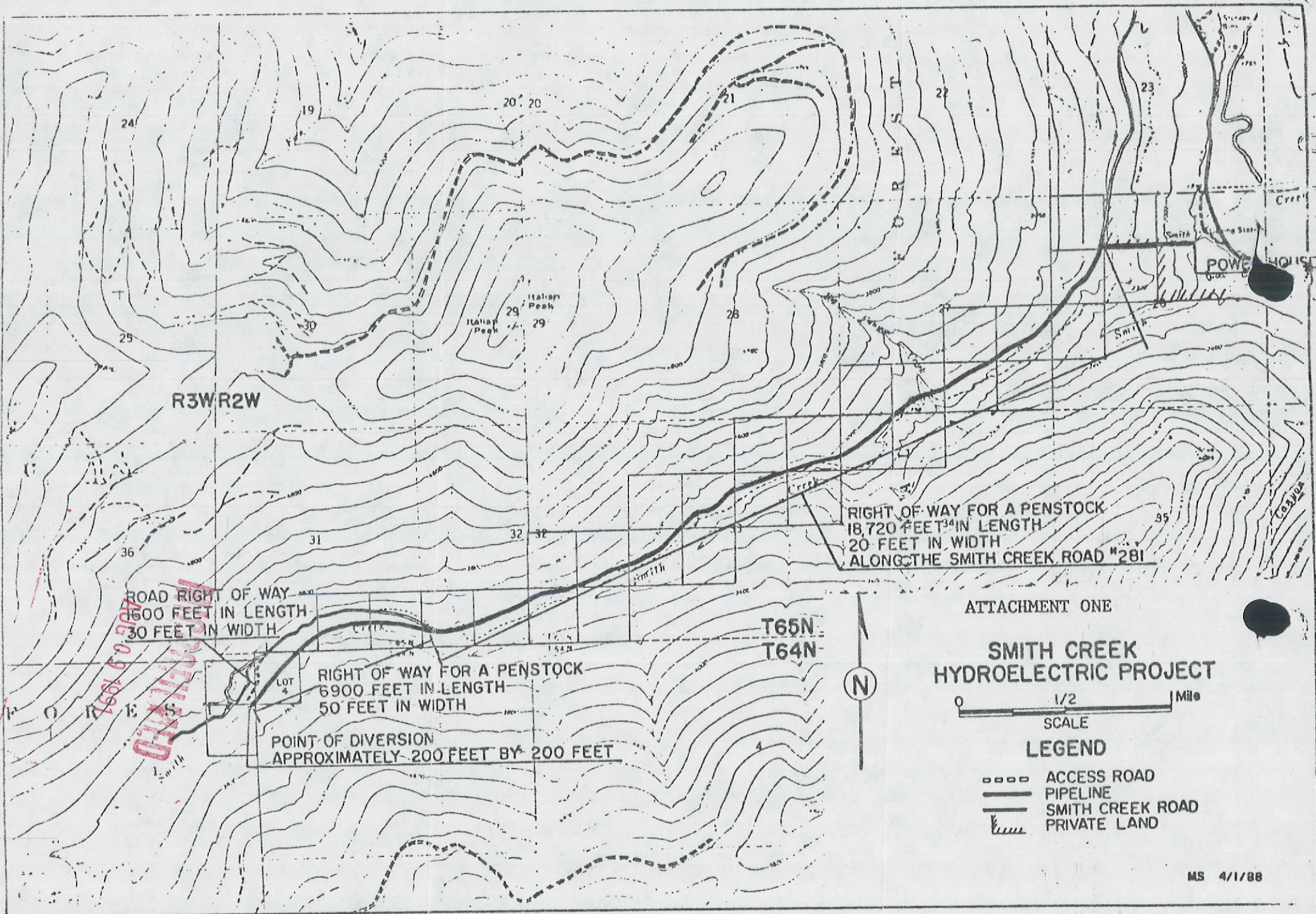




ATTACHMENT ONE

SMITH CREEK HYDROELECTRIC PROJECT

0 1/2 1 Mile
SCALE

LEGEND

- ACCESS ROAD
- ===== PIPELINE
- ===== SMITH CREEK ROAD
- ~~~~~ PRIVATE LAND

TRIBUNE PUBLISHING COMPANY, INC.
The Lewiston Morning Tribune
505 C St., P.O. Box 957
Lewiston, Idaho 83501
(208) 743-9411

Date 012689 INVOICE No. LO0154145

Account No. 96475 LAKE CREEK

Description 54145NOTIC

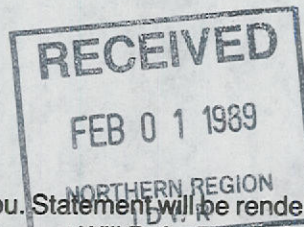
Times 2 Lines 39

Tab Lines

**LEGAL ADVERTISING
INVOICE**

SOLD TO: STATE OF IDAHO
DEPT. OF WATER RESOURCES
4055 GOVERNMENT WAY
COEURDALENE
ID 83814

\$ 39.00



NOTICE: This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement Will Refer To Invoice by No. Only.

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

Diane Holzer, being duly sworn,

deposes and says, I am the Legal Clerk
of the Tribune Publishing Company, a corporation organized and existing
under and by virtue of the laws of the State of Idaho, publishers of the
LEWISTON MORNING TRIBUNE, a newspaper of general circulation
published at Lewiston, Nez Perce County, Idaho; That the said Lewiston
Morning Tribune is an established paper and has been published regular-
ly and issued regularly at least once a day for more than 21 consecutive
years next immediately preceding the first publication of this notice, and
has been so published uninterrupted for said period; that the

54145
**NOTICE OF APPLICATION FOR
WATER RIGHT**

The Following application(s) have
been filed to appropriate the public
waters of the State of Idaho:
85-07519

INMAN, RICHARD
INMAN, DONNA
P.O. BOX 13784
PORTLAND, OR 97213
Source: LAKE CREEK

Tributary: WAHA LAKE
Diversion Pt: SESESE Sec

16 T 33N R 04W
Use: DOMESTIC (.040
CFS)

Date Filed: 12/29/1988

In: T33N R04W S16 SESE
98-07650

IDAHO NATURAL ENERGY INC.
550 LINDEN DR.

IDAHO FALLS, ID 83401

Source: SMITH CREEK

Tributary: KOOTENAI RIVER
Diversion Pt: SENE Sec 1 T

64N R 03W
Use: POWER (70.000
CFS)

Date Filed: 12/19/1988

In: T65N R02W S26 SWNE

The permit(s) will be subject to
all prior water rights. Protest must
be filled with the Director, Dept. of
Water Resources, Northern Region,
1910 Northwest Blvd., Suite 210, Co-
eur d'Alene, Idaho 83814 on or before
FEBRUARY 6, 1989.

R. KEITH HIGGINSON, Director

NOTICE OF APPLICATION FOR

attached hereto and which is made a part of this affidavit was published in
the said Lewiston Morning Tribune, 2 time(s). Publication be-
ing on 011989

WEEK for 2 consecutive WEEKS, or once a
publication thereof being on the 011989, the first
publication thereof being on the 012689, and the last pub-
lication thereof being on the , and said

NOTICE OF APPLICATION FOR

was so published in the regular and entire issue of said newspaper and
not in a supplement thereof and was so published in every issue and
number of the said paper, during the period and times of publication as
set forth above.

SUBSCRIBED AND SWORN BEFORE ME THIS THE 26
day of January 1989

Sheral M. Lentz

Notary Public in and for the State of Idaho,
residing at Lewiston, therein.

MICROFILMED

AUG 09 1991

PERMIT # 98-7650

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
FIELD REPORT SUPPLEMENT

PHOTOGRAPHS



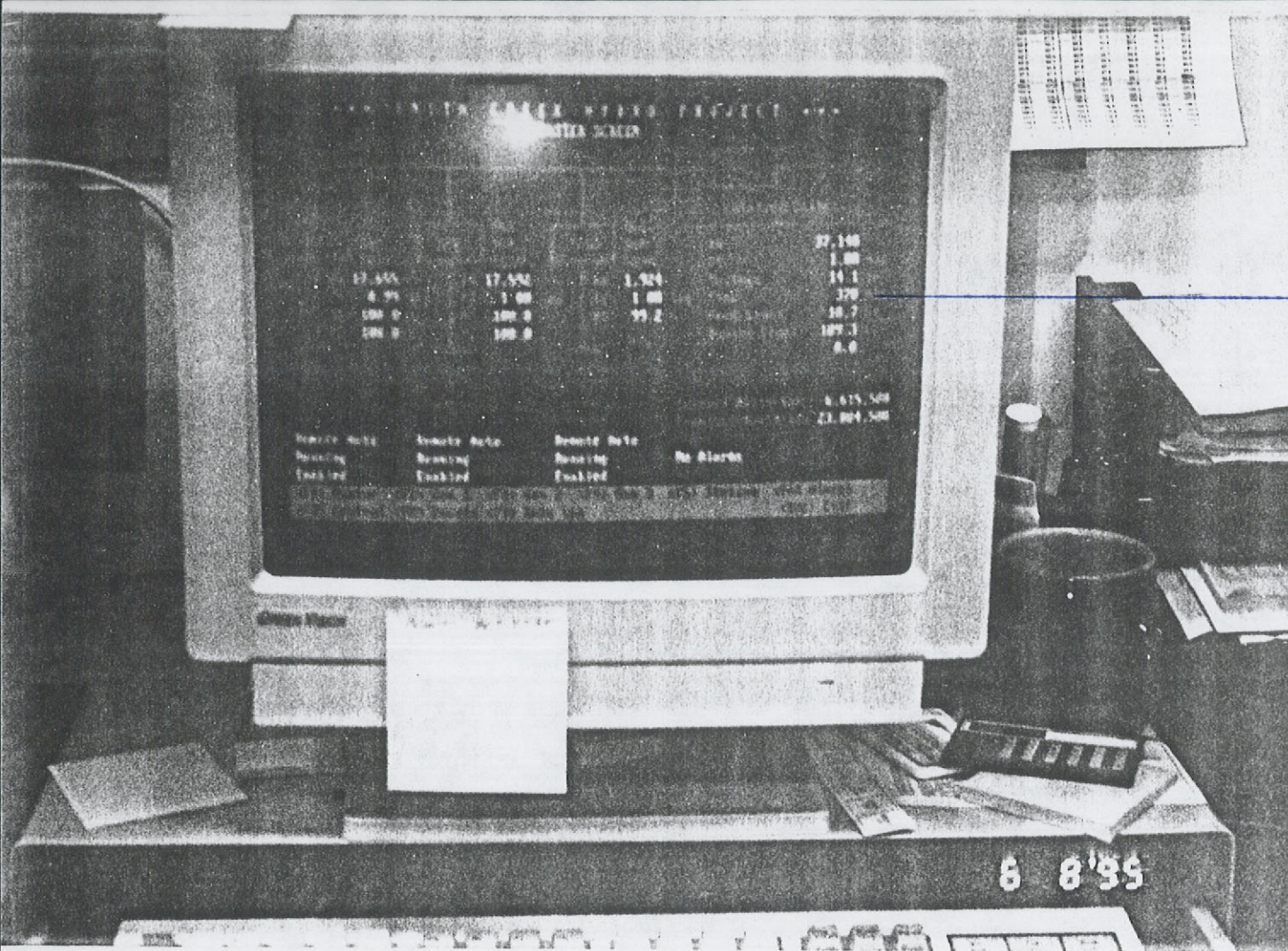
PD.-INTAKE



P.V.
Water returned
to Creek.

MICROFILMED

FEB 05 1999



total c.f.s
(370)

MICROFILMED
FEB 05 1999

SEE ORIGINAL IN 98-07612

98-07650

Power Station
P.S.

flow indicator
Box for computer

P.S.

MICROFILMED

FEB 05 1999

RECEIVED

FEB 06 1989

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Department of Water Resources

Idaho Natural Energy, Inc.

Project No. 8436-026, 031 & 033
Idaho

ORDER GRANTING EXTENSION OF TIME

(Issued January 26, 1989)

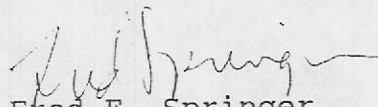
On January 9, 1989, Idaho Natural Energy, Inc., licensee for the Smith Creek Project, requested a 60-day extension to comply with license article 410 (transmission line design plan), and a 90-day extension to comply with license articles 403 (functional design drawings for diversion structure) and 106 (visual enhancement plan).^{1/}

The reasons stated by the licensees in support of the requested extension of time are reasonable and justify the extension.

The Director orders:

(A) The licensee's January 9, 1989, request for 60-day and 90-day extensions are granted. The deadline to submit the materials required by article 410 is extended to March 9, 1989, and the materials required by articles 403 and 106 are extended to April 9, 1989.

(B) This order is issued under authority delegated to the Director and is final unless appealed to the Commission under Rule 1902 within 30 days for the date of this order. Failure to file a petition appealing this order to the Commission shall constitute acceptance of this order.


Fred E. Springer
Director, Office of
Hydropower Licensing

^{1/} Two previous extensions of time have been granted by orders dated June 24 and December 2, 1988, to comply with the requirements of articles 101, 102, 104, 105, 106, 108, 110, 403, 404, 406, 408, 410, 411, and 415.

AUG 09 1991

MESSAGE CONFIRMATION

SEP-29-'99 FRI 15:53

TERM ID: IDNR FAX #1

P-9999

TEL NO: 208 334 7866

NO.	DATE	ST.TIME	TOTAL TIME	ID	DEPT CODE	OK	NG
443	09-29	15:51	00'01"22	801 524 1099		02	00

Carl Barton

801-524-1099

Dave Van Otten

801-353-6661

MESSAGE CONFIRMATION

SEP-29-'89 FRI 15:32

TERM ID: IDWR FAX #1

P-9999

TEL NO: 208 334 7866

NO.	DATE	ST.TIME	TOTAL TIME	ID	DEPT CODE	OK	NG
442	09-29	15:30	00'01'24	801 363 6661		02	00

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP**

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
Incomplete forms will be returned.

RECEIVED
NOV 02 2001
IDWR/North

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
98-7650					
98-7612					

RECEIVED
NOV 5 2001
DEPARTMENT OF WATER RESOURCES
K

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) Smith Falls Hydropower
699 East South Temple, Suite 220
Salt Lake City, Utah 84102
4. New Owner/Claimant(s) City of Eugene, Oregon, acting by and through the
Eugene Water & Electric Board
Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
- New Mailing Address 500 East Fourth Avenue
- City, State and ZIP Code Eugene, Oregon 97440
- New Telephone Number (541) 484-2411
5. Date you acquired the property May 2, 2001

See file # 98-07650 for support documentation

MICROFILMED

OCT 17 2002

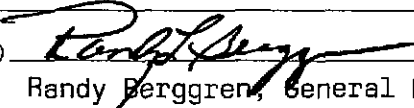
MICRO

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s)
(include title if applicable)


Randy Berggren, General Manager

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by DBell

Date 11.2.2001

Fee \$50.00

Receipted by DBell

Date 11.2.2001

Receipt No. N014747

Processed by _____ AJ

Date _____

WR _____ Date _____

FILED

OCT 17 2002

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 98-07650

Priority: January 5, 1989

Maximum Diversion Rate: 70.00 CFS
Maximum Diversion Volume: 50589.0 AF

This is to certify, that SMITH FALLS HYDROPOWER

669 E SOUTH TEMPLE STE 220

SALT LAKE CITY UT 84102

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated December 19, 1988; and has submitted Proof of Beneficial Use on June 18, 1991. An examination indicates that the works have a diversion capacity of 370.000 cfs of water from:

SMITH CREEK

tributary to KOOTENAI RIVER

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
POWER	01/01 to 12/31	70.00 CFS	50589.0 AF

LOCATION OF POINT(S) OF DIVERSION:

SENE , Sec. 1, Township 64N, Range 03W
BOUNDARY County

PLACE OF USE: POWER

TWN RGE SEC

65N 02W 26

NWNE

CONDITIONS OF APPROVAL AND REMARKS

1. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
2. Use of water under this right shall be non-consumptive.
3. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
4. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
5. Upon specific notification by the department, the right holder shall regularly measure the required bypass flow in Smith Creek and shall report the measurement results to the department.
6. Water used under this right shall be discharged into the natural channel upstream from Smith Creek Falls.

MICROFILMED

FEB 25 1993

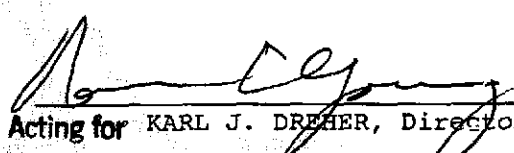
State of Idaho
Department of Water Resources**Water Right License**

WATER RIGHT NO. 98-07650

CONDITIONS OF APPROVAL AND REMARKS

7. A minimum flow of 27 cfs, measured immediately below the point of diversion, shall be left in the natural channel of Smith Creek at all times that the hydropower project is operating. All water shall be left in the natural channel of Smith Creek at any time the hydropower project is not operating.
8. The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of license 8436-001 issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Signed and sealed this 22ND day of JANUARY, 1999.


Acting for KARL J. DREHER, Director

MICROFILMED

FEB 05 1993

RECEIVED

State of Idaho
Department of Water Resources

JAN 14 1999

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR AMENDMENT

(For Licensing Purposes)

WATER RIGHT NO. 98-07650

Date of Priority: January 5, 1989

Maximum Diversion Rate: 70.00 CFS

Maximum Diversion Volume: 50589.0 AF

Comes now

SMITH FALLS HYDROPOWER

HCR 60 BOX 251

PORTHILL ID 83853

and represents to the Director of the

Idaho Department of Water Resources:

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 98-07650, and requests that the permit be changed as follows:

Source: SMITH CREEK

tributary to KOOTENAI RIVER

BENEFICIAL USE

PERIOD OF USE

RATE OF DIVERSION

ANNUAL VOLUME

POWER

01/01 to 12/31

70.00 CFS

50589.0 AF

LOCATION OF POINT(S) OF DIVERSION:

SENE, Sec. 1, Township 64N, Range 03W
BOUNDARY County

PLACE OF USE: POWER

TWN RGE SEC

65N 02W 26

NWNE

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk.

Signed at Salt Lake City, Utah, this 11 day of January, 1999.

MICROFILMED

R. Fred Moss

(Signature)

FEB 05 1999

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 98-07650

FOR DEPARTMENT USE ONLY

Preliminary check by SWK Fee = 50⁰⁰ Received by SWK # C044359 Date 1/15/99

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, Karl J. Dreher, of the Department of Water Resources hereby approve the
above Application for Amendment for Permit No. 98-07650 with the following;

CONDITIONS OF APPROVAL AND REMARKS

1. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
2. Use of water under this right shall be non-consumptive.
3. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
4. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
5. Upon specific notification by the department, the right holder shall regularly measure the required bypass flow in Smith Creek and shall report the measurement results to the department.
6. Water used under this right shall be discharged into the natural channel upstream from Smith Creek Falls.
7. A minimum flow of 27 cfs, measured immediately below the point of diversion, shall be left in the natural channel of Smith Creek at all times that the hydropower project is operating. All water shall be left in the natural channel of Smith Creek at any time the hydropower project is not operating.
8. The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of license 8436-001 issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

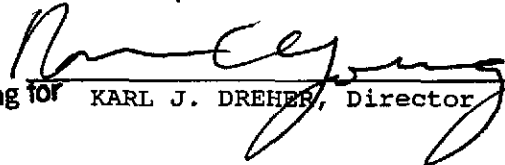
MICROFILMED

FEB 05 1999

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 98-07650

Witness my hand this 22nd day of JANUARY, 1999.


Acting for **KARL J. DREHER**, Director

MICROFILMED

FEB 05 1999

WATER RIGHT SUMMARY

ACTION	RIGHT NO.	NAME	AMOUNT CFS
Original Application	98-7650	Idaho Natural Energy, Inc.	70
Full Assignment	98-7650	Smith Falls Hydropower	70

RECEIVED

AUG 09 1991

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 98-7650

IN THE NAME OF SMITH FALLS HYDROPOWER

)
) ORDER OF REINSTATEMENT
)
)

WHEREAS, the Department issued the above-captioned permit with the condition that proof of construction of works and application of water to beneficial use be submitted on or before June 1, 1991; and,

WHEREAS, the Department notified the permit holder by certified mail that proof was due and instructed the permit holder as to the steps to be taken to make said proof; and,

WHEREAS, on June 7, 1991, the department notified the permit holder that the permit lapsed for failure to submit proof of beneficial use;

WHEREAS, on June 18, 1991, the permit holder assigned all right, title, and interest in and to Permit No. 98-7650 to Smith Falls Hydropower; and,

WHEREAS, Section 42-218a of the Idaho Code provides that a permit may be reinstated upon a showing of reasonable cause within sixty days; and,

WHEREAS, the permit holder has provided a reasonable showing as to why said permit should be reinstated by submitting proof of beneficial use on June 18, 1991;

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 98-7650 be REINSTATED with advance in priority to January 5, 1989.

Dated July 15 day of July, 1991.

AUG 09 1991


L. GLEN SAXTON
Chief, Water Allocation Bureau

RECEIVED
JUN 18 1991

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

Department of Water Resources

The Idaho Department of Water Resources will consider this form as a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

(208) 267-2744

1. Permit No. 98-07650 Telephone No. (801) 363-6111

2. Name(s) of Permit Holder(s): Smith Falls Hydropower

HCR 60, Box 251, Porthill, Idaho 83853

3. Post Office Address: 699 E. South Temple, #220, Salt Lake City, Utah 84102

4. Source of Water: Smith Creek

a. If ground water, well driller's name: N/A Date drilled: _____

b. Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use:

Domestic _____ (No. of households) Irrigation _____ (No. of acres)

Stockwater _____ (No. and type of stock) Other Hydroelectric Power

Production

6. Total rate and/or volume for which proof is submitted 70 cfs _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

Measuring device: Required? ☒ Yes ☐ No Installed? ☐ Yes ☐ No

OR

Flow Measurement Port: Required? ☒ Yes ☐ No Installed? ☐ Yes ☐ No

8. Fee Enclosed: \$ _____ (See License Examination Fee Schedule)

9. Person to contact to accompany the Department representative during the field examination:

Patrick M. Murphy, Plant Operator

(208) 267-2744

Name

Telephone No.

HCR 60, Box 251

Porthill, Idaho 83853

Address

AUG 09 1991

10. The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

June 14, 1991

Date

Patrick M. Murphy, Plant Operator
 Signature (and title if on behalf of a company or organization)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

APPROVED

1. Name of applicant IDAHO NATURAL ENERGY INC. Phone (208) 522-8069
Post office address 550 Linden Drive, Idaho Falls, Idaho 83401
2. Source of water supply Smith Creek which is a tributary of Kootenai River
3. Location of point of diversion is SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____
Sec. 1 Township 64 N Range 3 W B.M. Boundary County; additional
points of diversion if any: None
4. Water will be used for the following purposes:
Amount 70 cfs for Hydroelectric Power Generation purposes from January to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 70 cfs and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
 - a. Description of ditches, flumes, pumps, headgates, etc. A concrete diversion structure
approximately 8 feet high and 75 feet wide will be placed in Smith Creek at
an approximate elevation of 3,450 mean sea level.
 - b. Height of storage dam N/A feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
 - c. Proposed well diameter is N/A inches; proposed depth of well is _____ feet.
 - d. Is ground water with a temperature of greater than 90°F being sought? N/A
7. Time required for the completion of the works and application of the water to the proposed beneficial use is
2 years (minimum 1 year).

APPROVED
AUG 09 1991

8. Description of proposed uses (if irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in KW. 1,590 ft/51,500 hp
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. _____

9. Description of place of use:

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
65N	2W	26			H														

Total number of acres to be irrigated _____

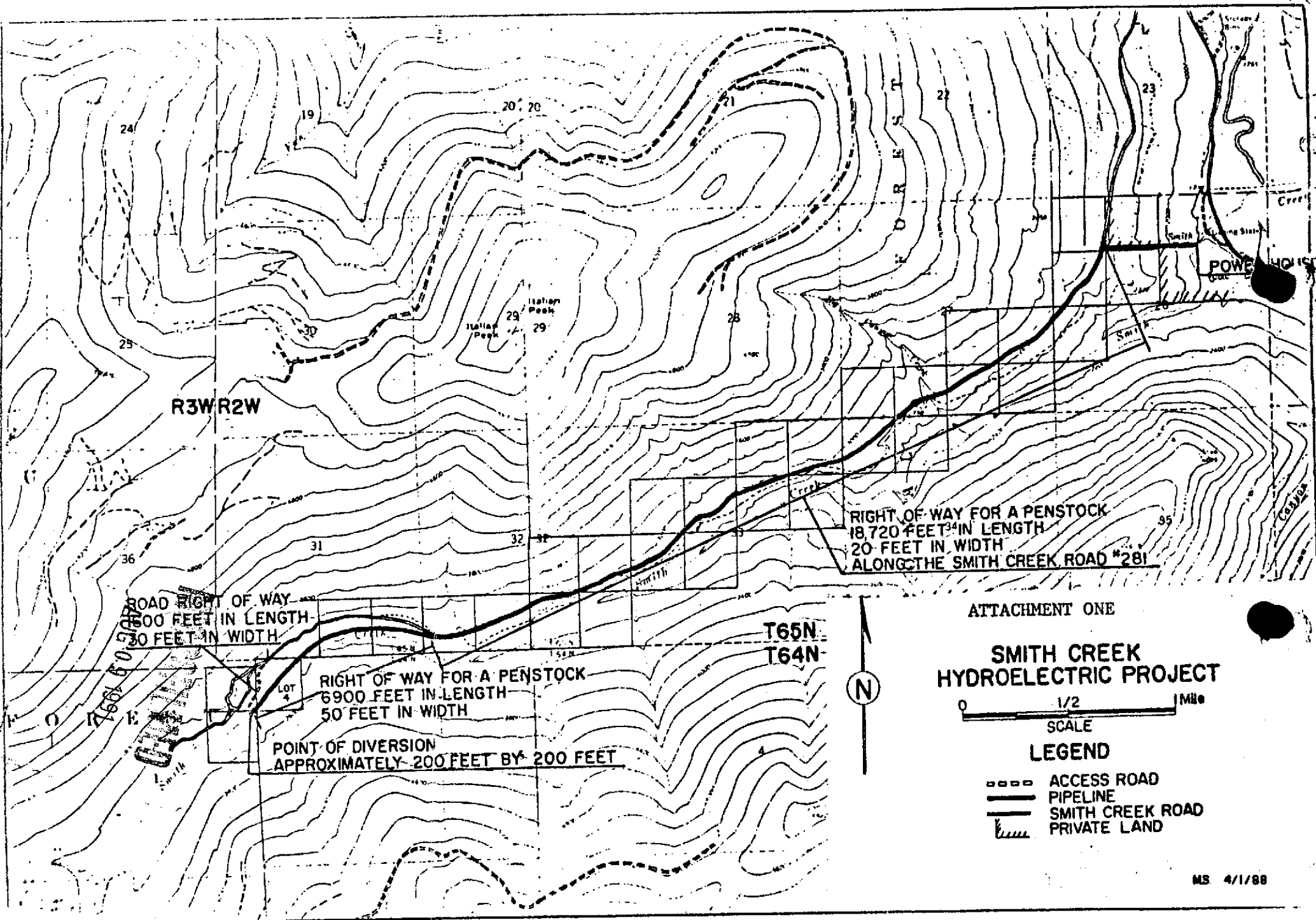
10. Describe any other water rights used for the same purposes as described above. See Permit No. 98-7612
For existing 300 CFS right

11. a. Who owns the property at the point of diversion? U. S. Forest Service

b. Who owns the land to be irrigated or place of use? Hydro-Flow, Inc.

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. Hydro-Flow, Inc. owns 100% of Idaho Natural Energy, Inc.- which is the applicant.

12. Remarks: A Special Use Permit has been obtained from the Forest Service (dated 5/12/88).
The FERC Licensing was issued on April 10, 1987 where a minimum bypass flow was set
at 27 CFS . Engineering studies have shown that up to 370 CFS can be used to optimize
plant equipment without changing the scope of the project.



[illegible]

100-443887-100

AUG 09 1991

Application for permit to appropriate the public waters of


(Applicant)

Proposed Priority 12/19/88

Received by CU Date 12/22/88 Time 2:00 PM Preliminary check by JK

Fee \$ 725.00 Received by pm # N002200 Date 12/23/88

Publication prepared by pm Date 1/11/89 Published in Idaho Tribune, Senior News, Idaho Statesman, Post Register

Publication approved pm Date 2/1/89

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 98-7650, and said application is hereby APPROVED.

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

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before June 1, 19 91.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other: SEE ATTACHED SHEET FOR CONDITIONS E THROUGH Q:

Witness my hand this 30th day of May, 1989.

J. Blum Saxton

MICROFILMED

AUG 09 1991

ATTACHMENT TO CONDITIONS OF APPROVAL

FOR PERMIT NO. 98-7650

- e. The issuance of this permit in no way grants any right-of-way or easement across the land of another.
- f. The permit holder shall either install a measuring device or a flow measurement port or provide a certified measurement or computation of flow based upon system design to be prepared by a professional engineer.
- g. This permit is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this permit. Failure to comply with these provisions is cause for immediate cancellation of this permit.
- h. The water right acquired under this permit for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- i. The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director on the date(s) of expiration of any license issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
- j. This permit does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
- k. Use of water under this permit shall be non-consumptive.
- l. A separate stream alteration permit from the IDWR is required for any activity in the stream channel other than construction and/or maintenance of the diversion structure. If your proposed construction or operation involves construction of an outfall or any other work in the stream channel other than a water diversion, you must contact the Department and obtain a Stream Channel Alteration permit prior to the start of construction.
- m. Water used under this permit shall be discharged into the natural channel upstream from Smith Creek Falls and shall meet Idaho Water Quality Standards.
- n. The adequacy of the project design to protect public and employee safety during all phases of construction and operation of the project shall be reviewed and certified by a professional engineer licensed to practice in the state of Idaho. A copy of the certification shall be filed with the department.
- o. A minimum flow of 27 cfs measured immediately below the point of diversion shall be left in the natural channel of Smith Creek at all times that the hydropower project is operating. All water shall be left in the natural channel of Smith Creek at any time the hydropower project is not operating.

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AUG 09 1991

- p. Prior to operation of the hydropower facility, the permit holder shall provide an operation plan to the department for review and approval. The operation plan shall provide for the protection of public safety and insure an uninterrupted flow of water over Smith Creek Falls during changes of operation of the hydropower facility.
- q. This permit and any subsequent license issued shall be limited to a term of 40 years, ending on June, 2019, and shall be subject to review by the director. Upon findings based on the public interest, the water right may be renewed, amended or revoked.

Witness my hand this 30th day of May 1989.

H. Glen Saylor

MICROFILMED

AUG 09 1991

State of Idaho
Department of Water Resources
ASSIGNMENT OF PERMIT

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JUN 18 1991

Department of Water Resources

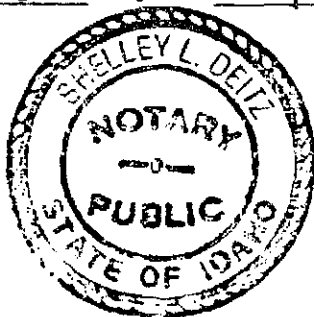
I, IDAHO NATURAL ENERGY, INC. hereby assign to SMITH FALLS HYDROPOWER
of 550 LINDEN DRIVE, IDAHO FALLS, IDAHO 83401
Address

All my right, title, and interest in and to Permit No. 98-7650
to appropriate the public waters of the State of Idaho.

The following described portion of my right, title, and interest in and
to Permit No. _____ to appropriate the public waters of the
State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage
within each 40 acre subdivision, the point of diversion and the amount of
water in cubic feet per second for direct diversion, or acre feet for storage)

Made this 25th day of SEPTEMBER, 19 89.



Gary E. May
Permit Holder
IDAHO NATURAL ENERGY, INC.
GARY E. MAY, VICE PRESIDENT

Spouse of Permit Holder

State of Idaho)
County of Boundary) ss

On this 25 day of September, 19 89, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged
to me that he (she) (they) executed the same.

s e a l

Shelley L. Deitz
Notary Public residing at
BONNERS FERRY

AUG 09 1991

My commission expires:

7-26-95

**AFFIDAVIT FOR WATER RIGHTS TO BE USED
FOR POWER PURPOSES**

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

1. Individual Applicant or Individual Members of a Partnership:

I, _____ of _____,
(name) (city)

County of _____, State of Idaho, being duly sworn, do hereby
certify that I am a bona fide resident of the State of Idaho.

2. Corporation:

I, Ted S. Sorenson of Idaho Falls,
(name) (city)

County of Bonneville, State of Idaho, being duly sworn, depose
and say: That I am the designated registered agent of the Idaho Natural Energy, Inc.

(name of corporation) : that as such I am in charge of the registered office

of the said corporation as required by Section 30-1-12, Idaho Code, at Idaho Falls,
(city)

Idaho, wherein are kept the corporate records required by Section 30-1-52, Idaho Code; and that Idaho

Natural Energy, Inc. is a corporation qualified to do business in the State of Idaho under the laws
(name of corporation)
of the State of Idaho.

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

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

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

Ted S. Sorenson
Applicant

State of Idaho)
County of Bonneville) ss.

On this 16TH day of December, 19 88, personally appeared before me
the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

David E. Bennett
Notary Public residing at
Idaho Falls AUG 9 1991

seal

My commission expires:

10-18-91

NOTICE OF CORRECTION

NOTICE IS HEREBY GIVEN THAT APPLICATION FOR PERMIT NO. 98-7650 in the name of Idaho Natural Energy Inc. was advertised incorrectly on January 19 and 26, 1989.

The place of use was incorrectly advertised as T65N R20W S26 SWNE; whereas, correctly it should be T65N R02W S26 SWNE.

Protests to the above-referenced correction must be filed with the Director, Dept. of Water Resources, 1910 Northwest Blvd., Suite 210, Coeur d'Alene, Id. 83814 on or before March 6, 1989.

R. Keith Higginson
Director
PUBLISH: Thursday,
February 16, and 23,
1989.

Affidavit of Publication

STATE OF IDAHO,
COUNTY OF TWIN FALLS } ss.

I, Linda Capps McKinnis being first duly sworn upon oath, depose and say that I am Print Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive Weeks, commencing with the issue dated

February 16, 1989, and ending with the issue dated February 23, 1989.

STATE OF IDAHO
COUNTY OF

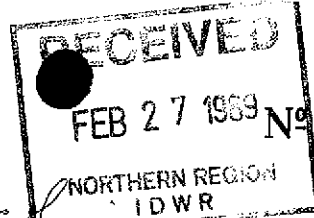
On this 23 day of February in the year of 1989, before me, a Notary Public, personally appeared Linda Capps McKinnis known or identified to me to be the person whose name subscribed to the within instrument, and being first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

AUG 09 1991

Sheva R. Feltman
Notary Public for Idaho

Residing at Twin Falls County

My commission expires: 5/19/94 County of Twin Falls,
Idaho



, effective February 16, t Sunday, and the Twin ich newspapers prior to ounty continuously and mths, and said TIMES- paper except Saturday, ication under said name

, Thursday of each week der of any court of com- , will be published; and , and in each issue there- e published.

Shuise day of

NOTICE OF CORRECTION
NOTICE OF CORRECTION
GIVEN THAT THE
TOWNSHIP PERMIT NO.
98-7650 in the name of
Idaho Natural Energy Inc.
was advertised incorrectly
on January 19 and 26,
1989.

The place of use was in-
correctly advertised as
T65N R20W S26 SWNE
whereas, correctly it
should be T65N R02W
S26 SWNE.

Protests to the above-ref-
erenced correction must
be filed with the Director,
Dept. of Water Resources,
1910 Northwest Blvd.,
Suite 210, Coeur d'Alene,

Affidavit of Publication

STATE OF IDAHO,
COUNTY OF TWIN FALLS

ss.

I, Linda Capps McSwine being first duly sworn upon
oath, depose and say that I am Print Clerk of the TIMES-NEWS,
published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of
the notice of advertisement, as per clipping attached, was published in the regular and
entire issue of said newspaper, and not in any supplement thereof, for Two
consecutive Weeks, commencing with the issue dated
February 16, 1989, and ending with the issue dated
February 23, 1989.

And I do further certify that said newspaper is a consolidation, effective February 16,
1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin
Falls News, published theretofore daily except Monday, both of which newspapers prior to
consolidation had been published under said names in said city and county continuously and
uninterruptedly during a period of more than twelve consecutive months, and said TIMES-
NEWS, since such consolidation, has been published as a daily newspaper except Saturday,
until July 31, 1978, at which time said newspaper began daily publication under said name
in said city and county continuously and uninterruptedly.

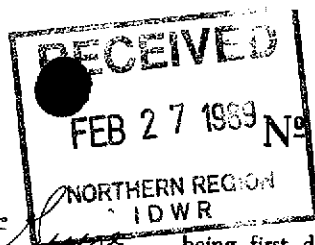
And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week
has been designated as the day on which legal notice by law or by order of any court of com-
petent jurisdiction within the state of Idaho, to be published weekly, will be published; and
that at the head of the editorial column of said combined newspapers, and in each issue there-
of, Thursday is announced as the day on which said legal notices will be published.

Linda Capps McSwine
Subscribed and sworn to before me on this 23rd day of

February, 1989.

Sheva R. Feltman

Notary Public in and for the County of Twin Falls,
State of Idaho, residing at Twin Falls, Idaho



NOTICE OF APPLICATION

FOR WATER RIGHT

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

98-07850

IDAHO NATURAL ENERGY INC.

550 Linden Dr.

Idaho Falls, ID 83401

Source: Smith Creek

Tributary: KOOTENAI RIVER

Diversion Pt: SENE Sec 1 T 64N R 03W

Use: Power (70,000 CFS)

Date Filed: 12/19/1988

In: T65N R20W S26 SWNE

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Northern Region, 1910 Northwest Blvd., Suite 210, Coeur d'Alene, Idaho 83814 on or before February 6, 1989.

R. Keith Higginson,
Director

PUBLISH: Thursday,
January 19 and 26, 1989.

Affidavit of Publication

STATE OF IDAHO,
COUNTY OF TWIN FALLS }

ss.

I, Linda Copps McSwine being first duly sworn upon oath, depose and say that I am Print Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive weeks, commencing with the issue dated January 19, 1989, and ending with the issue dated January 26, 1989.

STATE OF IDAHO

COUNTY OF

On this 27 day of January in the year of 1989, before me, a Notary Public, personally appeared Linda Copps McSwine, known to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

AUG 09 1991

Bonnie Schuch
Notary Public for Idaho

Residing at Twin Falls

My commission expires: 9-16-94

RECEIVED

FEB 03 1989

Nº 19426

NORTHERN REGION
IDWR

, effective February 16, t Sunday, and the Twin ich newspapers prior to ounty continuously and onths, and said TIMES- paper except Saturday, ication under said name

, Thursday of each week der of any court of com- will be published; and in each issue there- e published.

27 day of

County of Twin Falls,
Twin Falls, Idaho

NOTICE OF
APPLICATION
FOR WATER RIGHT
The following applica-
tions have been filed to
appropriate the public
waters of the State of
Idaho:
98-07860
IDAHO NATURAL
ENERGY INC.
550 Linden Dr.
Idaho Falls, ID 83401
Source: Smith Creek
Tributary: KOOTENAI
RIVER
Diversion Pt: SENE Sec
1 T 64N R 03W
Use: Power (70,000 CFS)
Date Filed: 12/10/1988
In: TREN

Affidavit of Publication

STATE OF IDAHO,
COUNTY OF TWIN FALLS }

ss.

RECEIVED

FEB 03 1989

Nº 19426

NORTHERN REGION

DWR

being first duly sworn upon

I, Linda Copps McShure of the TIMES-NEWS,
published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of
the notice of advertisement, as per clipping attached, was published in the regular and
entire issue of said newspaper, and not in any supplement thereof, for two
consecutive weeks, commencing with the issue dated

January 19, 1989, and ending with the issue dated
January 26, 1989.

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except Monday, both of which newspapers prior to consolidation had been published under said names in said city and county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at which time said newspaper began daily publication under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to be published weekly, will be published; and that at the head of the editorial column of said combined newspapers, and in each issue thereof, Thursday is announced as the day on which said legal notices will be published.

Linda Copps McShure
Subscribed and sworn to before me on this 27 day of

January, 1989

Bonnie Schuch
Notary Public in and for the County of Twin Falls,
State of Idaho, residing at Twin Falls, Idaho

Proof of Publication

The Post-Register

State of Idaho, }
County of Bonneville } ss

I, .. Ted Delezene, first being duly sworn, depose and say: That I am the Foreman of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post-Register, a newspaper of general circulation, published daily, except Saturday, at Idaho Falls, Idaho; said Post-Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the 1st day of November, 1931, and each of said newspapers have been published continuously and uninterruptedly, prior to consolidation, for more than seventy-eight (78) weeks and said Post-Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for two consecutive weeks, first publication having been made on the 19th day of January 1989 ..., last publication having been made on the 26th day of January 1989 ..., and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Subscribed and sworn to before me, this . 30th . day of . January . 1989 ..

Ted Delezene
.....
Don K. Napier
.....
Notary Public

My commission expires . September 30, . 1994 ..

NOTICE OF APPLICATION FOR WATER RIGHT

The Following application(s) have been
filed to appropriate the public waters of the
State of Idaho:

98-07650

IDAHO NATURAL ENERGY INC.
550 LINDEN DR.

IDAHO FALLS, ID 83401

Source: SMITH CREEK; Tributary: KOO-
TENAI RIVER

Diversion Pt: SENE Sec 1 T 64N R 03W

Use: POWER (70,000 CFS)

Date Filed: 12/19/1988

In: T65N R02W S26 SWNE

The permit(s) will be subject to all prior
water rights. Protests must be filed with the
Director, Dept. of Water Resources, North-
ern Region, 1910 Northwest Blvd., Suite
210, Coeur d'Alene, Idaho 83814 on or
before FEBRUARY 6, 1989.

R. KEITH HIGGINSON, Director

Published: January 19, 26, 1989

JK
2/9/89
MICROFILMED

AUG 09 1991

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FEB 03 1989

NORTHERN REGION
IDWR

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707

LEGAL ADVERTISING INVOICE

Amount Due

34.68

Account Name Idaho Department of Water Resources (Northern)			Account Number #100631		
Address 1910 Northwest Blvd., Suite 210		City/State Coeur d'Alene, ID		Zip 83814	
Ordered By Patricia Stypa	P.O. Number	Rate NT	Run Dates 1989 January 19, 26		
Identification Application for Water Right: 98-07650			Estimated Inches		Real Inches
Number of Affidavits Requested 1					Legal Number #1645

NOTICE OF APPLICATION FOR WATER RIGHT

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

98-07650

Idaho Natural Energy, Inc.
550 Linden Dr.
Idaho Falls, ID 83401
Source: Smith Creek
Tributary: Kootenai River
Diversion Pt: SENE Sec 1 T
64N R 03W
Use: Power (70,000 CFS)
Date Filed: 12/19/1988
In: T65N R02W S26 SWNE

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Northern Region, 1910 Northwest Blvd., Suite 210, Coeur d'Alene, Idaho 83814 on or before FEBRUARY 6, 1989.

R. KEITH HIGGINSON
Director

Pub. Jan. 19, 26, 1989

1645

RECEIVED

JAN 30 1989

NORTHERN REGION
IDWR

STATE OF IDAHO)

SS.

COUNTY OF ADA)

Debbie Richards

, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto; that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended, for 2

☒ consecutive weekly ☐ consecutive daily ☐ single ☐ odd skip

insertion(s) beginning with the issue of January 19, 19 89

and ending with the issue of January 26, 19 89

AUG 09 1991

Subscribed and sworn to before me this 26th

day of January, 19 89

Notary Public for Idaho, Residing at Boise, Idaho

AFFIDAVIT OF PUBLICATION

State of Idaho

ss.

County of Boundary,

Dan Drewy being first duly sworn on oath
deposes and says that he/she is Editor
of the Bonners Ferry Herald, a newspaper printed and
published at Bonners Ferry, Boundary County, Idaho; that
the said newspaper has been continuously and
uninterruptedly published in said Boundary County during
a period of 12 months prior to the first publication of the
hereto attached notice of publication in the case of:

Applications for Water rights
1156

as it was published in the regular and entire issue of the
said paper for a period of 2 consecutive weeks,
commencing on 18 day of Jan., 1989
and ending on the 25 day of Jan, 1989
and that said notice was published in said newspaper.

On this 25 day of Jan in the year
of 1989, before me, a Notary Public, personally
appeared Dan Drewy,
known or identified to me to be the person whose name
subscribed to the within instrument, and being by me first
duly sworn, declared that the statements therein are true,
and acknowledged to me that he executed the same.

Anna Thomas
Notary Public for Idaho

Residing at Bonners Ferry

My commission expires: 12-1-1994

NOTICE OF APPLICATION
FOR WATER RIGHT

The following application(s) have
been filed to appropriate the public
waters of the State of Idaho:

98-07650

IDAHO NATURAL ENERGY INC.
550 LINDEN DR.
IDAHO FALLS, ID 83401
Source: SMITH CREEK Tributary:
KOOTENAI RIVER
Diversion Pt: SENE Sec 1 T 64N R
03W
Use: POWER (70.000 CFS)
Date Filed: 12/19/1988
In: T65N R02W S26 SWNE

The permit(s) will be subject to all
prior water rights. Protests must be
filed with the Director, Dept. of
Water Resources, Northern Region,
1910 Northwest Blvd., Suite 210,
Coeur d'Alene, Idaho 83814 on or
before FEBRUARY 6, 1989.

R. Keith Higginson, Director

#1156 January 18, 25, 1989

NOTICE OF APPLICATION
FOR WATER RIGHT

The following application(s) have
been filed to appropriate the public
waters of the State of Idaho:

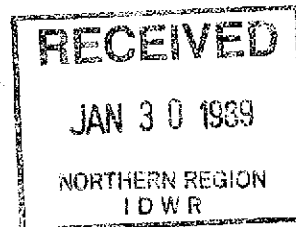
98-07650

IDAHO NATURAL ENERGY INC.
550 LINDEN DR.
IDAHO FALLS, ID 83401
Source: SMITH CREEK Tributary:
KOOTENAI RIVER
Diversion Pt: SENE Sec 1 T 64N R
03W
Use: POWER (70.000 CFS)
Date Filed: 12/19/1988
In: T65N R02W S26 SWNE

The permit(s) will be subject to all
prior water rights. Protests must be
filed with the Director, Dept. of
Water Resources, Northern Region,
1910 Northwest Blvd., Suite 210,
Coeur d'Alene, Idaho 83814 on or
before FEBRUARY 6, 1989.

R. Keith Higginson, Director

#1156 January 18, 25, 1989



AUG 09 1991

TRIBUNE PUBLISHING COMPANY, INC.

The Lewiston Morning Tribune

505 C St., P.O. Box 957

Lewiston, Idaho 83501

(208) 743-9411

Date 012689

INVOICE No. L00154145

Account No. 96475

LAKE CREEK

Description 54145NOTIC

Times 2

Lines 39

Tab Lines

**LEGAL ADVERTISING
INVOICE**

SOLD TO:

STATE OF IDAHO
DEPT. OF WATER RESOURCES
4055 GOVERNMENT WAY
COEURD'ALENE
ID 83814

\$ 39.00

RECEIVED

FEB 01 1989

NORTHERN REGION

NOTICE: This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement Will Refer To Invoice by No. Only.**AFFIDAVIT OF PUBLICATION**STATE OF IDAHO, ss.
County of Nez Perce**NOTICE OF APPLICATION FOR
WATER RIGHT**The Following application(s) have
been filed to appropriate the public
waters of the State of Idaho:

85-07519

INMAN, RICHARD
INMAN, DONNA
P.O. BOX 13784
PORTLAND, OR 97213
Source: LAKE CREEK

Tributary: WAHA LAKE

Diversion Pt: SESESE Sec
16 T 33N R 04WUse: DOMESTIC (.040
CFS)

Date Filed: 12/29/1988

In: T33N R04W S16 SESE
98-07650IDAHO NATURAL ENERGY INC.
550 LINDEN DR.

IDAHO FALLS, ID 83401

Source: SMITH CREEK

Tributary: KOOTENAI RIVER

Diversion Pt: SENE Sec 1 T
64N R 03WUse: POWER (70.000
CFS)

Date Filed: 12/19/1988

In: T65N R02W S26 SWNE

The permit(s) will be subject to
all prior water rights. Protest must
be filed with the Director, Dept. of
Water Resources, Northern Region,
1910 Northwest Blvd., Suite 210, Co-
eur d'Alene, Idaho 83814 on or before
FEBRUARY 6, 1989.

R. KEITH HIGGINSON, Director

Diane Holzer

being duly sworn,

deposes and says, I am the Legal Clerk
of the Tribune Publishing Company, a corporation organized and existing
under and by virtue of the laws of the State of Idaho, publishers of the
LEWISTON MORNING TRIBUNE, a newspaper of general circulation
published at Lewiston, Nez Perce County, Idaho; That the said Lewiston
Morning Tribune is an established paper and has been published regular-
ly and issued regularly at least once a day for more than 21 consecutive
years next immediately preceding the first publication of this notice, and
has been so published uninterrupted for said period; that the**NOTICE OF APPLICATION FOR**attached hereto and which is made a part of this affidavit was published in
the said Lewiston Morning Tribune, 2 time(s). Publication be-
ing on 011989WEEK for 2 consecutive WEEKS, or once a
publication thereof being on the 011989, the first
publication thereof being on the 012689, and said**NOTICE OF APPLICATION FOR**was so published in the regular and entire issue of said newspaper and
not in a supplement thereof and was so published in every issue and
number of the said paper, during the period and times of publication as
set forth above.

SUBSCRIBED AND SWORN BEFORE ME THIS THE 26

day of January 1989

Notary Public in and for the State of Idaho,
residing at Lewiston, therein.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 28, 2002

CITY OF EUGENE
EUGENE WATER & ELECTRIC BRD
500 E 4TH AVE
EUGENE OR 97440

RE: Change of Ownership for Water Rights 98-7612 and 98-7650

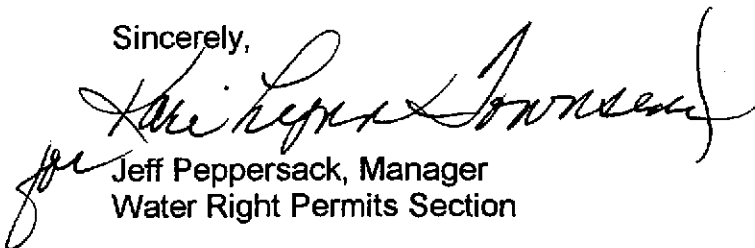
Dear Water Right Holder(s):

The department acknowledges receipt of correspondence changing ownership of the above referenced water rights to you. The department has modified its records to reflect the changes in ownership and has enclosed computer-generated reports for your records.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department.

Please feel free to contact this office if you have any questions regarding this matter.

Sincerely,


Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosures

MICROFILMED

OCT 17 2002

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Smith Falls Hydropower
Eugene Water and Electric Board

Project No. 8436-118

ORDER APPROVING TRANSFER OF LICENSE

(Issued November 13, 2000)

On June 8, 2000, Smith Falls Hydropower (Smith Falls or transferor), licensee of the Smith Creek Project No. 8436, and Eugene Water and Electric Board (Eugene or transferee) jointly filed an application for approval of transfer of license. The 37,792 kilowatt project is located on Smith Creek in Boundary County, Idaho. The project occupies lands of the United States within the Panhandle National Forest.

The license for the project was issued to Idaho Natural Energy, Inc., on April 10, 1987.¹ Transfer of the license to Smith Falls was approved by order issued on July 24, 1989.² The application states that the purpose of the proposed transfer is to enable Eugene to assume ownership and operation of the project in conjunction with its other operating facilities within the State of Oregon.

The transferor has generally complied with the terms and conditions of the license. Smith Falls has paid and agrees to continue to pay charges which accrue until the transfer is effective.

Eugene is the licensee for Project Nos. 2242, 2496, 3109, and 5264. The transferee is qualified to hold the license and to operate the properties under the license, and will be required to accept all of the terms and conditions of the license and to be bound by the license as if it were the original licensee.

¹39 FERC ¶ 62,038.

²48 FERC ¶ 62,046.

Project No. 8436-118

2

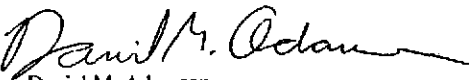
The Director orders:

(A) Transfer of the license for Project No. 8436 from Smith Falls Hydropower to Eugene Water and Electric Board is approved.

(B) Smith Falls Hydropower shall pay all annual charges that accrue up to the effective date of the transfer.

(C) Approval of the transfer is contingent upon: (1) delivery of all license instruments to Eugene Water and Electric Board, which shall be subject to the terms and conditions of the license as though it were the original licensee; and (2) Eugene Water and Electric Board acknowledging acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet. Within 60 days from the date of this order, Eugene Water and Electric Board shall submit certified copies of all instruments of conveyance and the signed acceptance sheet.

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


Daniel M. Adamson
Director
Office of Energy Projects

MICROFILMED
NOV 17 2002

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Idaho Falls, Idaho	Projects Nos. 2842-035, 2952-065
City of Tacoma, Washington	Project Nos. 2016-047, 1862-075
Cities of Aberdeen and Tacoma, Washington	Project No. 6842-122
Public Utility District No. 1 of Chelan County, Washington	Project Nos. 2145-037, 943-072, and 637-019
Public Utility District No. 1 of Pend Oreille County	Project No. 2042-017
Public Utility District No. 1 of Douglas County	Project No. 2149-088
Sacramento Municipal Utility District	Project No. 2101-071
City of Oswego, New York	Project No. 10551-083
The Central Nebraska Public Power and Irrigation District	Project No. 1417-086
City of Seattle, Washington	Project Nos. 553-114, 2144-025, 2705-023, and 2959-098
South Sutter Water District	Project No. 2997-024
New York Power Authority	Project Nos. 2090-029, 2216-045 and 2685-011
Calaveras County Water District	Project No. 2409-113
City of Watertown, New York	Project No. 2442-053
Oklahoma Municipal Power Authority	Project No. 3083-095

Docket Nos. P-2842-035, *et al.*

-2-

City of Santa Clara, California

Project Nos. 3190-012, 3193-012 and 619-085

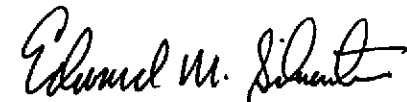
ORDER SCHEDULING PREHEARING CONFERENCE

(Issued November 15, 2000)

A prehearing conference will be held on November 29, 2000, at 10:00 a.m., in a hearing room at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

The purpose of the prehearing shall be to clarify the positions of the parties, to explore what further steps are necessary in order to enable the parties to reach an amicable settlement, and to set a procedural schedule to govern adjudication.

At the prehearing conference, the parties and Staff shall be prepared to propose and agree to a preliminary joint stipulation of issues which will govern this matter during the procedural stages and which should reflect the position of each party with respect to each issue. In addition, the parties shall be prepared to agree to a procedural schedule which encompasses the submission of direct testimony and answering and/or rebuttal testimony, discovery, witness lists which shall include estimates of the time necessary for the presentation of each witness, and a final joint stipulation of issues which will govern the adjudication of this matter.



EDWARD M. SILVERSTEIN
Presiding Administrative Law Judge

MICROFILMED
OCT 17 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

January 25, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

SMITH FALLS HYDROPOWER
669 E SOUTH TEMPLE STE 220
SALT LAKE CITY UT 84102

RE: WATER RIGHT NO. 98-07650

Dear Water Right Holder(s):

The Department of Water Resources (the Department) has issued the enclosed license confirming that a water right has been established in accordance with the permit referenced above. The license is a preliminary order issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the Department within fourteen (14) days of the service date of this order. The Department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding. Otherwise, this preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

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FEB 05 1999

ORAL ARGUMENT

If the Department grants a petition to review the preliminary order, the Department shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Department in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Department may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

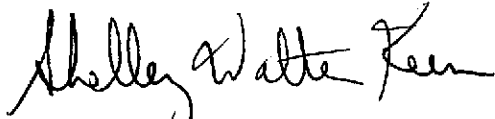
NOT RECORDED

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

For your records I have also enclosed a copy of your Application for Amendment of Permit, which was approved.

If you have any questions, please call me at 208-327-7946.

Sincerely,

A handwritten signature in cursive script that reads "Shelley W. Keen".

Shelley W. Keen
Water Rights Supervisor

SK:klt

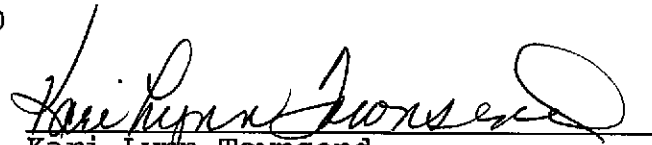
Enclosure

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of January, 1999, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved License) to the person(s) listed below:

Water Right No. 98-07650

SMITH FALLS HYDROPOWER
669 E SOUTH TEMPLE STE 220
SALT LAKE CITY UT 84102


Kari Lynn Townsend
Secretary

MICROFILMED

FEB 05 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

January 6, 1999

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

SMITH FALLS HYDROPOWER
669 E SOUTH TEMPLE STE 220
SALT LAKE CITY UT 84102

RE: WATER RIGHT NO. 98-07650

Dear Permit Holder(s):

I previously forwarded to you an Application for Amendment so that you could amend your permit to depict your water right as it has been actually developed. I have not yet received the amendment. If I do not receive it within 14 days, I will assume you no longer have any interest in the permit and cancellation proceedings will begin.

Enclosed for your convenience is another amendment form. Please note that the filing fee for this amendment is \$50.00. If you have any questions, please call me at (208) 327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosure

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FEB 05 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

TRANSMITTAL COVER SHEET

FAX NUMBER: (208) 327-7866

DATE: 12.17.98

TO: Fred Mass
801-363-6661

FROM: Kari Lynn Johnson
IDWR

DOCUMENT DESCRIPTION: Verification of Correct
Mailing Address

COVER SHEET + 0 PAGES

CONTACT: Kari Lynn
327-7941

IF YOU DO NOT RECEIVE ALL THE PAGES

MICROFILMED

FEB 05 1999

Fred- The 11.30.98 letter ^{THANK YOU!!} we mailed to your Butte, Id office was returned by the Post Office. There is a new address printed on the envelope which is:

699 E. South Temple Suite 220

Salt Lake City UT 84102

Please confirm in writing, the correct mailing address for this file. Thank you!

Kari Lynn

STATE OF IDAHO

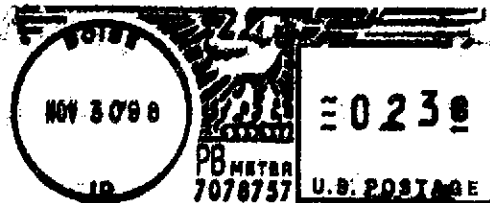
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street

Boise, Idaho 83706-2237

RETURN SERVICE
REQUESTED

RESORTED
FIRST CLASS



NOT DELIVERABLE AS ADDRESS
UNABLE TO FORWARD
MAIL PROCEEDING

Forward To:

SMITH FALLS HYDROPOWER

699 E. SOUTH TEMPLE SUITE 2200

SALT LAKE CITY, UTAH

84102

RECEIVED

DEC 14 1998

Department of Water Resources

MICROFILMED
FEB 05 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

November 30, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

SMITH FALLS HYDROPOWER
HCR 60 BOX 251
PORTHILL ID 83853

RE: WATER RIGHT NO. 98-07650

Dear Permit Holder(s):

The Department of Water Resources is reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms that a water right has been established in compliance with the terms of the permit. The examiner who verified your water use reported that your place(s) of use is in a location other than what was described on your permit. Therefore, before a license can be issued, the permit must be amended to depict your water right as it was actually developed.

The enclosed Application for Amendment form depicts the place(s) of use and other information as it will appear on the license when it is issued. Please review the amendment form carefully. If you concur with the information presented, please sign the form and return it with the \$50.00 filing fee within 14 days.

Also, please note that some of the proposed conditions of approval and remarks may be modified upon further administrative review.

If you do not concur, or if you have any questions about this information, please contact me as soon as possible. My telephone number is (208)327-7946.

Sincerely,

A handwritten signature in cursive script that reads "Shelley W. Keen".

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosure

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 98-07650

Date of Priority: January 5, 1989 Maximum Diversion Rate: 70.00 CFS
Maximum Diversion Volume: 50589.0 AF

Comes now SMITH FALLS HYDROPOWER
HCR 60 BOX 251
PORTHILL ID 83853 and represents to the Director of the

Idaho Department of Water Resources:

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 98-07650, and requests that the permit be changed as follows:

Source: SMITH CREEK tributary to KOOTENAI RIVER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
POWER	01/01 to 12/31	70.00 CFS	50589.0 AF

LOCATION OF POINT(S) OF DIVERSION: SENE , Sec. 1, Township 64N, Range 03W
BOUNDARY County

PLACE OF USE: POWER
TWN RGE SEC
65N 02W 26 NWNE

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk.

Signed at _____, this _____ day of _____, 19____.

(Signature)

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 98-07650

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = _____ Received by _____ # _____ Date _____

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, Karl J. Dreher, of the Department of Water Resources hereby approve the
above Application for Amendment for Permit No. 98-07650 with the following;

CONDITIONS OF APPROVAL AND REMARKS

1. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
2. Use of water under this right shall be non-consumptive.
3. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
4. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
5. The Director retains jurisdiction of this right to require continuous measurement & recording of the bypass flow rate and periodic reporting of the measurements to the department.
6. Water used under this right shall be discharged into the natural channel upstream from Smith Creek Falls.
7. A minimum flow of 27 cfs, measured immediately below the point of diversion, shall be left in the natural channel of Smith Creek at all times that the hydropower project is operating. All water shall be left in the natural channel of Smith Creek at any time the hydropower project is not operating.
8. The Director retains jurisdiction to revise the bypass flow for maintenance of fish, wildlife, riparian and aquatic habitat.

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 98-07650

CONDITIONS OF APPROVAL AND REMARKS

9. The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of license 8436-001 issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

Witness my hand this _____ day of _____, 19____.

KARL J. DREHER, Director

MEMORANDUM

DATE: December 17, 1998

TO: File 98-07650

FROM: Kari Lynn Townsend

RE: Phone call and returned mail

Fred Moss telephoned on 12-16-98 to say that his Porthill office had advised him that they had not received the letter and application for amendment that we mailed out on 11-30-98. He asked me to FAX a copy of the letter and the application for amendment to him.

On December 14, 1998 the postoffice returned the letter to the Porthill office with a new address in Salt Lake City printed on it with the request for forwarding. For some reason the postoffice was unable to forward (perhaps because of the Return Service Requested stamp on the envelope).

The returned mail did **not** get back to the file until 12-17-98 so I have not mentioned to Mr. Moss that we have received the Porthill office mail **nor** have I verified the Salt Lake City address as being the correct address for the file.

I will send a FAX message to Fred Moss today and ask him to verify the correct and current address for this file.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

TRANSMITTAL COVER SHEET

FAX NUMBER: (208) 327-7866

DATE: 12.16.98

TO: Fred Mass
801-363-6661

FROM: Kari Lynn Johnson
IDWR

DOCUMENT DESCRIPTION: Letter And Application for
Amendment

COVER SHEET + 7 PAGES

CONTACT: Kari Lynn Johnson IF YOU DO NOT RECEIVE ALL THE PAGES
327-7941

THANK YOU!

MICROFILMED

FEB 05 1999

~ Celebrating Our Centennial Year of Service to Idaho 1895-1995 ~



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

November 30, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

SMITH FALLS HYDROPOWER
HCR 60 BOX 251
PORTHILL ID 83853

RE: WATER RIGHT NO. 98-07650

Dear Permit Holder(s):

The Department of Water Resources is reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms that a water right has been established in compliance with the terms of the permit. The examiner who verified your water use reported that your place(s) of use is in a location other than what was described on your permit. Therefore, before a license can be issued, the permit must be amended to depict your water right as it was actually developed.

The enclosed Application for Amendment form depicts the place(s) of use and other information as it will appear on the license when it is issued. Please review the amendment form carefully. If you concur with the information presented, please sign the form and return it with the \$50.00 filing fee within 14 days.

Also, please note that some of the proposed conditions of approval and remarks may be modified upon further administrative review.

If you do not concur, or if you have any questions about this information, please contact me as soon as possible. My telephone number is (208) 327-7946.

Sincerely,

A handwritten signature in cursive script that reads "Shelley W. Keen".

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosure

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FEB 05 1999

WR0749NP
No. L98-07650

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

DATE: 11/06/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY	WATER USE	USE PERIOD		DIVERSION	DIVERSION
		DATE		FROM	TO	RATE	VOLUME
C	SMITH FALLS HYDROPOWER HCR 60 BOX 251 PORTHILL ID 83853 (208) 267-2744	01/05/1989	POWER	01/01	12/31	70.000 CFS	50589
TOTAL DIVERSION:						70.000 CFS	

Water Source: SMITH CREEK

Tributary to: KOOTENAI RIVER

Stage: LICENSE

Point(s) of Diversion Capacity: 370.000 CFS

Point(s) of Diversion: T64N R03W S01 SENE BOUNDARY County

Place of use Legal Description for: POWER

	NE				NW				SW				SE			
	NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T R S	: Lt	Ac	Lt	Ac	: Lt	Ac	Lt	Ac	: Lt	Ac	Lt	Ac	: Lt	Ac	Lt	Ac
65N 02W 26	:		P	:	:			:	:			:	:			:

Pou County: BOUNDARY

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):

98-07612 98-07650 L98-07612

Conditions of Approval:

- 025 - This right does not constitute Idaho Public Utilities Commission
- or Federal Energy Regulatory Commission approval that may be
- required.
- 027 - Use of water under this right shall be non-consumptive.
- 081 - Use of water under this approval shall comply with applicable
- water quality standards of the Division of Environmental Quality
- of the Idaho Department of Health and Welfare.
- R22 - The rights for the use of water confirmed in this license
- shall be junior and subordinate to all rights for the use of
- water other than hydropower, within the State of Idaho that are
- initiated later in time than the priority of this right and
- shall not give rise to any right or claim against any future
- rights for the use of water, other than hydropower, within the
- State of Idaho initiated later in time than the priority of this
- right.

Remarks: GEN The Director retains jurisdiction of this right to require
continuous measurement & recording of the bypass flow rate
and periodic reporting of the measurements to the
department.

Water used under this right shall be discharged into the
natural channel upstream from Smith Creek Falls.

A minimum flow of 27 cfs, measured immediately below the
point of diversion, shall be left in the natural channel.

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FEB 05 1999

Remarks: of Smith Creek at all times that the hydropower project is operating. All water shall be left in the natural channel of Smith Creek at any time the hydropower project is not operating.

The Director retains jurisdiction to revise the bypass flow for maintenance of fish, wildlife, riparian and aquatic habitat. The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of license 8436-001 issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

~~Rights 98-07612 and 98-07650 when combined shall not exceed a total annual maximum diversion volume of 95,238.0 af.~~

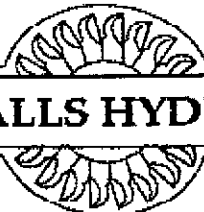
Dates: App. Received: 12/19/1988 Priority Date: 01/05/1989 (Priority Date Advanced.)
Proof Due Date: 06/01/1991 Proof Made Date: 06/18/1991 (Proof Received Late.)
Exam Made Date: 06/08/1995 Exam Sent to S.O.: 07/19/1996
Licensed Date:

Misc: Water District Number: Field Exam Fee: R (Received)

Audit: 10/22/98 SCURTIS 10/22/98 SCURTIS 10/23/98 SCURTIS 11/06/98 SCURTIS

MICROFILMED

FEB 05 1999



SMITH FALLS HYDROPOWER

November 19, 1998

Ms. Sharla Curtis
Water Resource Agent
State of Idaho
Department of Water Resources
1301 North Orchard Street,
Boise, Idaho 83720

RE: Water Rights Permits #98-07612 and #98-07650, Your Letter Dated Nov. 6, 1998

Dear Ms. Curtis:

In complying with your request to respond within 15 days this letter is our formal response to your letter dated Nov. 6, 1998. Smith Falls Hydropower does **not** agree with your method of determining the diversion volume of 95,238 af, diversion under the two water rights that have been issued to Smith Falls Hydropower. To be honest with you, I do not understand what you are attempting to accomplish with this new idea of limiting our water rights on our project. Let me explain our position and understanding on this issue.

Smith Falls has the right to divert up to 370 cfs of water from Smith Creek, located in Boundary County, Idaho under permits #98-07612 and #98-07650. These are non-consumption rights and allows our hydroelectric project to operate with agreed upon flow bypass amounts that were agreed to and included in our Federal Energy Regulatory Commission License # 8436. The project has the ability and right to produce up to 38 mega watts of electricity continually for the entire year based on the available water given to the project by the natural precipitation for any given year. It appears to us that your letter and method is attempting to limit the output of the plant and cause the project to loose production, thus adversely impacting the plants income. The only number that we could accept would be if you took the 370 cfs and calculated that flow for the entire year. That number would be 270,840 af.

If you have any questions please contact us within 15 days or we will assume that you agree with our information presented and will expect that the 270,840 af will be used to issues the licenses.

Sincerely,


R. Fred Moss
President, AWHII

Copy: Everett Jordan, EWEB

MICROFILMED

699 East South Temple, Suite 220 • Salt Lake City, Utah 84102 • (801) 363-7007
FEB 05 1999



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 6, 1998

R. Fred Moss
Smith Falls Hydropower
699 E. S. Temple, Suite 220
Salt Lake City, UT 84102

RE: Permit Nos. 98-07612 and 98-07650

Dear Mr. Moss:

Thank you for the information you sent to help us in our review of Permits 98-07612 and 98-07650 for the purpose of issuing water right licenses. I used the 1997 power production information to determine an annual diversion volume for the rights; that appeared to be the best method available.

I have enclosed a draft copy of both licenses as we propose to issue them. Please note the remark on each of the rights limiting the combined annual diversion volume to 95,238 af; diversion under the two rights would be held to that limitation. If you have better information to serve as the basis for determining an annual volume, please send it to me within 15 days. If I don't hear from you within that time frame, I will assume you agree with the information presented and will move forward with license review. Permit 98-07650 will require an amendment to change the place of use description and you will receive that information under separate cover.

Sincerely,

A handwritten signature in cursive script that reads "Sharla Curtis".

Sharla Curtis
Water Resource Agent

MICROFILMED
FEB 05 1999

SMITH FALLS HYDROPOWER

RECEIVED

NOV 05 1998

Department of Water Resources

Nov. 3, 1998

Ms. Sharla Curtis
State of Idaho
Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83720

RE: Water Right License for Smith Falls Hydropower #98-07612 & #98-07650

Dear Ms. Curtis:

As we talked today, I am Faxing you the information you requested, the pages in the power sales agreement, a copy of the page from the Idaho State report on kwh amounts for 1997 and a page from our agreement with EWEB assigning the power sales agreement to Smith Falls Hydropower.

The small turbine that we have is used in cooperation with the other two larger turbines. The computer program decided which turbine to run depending on the available water in Smith Creek. The order of their use is the small turbine is used until enough water is available to run the larger turbine. Then once the first larger turbine is up to its peak performance the other large turbine is started. Once both large turbines are at their peak the small turbine is again use.

The Hydro project is a run of the river project and thus has the flows in Smith Creek vary a lot. Usually in the late fall the normal water flow in the creek is too low to generate so this is when we schedule our maintenance.

The water flow, in cfs, in the creek is approx. 10 cfs / 1 megawatt of electricity. So if you take our production for the year and convert it, it should give you approx. the amount of water that flows through the turbines.

If you have any other questions please contact me at (801) 363-6111.

Sincerely,



R. Fred Moss
Project Manager

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Section VII - KWH PRODUCTION

	19 97	19 ____	19 ____	19 ____	19 ____
January	3,332,510 ^{KWH}	KWH	KWH	KWH	KWH
February	1,052,613				
March	5,696, 714				
April	10,611,350				
May	24,831,947				
June	24,758,303				
July	14,196,875				
August	1,408,164				
September	5,888,567				
October	13,100,608				
November	7,745,173				
December	2,428,936				
TOTALS	115,045,760				

Describe unusual down-times experienced for the above years: Examples - collapsed penstock, equipment failure, etc.

Note: This section shows Kilowatt hours actually scheduled to Eugene Water and Electric Board by Bonneville Power Administration (BPA) after losses and wheeling. BPA rounds to the nearest 1,000 KWH.

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is executed as of this 12th day of September, 1990, by and among the CITY OF EUGENE, OREGON, acting through the EUGENE WATER AND ELECTRIC BOARD ("EWEB"), SMITH FALLS HYDROPOWER, an Idaho general partnership ("Smith Falls"), and R. FRED MOSS, GARY E. MAY, and MARSHA A. VAN OTTEN, all individuals (collectively, the "Shareholders").

RECITALS:

A. Except as set forth herein, each of the capitalized terms contained in this Agreement shall have the respective meanings set forth in the Power Sales Agreement, as defined below.

B. EWEB and Smith Falls' predecessors in interest, Hydro-Flow, Inc., a Utah corporation ("HFI"), and Idaho Natural Energy, Inc., an Idaho corporation ("INE"), executed that certain Power Sales and Right to Purchase Agreement, dated as of October 28, 1988, as amended by that certain Agreement of Understanding, dated as of May 25, 1989, by and among Smith Falls, EWEB, and Westinghouse Credit Corporation, a Delaware corporation ("WCC"), as amended by that certain First Amendment to Agreement of Understanding, effective as of May 25, 1989, by and among Smith Falls, EWEB, and WCC (as amended, the "Power Sales Agreement").

C. Pursuant to the terms of that certain Assignment Agreement, dated as of May 25, 1989, Smith Falls succeeded to the rights and obligations of HFI and INE under the Power Sales Agreement. The Shareholders own shares of the capital stock of Smith Falls' three (3) corporate general partners.

D. The terms of the Power Sales Agreement contemplate Smith Falls' construction of a hydroelectric facility, located on Smith Creek near Porthill in Boundary County, Idaho (the "Project"), Smith Falls' delivery of hydroelectrically generated power to the Points of Delivery, and EWEB's purchase, at certain agreed upon rates, of all Project Output.

E. In order to construct the Project, Smith Falls obtained financing from WCC pursuant to the terms of that certain Financing Agreement, dated as of May 25, 1989, by and among WCC, INE, HFI, Smith Falls, and Smith Falls' general partners (the "Financing Agreement"). Smith Falls' permanent financing arrangement with WCC takes the form of a sale/leaseback and is governed by the terms of that certain

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POWER SALES AND RIGHT TO PURCHASE AGREEMENT

Between

EUGENE WATER & ELECTRIC BOARD

And

HYDRO-FLOW, INC.

IDAHO NATURAL ENERGY, INC.

This is an Agreement between the City of Eugene, Oregon, acting by and through the Eugene Water & Electric Board (hereinafter referred to as "EWEB"), and Hydro-FLOW, Inc., a Utah corporation and Idaho National Energy, Inc., an Idaho corporation (hereinafter collectively referred to as "HFI").

WITNESSETH:

WHEREAS, the City of Eugene, acting by and through EWEB, is authorized to purchase electrical energy and to plan, finance, construct, acquire, operate, own and maintain works and facilities necessary or incidental to the generation of electric power and energy; and

WHEREAS, HFI has or will through its wholly owned subsidiary Idaho Natural Energy, Inc., acquire the necessary federal, state and local licenses and permits required to construct the Project, as hereinafter defined; and

WHEREAS, HFI has represented to EWEB that the Project can produce approximately eighty-one thousand five hundred (81,500) megawatt hours of average annual energy; and

FEB 05 1999

WHEREAS, EWEB desires to purchase the Project Output following the Date of Commercial Operation and may chose to purchase the Project under the terms and conditions set forth herein; and

WHEREAS, HFI desires to construct the Project in a workmanlike and timely fashion and in accordance with all applicable laws and regulations; to sell the Project Output to EWEB; and, is willing to grant EWEB the right to acquire the Project under the terms and conditions and for the considerations provided for herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties do agree as follows:

ARTICLE 1: DEFINITIONS.

1.1 "Billing Statement" shall mean a written statement prepared by HFI and forwarded to EWEB on a monthly basis during each Contract Year that shows the amount to be paid during said month by EWEB to HFI under this Agreement for Project Output delivered by HFI to EWEB.

1.2 "Contract Year" shall mean:

1.2.1 The period commencing on the Date of Commercial Operation and ending on the following June 30, and, thereafter,

1.2.2 The twelve-month period commencing on July 1 each year during the term hereof and ending on the following June 30.

FILED
FEB 05 1999

(20) year period from the date of the exercise of the option but in no case less than 4.5% nor more than 5.5%.

"Discount Rate" shall mean the escalation factor plus six percent (6%).

"Debt Service" shall mean all sums required at the time of exercising the option required to pay the amount remaining due to HFI's lender on its term loan debt for financing construction of the Project as described in Exhibit D or as otherwise agreed to by EWEB. Debt Service shall not include any cost to unwind the fixed rate portion of the loan, if any.

ARTICLE 3: SALE AND PURCHASE OF PROJECT OUTPUT.

3.1 HFI hereby agrees to deliver to the Points of Delivery, and EWEB agrees to purchase from HFI at the Points of Delivery, all Project Output during the term and under the conditions set forth in this Agreement. EWEB's obligation to purchase shall be payable solely from revenues in the "Distribution Division General Fund" established in the "Trojan Nuclear Project Revenue Bonds, Series of 1971, Bond Resolution." EWEB hereby agrees to maintain sufficient monies in this fund to meet the reasonably estimated monthly obligations incurred in this Agreement as they come due.

ARTICLE 4: TERM OF CONTRACT.

4.1 This Contract shall be effective upon its execution by EWEB and HFI and shall continue thereafter for forty (40) Contract Years.

FEB 05 1999

remedies in the event that either party to this Agreement refuses to comply with an order of the arbitrators. In lieu of any of the remedies set forth in paragraphs 10.3.1 through 10.3.3 either party shall be entitled in the event of a refusal by the other party to comply with an order of the arbitrators to seek a judicial degree requiring specific performance on the part of the non-complying party or an award of damages against the non-complying party.

ARTICLE 11: TERMINATION OF CONTRACT.

This contract may be terminated only with the written consent of both parties hereto or as otherwise specifically provided in this Agreement. No termination notice shall be effective before sixty (60) days following the receipt of notice of termination under the procedures described in Article 6 of this Agreement.

ARTICLE 12: ASSIGNMENT OF CONTRACT.

12.1 Except as provided in Article 12.2, the rights and obligations of the parties to this Agreement may not be assigned by either party except upon the express written consent of the other party, which consent shall not be unreasonably withheld or delayed. As a condition of such consent, any third party to whom an assignment is made will be required to demonstrate to the reasonable satisfaction of the non-assigning party to this Agreement that the third party is capable of fulfilling the assigning party's obligations under this Agreement.

with regard to either party. Each party shall be individually and severally liable for its own obligations under this Agreement.

IN WITNESS WHEREOF, each of the parties hereto have caused this Contract to be executed as of this 28th day of October, 1988.

ATTESTED:

By: Krista K. Hince

By: Krista K. Hince

ATTESTED:

By: Krista K. Hince

EUGENE WATER & ELECTRIC BOARD

By: [Signature] General Manager
501 East 4th Avenue
Eugene, Oregon 97440

By: [Signature] President
HYDRO-FLOW, INC.

By: [Signature] President
699 East South Temple, Suite 220
Salt Lake City, Utah 84102

ATTESTED:

By: Krista K. Hince

IDAHO NATURAL ENERGY, INC.

By: [Signature] President
699 East South Temple, Suite 220
Salt Lake City, Utah 84102

FEB 05 1989



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

October 27, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Smith Falls Hydropower
HCR 60, Box 251
Porthill, ID 83853

Idaho Natural Energy, Inc.
699 E.S. Temple
Suite 220
Salt Lake, UT 84102

RE: Permit Nos. 98-07612 and 98-07650

Gentlemen:

We are in the process of reviewing the above referenced permits for licensing. I need a couple of pieces of information before that process can be completed. The permits are currently in the name of Smith Falls Hydropower, however, we have information in the files that indicate Idaho Natural Energy, Inc. may be the present owner of the power facility. For this reason I am sending this letter to both entities. The information I need is as follows:

- A copy of the current power purchase contract (our file indicates the purchaser is Eugene Water and Electric Board)
- Written statement explaining how the smaller turbine is used – i.e. is it always running when the other two are operating for a total diversion of 370 cfs or is it only used in low flow periods at which time it operates alone
- Written statement explaining the operating schedule – i.e. are there annual down-times for maintenance, the system is operated how many hours per day, how many days per year
- If Idaho Natural Energy, Inc. is indeed the present owner of the facility and wishes to have the licenses issued in their name, an assignment of permit needs to be completed and returned with the \$25 filing fee

I am enclosing an assignment form with this letter to both companies. Only one needs to be submitted. It also makes no difference to me which one of the companies responds

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FEB 05 1999

October 27, 1998

Page 2

with the above requested information. I do ask, however, that the information be returned to me by November 10, 1998 so that the licensing process can be finalized. If I don't receive an assignment form by that date also, the licenses will be prepared in the name of Smith Falls Hydropower.

If you have any questions, please feel free to give me a call.

Sincerely,



SHARLA CURTIS
Water Resource Agent

Enclosure

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FEB 05 1999

WR0749NP
No. L98-07650

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

DATE: 10/22/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	SMITH FALLS HYDROPOWER HCR 60 BOX 251 PORTHILL ID 83853 (208) 267-2744	01/05/1989	POWER	01/01 12/31	70.000 CFS	50589.00 AFA
TOTAL DIVERSION:					70.000 CFS	50589.00 AFA

Water Source: SMITH CREEK

Tributary to: KOOTENAI RIVER

Stage: LICENSE

Point(s) of Diversion Capacity: 370.000 CFS

Point(s) of Diversion: T64N R03W S01 SENE BOUNDARY County

Place of use Legal Description for: POWER

NE				NW				SW				SE			
NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac
65N 02W 26 : P :															

Pou County: BOUNDARY

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):

98-07612 98-07650 L98-07612

Conditions of Approval:

- 025 - This right does not constitute Idaho Public Utilities Commission
- or Federal Energy Regulatory Commission approval that may be
- required.
- 027 - Use of water under this right shall be non-consumptive.
- R22 - The rights for the use of water confirmed in this license
- shall be junior and subordinate to all rights for the use of
- water other than hydropower, within the State of Idaho that are
- initiated later in time than the priority of this right and
- shall not give rise to any right or claim against any future
- rights for the use of water, other than hydropower, within the
- State of Idaho initiated later in time than the priority of this
- right.

Added 081

Remarks: GEN The Director retains jurisdiction of this right to require continuous measurement & recording of the bypass flow rate and periodic reporting of the measurements to the department.

Water used under this right shall be discharged into the natural channel upstream from Smith Creek Falls.

A minimum flow of 27 cfs, measured immediately below the point of diversion, shall be left in the natural channel of Smith Creek at all times that the hydropower project is operating. All water shall be left in the natural channel of Smith Creek at any time the hydropower project

Remarks: is not operating.
The Director retains jurisdiction to revise the bypass flow for maintenance of fish, wildlife, riparian and aquatic habitat. The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of license 8436-001 issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

Dates: App. Received: 12/19/1988 Priority Date: 01/05/1989 (Priority Date Advanced.)
Proof Due Date: 06/01/1991 Proof Made Date: 06/18/1991 (Proof Received Late.)
Exam Made Date: 06/08/1995 Exam Sent to S.O.: 07/19/1996
Licensed Date:

Misc: Water District Number: Field Exam Fee: R (Received)

Audit: 10/22/98 SCURTIS 10/22/98 SCURTIS

LICENSE REVIEW CHECKLIST

PERMIT NO. 98-07650 DATE 10/22/98 REVIEWER: SHARLA

NAME Change/OK
Address OK Smith Falls Hydro
no assign. need - had plenty of time & opportunity
to do so

SOURCE OK Does change clarify orig. intended source? If no, Void permit

POINT OF DIV OK ☐ Change (P39 /P47) ☐ Add (P45/P42) Feds - P40

W32 (multiple in 1/4)
W36 (overlap)
W59 (subd. desc)

Overlaps: Right(s): _____
File reviewed _____ Profile reports printed _____

PLACE OF USE chg ☒ Change (P41/P47) ☐ Add (P41/P42) Feds - P43

W60 (subd. desc)
W27 (ppu acre limit)

Overlaps: Right(s): _____
File reviewed _____ Profile reports printed _____

PD & PU amend (P37) Feds - P48

RATE OF DIV

Permitted Rate 70.0 cfs

Fee limit 20.0⁺ cfs \$600⁰⁰ C020879

Measured 370.0 cfs

Theoretical _____ cfs

Recommended Total Div Rate 70.0 cfs

WATER USES	<u>OK</u>	Change (P46)		
<u>Power</u>	<u>70.0</u>	cfs	af	Irrig - overlap (R58-R61, R62-R65, R66-R69)
_____	_____	cfs	af	supp. gw (WB7/065/079)
_____	_____	cfs	af	overlap spec. combined rts (W35)
_____	_____	cfs	af	<1 acre (W31)
_____	_____	cfs	af	Domestic (W01/WB5/070/071/075)
TOTALS	_____	cfs	af	Power (W42 or W43/025/027/R22 or R23)
				Fish (042) Fire (077) Wtr Quality (081/R07)

Flow rate 70.0 cfs X 365 days X 1.98 = 50,589 af

REMARKS _____

ADD'L CONDITIONS ☐ Watermaster Control WD# _____
☐ GW Measurement/Measuring Device
☐ Others Trust (052/R55 - remove 051) Non-trust (048/049)

Advance Priority ☐ yes ☒ no SRBA Claim NA Adjust Memo blank source
Amend letters P41, P38
P47

MEMORANDUM

TO: FILES 98-07612 and 98-07650

FROM: CINDY BIRD

RE: Assignment of Permit

DATE: June 9, 1998

Idaho Natural Energy, Inc. phone to get a clarification on the letter dated May 29, 1998 from Sharla Curtis regarding the request for an assignment of permit. He wanted to know if they did nothing and let the 30 days pass then the license would be issued in the name of Smith Falls Hydropower; I told him that was correct. I also asked him if they wanted the license issued in there name and he didn't know and needed to find out.

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

May 29, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Idaho Natural Energy, Inc.
699 E. South Temple
Suite 220
Salt Lake City, UT 84102

REF: Water Right Permits 98-07612 and 98-07650.

Dear Water Right Holder(s):

We are in the process of reviewing the above referenced permits for the purpose of issuing licenses. In order to complete this process and issue the licenses in your name, we need to have an Assignment of Permit, one for each right and the appropriate filing fees of \$25.00 for each assignment.

For your convenience I have enclosed Assignment of Permit forms for your use in this matter. If we have not received the assignments within thirty (30) days, we will proceed with the license processing and the licenses will be issued in the name of Smith Falls Hydropower.

If you have any further questions, please feel free to contact our office.

Sincerely;

Sharla Curtis
Water Resource Agent

SC:cb

Enclosure (2)

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FEB 05 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

RECEIVED

JUL 22 1998

Department of Water Resources

A. GENERAL INFORMATION

Permit No. 98-07650

1. Owner: Idaho Natural Energy Inc. Phone No. (801) 363-6111

Current Address: 699 E. South Temple suite 220 Salt Lake City UT 84102

2. Accompanied by: Fred Moss EXAM DATE: 6/8/95

Address: H.C.R 60, Box 251 Pothill Id, 83853 Phone No. (208) 267-2744

Relationship to Permit Holder: plant Manager (Smith Falls hydropower)

3. Source: _____ tributary to _____

B. OVERLAP REVIEW

1. Other water rights with the same place of use: 98-7612

2. Other water rights with the same point of diversion: 98-7612

C. DIVERSION AND DELIVERY SYSTEM

1. Point(s) of Diversion:

Ident No.	Gov't Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			SE	NE	01	64N	03W	Boundary	USGS 7.5 Min quad

2. Place(s) of Use:

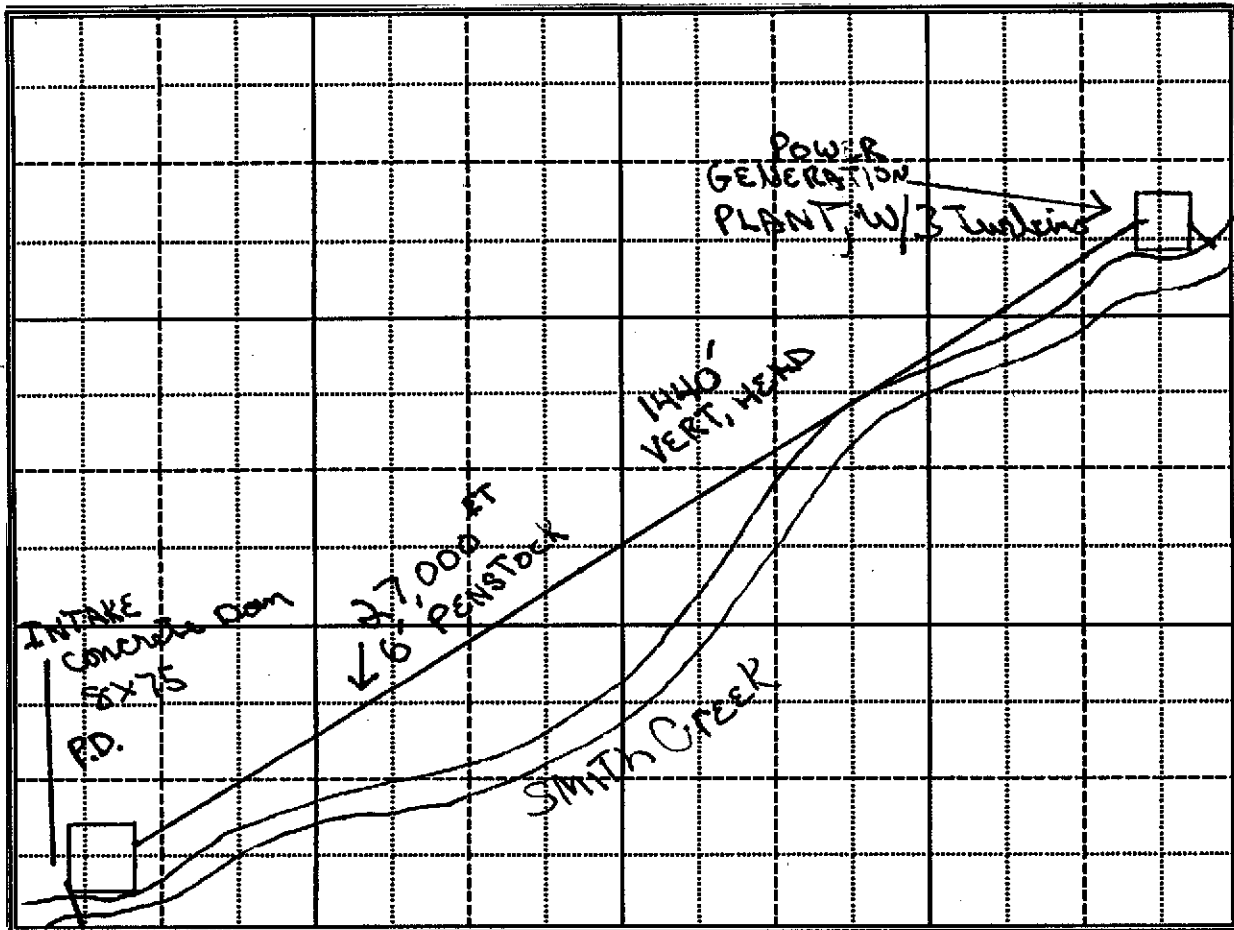
Indicate Method of Determination USGS 7.5 quad

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
65	02W	26		P															

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3. **Delivery System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable.



Scale: 1" = _____

____ Copy of USGS Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required).

____ Aerial Photo Attached (required for Irrigation of 10+ acres)

____ Photo of Diversion and System Attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size

*Code to correspond with No. on map and aerial photo

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
on site flow indicator						
			MICROFILMED			

2. Measurements:

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E. NARRATIVE/REMARKS/COMMENTS

Water from Smith Creek is diverted by a 8x75 Concrete dam and is carried by a 6' penstock 27,000' to power plant where it is channeled through two (2) turbines for power generation. The third turbine is used for power generation at times of low flow. power is then sold out of state. Water is then returned to Smith Creek just before Smith falls. This filing is for 70 CFS the flow meter on site read 370 CFS the other 300 CFS is covered under WR# 98-7612 at time of inspection the plant was producing 17,655 K.W.

Have conditions of permit approval been met? ☒ yes ☐ no

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F. FLOW CALCULATIONS

____ Additional Computation Sheets Attached

Measured Method:

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

 $V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$ _____ $V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 =$ _____ $V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} =$ _____

2. Volume Calculations for Other Uses:

$$70 \times 365 \times 1.9835 = 50678.42$$

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
<u>Power</u>	<u>01-01</u>	<u>12-31</u>	<u>70.00</u>	<u>50678.42</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Totals:			<u>70.00</u>	<u>50678.42</u>

2. Recommended Amendments

____ Change P.D. as reflected above

____ Add P.D. as reflected above

____ ☒ None

____ Change P.U. as reflected above

____ Add P.U. as reflected above

____ Other

I. AUTHENTICATIONField Examiner's Name Chad M. Cracker Date 5/9/96

Reviewer _____ Date _____

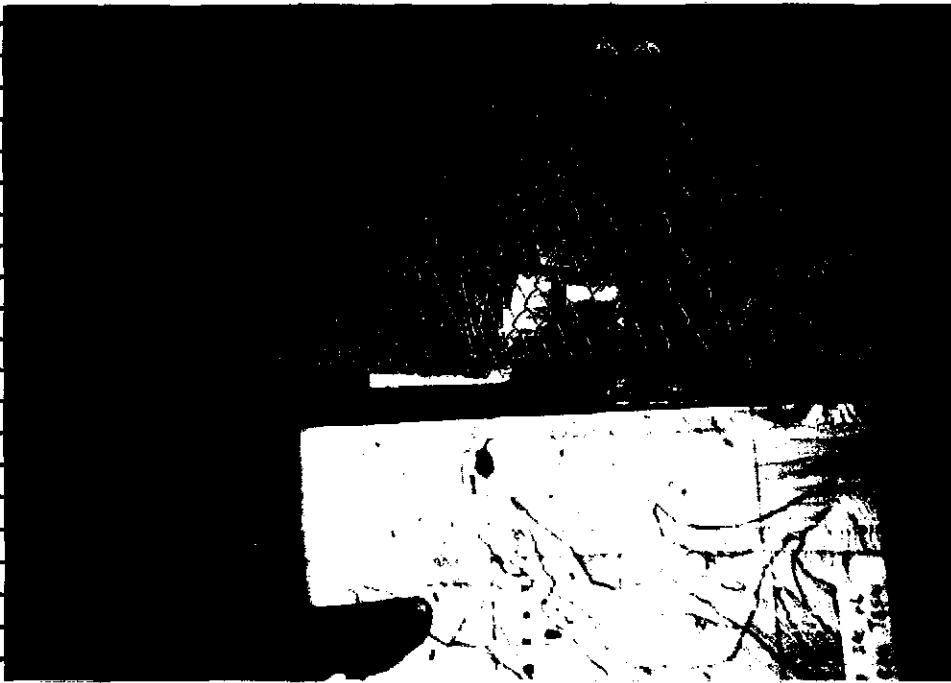
MICROFILMED ^{SEAL}

FEB 05 1999

PERMIT # 98-7650

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
FIELD REPORT SUPPLEMENT

P H O T O G R A P H S



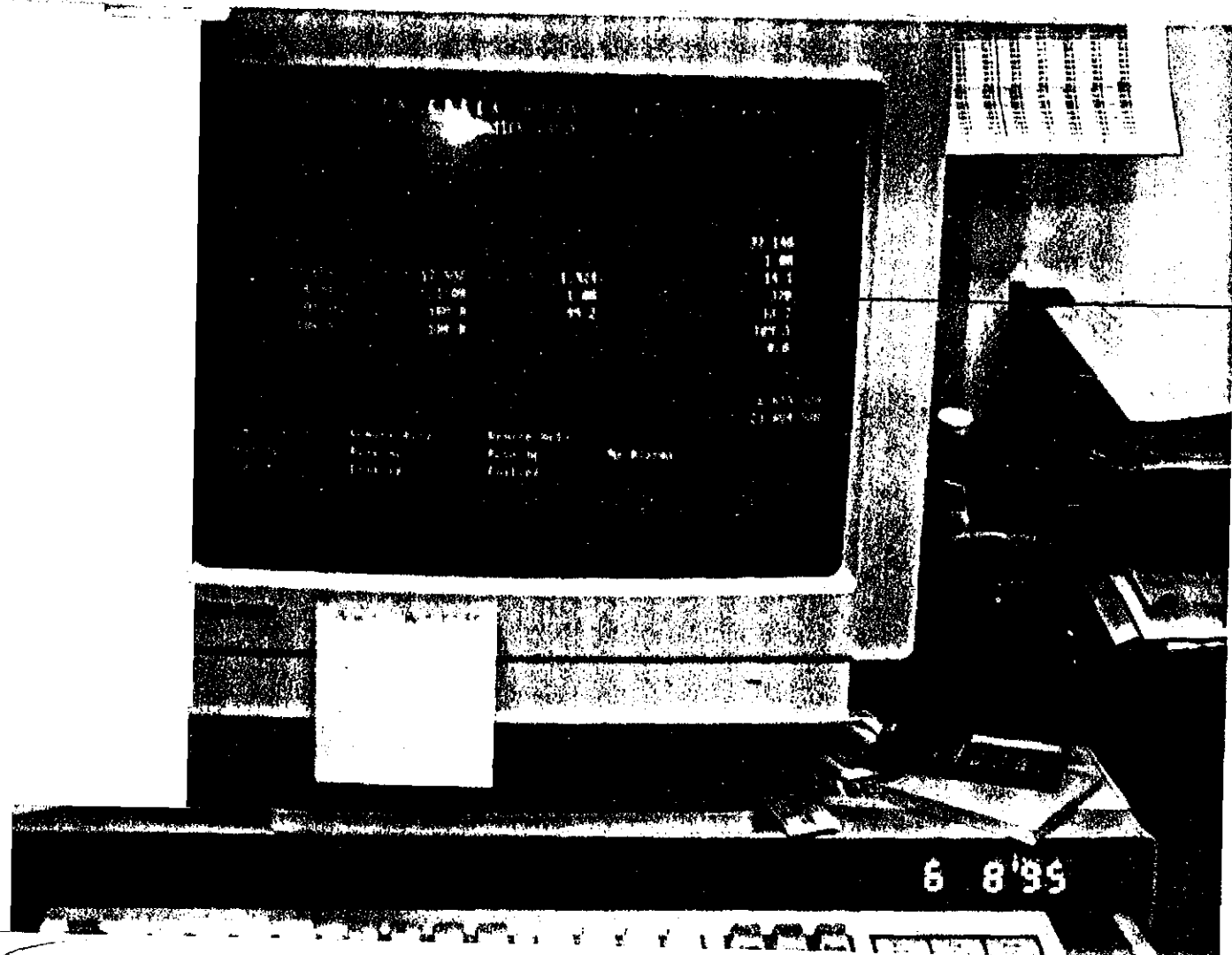
P.D. - INTAKE



P.V.
Water Returned
to Creek.

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total C.F.S
(370)

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SEE ORIGINAL IN 98-07612

98-07650

Power Station
P.V.

flow indicator
Box for computer

P.D.

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FEB 05 1999



July 15, 1991

SMITH FALLS HYDROPOWER
HCCR 60, BOX 251
PORTHILL, ID 83853

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 98-07650

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. Enclosed is an order advancing the priority of the permit since the proof was received after the proof due date. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

I note that the permit issued to you by the department requires the installation of a measuring device to allow the department to determine the rate of diversion. The proof which you submitted does not show that you have installed this equipment.

The installation of the measuring device must be complete by the time the department representative conducts the examination of your system unless the department has rescinded the requirement prior to the field examination. In some cases, the equipment requirement can be rescinded because the equipment cannot be physically installed, is not appropriate or can be accommodated with other measuring methods.

If you have questions concerning this matter, please feel free to contact the NORTHERN Regional Office in Coeur D' Alene at (208)765-4639.

Sincerely,

Rita Fleck
Secretary/Records Manager

c: IDWR - Region

RECORDED

AUG 09 1991

ANALYSIS SHEET
for
PROOF OF BENEFICIAL USE

Permit No. 98-7650

Date 7-2-91

GENERAL CONSIDERATIONS

☒ Name same as permit?
NO Address same as permit? If no, indicate below.
NO Proof timely received? If no, complete priority advancement below.

SOURCE OF WATER

☒ Surface water source
☐ Ground water source
NA Drill permit req'd?
☐ Copy in file? Drill permit no. _____
☐ Amt paid for drilling permit? _____ Correct?
☐ Well log in file?

LICENSE EXAMINATION FEE

yes Required?
600.00 Amount submitted?
yes Correct amount?

MEASURING DEVICE

yes Measuring device or access port required?
no Installed?
☐ Waiver requested or needed?

DEFICIENCIES OR ACTION ITEMS

address change PS. 7-2-91

meas. device

PRIORITY CALCULATION

Date proof received June 18, 1991 169
Date proof due June 1, 1991 - 152
No. of days late = 17
Priority date Dec 19, 1988 + 353
NEW PRIORITY DATE ✓ Jan 5, 1989 = 370

370
365
5

5

LB

WARNING

CANCELLED OR LAPSED

This permit has been officially CANCELLED or LAPSED.

Ninety days following the date of official action this file will be DESTROYED.

June 4, 1991

DAVID B VAN OTTEN
IDAHO NATURAL ENERGY INC
699 EAST SOUTH TEMPLE #220
SALT LAKE CITY UT 84102

LAPSE NOTICE

RE: PERMIT NO. 98-07650

Dear Permit Holder:

You are hereby notified that under the provisions of Section 42-218A, Idaho Code, the above referenced permit has lapsed and is of no further force nor effect. The department provided the proper forms to you in our proof due notice dated March 31, 1991. No further construction or additional development is authorized under this permit unless it is reinstated.

The permit can only be reinstated if you submit an acceptable proof of beneficial use or an acceptable request for extension of time to the department within sixty (60) days of the mailing of this lapse notice. An acceptable proof of beneficial use submittal must include the examination fee or a completed field examination report. A request for extension of time must be accompanied by a fifteen dollar (\$15) fee.

Enclosed again for your use are a proof of beneficial use form and a request for extension of time form. Please note that only one extension of time can be granted unless the project has not been completed because of lack of a necessary approval by a government agency or by litigation which may bring title to the water in question.

L. GLEN SAXTON
Chief, Water Allocation Bureau

LGS:rf

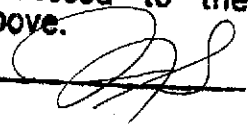
Enclosures

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CERTIFICATION OF MAILING

I hereby certify that on 6-7-91
a copy/an original of this document was
deposited in the United States mail,
postage prepaid addressed to the
individual(s) named above.



SORENSEN ENGINEERING

CONSULTING ENGINEERS
550 LINDEN DRIVE
IDAHO FALLS, IDAHO 83401
208-522-8069

April 3, 1991

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APR 08 1991

Rita Fleck
Secretary/Records Manager
State of Idaho Department of Water Resources
1301 North Orchard
Statehouse Mail
Boise, ID 83720

Department of Water Resources

RE: IDAHO NATIONAL ENERGY INC.
PERMIT #98-07650

Dear Ms. Fleck:

I received your certified letter dated March 31, 1991 concerning the above referenced permit. This letter concerns a "proof due" notice. Please note that the address for Idaho Natural Energy Inc. has been changed and all correspondence should be routed to the following:

David B. Van Otten
Idaho Natural Energy, Inc.
699 East South Temple #220
Salt Lake City, UT 84102

By this same letter I am sending Mr. Van Otten your March 31, 1991, letter.

Very truly yours,



Ted S. Sorenson, P.E.
Consulting Engineer

TSS:mbk

enclosure

cc: Mr. David Van Otten w/enclosure

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138365
March 31, 1991

IDAHO NATURAL ENERGY INC.
550 LINDEN DR.
IDAHO FALLS, ID 83401

PROOF DUE NOTICE

RE: PERMIT NO. 98-07650

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before June 1, 1991. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

SINCERELY,

Rita Fleck
Secretary/Records Manager

Enclosures

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98-7612
98-7650

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JUL 3 1990

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Department of Water Resources

Smith Falls Hydropower

Project No. 8436-059
Idaho

ORDER GRANTING EXTENSION OF TIME

(Issued June 28, 1990)

The licensee for the Smith Creek Project has requested an extension of time to comply with ordering paragraph B of the Commission's Order Deleting License Article and Requiring Recreation Plan issued on October 10, 1989. ^{1/} The reasons advanced by the licensee in support of the requested extension of time are reasonable and justify the extension.

The Director orders:

(A) The deadline for filing a recreation plan according to ordering paragraph B is extended to September 2, 1990.

(B) This order is issued under authority delegated to the Director pursuant to section 375.314 of the Commission's regulations. Section 385.1902 of the Commission's regulations provides 30 days from the date of this order for an appeal to the Commission of this action. Filing an appeal does not stay the effective date of this order or any date specified herein.



J. Mark Robinson
Director, Division of Project
Compliance and Administration

AUG 09 1991

1/ The extension requested was filed untimely. No public interest will be served by denying the extension based on the filing date. However, in the future, the licensee must make every effort to comply with the regulations and the terms and conditions of the license in a timely manner or face penalty provisions of section 31 of the Federal Power Act, including civil penalties of up to \$10,000 per day for each violation or revocation of the license.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Smith Falls Hydropower

Project No. 8436-050
Idaho

ERRATA NOTICE

(February 2, 1990)

ORDER AMENDING LICENSE
(MAJOR)
(Issued December 28, 1989)

On page 3 of the order under section (E) change "Article 301" to "Article 304" and change "Article 302" to "Article 305".

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Department of Water Resources

Lois D. Cashell
Secretary

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Department of Water Resources

Idaho Natural Energy, Inc.

Project No. 8436-026, 031 & 033
Idaho

ORDER GRANTING EXTENSION OF TIME

(Issued January 26, 1989)

On January 9, 1989, Idaho Natural Energy, Inc., licensee for the Smith Creek Project, requested a 60-day extension to comply with license article 410 (transmission line design plan), and a 90-day extension to comply with license articles 403 (functional design drawings for diversion structure) and 106 (visual enhancement plan).^{1/}

The reasons stated by the licensees in support of the requested extension of time are reasonable and justify the extension.

The Director orders:

(A) The licensee's January 9, 1989, request for 60-day and 90-day extensions are granted. The deadline to submit the materials required by article 410 is extended to March 9, 1989, and the materials required by articles 403 and 106 are extended to April 9, 1989.

(B) This order is issued under authority delegated to the Director and is final unless appealed to the Commission under Rule 1902 within 30 days for the date of this order. Failure to file a petition appealing this order to the Commission shall constitute acceptance of this order.


Fred E. Springer
Director, Office of
Hydropower Licensing

^{1/} Two previous extensions of time have been granted by orders dated June 24 and December 2, 1988, to comply with the requirements of articles 101, 102, 104, 105, 106, 108, 110, 403, 404, 406, 408, 410, 411, and 413.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Smith Falls Hydropower

Project No. 8436-050
Idaho

ORDER AMENDING LICENSE
(MAJOR)

(Issued December 28, 1989)

Smith Falls Hydropower (licensee) has filed an application under Part I of the Federal Power Act (Act) to amend its license for the Smith Creek Project located in Boundary County, Idaho, on Smith Creek, tributary of the Kootenai River. The project would occupy lands of the United States within the Panhandle National Forest.

The licensee proposes to amend the project by installing two generating units with an installed capacity of 18 MW each instead of two 15 MW units as authorized in the original license, and install a third unit with an installed capacity of 2.15 MW. The license for the Smith Creek Project No. 8436 was issued to Idaho Natural Energy, Inc. on April 10, 1987. 1/ On July 24, 1989, the Commission issued an Order Approving Transfer of License from Idaho Natural Energy, Inc. to Smith Falls Hydropower. 2/

Notice of the application has been published. No protests or motions to intervene were filed. Comments received from the Idaho Department of Health and Welfare, the U.S. Department of Agriculture, the Idaho Department of Fish and Game and individuals have been fully considered in determining whether to issue this amendment of license.

Comprehensive Development

Section 10(a)(2) of the Act 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.

Under section 10(a)(2), federal and state agencies filed 24 comprehensive plans that address various resources in Idaho. Of

Idaho Natural Energy, Inc., 39 FERC 1 62,038 (1987).

Idaho Natural Energy, Inc. and Smith Falls Hydropower,
48 1 62,046 (1989).

P 98-7612
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Reid

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these, the staff identified 10 plans relevant to this project. 3/ No conflicts were found.

Based on our review of agency and public comments filed in this proceeding and on the staff's independent analysis, the Smith Creek Project, as proposed to be amended, is best adapted to a comprehensive plan for Smith Creek.

Recommendations of Federal and State Fish and Wildlife Agencies

Section 10(j) of the Act requires the Commission to include license conditions, based on recommendations of federal and state fish and wildlife agencies, for the protection, mitigation, and enhancement of fish and wildlife. The U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game did not provide any recommendations for the proposed amendment of license.

Summary of Findings

The EA contains background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment. Issuance of this amendment is not a major federal action significantly affecting the quality of the human environment.

The design of this project is consistent with the engineering standards governing dam safety. The project will be safe if constructed, operated and maintained in accordance with the requirements of this order. Analysis of related issues is provided in the Safety and Design Assessment (S&DA), also attached to this order.

The Director, Office of Hydropower Licensing, concludes that the amendment of the Smith Creek Project would not conflict with any planned or authorized development and would be best adapted

3/ Forest plan-Idaho Panhandle National Forest, 1987, Forest Service; Final environmental impact statement for the forest plan-Idaho Panhandle National Forest, 1987, Forest Service; Idaho fisheries management plan, 1986, Idaho Department of Fish and Game; Idaho water quality standards and wastewater treatment requirements, 1985, Idaho Department of Health and Welfare; Idaho outdoor recreation plan, 1983, Idaho Department of Parks and Recreation; State water plan, 1986, Idaho Water Resources Board; Columbia River basin fish and wildlife program, 1984, Northwest Power Planning Council; Northwest conservation and electric power plan, 1986, Northwest Power Planning Council; Columbia River Basin fish and wildlife program, 1987, Northwest Power Planning Council; Protected areas amendments and response to comments, 1988, Northwest Power Planning Council.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Smith Falls Hydropower

Project No. 8436-051+
Idaho

ORDER APPROVING CONVEYANCE OF PROJECT LANDS AND WORKS

(Issued December 28, 1989)

On December 21, 1989, Smith Falls Hydropower, the licensee for the Smith Creek Project, FERC No. 8436, filed an application seeking Commission approval for conveyance of project lands and works in order to obtain financing for the project. Under the Financing Agreement and Facility and Site Lease, as amended, Westinghouse will purchase the project works and lease the project's lands from the licensee, and simultaneously will lease the project works and sublease the project's land back to the licensee. The application was made pursuant to article 5 of the license.

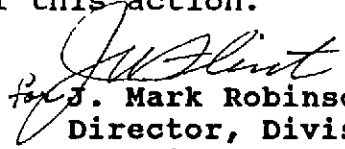
A review of the application and the sales agreement indicates that the licensee has retained sufficient rights for all project purposes. Therefore, the conveyance of project lands and works will be approved herein.

The Director orders:

(A) The conveyance of lands and project works, as described in the application filed December 21, 1989, is approved.

(B) The licensee shall maintain all rights necessary for project purposes and shall be able to obtain title to their prospective project land and works prior to the expiration of the license. The licensee shall maintain, in any arrangement, sufficient ownership and control of the project to enable the Commission to carry out its regulatory responsibilities under the Federal Power Act with respect to the project.

(C) This order is issued under authority delegated to the Director. Section 385.1902 of the Commission's regulations (18 C.F.R.) provides 30 days from the date of this order for an appeal to the Commission of this action.


J. Mark Robinson
Director, Division of Project
Compliance and Administration

AUG 09 1991

DC-A-4

March 21, 1990

David B. Van Otten
699 East South Temple, Suite 220
Salt Lake City, UT 84102

RE: PERMITS 98-7612 AND 98-7650

Dear Mr. Van Otten:

The department has received the information you forwarded on March 1, 1990 in response to our request for an operation manual which describes procedures and precautions to insure public safety and the mainenance of the minimum streamflow.

The information which you provided does not describe the procedures in the detail which the department had hoped for but the department does not want to store and maintain a full copy of the six (6) large manuals of operation referred to in your letter.

Assuming the complete manuals provide more detail to the operators of the power project than shown in the exerpts you have provided, the department will consider that the submittal is satisfactory.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: N. Region

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SMITH FALLS HYDROPOWER

March 1, 1990

Mr. Robert G. Haynes
Idaho Dept. of Water Resources
1910 Northwest Blvd., Suite 210
Coeur d'Alene, Idaho 83814

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MAR 6 1990

RE: Smith Creek Hydro Project operations manual.

Dear Mr. Haynes:

Department of Water Resources

Pursuant to our phone conversation today we are sending you the portion of the operations manual which deals with Standard Operating Procedures, Normal Operation and Emergency Operation. This is to comply with the conditions of the Permits to Appropriate Water, #98-7612 and #98-7650 which your department has issued to Smith Falls Hydropower. Please review these procedures. As we discussed, we have six large manuals of operation which cover every aspect of the facilities operations. We believe that the above information is probably sufficient to meet your needs.

By this letter I am also asking Fred Moss of our Bonners Ferry Office to keep you apprised of the testing which is going on at the site. A static pressure test of the penstock is scheduled to commence March 2nd. A 1.25 times normal working pressure test is scheduled to commence in about a week. This will depend on weather and ground conditions which affects the preparation for this test. Once this test is completed, we anticipate performance testing units 1 and 2 prior to being declared ready for Commercial Operation on or about March 16th through 19th. Fred will keep you advised of the exact date as events progress so that you may attend these testing sessions at your discretion.

Thank you for your cooperation.

Sincerely,

SMITH FALLS HYDROPOWER

David B. Van Otten
David B. Van Otten

cc: Gary Spackman, IDWR, Boise

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Fred Moss
Gary May

Farley Eskelson

SMITH FALLS HYDROELECTRIC PROJECT

STANDARD OPERATING PROCEDURES

1. Organizational Unit:

Smith Falls Hydroelectric
Bonners Ferry, Idaho

2. Scope of Operation:

Intake structure including (spillway, impoundment, gates, fish ladder, fish screens, fish bypass notch, spillway windows) and associated equipment at the diversion. Penstock air/vac valves, visual inspection of penstock, powerhouse, switchyard (operation and inspection), and associated equipment at the powerhouse. Project roadways, buildings and grounds.

3. Headquarters location:

Smith Falls Hydroelectric
Powerhouse
Mile Marker 21.5
Westside Road
Copland, Idaho
Phone 208 - 267-5351
208 - 276-2744

Smith Falls Hydroelectric
Business Office Bonners Ferry
PO Box 3100 113 Eisenhower
Bonners Ferry, Idaho 83805

Phone 208 - 267-7511
Fax 208 - 267-7512

Smith Falls Hydroelectric
Corporate Offices
699 East South Temple, Suite 220
Salt Lake City, Utah 84102

Phone 801 - 363-7007
Fax 801 - 363-6661

4. Staffing and Organization:

The project operation and maintenance subsection is headed by Chief of Operations with Chief Plant Operator and one part time plant operator. The Chief Plant Operator is with in phone contact of the plant at all times. When off duty

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the operator will wear a pager that will call when the plant goes off line. The plant is automated to run during night time hours. There will be an operator on site during business hours including weekends and holidays. The operators will be on call during off hours. The plant has a automatic dialer that will contact operator on duty. The dialer will be set up as follows:

1. Chief Plant Operator
2. Plant operator
3. Chief of Operations
4. Assistant Chief of Operations
5. Corporate offices Bonners Ferry
6. Corporate offices Salt Lake City
7. County Sheriff

5. Functional Responsibility

- A. The Chief of Operations supervises, directs, coordinates, schedules and performs all activities in connection with project operation functions. He will report to the Operations Committee. He writes all FERC reports and sees that the plant is operating with in the FERC license.
- B. The Chief Operator supervises, directs coordinates, schedules of all plant operators in connection with project operation functions, routine maintenance, inspection, lubrication, cleaning, painting, etc. of all project facilities. He provides assistance to the Chief of operations on all matters pertaining to Project operations and major maintenance, and calls attention to operation or maintenance items which are beyond the ability of the regular operating force. He also assures that all labor and material charges are allocated to the proper account, all overtime approved, and that all expenditures have been properly authorized.
- C. Functional responsibilities which are re-delegated to the operators or maintenance personnel, and for which the Chief Operator has the responsibility, include the following:
 - (1) The proper operation, inspection and care of all powerhouse, diversion, impoundment, penstock and project auxiliaries.
 - (2) Execution of switching, inspection and operating functions for powerhouse and switchyard or auxiliary equipment.
 - (3) Proper operations of water spilling for minimum required Fisheries Flows including Flush and Flows.

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- (4) Maintenance of project roadways and mobil equipment.
- (5) In absence of Chief Operator, The operator on duty is in charge of 1 through 4 .
- (6) There will be part time assistance in cleaning and maintaining fish screens, trash rack, and diversion activities during spring time high flows.
- (7) During time when trouble may occur such as floods, storms or other causes, the Chief Operator shall see that the project is adequately staffed with not less then two operators available plus labor as necessary. The Chief Operator will contact the Chief of Operations immediately so that the situation can be evaluated.

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STANDARD OPERATING PROCEDURES

1. Normal Operation

- A. Duties of the Plant Operator will revolve around a day-to-day checklist to verify safety and efficient operation as well as a schedule of maintenance as determined by the Chief of Operations. The day-to-day checklist will include visual observation of diversion structure, penstock, powerhouse, switchyard and all facilities associated with the project. He will fill out a Daily Operation Report (DOR) and keep a daily log of operations. Both the DOR and daily log will be kept in the office at the plant.
- B. More specific routine operations of the power plant and transmission facilities are as follows:
 1. Plan and control power generation and regulation. This will include maintenance at all times of the minimum required Fisheries Flows required by all governmental agencies. Read the USGS gage down stream daily to insure minimum bypass flow.
 2. Monitor all machinery in the plant to include but not limited to turbines, generators, lube-oil systems, hydraulic systems, lube-oil heating systems, building heating and air conditioning systems, switchgear, fish screens, trash racks, telecommunications equipment, stream flow gages and other equipment to be sure that they are all functioning properly and safely.
 3. Prepare reports, logs, records of electrical production and a record of any maintenance items. The DOR will provide the format for such information. This information will include daily summaries of electrical production in kwh and peak mw, average production, temperature and precipitation records. Record names and addresses of any visitors, including governmental agencies and other personnel which may be on hand to repair equipment, clean equipment on site. The DOR will be copied and forwarded to Chief of Operations on a weekly basis. The original DOR will be on file at the office of the plant.
 4. Communicate with EWEB, BPA, and NLI on a regular basis on all operational matters which affect power production and which may impact their systems.

AUG 09 1991

5. Keep the powerhouse and diversion structure clean and presentable.
6. Ensure the safety of maintenance personnel. To train additional labors in their duties of operations to insure both plant and human safety.
7. Be responsible to secure and lock the powerhouse, and diversion building, and switchyard when not occupied by personnel.
8. Maintain the grounds and arrange for the removal of garbage. In the event oil is changed in the lube-oil system or the hydraulic units, the Chief plant operator will ensure the environmentally safe removal of the oil containers from the site.
9. Review and verify time sheets of assistant plant operators, and other maintenance personnel to be forwarded to Chief of Operations for payment.
10. To conduct tours and inspections of agency personnel and others which the Chief of Operations and Owner may approve (VIP'S). Tours of the plant and its operations will only be to those whom the Chief of Operations approves.

2. Emergency Operation

- A. In emergencies involving danger to life or property, the plant operator on duty will immediately contact the Chief Plant Operator who will immediately contact the Chief of Operations giving him all details available, the plant operator on duty will take immediate local control, if necessary for safety. With the help of the Chief Plant Operator and the Chief of Operations will assist the plant operator on duty of what ever action will need to be taken.
- B. More specific emergencies and there procedures are described as follows:
 1. Emergency shut down of plant. If there is a need to shut down the plant due to safety of the plant or life, the plant operator will switch the main breaker to trip which will trip the turbines and generators off line.
 2. Emergency evacuation of penstock. If there is a need to evacuate the penstock of water due to safety of the plant or life, the plant operator will shut down the turbines and generators in a emergency shut down as described above. The plant

operator will go to the diversion and shut the knife gate. After closure of knife gate the operator will inspect the air vent to insure that it is free of ice. The operator will drain the penstock by means of opening one needle valve on one of the big turbines.

The plant is equipped with a pressure transducer that will sense a sudden loss of pressure which will in turn shut the knife gate automatically. This is incase of a penstock rupture.

3. Emergency shut down of power from Smith Falls substation above the plant to the plant. If there is a need to shut down the power into the plant from the substation due to safety of the plant or life, the plant operator will shut down the turbines and generators as indicated in No. 1 then trip the breaker for the substation located on the front panel of the switchgear.
4. Emergency shut down of power through the Smith Falls transmission line. If there is a need to shut down the power through the transmission line from BPA's substation at Bonners Ferry to the substation located at the plant due to safety of the plant or life, the plant operator will contact BPA's on call substation operator for tripping the breaker.
5. Emergency draining of impoundment at the diversion. If there is a need to drain the impoundment at the diversion due to safety of the plant or life, the plant operator will go to the diversion shut the knife gate then open the four 48" sluice gates. The impoundment can only be drained if the amount of water going out of the sluice gates is more then the water coming into the head of the diversion. In the spring time in high flows the diversion impoundment can not be drained.
6. Any other emergency other than what was listed will be evaluated at the time by the Chief Plant Operator and the Chief of Operations.

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SMITH FALLS HYDROPOWER

February 5, 1990

Mr. Gary Spackman, Manager
Water Rights Permit Section
State of Idaho
Department of Water Resources
1301 North Orchard St., Statehouse Mail
Boise, ID 83720

REC-11
FEB 7 1990

Department of Water Resources

RE: Smith Falls Hydropower
Permits to Appropriate Water, #98-7612 and #98-7650;
Condition Requiring Submittal of Operation Plan

Dear Mr. Spackman,

Pursuant to our phone conversation today, I am sending you this letter to advise you of the Revised Schedule for placing the Smith Falls Hydropower Plant "on line".

At this point we feel we will be ready for performance testing during the week of February 12th through 16th. This may extend also into the week of February 19th. However, we feel that by the end of February, we will be on line with the Smith Falls Hydropower Project.

One of the conditions of the water permits is to submit an operations manual which would instruct an operator in the proper procedures and precautions to insure public safety and maintenance of the minimum stream flow. We anticipate submitting this manual by the end of February. Previously, you had sent us a letter dated December 14th which requested that the operations manual be submitted within 60 days of that letter; however, this was in response to our letter that indicated that we thought we would be on line the first week in January. Due to construction delays, this is not so. We are asking that the Department grant us several weeks extension to the end of February to comply with the provisions of the water permits. It is our understanding that this is okay with the Department.

Thank you for your cooperation.

Sincerely,

SMITH FALLS HYDROPOWER

David B. Van Otten
David B. Van Otten

DBVO/jp

cc: Robert Haynes

Gary May

Fred Moss

609 East South Temple, Suite 220 • Salt Lake City, Utah 84102 • (801) 363-7007

Farley Eskelson

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

February 23, 1990

David Van Otten
Smiths Falls Hydropower
699 East South Temple
Suite 220
Salt Lake City, UT 84102

RE: Permits to Appropriate Water Nos. 98-7612 & 98-7650:
Certification of Safety of the Smiths Falls Hydropower Plant

Dear Mr. Van Otten:

A condition of permits nos. 98-7612 and 98-7650 required:

The adequacy of the project designed to protect public and employee safety during all phases of construction and operation of the project shall be reviewed and certified by a professional engineer licensed to practice in the state of Idaho. A copy of the certification shall be filed with the Department.

I requested this certification on October 17, 1989. In response to my request, Ted S. Sorenson, P.E., sent me a letter on October 23, 1989, which certified that the project design was adequate to protect public and employee safety.

The letter from Ted Sorenson satisfies the condition of permits nos. 98-7612 and 98-7650.

Respectfully,

Sharla Curtis
for GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc. Ted Sorenson
Northern Region

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MESSAGE CONFIRMATION

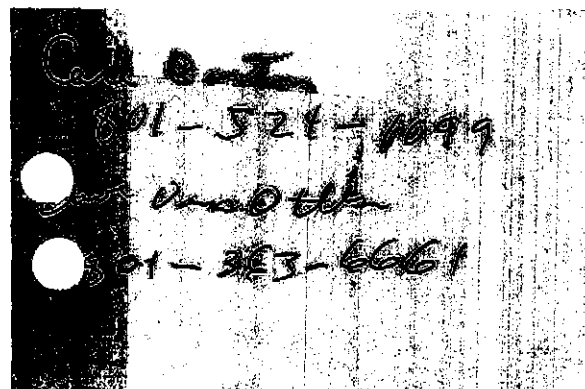
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TERM ID: IDNR FAX #1

P-9999

TEL NO: 208 334 7866

NO.	DATE	ST.TIME	TOTAL TIME	ID	DEPT CODE	OK	NG
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MESSAGE CONFIRMATION

SEP-29-'89 FRI 15:32

MSG ID: 1DWR FAX #1

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TEL NO: 208 334 7866

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

December 14, 1989

David B. Van Otten
Smith Falls Hydropower
699 East South Temple, Suite 220
Salt Lake City, UT 84102

RE: Permits to Appropriate Water No. 98-7612 and 98-7650;
Condition Requiring Submittal of Operation Plan

Dear Mr. Van Otten:

I have reviewed the letter which you submitted on November 28, 1989, which discusses plans of Smith Falls Hydropower to begin operations. The information helped me understand what is planned.

The condition on the permits requiring submittal of an operation plan contemplated the submittal of an operation manual which would instruct an operator in the proper procedures and precautions to insure public safety and maintenance of the minimum streamflow.

The Department feels that operation instructions are necessary to insure safety and bypass flows. Please submit a copy of the operations manual within sixty (60) days of the date of this letter.

Please also inform Robert Haynes our Northern Regional Manager, 1910 NW Boulevard, Suite 210, Coeur d'Alene, Idaho, 83814, telephone number 765-4639, of the operation start up plan for December 30, 1989. He may desire to attend. I also suggest that you keep him informed of the meeting schedules for the operating committee. Bob may want to be apprised of the proceedings.

Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc. Northern Region - Robert Haynes

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SMITH FALLS HYDROPOWER

Department of Water Resources

November 28, 1989

Mr. Gary Spackman, Manager, Permits Section
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: Smith Creek Hydroelectric Project, FERC #8436,
Compliance with Water Permits Nos. 98-7612 & 98-7650.

Dear Mr. Spackman:

As a condition to our Water Permits referenced above we are required to provide certain proof of compliance as well as data for the department to review. This letter will address compliance issues.

We are required to provide proof of construction of works and application of water to beneficial use prior to Feb. 1, 1993. Will photographs of the completed plant and inspection of the project by your Northern Region representative, Robert G. Haynes, be sufficient to meet this requirement? Previously, Sorenson Engineering submitted plans for Phase I and Phase II on October 3, 1989, to you for review.

The U.S.G.S. has installed a water flow gage approximately 50 to 100 feet downstream of the diversion dam. This has been equipped with a measuring device to continuously measure and record the bypass flow rate below the diversion dam. In addition, Smith Falls Hydropower has added a Stevens monitor which will electronically record the stream flows on a computer chip which can be downloaded onto a floppy disc periodically. Either this electronic record or the record kept by the U.S.G.S. can be forwarded to IDWR periodically. Please advise us as to your preference.

We believe that paragraph 1.m. has previously been complied with as Sorenson Engineering forwarded a letter to you regarding the design of the project to protect the public and employee safety during all phases of construction and operation. If we need to provide any further information to comply with paragraph 1.m., please advise.

Paragraph 1.o. requires that the permit holder shall provide an operation plan to the department for review and approval prior to operating the hydropower facility. We desire to come on line

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AUG 09 1991

no later than December 30, 1989 (weather permitting). Therefore, please accept this letter as notice of such date. We believe the information provided in the following paragraphs will be sufficient to meet the requirements of paragraph 1.o. However, if more information is desired, please let us know quickly so we can provide the information you need quickly and obtain your permission to start operations December 30, 1989. The following is provided:

1. The Federal Energy Regulatory Commission required us to file a Ramping Rate Plan which restricts how quickly we can take water or reject water from our diversion works so that any fisherman downstream will not be hit with a sudden rise in water. Conversely, it precludes us from suddenly taking water from the stream and leaving fish high and dry on the rocks. A copy of this plan is enclosed for your review. It has previously been approved by the FERC. However, the final stage:discharge relationship showing flows in cfs per water elevation in the river must still be completed by U.S.G.S. who has already installed their gage and will be performing this monitoring and calibration during December.

2. The IDWR may be interested to know that our Power Sales Agreement with the Eugene Water and Electric Board requires the establishment of an Operating Committee which will meet every six months to review past operations and maintenance and to plan operations and maintenance for the next six months. Public and employee safety is one of the agenda items for this Operating Committee. Scheduled Maintenance and any repairs or additions to the Project will be planned by the committee. It will operate within the framework of Prudent Electrical Practices.

3. The diversion dam intake works is covered with a steel building to keep the public away from six rotating fish drum screens which are 12' in length and 6' in diameter each. In addition, a trash rack is also installed to keep people from getting into the penstock. Approach velocity to the covered fish screens has been reduced to 1 foot per second. Although we cannot keep people out of the diversion pond (U.S.F.S. will not allow a fence), a log boom and a breast wall should keep them away from the intake works unless an individual desires to be reckless.

4. Water diverted at the Diversion Dam will be returned via the tailrace at the powerhouse back to Smith Creek about 50 feet prior to the lip of Smith Falls. The Permittee, Smith Falls Hydropower, has gone to great lengths to not only save the water fall but to preserve the majestic trees on both sides of the falls in such a way as to minimize visual impacts to the observers from the highway bridge.

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AUG 09 1991

5. Since the Diversion Dam has a slot cut into it to maintain a minimum instream flow of 27 cfs, there should always be 27 cfs going over Smith Falls, unless natural conditions provide less than 27 cfs. These are items which can be reviewed by Robert G. Haynes upon a visual inspection.

6. Bouvier Hydropower, Inc., the supplier of our turbines, generators, and switchgear, have provided us with five manuals of operations data. In addition, Sorenson Engineering is supplying us with a manual for the hydrological operation of the plant. In general terms, we will only operate the plant when we have at least 30 to 31 cfs of water in the creek at the Diversion Dam (27 cfs instream flow plus 3 to 4 cfs we can divert to make power with Unit #3). As water flows increase we will gradually take in more water into the penstock through the intake portion of the Diversion Dam. Once we have reached 17 cfs, we will phase out unit 3 (a very small turbine/generator of 2.15 MW capacity) and start bringing on Unit 1 (rated at 18 MW capacity). Unit 1 will typically operate from 17 cfs up to 174 cfs of flow. However, it is likely that we will bring on Unit 2 (the twin to Unit 1) at about 150 cfs of flow to obtain better efficiencies. Both Units 1 and 2 will operate up to a maximum flow of 348 cfs. At 349 cfs Unit 3 will be brought back on line to increase the capacity to approximately 365 to 367 cfs (depending upon flow losses within the penstock). As water flows in Smith Creek subside, the generating Units will be gradually backed off in the reverse order that they came on line. This will all be in accordance with the Ramping Rate Plan as attached hereto.

7. The Project is equipped with full protective equipment. The switchyard has sufficient breaker and protective devices to protect the project which in turn reduces danger to people. The risk of injury to people cannot be reduced to zero in any power plant. However, much effort has been made to provide automatic shutdown devices in the plant itself. A loss of power due to a lightning strike or other cause will automatically shut down the plant.

8. Mechanical safety devices have also been installed. A knife gate at the Diversion Dam can be used to keep water out of the penstock for maintenance reasons or for protection of a penstock in imminent danger. Turbines are equipped with Deflectors which will take a turbine/generator unit off line while still allowing water to flow through the penstock. This allows us to adhere to our Ramping Rate Plan. Generation Units can be brought back on line through adjustment of the deflectors. Turbine nozzles are restricted through a very small hydraulic orifice from closing too rapidly and creating a "water hammer" effect in the penstock. This precludes such a problem which would be a serious hazard to human life.

AUG 09 1991

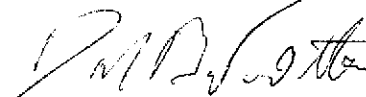
9. The Operating Committee is meeting November 30, 1989 at the Kootenai River Inn, Bonners Ferry, Idaho to establish its operations procedures and guidelines. If the IDWR has any particular concerns it would like addressed, it is welcome to provide the same in written comments. We will have a final meeting during December to establish final operations procedures and guidelines.

As paragraph 1.o. requires us to seek the IDWR's review and approval of an operation plan prior to operation of the hydropower facility on December 30, 1989, please accept this letter as our effort to comply with this condition. If further information is needed, please feel free to contact Dave Van Otten at (801) 363-6111 or Fred Moss at (208) 267-7511.

We have appreciated the efforts of IDWR to work with us in the past. We desire to return the favor by complying fully with the permits the IDWR has issued.

Sincerely,

SMITH FALLS HYDROPOWER



David B. Van Otten

cc: Robert G. Haynes, IDWR Northern Region
Gary E. May
R. Fred Moss
E. Farley Eskelson
Ted Sorenson, Sorenson Engineering

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AUG 09 1991

**SMITH CREEK HYDROELECTRIC PROJECT
FERC #8436**

ARTICLE 407

RAMPING RATES

In accordance with the requirements of license Article 407 of the Smith Creek Hydroelectric Project (FERC No. 8436) the following plan has been developed.

This plan was developed in consultation with the Idaho Department of Fish and Game (IDFG) and the U.S. Fish and Wildlife Service (FWS) to set limits on the maximum rate of change in the river flow (the ramping rate) needed to protect the fish and wildlife resources in Smith Creek. After consultation with the agencies it was determined that ramping rates for both increases and decreases in channel flows are to be set at no greater than one vertical foot per hour. This rate will be slow enough to insure that juvenile fish and invertebrates are not stranded and is sufficient to minimize impacts to fish and invertebrates. This rate will be incorporated into a staff gage/discharge relationship to insure that the one foot per hour rate is not exceeded at varying flows. This ramping rate will apply to all flow fluctuations under the control of the operator. This includes watering and dewatering of the penstock, local changes as they relate to turbine use, sediment transport, screen cleaning, maintenance operations, etc. A continuous flow monitor will be installed below the point of diversion as a part of the project and will be available for inspection by all agency personnel.

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Carroll/Ku

3 1988

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Idaho Natural Energy, Inc

Project No. 8436-005
Idaho

ORDER APPROVING IN PART AND MODIFYING IN PART
A RAMPING RATE PLAN

(Issued June 20, 1988)

On January 11, 1988, Idaho Natural Energy, Inc. (licensee), filed a ramping rate plan, pursuant to article 407 of the license issued on April 10, 1987, for the Smith Creek Hydroelectric Project. In addition to limiting the vertical change in creek depth to one foot per hour, the plan contains provisions to develop a stage:discharge relationship, and to install a monitor to continuously measure flows in the creek. These provisions were recommended by the Idaho Department of Fish and Game, in a letter dated October 27, 1987.

The licensee's one-foot-per-hour change in depth should effectively prevent the stranding of fish and invertebrates during project operation. However, because the licensee's plan did not contain a schedule for developing the stage:discharge relationship, nor installing the flow monitor necessary to measure the ramping rate, modification of the licensee's plan is needed. To ensure that this proposed ramping rate is monitored throughout project operation, the licensee must develop the stage:discharge relationship and install the flow monitor prior to commencing project operation.

The Director orders:

(A) The ramping rate plan filed by the licensee on January 11, 1988, as modified in paragraph B, is approved.

(B) Prior to the start of project operation, the licensee shall develop the stage:discharge relationship and install the monitor to continuously monitor flow that are part of the January 11, 1988 plan.

(C) This order is issued under authority delegated to the Director and is final unless appealed to the Commission under Rule 1902 within 30 days from the date of this order.

JMR
J. Mark Robinson
Director, Division of Project
Compliance and Administration
AUG 09 1988

SORENSEN ENGINEERING

CONSULTING ENGINEER

550 LINDEN DRIVE

IDAHO FALLS, IDAHO 83401

208-522-8069

FAX 208-522-8223

October 23, 1989

RECEIVED
OCT 26 1989

Gary Spackman
Manager
Water Rights Permit Section
Department of Water Resources
Statehouse Mail
1301 North Orchard
Boise, ID 83620

Department of Water Resources

RE: SMITH FALLS HYDROPOWER PLANS, PERMITS #98-716, 98-7612 AND
98-7650

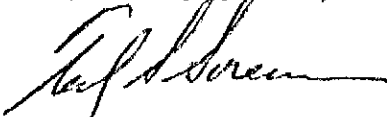
Dear Mr. Spackman:

Pursuant to your letter of October 17, 1989, to Mr. David Van Otten, this letter is written to certify the adequacy of the project design to protect public and employee safety during construction operation phases of the project.

This concern was paramount during design and will be throughout construction.

Trusting this to be of value;

Very truly yours,



Ted S. Sorenson, P.E.
Project Engineer

TSS:mbk

cc: David Van Otten

RECEIVED
AUG 09 1991

October 17, 1989

Smith Falls Hydropower
Attn: David B. Van Otten
699 E. S. Temple, Suite 220
Salt Lake City, UT 84102

RE: SMITH FALLS HYDROPOWER PLANS - PERMITS 98-7612 AND 98-7650

Dear Mr. Van Otten:

The department has received the plans forwarded to the department by Ted Sorenson in connection with the above referenced project. We appreciate receiving the plan but wish to point out there appears to be some misunderstanding of what is needed. More specifically, the conditions of approval for the permits include the following condition:

"The adequacy of the project design to protect public and employee safety during all phases of construction and operation of the project shall be reviewed and certified by a professional engineer licensed to practice in the state of Idaho. A copy of the certification shall be filed with the department."

Your engineer is the proper party to certify the adequacy of the project design to protect public and employee safety during construction and operation phases of the project as required by this condition. The certification then needs to be filed with the department.

If you have questions, please feel free to contact the department.

Sincerely,

GARY SPACKMAN, Manager
W.R. Permits Sec.

c: IDWR - N. Region
Ted Sorenson

AUG 09 1991

ORENSEN ENGINEERING

CONSULTING ENGINEER

550 LINDEN DRIVE

IDAHO FALLS, IDAHO 83401

208-522-8069

FAX 208-522-8223

October 3, 1989

Gary Spackman
Manager, Water Rights Permit Section
Idaho Department of Water Resources
Statehouse Mail
1301 North Orchard
Boise, ID 83720

RE: SMITH FALLS HYDROPOWER PERMIT #'S 98-7612 AND 98-7650

Dear Mr. Spackman:

Pursuant to instructions from Mr. David Van Otten, enclosed is a copy of the plans for Phase I and Phase II of the Smith Falls Hydropower project. Pursuant to your verbal instructions, the specifications are not included.

These plans are sent pursuant to your letter of October 2, 1989.

Very truly yours,



Ted S. Sorenson, P.E.
Project Engineer

TSS:mbk

cc: Dave Van Otten
E. Farley Eskelson

RECORDED

AUG 09 1991

Specimen

SMITH FALLS HYDROPOWER

September 29, 1989

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OCT 02 1989

Mr. Norman C. Young
State of Idaho
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Department of Water Resources

RE: Assignment of Water Permits 98-7612 and 98-7650 and
attached letter from Carl Barton, Atty.

Dear Norm:

Carl indicated that he couldn't get your FAX machine to
accept his complete letter. Therefore, I am FAXing it to you
from my machine with a copy to follow by mail.

I have advised Ted Sorenson of Sorenson Engineering to send
you a certified set of Plans and Specifications on the Smith
Creek Hydro Project. He will also include you on the mailing
list and the agenda for the next Engineers/Agency/Contractors
meeting to be held on October 26th at 10:00 A.M. at the site.

Thank you for your help and cooperation.

Sincerely,

David B. Van Otten
David B. Van Otten

cc: Carl W. Barton
Gary E. May
R. Fred Moss
Ted Sorenson

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AUG 09 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

October 2, 1989

Smith Falls Hydropower
Attn: David B. Van Otten
699 E. S. Temple, Suite 220
Salt Lake City, UT 84102

RE: Assignment & Encumbrance of Permit Nos. 98-7612 & 98-7650

Dear Mr. Van Otten:

The Department of Water Resources has reviewed the assignment and security documents related to Permit Nos. 98-7612 and 98-7650 (the permits). We find that the permits have been assigned to Smith Falls Hydropower.

Voluminous security documents expressly grant a security interest in Permit No. 98-7612 to Chicago Title Insurance Company and Westinghouse Credit Corporation. The documents also appear to encumber Permit No. 98-7650 although Permit 98-7650 is not specifically identified by number in the security documents.

The assignee, the secured parties and other parties to the transaction have submitted sufficient proof of authority to do business in the state of Idaho.

Pursuant to Idaho Code §42-207, the Department finds that Permit Nos. 98-7612 and 98-7650 have been assigned and encumbered in good faith, and not for speculation or delay. The transactions appear to be for the purpose of securing adequate financing for the project.

The Department will change its records to reflect that Smith Falls Hydropower is the owner of the permits. Notice will be posted in the file that Chicago Title and Westinghouse are secured parties.

The Department cannot guarantee that the secured parties will always be timely notified of matters pertaining to the permits. Furthermore, the Department may not be able to grant a time to cure defaults by the owner of record. If a dispute arises in the future regarding ownership, the secured parties must submit proof of ownership prior to being recognized as the owner.

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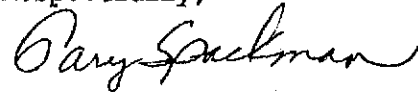
Smith Falls Hydropower
October 2, 1989
Page 2

Conditions attached to the permits expressed concern about construction and operation safety. A condition required certification of public and employee safety by a professional engineer licensed to practice in the state of Idaho. The condition contemplated the review of plans and specification and certification prior to or simultaneous with construction. The Department understands that construction is now at least partially complete, but the public and employee safety of the project has not yet been verified.

This letter is a request for compliance with the condition. If an adequate response is not received within thirty (30) days, the Department will act to impose a bond or perhaps remove the permits from its records.

May I remind you that the safety of operating procedures must be reviewed and confirmed similarly.

Respectfully,



GARY SPACKMAN, Manager
Water Right Permits Section

GS:sc

cc: Carl Barton, Esq.
Northern Region

AUG 09 1991

PRINCE, YEATES & GELDZAHLER
LAWYERS

CITY CENTRE I, SUITE 900
175 EAST FOURTH SOUTH
SALT LAKE CITY, UTAH 84101
TELEPHONE (801) 524-1000

PARK CITY OFFICE
514 MAIN STREET
P.O. BOX 38
PARK CITY, UTAH 84060
(801) 649-7440

OF COUNSEL
LYLE M. WARD

TELECOPIER
(801) 524-1099

RECEIVED

OCT 04 1989

Department of Water Resources

September 29, 1989

F. S. PRINCE (RETIRED)
ROBERT M. YEATES
DAVID S. GELDZAHLER
DENIS R. MORRILL
JON C. HEATON
JOHN P. ASHTON
RONALD F. SYSAK
RICHARD L. BLANCK
JOHN M. BRADLEY
D. JAY GAMBLE
STEVEN L. TAYLOR
GORDON STRACHAN
C. CRAIG LILJENQUIST
ANITA TORTI MOSELEY
J. RANDALL CALL
JOHN S. CHINDLUND
WILLIAM A. MEADERS, JR.
GEOFFREY W. MANGUM
‡ ADMITTED IN TEXAS ONLY
‡ REGISTERED PATENT ATTORNEY

JAMES A. BOEVERS
RONALD E. NEHRING
DAVID K. BROADBENT
J. SCOTT LUNDBERG
THOMAS J. ERBIN
PAUL J. TOSCANO
SAMUEL ALBA
ERIK STRINDBERG
ROBERT G. WING
GAIL S. REICH
BRIAN S. KING
GARY R. THORUP
CARL W. BARTON
THOMAS M. MELTON
GREGORY E. LINDLEY†
M. DAVID ECKERSLEY
DON R. SCHOW
SALLY BUCK MCMINNIEE
JOSEPH A. WALKOWSKI‡

TELECOPIED TO (208) 327-7866

Mr. Norman C. Young
State of Idaho
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Re: Assignment of Water Permits 98-7612 and 98-7650

Dear Mr. Young:

Thank you for your letter of today's date. Dave Van Otten has requested that I respond to you directly.

As I read your letter, you have a concern about who will bear ultimate financial responsibility for the Smith Creek Project (the "Project") and who would shoulder any damages or liability arising in connection with the Project. Under Utah law, the partners of a general partnership are jointly and severally liable for the debts and liabilities of the partnership. In this case, the three corporate general partners of Smith Falls Hydropower (the "Partnership") are jointly and severally liable for the debts and liabilities of the Partnership in connection with the Project. The Westinghouse financing documents are not intended to and do not alter this relationship or these responsibilities.

I hope this letter provides you with the information

AUG 09 1991

State of Idaho
September 29, 1989
Page 2

you need. Thank you for your cooperation in assigning the above-referenced water permits. Should you have any questions, please call me collect.

Sincerely,

PRINCE, YEATES & GELDZAHLER

Carl W. Barton

Carl W. Barton

3277D
092989

AUG 09 1991



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

September 29, 1989

Carl W. Barton, Esq.
City Centre I, Suite 900
175 East 4TH South
Salt Lake City, Utah 84111

Re: Assignment of Permits 98-7612 and 98-7650

Dear Mr. Barton:

The Department of Water Resources has been evaluating the requested assignment of the above referenced permits to Smith Creek Hydro, a Utah created general partnership. The general partners are various corporations. Financing of the project involves Westinghouse Financing Corporation and Chicago Title Company, which are given various security agreements in the project.

Because of the involvement of the corporations in the complex financing and security arrangements, it is not clear who will be responsible for failure to comply with permit conditions or which entities are accepting financial responsibility for failure of the project or other damages resulting from construction and operation of the project.

Please provide a letter describing the legal arrangement that addresses these matters.

Sincerely yours,

NORMAN C. YOUNG
Administrator

NCY:dc

cc: Dave Van Otten

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AUG 09 1991

State of Idaho
Department of Water Resources
ASSIGNMENT OF PERMIT

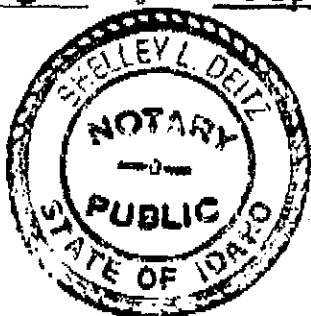
1. IDAHO NATURAL ENERGY, INC. hereby assign to SMITH FALLS HYDROPOWER
of 550 LINDEN DRIVE, IDAHO FALLS, IDAHO 83401
Address

All my right, title, and interest in and to Permit No. 98-7650
to appropriate the public waters of the State of Idaho.

The following described portion of my right, title, and interest in and
to Permit No. _____ to appropriate the public waters of the
State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage
within each 40 acre subdivision, the point of diversion and the amount of
water in cubic feet per second for direct diversion, or acre feet for storage)

Made this 25th day of SEPTEMBER, 1989.



Gary E. May
Permit Holder
IDAHO NATURAL ENERGY, INC.
GARY E. MAY, VICEPRESIDENT
Spouse of Permit Holder

State of Idaho)
County of Boundary) ss

On this 25 day of September, 1989, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged
to me that he (she) (they) executed the same.

Shelley L. Deitz
Notary Public residing at
BONNERS

seal

My commission expires:
7-26-95

MICROFILMED
AUG 09 1991

SMITH FALLS HYDROPOWER

Bonnors Ferry Office
P.O. Box 3100 - 113 Eisenhower
Bonnors Ferry ID 83805

Phone (208) 267-7511

FACSIMILE TRANSMITTAL COVER SHEET

Person Sending

GARY MAY

Project Name/Subject

SMITH CREEK - 98-7612 & 98-7650

FAX Number (208) 267-7512

Company Name

IDAHO DEPT. of WATER RESOURCE

Addressee
Data

Location

BOISE

Attention

GARY SPACKMAN

FAX Number

1-208-327-7866

Number of pages including cover sheet 3

MESSAGE MR. SPACKMAN, THIS FAX CONTAINS
A COPY OF AN "ASSIGNMENT OF PERMIT" FOR
PERMIT # 98-7650 AND A COPY OF SCHEDULE V.
I HAVE THE ORIGINAL ASSIGNMENT FORM AND
HAVE SENT IT IN THE REGULAR MAIL TO YOU.
I BELIEVE THAT THESE ARE THE LAST 2 ITEMS
YOU NEEDED IN ORDER TO ASSIGN WATER PERMITS
98-7612 AND 98-7650 TO SMITH FALLS HYDROPOWER.
IF I CAN BE OF FURTHER ASSISTANCE, PLEASE CALL
ME IN BONNERS FERRY, ID. 208-267-7511

THANKS!

Signed

Gary May

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AUG 09 1991

SCHEDULE VPERMITS AND WATER PERMITS

A. PERMITS

1. Collection Agreement No. 1 between Idaho Natural Energy, Inc. and Idaho Panhandle National Forest, USDA-Forest Service, dated February 23, 1989.
2. License issued by Federal Energy Regulatory Commission, Project No. 8436-001 (Agency approval to transfer required).
3. Special Use Permit issued by Bonners Ferry Ranger District Idaho Panhandle National Forest, dated May 12, 1988, for Smith Creek Hydroelectric Project (Agency approval to transfer required).
4. Conditional Use Permit Issued by Boundary County Commission, Dated September 1, 1987 (Agency approval to transfer required).
5. Army Corps 404 Permit issued by Department of the Army, dated January 6, 1988, No. 071-OVC-4-003180.
6. Qualifying Status Permit to be issued by Federal Energy Regulatory Commission, pursuant to Docket No. QF84-209-001 (Agency approval to transfer required).

B. WATER PERMITS

1. Water Rights Permits issued by the Department of Water Resources, State of Idaho, Permit No. 98-7612 (Agency approval to transfer required).
2. Water Quality Permit issued by State of Idaho, dated December 18, 1985 (Agency approval to transfer required).
3. Permit to Alter Stream issued by State of Idaho Department of Water Resources, dated March 22, 1988 (Agency approval to transfer required).

RECEIVED

AUG 09 1991

SMITH FALLS HYDROPOWER

Bonnars Ferry Office
P.O. Box 3100 - 113 Eisenhower
Bonnars Ferry ID 83805

Phone (208) 267-7511

FACSIMILE TRANSMITTAL COVER SHEET

Person Sending

GARY MAY

Project Name/Subject

SMITH CREEK - 98-7612 & 98-7650

FAX Number (208) 267-7512

Company Name

IDAHO DEPT. OF WATER RESOURCES

Addressee
Data

Location

BOISE

Attention

GARY SPACKMAN

FAX Number

1-208-327-7866

Number of pages including cover sheet

3

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IF I CAN BE OF FURTHER ASSISTANCE, PLEASE CALL
ME IN BONNERS FERRY, ID. 208-267-7511

THANKS!

Signed

Gary May

AUG 09 1991

State of Idaho

Department of Water Resources

ASSIGNMENT OF PERMIT

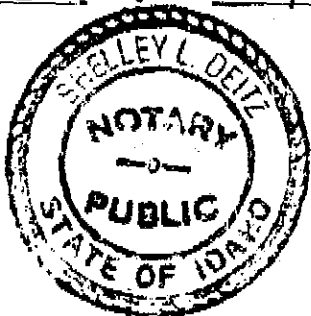
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 of 550 LINDEN DRIVE, IDAHO FALLS, IDAHO 83401
 Address

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(Describe that portion of the permit being assigned by listing the acreage
 within each 40 acre subdivision, the point of diversion and the amount of
 water in cubic feet per second for direct diversion, or acre feet for storage)

Made this 25th day of SEPTEMBER, 19 89.



Gary E. May
 Permit Holder
IDAHO NATURAL ENERGY, INC.
GARY E. MAY, VICE PRESIDENT

Spouse of Permit Holder

State of Idaho)

County of Boundary) ss

On this 25 day of September, 19 89, personally
 appeared before me the signer(s) of the above instrument, who duly acknowledged
 to me that he (she) (they) executed the same.

s e a l

Shelley L. Deitz
 Notary Public residing at

BENNETT FERRY

My commission expires:

7-26-95

AUG 09 1991

SCHEDULE VPERMITS AND WATER PERMITS

A. PERMITS

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MICROFILMED

AUG 09 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

August 22, 1989

Carl Barton, Attorney at Law
City Centre I, Suite 900
175 East 4th South
Salt Lake City, UT 84111

RE: Smith Creek Hydroelectric Project Request for Approval of
Assignment of Water Permits Nos. 98-7612 and 98-7650

Dear Mr. Barton:

I have reviewed the information which you sent to me again, and the letter of transmittal that accompanied the information. I will address each one of the documents as you referred to them in your letter dated July 19, 1989.

Exhibit "A", Assignment from INE and Hydro-Flow Inc. to Smith Falls Hydropower

Exhibit A appears to be an assignment agreement that is identical to the assignment agreement submitted earlier. It is dated May 26. Exhibits A and B of the document refer only to permit no. 98-7612. Without further documentation, the Department will only recognize the assignment to Smith Falls Hydropower of permit no. 98-7612.

Exhibit "B", All Inclusive Mortgage in Favor of Westinghouse from Smith Falls Hydropower

The definitions in the mortgage agreement define "water permits" as the permits identified in schedule no. V of the financing agreement. A copy of the financing agreement was sent to me, but a copy of schedule no. V was not included.

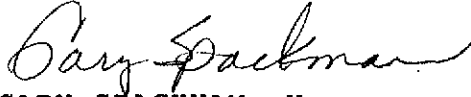
Exhibits "C" and "D"

The mortgage issued by Hydro-Flow is not necessary for review, since Hydro-Flow has assigned its interest in the permits to the partnership (assuming 98-7650 has been assigned). In addition, the facility lease is not necessary for review at the present time except as it may refer to the water permits generally.

AUG 09 1991

The two questions that I raised in my last letter still remain unresolved. When additional materials are submitted, I ask that they be reviewed carefully and that discretion be exercised to prevent submittal of excessive volume. While you probably are unfamiliar with our requirements, I have had difficulty interpreting the large number of documents I have received.

Respectfully,



GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

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FACILITY AND SITE LEASE

Dated as of [B]

Between

WESTINGHOUSE CREDIT CORPORATION,

Lessor,

and

SMITH FALLS HYDROPOWER,

Lessee

Hydroelectric Facility
Boundary County, Smith Creek, Idaho

Note: This Facility and Site Lease has been executed in two (2) counterparts of which this is Counterpart Number _____. See Section 29 hereof for information concerning the distinction between various counterparts hereof.

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AUG 30 1991

EXHIBIT "D"

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Definitions	
Section 2. Lease of Leased Property	
Section 3. Purchase and Lease	
Section 4. Term of Lease	
Section 5. Payments of Rent	
Section 6. Sublease; Renewal Option	
Section 7. Insurance	
Section 8. Additions and Improvements	
Section 9. Maintenance and Operation	
Section 10. Title, Liens, Additional Covenants, Eminent Domain and Further Assurances	
Section 11. Risk of Loss; Casualty Occurrences; Special Casualty Occurrence	
Section 12. Disclaimer of Guarantees, Warranties and Representations	
Section 13. Location; Performance Under Site Lease	
Section 14. Valuation of Property	
Section 15. Notices; Reports	
Section 16. Return of Leased Property	
Section 17. Default	
Section 18. Remedies	
Section 19. Indemnities	

RECEIVED
AUG 6 9 1991

Section 20.	Assignment	
Section 21.	Addresses and Payments	
Section 22.	Waivers	
Section 23.	Quiet Enjoyment	
Section 24.	Lessor's Right to Perform for Lessee	
Section 25.	Resistance to Regulatory Change	
Section 26.	Distributions to General Partners	
Section 27.	Governing Law; Entire Agreement	
Section 28.	Amendment; Invalidity; Payments	
Section 29.	Counterparts	
Section 30.	Scope of Liability	

SCHEDULE I - DEFINITIONS

SCHEDULE II - DESCRIPTION OF SITE

SCHEDULE III - BASIC RENT FACTORS AND CASUALTY LOSS VALUES

SCHEDULE IV - EXCESS RENT AMOUNTS

EXHIBIT A - CERTIFICATE OF DELIVERY AND ACCEPTANCE FOR FIRST LEASE CLOSING
DATE

EXHIBIT B - CERTIFICATE OF DELIVERY AND ACCEPTANCE FOR SECOND LEASE CLOSING
DATE

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AUG 09 1991

FACILITY AND SITE LEASE

This FACILITY AND SITE LEASE dated as of May 25, 1989, is by and between WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation ("Lessor"), and SMITH FALLS HYDROPOWER, a Utah general partnership ("Lessee").

W I T N E S S E T H :

Section 1. Definitions. The terms in Schedule I annexed hereto shall have the meanings set forth therein for all purposes of this Lease and shall be equally applicable to both the singular and the plural forms of the terms therein defined. References in this Lease to Sections, Schedules, Exhibits and clauses, without further attribution, are intended to refer to Sections, Schedules, Exhibits and clauses of this Lease.

Section 2. Lease of Leased Property. Subject to all of the terms, covenants and conditions of this Lease, Lessor hereby subleases all of its leasehold interest under the Ground Lease in and to the Site and covering the real property described in Schedule II and leases all of its interest in the Facility (such interest of Lessor under the Ground Lease and in and to the Facility is sometimes referred to herein as the "Leased Property") to Lessee, and Lessee hereby leases all of Lessor's interest in and to the Facility and subleases all of Lessor's leasehold interest in the Site under the Site Lease from Lessor, all for the Rent and the Term hereinafter stipulated and upon the terms and conditions herein set forth.

Section 3. Purchase and Lease. Subject to the conditions set forth in Section 3(b) of the Financing Agreement, Lessor agrees on the First Lease Closing Date to purchase the Facility (other than the Second Large Turbine) from Lessee for an amount equal to the Initial Payment and lease the Site from Lessee and lease the Leased Property to Lessee hereunder. Subject to the conditions set forth in Section 3(c) of the Financing Agreement, Lessor agrees on the Second Lease Closing Date to purchase the Second Large Turbine from Lessee for an amount equal to the Final Payment and lease the Second Large Turbine to Lessee hereunder. The leasing on the First Lease Closing Date of the Leased Property hereunder shall be conclusively evidenced by the execution and delivery by Lessee to Lessor of a Certificate of Delivery and Acceptance, substantially in the form of Appendix A and an Acknowledgment from Lessor in the form attached thereto, which certificate and acknowledgment shall evidence acceptance by Lessee and the delivery by Lessor of the portion of the Leased Property described therein for all purposes hereof. The leasing on the Second Lease Closing Date of the Second Large Turbine hereunder shall be conclusively evidenced by the execution and delivery by Lessee to Lessor of a Certificate of Delivery and Acceptance, substantially in the form of Appendix B and an Acknowledgment from Lessor in the form attached thereto, which certificate and

acknowledgment shall evidence acceptance by Lessee and the delivery by Lessor of the portion of the Leased Property described therein for all purposes hereof.

Section 4. Term of Lease.

(a) Generally. The term of this Lease shall commence on the First Lease Closing Date and, subject to Lessee's renewal option as provided in Section 6, shall end on the Expiration Date unless sooner terminated pursuant to this Section 4 or Sections 11 or 18.

(b) Termination. Lessee and Lessor acknowledge that Utility has the right (the "Purchase Right") to purchase the Facility pursuant to the Power Purchase Agreement as amended by the Agreement of Understanding. If Utility exercises the Purchase Right, this Lease shall terminate as of the Transfer Date upon the purchase by Utility of the Facility and the payment to Lessor by Utility of the Purchase Price and the payment to Lessor by Lessee of (i) all accrued Basic Rent calculated on a pro rata basis due up to but not including the Transfer Date, (ii) all accrued Excess Rent calculated on a pro rata basis due up to but not including the Transfer Date and (iii) any unpaid Supplemental Rent. If (A) the Purchase Right is exercised other than (1) upon the occurrence of a Special Casualty Occurrence or (2) after the termination of this Lease by Lessor upon the occurrence of an Event of Default, and (B) the Purchase Price actually paid by Utility for the Project is greater than the Casualty Loss Value of the Facility as of the Transfer Date, then Lessor shall pay Lessee on the Transfer Date a termination payment equal to forty percent (40%) of the difference. ("Transfer Date," "Purchase Price" and "Project" are used as defined in the Agreement of Understanding.)

Section 5. Payments of Rent.

(a) Basic Rent. Lessee shall pay Basic Rent to Lessor on each Rent Payment Date.

(b) Excess Rent. Lessee shall pay to Lessor as Excess Rent ("Excess Rent") on each Rent Payment Date an amount equal to the amounts specified on Schedule IV for the respective Rent Payment Date.

(c) Supplemental Rent. Lessee shall also pay, as Supplemental Rent, any and all amounts, liabilities and obligations (other than Basic Rent and Excess Rent) which Lessee assumes or agrees to pay hereunder to Lessor or others, including, without limitation, the Casualty Payments, the Special Casualty Payments and the indemnities provided for in Section 19, promptly as the same shall become due and owing. If Lessee fails to pay any Supplemental Rent, Lessor or its assigns shall have all rights, powers and remedies provided for herein or by law or equity or otherwise as in the case of nonpayment of Basic Rent. Lessee shall also pay to Lessor on demand, as Supplemental Rent, to the extent permitted by applicable law, interest at the Default Rate on any part of any installment of Basic Rent, Excess Rent, any Casualty Payment and any Special Casualty Payment not paid when due for the period for which the same shall be overdue and on any other payment of

AUG 02 1981

Supplemental Rent not paid when demanded by Lessor for the period until the same shall be paid.

(d) Obligation to Pay Rent. Each payment of Rent shall be in immediately available funds. This Lease is a net lease and Lessee's obligation to pay all Rent payable hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation: (i) any setoff, counterclaim, recoupment, deduction, defense or other right which Lessee may have against Lessor, any manufacturer or any one else for any reason whatsoever; (ii) any defect in the title, condition, design, operation, merchantability or fitness for use of any part of the Facility; (iii) the existence of any Liens with respect to the Leased Property, whether or not resulting from claims against Lessor not related to the ownership of the Leased Property; (iv) subject to Sections 11(b) and 11(c), any loss or destruction of, or damage to, any part of the Facility or any interruption or cessation in the use or possession thereof for any reason whatsoever and of whatever duration; (v) the invalidity or unenforceability of this Lease or any other infirmity therein or any lack of power or authority of Lessor or Lessee to enter into this Lease; (vi) any insolvency, bankruptcy, reorganization or similar proceeding by or against Lessee, any General Partner, any Affiliate or Lessor; or (vii) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, Lessee nonetheless agrees to pay an amount equal to each payment of Rent at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease, except in accordance with the express terms hereof. Except as provided in Section 5(g) hereof, each payment of Rent made by Lessee shall be final, and Lessee shall not seek to recover all or any part of such payments from Lessor or any other Person for any reason whatsoever. This provision, however, shall not be construed to waive Lessee's right of action, if any, against Lessor or any other Person for damages incurred by Lessee on account of any breach by Lessor or such other Person of any provision of this Lease or any other agreement relating or not relating hereto.

(e) Adjustment of Basic Rent Factors and Casualty Loss Values. The Basic Rent Factors and Casualty Loss Values shall be adjusted upward or downward as soon as possible if any Tax Law Change occurs after the First Lease Closing Date which applies to the Leased Property so as to maintain Lessor's aggregate Net Economic Return with respect to the Leased Property. The amount of any adjustment pursuant to this Section 5(e) shall be determined by Lessor based upon the assumptions and methods of calculations employed in the original calculation of Basic Rent Factors and Casualty Loss Values and shall, in the reasonable opinion of Lessor, satisfy the requirements of Internal Revenue Procedures 75-21 and 75-28. Lessee shall notify Lessor within ten (10) days of receipt of such recalculations if Lessee does not agree therewith and, if requested by Lessee, such recalculation shall be

AUG 08 1997

verified, at Lessee's expense, by a nationally recognized certified public accounting firm acceptable to Lessor. Such adjustments shall be evidenced by the execution and delivery by Lessor and Lessee of a supplement to this Lease.

(f) Reserve Account; Escrow Account. During the Term, Lessee shall establish and maintain (i) the Lease Payment Reserve Account pursuant to the Lease Payment Reserve Agreement and (ii) the Escrow Account pursuant to the Escrow Fund Agreement.

(g) Overpayments of Rent. If Lessee shall make any payment of Rent hereunder in excess of the amount Lessee is required to pay then either (i) Lessor shall promptly refund such excess amount to Lessee, or (ii) with Lessor's prior written consent, Lessee shall deduct such excess amount from the next payment of Rent due hereunder.

Section 6. Sublease; Renewal Option.

(a) Sublease. Lessee shall not sublease the Leased Property without Lessor's prior written consent, which consent will not be unreasonably withheld. Each sublease, whether or not consented to by Lessor, shall be expressly subject and subordinate to all the terms and conditions of this Lease and shall in no way relieve Lessee from any obligations under this Lease (it being understood and agreed that Lessee shall remain primarily liable for such obligations notwithstanding any such sublease), and Lessee hereby waives any rights it may now have or hereafter acquire to avoid any such obligations by reason of such sublease or any circumstances arising from such sublease. Lessee agrees to indemnify and hold Lessor harmless against any and all reasonable out-of-pocket expenses, claims, demands and liabilities, of whatever nature, relating to or in any way arising out of such sublease, including, without limitation, reasonable out-of-pocket expenses incurred in evaluating any proposed sublease, and all reasonable out-of-pocket costs, damages, charges, attorneys' fees and expenses arising out of or necessitated by assertion of any such claim or demand with regard to such sublease. Any sublease entered into in violation of this Section 6(a) shall be void.

(b) Renewal Option. Upon 12 months' prior written notice, Lessee shall be entitled at the end of the Basic Term and at the end of each of the first three Renewal Terms, to renew this Lease for an additional term of five (5) years provided no Default shall have occurred and be continuing either at the time of election or renewal and provided that the Term of this Lease shall not exceed the expiration date of any Related Lease Document. Each such renewal shall be on the same terms and conditions hereof except (i) the Basic Rent for each Renewal Period shall be an amount equal to the Fair Market Rental Value of the Facility as of the first day of such Renewal Term and (ii) the Casualty Loss Value shall be equal to the Fair Market Value of the Facility as of the first day of such Renewal Term and shall decrease linearly over such Renewal Term to an amount equal to the Fair Market Value of the Facility at the end of such Renewal Term (as estimated as of the first day of such Renewal Term).

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AUG 08 1981

(c) Valuation. Lessee and Lessor agree to negotiate in good faith the Fair Market Value or Fair Market Rental Value, as the case may be, and, if such agreement cannot be reached at least one hundred twenty (120) days prior to the last day of the applicable Term, shall, at Lessee's or Lessor's option, submit the question of value to independent appraisers in the manner specified in Section 14. Lessor and Lessee agree to be bound by the determination of such independent appraisers.

Section 7. Insurance.

(a) Required Insurance Coverages and Limits. Lessee agrees that it will at its own cost and expense and at all times during the Term carry and maintain or cause to be carried and maintained:

(i) Property Insurance -- "all risk" property insurance on the Facility, including without limitation flood and earthquake insurance (to the extent such flood and earthquake coverages are available on commercially practicable terms), in an amount at least equal to the greater of (A) the Casualty Loss Value of the Facility and (B) the replacement value of the Facility;

(ii) Business Interruption Insurance -- business interruption insurance covering actual losses sustained, including without limitation extra and continuing expenses and loss of profit (to the extent such loss of profit coverage is available on commercially practicable terms), covering the corresponding hazards under the "all risk" insurance described in clause (i) above (but only to the extent such coverage is available on commercially practicable terms with respect to flood and earthquake coverage), in an amount at least equal to \$3,900,000;

(iii) Worker's Compensation -- worker's compensation insurance with respect to employees of Lessee sufficient to meet the statutory requirements of the State of Idaho and employer's liability insurance in an amount not less than \$1,000,000;

(iv) Comprehensive General Liability Insurance -- comprehensive general liability insurance written on an occurrence form including without limitation blanket contractual, personal injury, XCU hazards, products/completed operations, independent contractors, sudden and accidental pollution, gradual pollution and "failure to supply" in a minimum amount of \$1,000,000 combined single limit for bodily injury and property damage on a per occurrence basis, and \$2,000,000 annual aggregate; provided that gradual pollution liability, sudden and accidental pollution liability and "failure to supply" liability shall be subject to availability on commercially practicable terms;

(v) Comprehensive Automobile Liability -- comprehensive automobile liability covering all owned, non-owned, leased, and hired vehicles in performance of any obligation under this Lease and shall be in a minimum amount of \$1,000,000 combined single limit for bodily injury and property damage on a per occurrence basis;

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AUG 23 1981

AUG 23 1981

(vi) Umbrella or Excess Liability Insurance -- umbrella or excess liability in the amount of \$9,000,000 per occurrence and \$9,000,000 annual aggregate in excess of, and following at a minimum, the terms of the underlying insurance as set forth in clauses (a)(iii), (a)(iv), and (a)(v) above. Alternatively, umbrella or excess liability insurance may be arranged in various layers such that the layers, when combined, will at a minimum equal \$9,000,000 per occurrence and \$9,000,000 annual aggregate in excess of the underlying insurance as set forth in clauses (a)(iii), (a)(iv), and (a)(v) above; and

(vii) Other Insurance -- such other insurance with respect to the Leased Property in such amounts, against such insurable hazards and in such form, as corporations similar to Lessee owing or leasing and operating similar properties would carry in the prudent management of such properties.

All the foregoing insurance policies shall be subject to such deductible amounts and retentions as are usual and customary for corporations similar to Lessee owning or leasing and operating similar properties, and such deductible amounts and retentions shall in any case be as low as are available on commercially practicable terms. All the foregoing insurance policies shall be in a form acceptable to Lessor and Lessor's insurance consultant. In addition, Lessee shall require worker's compensation employer liability, automobile liability and comprehensive general liability coverage by contractors and major subcontractors at all times that any of the foregoing shall be performing services on the Site or in connection with the Facility in such amounts and types as are required to be maintained by Lessee pursuant to this Section 7.

(b) Policies. All insurance hereunder shall name Lessor and such other parties as Lessor may designate as additional insureds as their respective interests may appear (in the case of insurance required by clause (a)(iii), to the extent permitted under Applicable Law and available from the respective insurers). All insurance referred to in clauses (a)(i) and (a)(ii) above shall name Lessor as loss payee. Lessee agrees to effect all insurance provided for in this Section 7 with insurance companies legally qualified to issue insurance in Idaho and reasonably acceptable to Lessor. All such policies referred to in Section 7(a) and such other policies as to which Lessor is named as an additional insured or loss payee, as the case may be, shall;

(i) Provide that the same shall not be cancelled, materially modified or terminated for reasons other than non-payment without at least sixty (60) days' prior written notice to each insured and each loss payee named therein and for non-payment without at least ten (10) days prior to written notice to each insured and each loss payee named therein;

(ii) Provide for at least sixty (60) days' prior written notice to each insured and each loss payee named therein of the date on which such policies shall terminate by lapse of time if not renewed,

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AUG 08 1991

(iii) Contain a breach-of-warranty clause providing that the respective interests of Lessor or any other additional insured or loss payee shall not be invalidated by any action or inaction of Lessee or any other Person,

(iv) Insure Lessor and any other additional insured or loss payee regardless of any breach or violation by Lessee or any other Person of any warranties, declarations or conditions contained in the policies related to such insurance,

(v) Provide that the insurer thereunder waives all right of subrogation against Lessor and waives any right of set-off or counterclaim and any other right of deduction whether by attachment or otherwise,

(vi) Be primary without right of contribution from any other insurance carried by or on behalf of Lessor with respect to any interest in the Facility,

(vii) Provide further that no person other than Lessee shall have any liability for any premiums with respect thereto, and

(viii) Include a severability of interests endorsement providing that inasmuch as the policies are written to cover more than one insured, all terms and conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(c) Certificate. On or prior to each of the First Lease Closing Date and the Second Lease Closing Date, and thereafter not less than five (5) days prior to the expiration dates of the expiring policies required pursuant to this Section 7, Lessee shall deliver to Lessor certificates of insurance issued by the insurers thereunder or by an insurance broker authorized to bind such insurers evidencing the insurance maintained pursuant to this Section 7; provided, however, that if the delivery of any certificate is delayed, Lessee shall deliver an executed binder with respect thereto and shall deliver the formal certificate upon receipt thereof. Upon Lessor's written request, Lessee shall promptly deliver to Lessor copies of the policies of insurance.

(d) Performance by Lessor. If Lessee shall fail to maintain insurance as herein provided, Lessor may at its option, but without obligation, provide such insurance and, in such event, Lessee shall, upon demand from time to time, reimburse Lessor for the cost thereof, together with interest on such cost at the Default Rate computed from the date of payment of such cost to the date of reimbursement.

(e) Separate Insurance. Nothing in this Section 7 shall be construed to prohibit Lessor from insuring at its own expense the Leased Property or its interest therein, and any insurance so maintained shall not provide for or result in a reduction of the coverage or the amounts payable under any of the insurance required to be maintained by Lessee under this

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AUG 28 1991

Section 7. If Lessor purchases additional insurance, the parties hereto agree that any insurance provided by Lessee pursuant to this Section 7 shall be considered primary.

Section 8. Additions and Improvements.

(a) Generally. Lessee at its own expense may from time to time make such addition or improvement to the Facility as Lessee may deem desirable in the proper conduct of its business and that will not damage the Facility or its productive capacity and will not be inconsistent with the continuing operation of the Facility in accordance with its original functional purpose, provided that (i) any such addition or improvement made by Lessee pursuant to this Section 8(a) shall not diminish the Fair Market Value, productive capacity or useful life of the Facility below the Fair Market Value, productive capacity or useful life thereof immediately prior to such addition or improvement, (ii) any such addition or improvement made by Lessee pursuant to this Section 8(a) shall be made in compliance with Applicable Laws, and (iii) any such actions shall not cause this Lease to lose its characterization as a true lease for United States federal income tax purposes (as interpreted in Internal Revenue Service ruling policy set forth, to the extent then applicable, in Rev. Proc. 75-21, 1975-1 C.B. 715, Rev. Proc. 75-28, 1975-1 C.B. 752, Rev. Proc. 76-30, 1976-2 C.B. 647, and Rev. Proc. 79-48, 1979-2 C.B. 529 or any other applicable statute, regulation, Revenue Procedure, Revenue Ruling, information release, or other published Internal Revenue Service policy).

(b) Compliance With Law. Lessee agrees to make, at its own expense and without offset for Rent due hereunder, any addition or improvement required to be made to the Facility in order to satisfy Lessee's obligations set forth in Section 9(b). Any such addition or improvement shall immediately and without further act become the property of Lessor.

(c) Severable Additions. Should Lessee install any addition or improvement on the Facility (other than an addition or improvement which is required to be made to the Facility pursuant to Section 8(b)) which is readily removable without causing material damage to the Facility (i) Lessee shall, if requested by Lessor, and (ii) Lessee may, if no Default shall have occurred and be continuing, remove such addition or improvement before the Expiration Date. Lessee shall repair all damage to the Facility resulting from such installation and removal so as to restore the Facility to the condition in which it existed prior to the installation of such addition or improvement (ordinary wear and tear excepted). Any such unremoved addition or improvement shall immediately and without further act become the property of Lessor on the Expiration Date. Notwithstanding the foregoing and provided that Lessee has not exercised its option to renew this Lease pursuant to Section 6(b), at the end of the Basic Term or any Renewal Term, Lessor or any purchaser or lessee of the Leased Property shall be entitled to purchase from Lessee at its then Fair Market Value any such addition or improvement.

(d) Nonseverable Additions. Should Lessee make to the Facility any addition or improvement which is not readily removable without causing

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AUG 5 2 1981

material damage to the Facility, any such addition or improvement shall immediately and without further act become part of the Facility and the property of Lessor.

Section 9. Maintenance and Operation.

(a) Generally. Lessee, at its own expense, shall maintain, service and repair the Facility and from time to time make or cause to be made all necessary restorations thereto as are consistent with Prudent Utility Practice and reasonably satisfactory to Lessor to the extent necessary to maintain the Facility (i) in the same condition as on the First Lease Closing Date and the Second Lease Closing Date (ordinary wear and tear excepted), (ii) in good working order and operating condition, (iii) in compliance with Sections 9(b) and 9(c), (iv) in compliance with the Power Purchase Agreement and all applicable manufacturer service manuals, and (v) as may be necessary to comply with and keep in force any and all manufacturers' or sellers' guarantees or warranties. Any replacements made by Lessee to or upon the Facility shall be considered accessions to the Facility and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor, but Lessor shall no longer have any interest in the replaced parts, title to which shall vest in Lessee with no further act, provided the replacements have a Fair Market Value, useful life and utility at least equal to that of the replaced parts.

(b) Compliance with Law. Lessee shall comply with and observe all requirements under the Related Documents and all Applicable Laws, whether now in force or which may in the future be promulgated, with respect to or in any way affecting the use, maintenance, condition and operation of the Facility (regardless of upon which Person such laws, rules, regulations, requirements or orders shall, by their terms, be nominally imposed), unless Lessee shall be contesting the validity thereof in good faith and by appropriate proceedings, but only so long as such proceedings, in Lessor's opinion, (i) shall not involve any substantial danger of the sale, forfeiture or loss of the Facility or the Site, title thereto or any part thereof or interest therein, and (ii) shall not result in, or involve any substantial probability of resulting in, the creation of any Lien on or with respect to the Facility or the Site, title thereto or any part thereof or interest therein, which is not a Permitted Lien. Lessee shall, and shall be responsible for, complying with all reporting, rate-setting and other requirements applicable to the Facility under the FPA, the PUHCA, state regulatory requirements and other Applicable Laws. Lessee shall maintain all records, logs and other materials required by any governmental authority having jurisdiction to be maintained in respect of the Facility (regardless of upon which Person such requirements shall, by their terms, be nominally imposed). Lessee, at its own expense, shall procure and pay for all permits, franchises, inspections and licenses necessary or appropriate in connection with the Facility and any repair, restoration, replacement, renewal, addition or improvement thereof and thereto. Upon request of Lessor, Lessee shall furnish to Lessor copies of all such permits, franchises, inspections and licenses.

(c) Operations and Maintenance Monitoring. At Lessor's option, Lessee will enter into an operations and maintenance monitoring agreement (the

AUG 6 1991

"Monitoring Agreement") with an independent consultant experienced in the engineering, construction, operation and maintenance of hydroelectric facilities and satisfactory to Lessor and Lessee (the "Monitoring Consultant"), which Monitoring Agreement shall be satisfactory to Lessor and shall have a term ending no earlier than the second anniversary of the Second Lease Closing Date. Lessee shall implement all recommendations made by the Monitoring Consultant unless compliance with such recommendation is expressly waived by Lessor.

(d) Lessor's Rights and Obligations. Lessor shall not be required to maintain, service or repair or to make any repair, restoration, replacement, renewal, addition or improvement of any nature or description with respect to, the Facility, or, except to the extent specifically provided herein or in the Financing Agreement, to incur any cost or expense in connection with this Lease. If Lessee fails or is unable to perform maintenance and repairs as provided herein, Lessor shall have the right, but not the obligation, to perform the same, and Lessee shall forthwith reimburse Lessor, as Supplemental Rent, for all costs and expenses incurred by Lessor in performing the same.

(e) Inspection. Lessor and its agents and employees shall have at all reasonable times during normal business hours the right of access to the Site for the purposes of inspecting the Facility and its applicable maintenance and performance records (including records maintained pursuant to Section 9(b)) and observing its use and operation. Lessor shall have no duty to make any inspection of the Facility and shall incur no liability or obligation by reason of not making any such inspection.

(f) Qualifying Facility. Lessee shall not take any affirmative act or fail to take any action that would cause the Facility not to be a QF.

(g) Pollution Control and Hazardous Substances. Lessee shall not release, emit or discharge into the environment hazardous substances, as defined under CERCLA, or hazardous waste, as defined under the RCRA, or air pollutants as defined under the Clean Air Act, as amended, or pollutants as defined under the Clean Water Act, as amended, in excess of federally permitted releases or reportable quantities, or other concentrations, standards or limitations under the foregoing laws, Applicable Law or any state law governing the protection of health and the environment or under any other federal, state or local laws, regulations or Governmental Authorizations in connection with the construction, power generation and transmission, waste disposal or any other operations or processes relating to the Facility. Lessee shall not, except in accordance with Applicable Law, (i) store or dispose, or allow the storage or disposal, of any hazardous substance on or in the Leased Property or (ii) transport or arrange for the transportation of any hazardous substance to or from the Site. If Lessor reasonably believes that there may be the presence or the possible presence of any hazardous substance on or in the Leased Property in violation of Applicable Law, Lessee shall, upon the written request of Lessor and at Lessee's cost, take any and all actions necessary to reasonably assure Lessor that no hazardous substance is stored or disposed on or in the Leased Property in violation of Applicable

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INDEXED
AUG 28 1981

Law. Lessee shall promptly notify Lessor in writing of any release or threatened release of any hazardous substance at or from the Leased Property, or of any notice of a release or threatened release of any hazardous substance, or for the costs for the cleanup thereof (including, without limitation by assessment, containment or removal), received by Lessee or by any Person for whose conduct Lessee is or may be responsible from any federal, state or other governmental authority. To the extent allowable by law or contract, Lessee shall indemnify and hold Lessor harmless from, and defend Lessor against, any and all claims, demands and liabilities, including reasonable attorneys' fees, of whatever nature relating to or in any way arising due to the release, emission or discharge into the environment of hazardous substances, hazardous waste, air pollutants or water pollutants, as defined above, by Lessee or any prior owner or user of the Facility or the Site or arising out of Lessee's failure to observe the covenants contained in this Section 9(g). The indemnities contained herein shall survive the expiration or other termination of this Lease.

(h) High Flow Performance Tests. Lessee shall perform, and allow Independent Engineer to review, the High-Flow Performance Tests at a time when the water flow is sufficient to complete such tests and if the Facility does not pass such tests, Lessee shall make such adjustments and repairs to the Facility as are necessary for such tests to be passed to Lessor's satisfaction.

(i) Operations and Maintenance. Lessee shall enter into the Operations and Maintenance Agreement with Operator. The Operation and Maintenance Agreement shall provide that the Operator shall perform all operations and maintenance functions specified in or required by this Section 9. The execution of the Operation and Maintenance Agreement shall not relieve Lessee of any of its obligations under this Lease, including this Section 9.

Section 10. Title, Liens, Additional Covenants, Eminent Domain and Further Assurances.

(a) Title. Lessor and Lessee agree that this is an agreement of lease only and nothing herein contained shall be construed as conveying to Lessee any right, title or interest in or to the Leased Property except as a lessee. Lessee understands and acknowledges that the Facility is owned by Lessor, and Lessor and Lessee agree that, only as between themselves and their successors and assigns (including successors by operation of law), the Facility is intended to be treated as personal property to the extent permitted by Applicable Law.

(b) Liens. Lessee shall not directly or indirectly create, incur, assume or suffer to exist any Lien in or with respect to the Facility or the Site, title thereto or any interest therein except Permitted Liens. Lessee agrees to take such action (including the obtaining and recording of waivers), at its own expense, as may be necessary to prevent any third party from acquiring any right to or interest in the Facility by virtue of the Facility being deemed to be real property or part of any real property. Lessee shall promptly notify Lessor in writing of any Lien other than a Permitted Lien

AUG 09 1991

(except for contested tax liens) of which Lessee is aware and which arises with respect to the Facility or the Site, title thereto or any interest therein and shall promptly, at Lessee's expense, cause any of the same which are not Permitted Liens to be duly discharged, dismissed or removed.

(c) Additional Covenants. Without the prior written consent of Lessor, Lessee will not:

(i) Sell, lease, transfer or otherwise dispose of any of its assets, whether now owned or hereafter acquired, except for sales or other dispositions in the ordinary course of its business as contemplated by the Fundamental Agreements and at fair market value;

(ii) Create, incur, assume or suffer to exist, or otherwise become or be liable in respect of any Indebtedness, other than (A) Indebtedness of Lessee under this Lease or any of the other Fundamental Agreements and (B) purchase money Indebtedness incurred in the ordinary course of constructing or operating the Facility;

(iii) So long as any Default shall have occurred and be continuing, make distribution of any form to any General Partner;

(iv) Make or commit to make any advance, loan, extension of credit or capital contributions to, or purchase any security of, or make any other investment in, any Person or become a general or limited partner in any partnership or a joint venturer in any joint venture;

(v) Issue, sell, transfer or deliver any additional partnership interests in Lessee or any securities or other rights convertible into or exchangeable for any such partnership interests or other rights calling for or permitting the issuance, transfer, sale or delivery of any such partnership interests or otherwise enter into any arrangement or contract with respect to any such partnership interests or make any other change in its capital structure or the Partnership Agreement;

(vi) Terminate or windup or take any steps in anticipation thereof;

(vii) Directly or indirectly enter into any transaction or series of transactions involving the payment or receipt of more than \$10,000 in the aggregate during any calendar year with or for the benefit of an Affiliate, excluding, however, payments under the Operation and Maintenance Agreement and partnership distributions to the General Partners of Lessee;

(viii) Enter into any contractual obligations exceeding in the aggregate \$10,000 per fiscal year, other than as required by the Fundamental Agreements; or

RECEIVED
AUG 09 1991

(ix) Establish or permit to be established on behalf of Lessee's employees, any ERISA Plans.

(d) Event of Eminent Domain. If an Event of Eminent Domain shall be threatened or occur with respect to any part of the Facility or the Site, Lessee shall:

(i) Promptly upon discovery or receipt of notice of any such threat or occurrence provide written notice of either to Lessor;

(ii) Diligently pursue all its rights to compensation against the State of Idaho or the United States, as the case may be, or against any agency, department, authority, commission, board, instrumentality or political subdivision of either (the "Condemning Authority") in respect of such Event of Eminent Domain; and

(iii) Without the written consent of Lessor, not compromise or settle any claim against the Condemning Authority.

Lessor may participate in any eminent domain proceedings, and Lessee shall from time to time deliver to Lessor all documents and instruments requested by it to permit such participation.

(e) Maintenance of Existence; Conduct of Business. Except as otherwise permitted under this Lease, Lessee:

(i) Will preserve and maintain its partnership existence and all material rights, privileges and franchises necessary or desirable in the normal conduct of its business; and

(ii) Engage solely in the business of designing, constructing and operating the Facility and selling or utilizing the electricity produced therefrom and related activities.

(f) Further Assurances. At Lessor's request, Lessee shall execute any and all documents acknowledging Lessor's ownership of the Facility and leasehold interest in the Site and as necessary or appropriate to perfect, confirm and protect the interest of Lessor in and to the Leased Property and this Lease. Lessee shall execute and file or cause to be executed and filed, at its own expense, any and all financing statements and continuation statements which are necessary or appropriate to perfect, confirm and protect the interests of Lessor in and to the Leased Property and this Lease. Lessor may file with the proper filing or recording officers any other papers or documents which it deems necessary or appropriate for the protection of its interests hereunder, and Lessee further agrees to execute and deliver to Lessor, upon its request, any and all further documents and instruments which Lessor may reasonably require to perfect, confirm and protect its interests in and to the Leased Property and this Lease. At least three (3) months prior to the expiration of any financing statement covering the interest of Lessor in the Leased Property, Lessee shall provide to Lessor an opinion of counsel for Lessee to the effect that there have been properly filed the continuation

AUG 09 1991

statements necessary to continue, under the law then in effect, the effectiveness of such financing statement until the expiration of such continuation statements, specifying the date of such expiration.

Section 11. Risk of Loss; Casualty Occurrence;
 Special Casualty Occurrence.

(a) Generally. During the term of this Lease and prior to delivery by Lessee to Lessor of the Leased Property pursuant to Section 16, Lessee shall bear the risk of and all responsibility for loss or damage to the Facility and Site and shall replace such loss and repair such damage as provided in Section 9 except as specifically provided in this Section 11. Lessee agrees to indemnify and hold Lessor harmless against all risks to the Facility, including, without limitation, loss or damage caused by fire, lightning, sprinkler leakage, tornadoes, wind storm, water damage, explosion, smoke and smudge, aircraft and motor vehicle damage, strikes, riots, civil commotion, vandalism, malicious mischief, burglary and theft.

(b) Casualty Occurrence. (i) If the Facility shall be or become (A) lost, stolen or destroyed, (B) in Lessee's reasonable judgment, irreparably damaged or damaged beyond economic repair, from any cause whatsoever, or (C) taken, requisitioned, condemned, confiscated or appropriated by any governmental board or agency, whether de facto or de jure, by exercise of eminent domain or otherwise, resulting in the loss of possession of the Facility by Lessee for a period of more than one hundred eighty (180) consecutive days or for a period which exceeds the then remaining Term of this Lease (any such event described in clause (A), (B) or (C) herein called a "Casualty Occurrence"), Lessee shall fully inform Lessor within twenty (20) days from the date of such Casualty Occurrence of the nature of the Casualty Occurrence and any other pertinent information regarding the Casualty Occurrence in the possession of Lessee.

(ii) On the Casualty Loss Payment Date, Lessee shall pay to Lessor in immediately available funds an amount equal to (A) all accrued Basic Rent calculated on a pro rata basis due up to but not including such Casualty Loss Payment Date, (B) all accrued Excess Rent calculated on a pro rata basis due up to but not including such Casualty Loss Payment Date, (C) any unpaid Supplemental Rent and (D) the Casualty Loss Value on the Casualty Loss Payment Date (collectively, the "Casualty Payment"). Upon the making of the Casualty Payment by Lessee, Basic Rent shall cease to accrue as of the date of such payment, this Lease shall terminate and Lessor shall, upon request of Lessee, execute and deliver to, or upon the order of, Lessee a bill of sale or, if appropriate, a grant deed, in such form as Lessee may reasonably request, for the Leased Property (without warranties other than for the absence of Lessor Liens); provided, however, that Lessee may not acquire the Leased Property if the Fair Market Value of the Leased Property at such time is greater than the Casualty Loss Value unless Lessee shall pay Lessor the difference between said Fair Market Value and Casualty Loss Value. Except as provided hereinabove in this Section 11, Lessee shall not be released from its obligations hereunder in the event of any such Casualty Occurrence.

(iii) If no Default shall have occurred and be continuing, and if Lessee shall have made payment to Lessor of the Casualty Loss Value for the Leased Property, Lessee shall be entitled to receive any insurance proceeds or condemnation payments with respect to the related Casualty Occurrence up to an amount equal to such Casualty Loss Value, and any balance of such proceeds or payments shall remain the property of Lessor and its successors and assigns. All casualty insurance proceeds and condemnation payments in respect of damage to the Facility which did not result in a Casualty Occurrence shall be paid to reimburse Lessee from time to time as restoration and repair progresses for the cost of such restoration and repair upon a written application of Lessee accompanied by a certificate of an officer of Lessee showing in detail reasonably satisfactory to Lessor the nature of such restoration and repair and the estimated cost to complete restoration and repair and stating that no Default shall have occurred and be continuing under this Lease.

(c) Special Casualty Occurrence.

(i) Special Casualty Occurrence. This Lease shall terminate immediately upon the happening of either of the following events unless such event is a result solely of Lessor's breach of its representation in Section 4(a)(iv) of the Financing Agreement (each a "Special Casualty Occurrence"): (A) Lessor or any Affiliate thereof becomes, or is deemed by any federal, state or local governmental authority or regulatory commission to be, or be subject to regulation as, a "public utility," an "electric utility," an "electric utility holding company," a "public utility holding company" or an "electrical corporation" under the FPA or the PUHCA, or is otherwise subject to similar regulation; or (B) the Facility is determined in a final order from the FERC not to be a QF and as a result of such determination Lessor or any Affiliate thereof may become subject to any regulation as contemplated in clause (A).

(ii) Lessor's Rights. Upon the termination of this Lease pursuant to Section 11(c)(i), Lessor shall elect within thirty (30) days of such termination to either (A) require Lessee to return the Leased Property to Lessor in the condition and otherwise in accordance with all of the terms of Sections 9 and 16, or (B) require Lessee to irrevocably elect, by notice to Lessor within twenty (20) days from receipt of notice of Lessor's election, to either (1) purchase the Facility pursuant to Section 11(c)(iii) or (2) sell the Leased Property on behalf of Lessor at a public or private sale pursuant to Section 11(c)(iv). If Lessee elects not to purchase the Facility, Lessee shall be obligated to warrant and certify to Lessor that at the time of such election, neither the Site nor the Facility is subject to liability for contamination or cleanup within the meaning of the CERCLA or any other statute, regulation, law or order then in effect governing the transfer or cleanup of the Leased Property. Lessee shall agree to indemnify Lessor against any such liability for the Leased Property for which Lessee may be responsible.

(iii) Purchase Election. If Lessee shall have given notice of its irrevocable election to purchase the Facility pursuant to Section 11(c)(ii), Lessee shall within ten (10) days of such notice pay to

RECEIVED
AUG 09 1991

Lessor in immediately available funds (A) all accrued Basic Rent calculated on a pro rata basis due up to but not including the date of the Special Casualty Occurrence, (B) all accrued Excess Rent calculated on a pro rata basis due up to but not including the date of the Special Casualty Occurrence, (C) any unpaid Supplemental Rent and (D) the greater of the Fair Market Value of the Leased Property or the Casualty Loss Value as of the last Rent Payment Date occurring on or before the Special Casualty Occurrence plus interest at the Default Rate on such amount from such Rent Payment Date until the date of actual payment. Upon payment of the foregoing amounts by Lessee, Lessor shall, upon request of Lessee, execute and deliver to, or upon the order of, Lessee a bill of sale or, if appropriate, a grant deed, in such form as Lessee may reasonably request, for the Leased Property (without warranties other than for the absence of Lessor Liens).

(iv) Sale Election.

(A) If Lessee shall have given notice of its irrevocable election to sell the Leased Property pursuant to Section 11(c)(ii), Lessee shall within ten (10) days of such notice pay to Lessor in immediately available funds (1) all accrued Basic Rent calculated on a pro rata basis due up to but not including the date of the Special Casualty Occurrence, (2) all accrued Excess Rent calculated on a pro rata basis due up to but not including the date of the Special Casualty Occurrence, (3) any unpaid Supplemental Rent and (4) the Casualty Loss Value as of the last Rent Payment Date occurring on or before the Special Casualty Occurrence plus interest at the Default Rate on such amount from such Rent Payment Date until the date of actual payment. Lessee shall have one hundred eighty (180) days from the date of such payment to sell the Leased Property at a private or public sale. Lessee shall, within ten (10) days of such sale, pay to Lessor an amount equal to the excess of (x) the proceeds of the sale minus (y) the sum of the reasonable costs and expenses directly related to such sale (including sales tax) and the Casualty Loss Value paid to Lessor pursuant to this Section 11(c)(iv). Upon the making of such payment by Lessee or, if the proceeds of the sale less reasonable costs directly related to such sale are less than the Casualty Loss Value paid to Lessor, upon such sale, Lessor shall execute and deliver to, or upon the order of, Lessee a bill of sale or, if appropriate, a grant deed, in such form as Lessee may reasonably request, for the Leased Property (without warranties other than for the absence of Lessor Liens).

(B) If Lessee has not completed the sale of the Leased Property within the period specified by Section 11(c)(iv)(A), Lessee shall within ten (10) days from such one hundred eighty (180) day period pay to Lessor in immediately available funds the amount of any deficiency between (1) the Fair Market Value of the Leased Property calculated as of the date of the Special Casualty Occurrence and (2) the Casualty Loss Value paid to Lessor pursuant to Subsection (i) of this Section 11(c). Upon the making of such payment by Lessee, Lessor shall, upon request of Lessee, execute and deliver to, or upon the order of, Lessee a bill of sale or, if appropriate, a grant deed, in such form as Lessee may reasonably request, for the Leased Property (without warranties other than for the absence of Lessor Liens).

Section 12. Disclaimer of Guarantees, Warranties and Representations. LESSEE EXPRESSLY ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER, DISTRIBUTOR, VENDOR OR SUPPLIER OF EQUIPMENT OR AN AGENT OF ANY MANUFACTURER, DISTRIBUTOR, VENDOR OR SUPPLIER OF EQUIPMENT. LESSOR SHALL NOT BE DEEMED TO HAVE MADE OR GIVEN, AND LESSOR HEREBY EXPRESSLY DISCLAIMS, ANY GUARANTEE, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE FOR ANY REASON OF THE FACILITY OR ANY PART THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. Lessee agrees that the only guarantees, representations or warranties made with respect to the Facility or the Leased Property are those made by the seller or manufacturer thereof, and Lessor and Lessee agree that they shall cooperate in enforcing such guarantees and warranties when such action is necessary, which enforcement shall be at Lessee's expense. So long as no Default shall have occurred and be continuing, Lessor hereby assigns to Lessee, for and during the term of this Lease, any applicable seller or manufacturer warranty issued on or applicable to the Facility or Leased Property, and Lessor hereby authorizes Lessee during the term of this Lease to obtain, at Lessee's sole expense, any and all services furnished in connection therewith by any seller or any manufacturer.

Section 13. Location; Performance under Site Lease. Lessee agrees that no part of the Facility shall be removed from the Site except as may be necessary for the purpose of maintenance or repair as required by the terms of this Lease. This Lease constitutes, with respect to the Site, a sublease to Lessee of Lessor's rights under the Site Lease that accrue during the Term hereof. Lessee hereby covenants and agrees to assume and perform all obligations of "Tenant" under the Site Lease during the Term in addition to all of Lessee's obligations hereunder. There shall be no merger of this Lease nor of the leasehold estate created hereby with any other estate in the Facility or the Site, or any part thereof, by reason of the fact that the same Person may acquire or own such estates, directly or indirectly.

Section 14. Valuation of Property. For purposes of this Lease, the following procedure shall be followed for determining the Fair Market Value or Fair Market Rental Value of any property, if such a determination is necessary pursuant to the terms of this Lease: If either party hereto shall have given written notice to the other requesting determination of such value, the parties shall attempt to agree upon such value, and, failing such agreement within twenty (20) days after the giving of such notice, the parties shall consult for the purpose of appointing an Appraiser by mutual agreement. If no such Appraiser shall be so appointed within thirty (30) days after such notice shall have been given, each party shall appoint an Appraiser within thirty-five (35) days after such notice shall have been given, and the two Appraisers so appointed shall within forty (40) days after such notice shall have been given appoint a third Appraiser. If no such third Appraiser shall be so appointed within forty (40) days after such notice shall have been given, either party may apply to the American Arbitration Association (or any successor thereto) in New York, New York, for the appointment of a third Appraiser, and both parties shall be bound by any appointment made by such Association. Each Appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value or Fair Market Rental

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APR 29 1991

Value, as the case may be, of the property in question within thirty (30) days after his or her appointment. If the parties shall have appointed a single Appraiser, his or her determination of value shall be final and binding as the Fair Market Value or the Fair Market Rental Value, as the case may be. If three Appraisers shall have been appointed as hereinabove set forth, the values determined by the three Appraisers shall be averaged, the determination which shall differ most from such average shall be disregarded, the remaining two determinations shall be averaged, and such average shall be final and binding as the Fair Market Value or the Fair Market Rental Value, as the case may be. Lessee and Lessor shall equally bear all expenses of such appraisers, provided that if three appraisers are chosen, Lessor and Lessee shall each bear all expenses of its chosen appraiser, and provided further that if the appraisal is requested in connection with the exercise of the remedies described in Section 18 all expenses of such appraisers shall be borne by Lessee.

Section 15. Notices; Reports.

(a) Notices. Lessee and Lessor shall each promptly notify the other in writing:

(i) Of the amount of any delinquent taxes assessed or charged to Lessor, Lessee or any sublessee or assignee under any law now or hereafter in force, of which Lessee or Lessor has had notice, that may reasonably subject the Facility or Site to the hazard of seizure or Lien;

(ii) Of any claim, demand, action or dispute that involves the rights of Lessor, Lessee or any sublessee or assignee hereunder, that involves the interpretation of any of the provisions of this Lease or that directly or indirectly affects the tax or other liability or rights of either Lessor, Lessee or any sublessee or assignee, in each case of which Lessee or Lessor has had notice; and if any litigation, suit or action is begun by or against Lessee or any sublessee or assignee relating to this Lease, the Facility or the Site, Lessor shall have the right, but not the obligation, to intervene in the litigation, suit or action at its own expense and assist in the prosecution or defense of same;

(iii) Within thirty (30) days after the same arise, of any claim, demand, dispute, litigation or proceeding against Lessee, any General Partner, INE, Hydro-Flow or any Shareholder (A) in which the amount involved is \$10,000 or more, or (B) arising from any accident in which the Facility is directly or indirectly involved, (C) in which injunctive or similar relief is sought that could have a material adverse effect on the operations or condition (financial or otherwise) of Lessee, any General Partner, INE, Hydro-Flow or any Shareholder, or (D) involving condemnation proceedings against the Facility or any portion thereof or against any of the Collateral, or (E) which relates in any way to the enforceability or performance of this Lease, the other Fundamental Agreements, the Related Documents or the transactions contemplated hereby or thereby or the rights of Lessor thereunder or hereunder;

RECEIVED
AUG 9 1991

(iv) Of any damage to the Facility from any cause whatsoever, whether or not insured, in excess of an aggregate of \$10,000; and

(v) Of any material adverse change in the operations or condition (financial or otherwise) of Lessee, any General Partner, INE, Hydro-Flow or any Shareholder.

(b) Reports. Lessee agrees to give to Lessor the following:

(i) Within ninety (90) days after the end of each calendar year, a certificate of a Responsible Officer of a General Partner on behalf of Lessee, stating that a review of the activities of Lessee during such calendar year has been made under the direction of such Responsible Officer with a view to determining whether Lessee has kept, observed, performed and fulfilled all of its obligations under this Lease, and that, to the best knowledge, information and belief of such Responsible Officer, there has occurred no Default or, if any such Default has occurred, specifying the nature thereof, the period of continuance thereof and what action Lessee has taken or proposes to take with respect thereto;

(ii) Promptly after the same shall have come to the notice of a Responsible Officer of a General Partner on behalf of Lessee, notice of the occurrence of any Default;

(iii) At least sixty (60) days prior thereto, notice of any change in the location of Lessee's chief executive office or principal place of business (as such terms are used in the Utah Uniform Commercial Code) and any change in Lessee's name, identity or structure;

(iv) Prompt notice of any exercise by Lessee of any right under any seller's or any manufacturer's warranty except with respect to any de minimus matters, or of any notice by any seller or any manufacturer with respect to any material defect in design or manufacture of any integral or structural element of the Facility;

(v) Within ninety (90) days after the end of each fiscal year of Lessee, a balance sheet of Lessee as of the end of such year, and a statement of income, partners' capital and cash flow of Lessee for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, and accompanied by a review letter thereon of independent public accountants selected by Lessee and acceptable to Lessor, which review letter shall state that such accountants are not aware of any material modifications that should be made to such financial statements in order for them to be in conformity with GAAP;

(vi) Within forty-five (45) days after each semi-annual period of each year, financial statements of Lessee prepared in accordance with GAAP with respect to the prior six (6) month period in substantially the form required by clause (v) above, certified by the chief financial officer of a General Partner who is Lessee's chief financial officer as to accuracy and conformity with GAAP and reasonably acceptable to Lessor;

(vii) Each financial statement described in clause (vi) above shall include, at a minimum, statements as to the amount of kilowatt hours of electric energy sold each billing month during such period and the price paid by Utility for such energy, a statement of cash flow and a comparison of actual operating results with budgeted operating projections; and

(viii) Such other information on the finances, business and operations of Lessee as Lessor may reasonably request.

Section 16. Return of Leased Property.

(a) Condition of Facility. Lessee agrees that, upon the termination of this Lease, by expiration hereof or otherwise, the Leased Property shall be free and clear of all Liens and rights of others other than Lessor's Liens and exceptions in items (e) and (f) in the definition of Permitted Liens, the Facility and the Site shall be in the condition and repair required to be maintained during the term hereof under Section 9 and Lessee shall deliver to Lessor all plans, specifications, operating manuals and other warranties and documents furnished by any manufacturer or any seller with respect to the Facility and all other documents relating to the maintenance and operation of the Facility. Lessee shall warrant and certify to Lessor that at the time of such delivery, neither the Site nor the Facility is subject to liability for contamination or cleanup with the meaning of CERCLA or any other statute, regulation, law or order then in effect governing the transfer or cleanup of the Site. Lessee shall agree to indemnify Lessor against any such liability for the Leased Property for which Lessee may be responsible.

(b) Assignment of Related Documents. Lessee agrees that, upon the termination of this Lease, by expiration hereof or otherwise, Lessee shall, at Lessor's sole option, assign and transfer to Lessor or Lessor's assignee all of Lessee's right, title and interest in and under such Related Documents as Lessor shall request in writing subject to governmental or agency approval as required under Applicable Law.

(c) Dismantlement. At the expiration of the Term or upon the occurrence of an Event of Default, Lessee shall, if directed by Lessor in writing not later than the date of such expiration, but at Lessee's expense and risk, (i) completely sever and disconnect the Facility from the Site, all without any liability of Lessor to Lessee, or to anyone claiming by, through or under Lessee, for damage or loss caused by such severance or disconnection; (ii) disassemble and prepare the components of the Facility for normal shipment; (iii) marshall and store such components at Lessee's risk and expense at the Site for a period of up to ninety (90) days after all components are ready for shipment; and (iv) deliver possession of the Facility to Lessor at the nearest railhead, together with all plans, logs, reports and records maintained by Lessee and all operating manuals and other warranties and documents furnished by the materials suppliers and contractors which supplied materials or performed construction work with respect to the Facility and other documents reasonably accessible to Lessee relating to the maintenance and operation of the Facility. If Lessee is required to return

AUG 05 1991

the Facility to Lessor pursuant to the terms of this Section 16(c), Lessee shall bear the risk of loss with respect to the Facility until such return is made.

(d) Abandonment. Lessor may, at its option, abandon the Facility to Lessee and transfer to Lessee all right, title and interest of Lessor in and to the Leased Property by delivery to, or upon the order of, Lessee a bill of sale, or if appropriate, a grant deed, in such form as Lessee may reasonably request, for the Leased Property (without warranties other than the absence of Lessor Liens).

(e) Survival. The provisions of this Section 16 shall survive the expiration or earlier termination of this Lease.

Section 17. Default. The following events shall constitute Events of Default hereunder:

(a) Lessee shall fail to make any payment of Basic Rent, Excess Rent, Casualty Loss Value any Casualty Payment, any Special Casualty Payment or any payment of principle or interest on the Revolving Loans within five (5) Business Days after the same shall become due.

(b) Notwithstanding the provisions of Section 17(a), Lessee shall fail to make any payment of Basic Rent when the same shall become due after three (3) prior failures to promptly pay Basic Rent.

(c) Lessee shall fail (i) at any time, to carry and maintain insurance as provided by Section 7 or (ii) to discharge any Lien as provided in Section 10 within forty-five (45) days after the existence thereof shall have first become known to Lessee (unless Lessee shall be contesting the same in good faith with due diligence and by appropriate proceedings but only so long as such proceedings do not in Lessor's opinion, involve any risk of the sale, forfeiture or loss of any Leased Property, title thereto or any interest therein).

(d) Lessee, any General Partner, INE, Hydro-Flow, any Shareholder or any Affiliate shall fail to make any other payment or perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder, under the Financing Agreement, the other Fundamental Agreements, the Related Documents or any other agreement, document or instrument delivered by Lessee, any General Partner, INE, Hydro-Flow, any Shareholder or any Affiliate pursuant thereto which failure is not otherwise an Event of Default under this Section 17, and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof to Lessee by Lessor, provided that such period shall be extended to one hundred twenty (120) days so long as (i) such Event of Default is curable other than by the payment of money, (ii) Lessee or such other Person diligently pursues such cure and completes the cure within such one hundred twenty (120) days and (iii) the cure does not, in Lessor's opinion, involve any risk of the sale, forfeiture or loss of any of the Leased Property, title thereto or any interest therein;

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AUG 6 1981

(e) Any representation or warranty made by Lessee, any General Partner, INE, Hydro-Flow, any Shareholder or any of their Affiliates, herein, in the Financing Agreement or in any certificate furnished to Lessor in connection herewith or therewith or pursuant hereto or thereto shall prove to be incorrect or misleading in any material respect when made;

(f) Any of the Fundamental Agreements or the Related Documents shall cease to be in full force and effect, or the validity or enforceability of any of the Fundamental Agreements or the Related Documents shall be contested by Lessee or any other Person or party thereto (other than Lessor), or Lessee or any such Person (other than Lessor) shall deny that it has any or further liability under any of the Fundamental Agreements or the Related Documents to which it is a party.

(g) The Second Lease Closing shall not have occurred on or prior to March 31, 1990.

(h) Any General Partner shall assign its interest in Lessee without Lessor's prior written consent;

(i) Lessee, any General Partner, INE, Hydro-Flow or any Shareholder shall (i) apply for or consent to the appointment of a trustee, receiver, liquidator, custodian or the like of itself or its property, (ii) with the exception of May, be unable, or admit in writing the inability, to pay its debts as they mature, (iii) make an assignment for the benefit of creditors, (iv) commence a voluntary case under a chapter of the Bankruptcy Reform Act of 1978, as amended, or file a petition or answer seeking reorganization or an agreement with creditors or to take advantage of any insolvency law or other law providing for the relief of debtors or an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or (v) take any partnership or corporate action, as the case may be, for the purpose of effecting any of the foregoing;

(j) An involuntary case under a chapter of the Bankruptcy Reform Act of 1978, as amended, shall be commenced, or any other proceeding shall be instituted without the application, approval or consent of Lessee, any General Partner, INE, Hydro-Flow or any Shareholder seeking in respect thereof reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator, custodian or the like of Lessee, any General Partner, INE, Hydro-Flow or any Shareholder or of all or any substantial part of its assets or other like relief or the issuance of a writ of attachment, execution or similar process in a material amount against any material part of the property of Lessee, any General Partner, INE, Hydro-Flow or any Shareholder and Lessee, any General Partner, INE, Hydro-Flow or any Shareholder shall either fail to contest such proceeding in good faith or such proceedings shall continue for any period of ninety (90) consecutive days; or

(k) There shall have occurred an Event of Default under any Fundamental Agreement or there shall have occurred a Default by any party other than Lessor under any material term, condition, provision,

1991

representation or warranty contained in any of the Related Documents and such default shall continue unremedied for thirty (30) days after notification from Lessor to Lessee.

Section 18. Remedies.

(a) Generally. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor may, at its option, declare this Lease to be in default, and at any time thereafter Lessor may do one or more of the following with respect to the entire Facility and the Site Lease as Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with, any mandatory requirements of Applicable Law:

(i) Recovery of Facility. Lessor may cause Lessee, upon the written demand of Lessor and at Lessee's expense, to deliver the Facility to Lessor at the Site, in the condition and otherwise in accordance with all of the terms of Sections 9 and 16, or Lessor, at its option, may enter upon the Site, if this can be done without breach of the peace (provided that entry on the Site without Lessee's consent shall not alone constitute a breach of the peace) and take immediate possession of and remove the Facility or any part thereof by summary proceedings or otherwise, all without liability to Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by and reasonably necessary to such taking or otherwise.

(ii) Sale, Lease or Use of Facility. Lessor may sell the Leased Property or any part thereof, at public or private sale, with notice to Lessee but with or without advertisement as Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Leased Property or any part thereof as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto except to the extent required by clause (iv) below if Lessor elects to exercise its rights under said clause in lieu of its rights under clause (iii) below.

(iii) Payment Generally. Whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under clauses (i) and (ii) above, Lessor, with respect to the Leased Property, by written notice to Lessee specifying a payment date not earlier than fifteen (15) days from the date of such notice (the "Payment Date"), may cause Lessee to pay to Lessor, on the Payment Date, as liquidated damages for loss of a bargain and not as a penalty, (A) any unpaid Basic Rent due up to but not including the Rent Payment Date (or the date which would have been such Rent Payment Date but for the termination of this Lease) preceding the Payment Date, (B) any unpaid Supplemental Rent, (C) any unpaid Excess Rent due up to but not including the Rent Payment Date (or the date which would have been such Rent Payment Date but for the termination of this Lease) preceding the Payment Date and (D) whichever of the following amounts Lessor, in its sole

AUG 09 1981

discretion, shall specify in such notice together with interest on such amount at the Default Rate from the Rent Payment Date to the date of actual payment):

(1) an amount equal to the Casualty Loss Value of the Leased Property as of such Rent Payment Date; provided, however, that Lessor shall be entitled without deduction to such amount for the Leased Property only if Lessor shall have demanded possession of the Facility and the Site pursuant to clause (i) above and Lessee shall have failed to deliver such possession in accordance with the terms of such clause; or

(2) an amount equal to the excess, if any, of such Casualty Loss Value over the aggregate Fair Market Rental Value of the Leased Property for the remainder of the Term hereunder after discounting at the Default Rate such Fair Market Rental Value on such periodic basis as Basic Rent is payable hereunder to present worth as of such Rent Payment Date; or

(3) an amount equal to the excess, if any, of such Casualty Loss Value over the aggregate Fair Market Value of the Leased Property as of such Rent Payment Date.

(iv) Payment After Sale. If Lessor, pursuant to clause (ii) above, shall have sold the Leased Property, Lessor, in lieu of exercising its rights under clause (iii) above with respect to the Leased Property, may, if it shall so elect, cause Lessee to pay Lessor, as liquidated damages for loss of a bargain and not as a penalty, (A) any unpaid Basic Rent due up to but not including the Rent Payment Date (or the date which would have been such Rent Payment Date but for the termination of this Lease) preceding the date of such sale, (B) any unpaid Supplemental Rent, (C) any unpaid Excess Rent due up to but not including the Rent Payment Date (or the date which would have been such Rent Payment Date but for the termination of this Lease) preceding the date of such sale, and (D) an amount equal to any deficiency between the net proceeds of such sale and the Casualty Loss Value of the Leased Property as of such Rent Payment Date, together with interest at the Default Rate on such amount from the date of such Rent Payment Date until the date of actual payment.

(v) Payment After Re-Lease. If Lessor, pursuant to clause (ii) above, shall have leased the Facility to others, Lessor, in lieu of exercising its rights under clause (iii) above, may elect to cause Lessee to pay to Lessor, as liquidated damages for loss of a bargain and not as a penalty, the sum of (A) any unpaid Basic Rent due up to but not including the Rent Payment Date (or the date which would have been such Rent Payment Date but for the termination of this Lease) preceding the date of such re-lease, (B) any unpaid Supplemental Rent, (C) any unpaid Excess Rent due up to but not including the Rent Payment Date (or the date which would have been such Rent Payment Date but for the termination of this Lease) preceding the date of such re-lease, and (D) the amount of any deficiency between (1) the Casualty Loss Value as of such Rent Payment Date and (2) the average rentals under such re-lease on a monthly basis for the number of months remaining on the Term of this Lease, after discounting such rentals at the Default Rate monthly to the present worth as of such Rent Payment Date, together with interest at the

Default Rate on such amount from such Rent Payment Date until the date of actual payment.

(b) Other Amounts and Expenses. In addition, Lessee shall be liable for any and all unpaid Supplemental Rent due hereunder before, after or during the exercise of any of the foregoing remedies and for all reasonable legal fees and other costs and expenses incurred by Lessor by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including all costs and expenses incurred by Lessor in connection with gaining possession of the Leased Property in accordance with the terms hereof, the placing of the Leased Property in the condition required hereunder or any sales or broker's commissions.

(c) Other Remedies. Lessor may exercise any other right or remedy which may be available to it under Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to terminate or rescind this Lease.

(d) Election of Remedies. Except as otherwise expressly provided above, no remedy referred to in this Section 18 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity. The exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other remedies. To the extent permitted by applicable law, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to take any judicial proceedings in connection with the Leased Property or to give any notice or to sell, lease or otherwise use the Leased Property in mitigation of Lessor's damages as set forth in this Section 18 or which may otherwise limit or modify any of Lessor's rights or remedies under this Section 18.

Section 19. Indemnities.

(a) General Indemnity.

(i) Generally. To the extent allowable by law or contract, Lessee shall indemnify and hold Lessor harmless from, and defend Lessor against, any and all claims, demands and liabilities, including reasonable attorneys' fees of whatever nature relating to or in any way arising out of this Lease or the possession, use, delivery, installation, operation, control, nondelivery, return, nonuse or disposition of the Facility or the Site, including, without limitation, any claim, demand or liability:

(1) arising by reason of latent and other defects whether or not discoverable by Lessor or Lessee,

(2) based upon the negligence of Lessor or upon any infringement of any patent, copyright or other similar right,

(3) arising under the strict liability doctrine in tort or under CERCLA, or

(4) arising by reason of the existence, at the time Lessor takes possession of the Facility pursuant to Section 18, of any lien or right of others against the Facility or the Site,

but excluding for the purposes of this Section 19 claims arising from Lessor's willful misconduct or gross negligence. Lessor shall make available to Lessee all of Lessor's rights under any similar indemnification from any seller or manufacturer of any part of the Facility. The indemnities contained herein shall survive the expiration or other termination of this Lease with respect to all claims which arise during the Term hereof or which arise out of acts or omissions which occur during the Term hereof and prior to delivery of the Leased Property to Lessor pursuant to Section 18.

(b) General Tax Indemnity.

(i) General.

(A) Indemnified Taxes. Lessee agrees that each payment of Rent shall be free of all withholdings of any nature whatsoever except for withholdings with respect to taxes excluded by Section 19(b)(i)(C), and in the event that any withholding is required, Lessee shall pay an additional amount of Rent such that after the deduction of all amounts required to be withheld, the net amount of Rent actually received by Lessor will equal the amount of Rent that would be due absent such withholding other than Excluded Taxes collected by way of withholding. In addition, Lessee shall pay, indemnify and hold harmless Lessor from and against, and reimburse Lessor for, each Tax that is described in Section 19(b)(i)(B) and that is not excluded by Section 19(b)(i)(C) (such indemnified Tax herein referred to as an "Indemnified Tax").

(B) Included Taxes. The Taxes for which Lessee must indemnify Lessor under Section 19(b)(i)(A) are, except as excluded by Section 19(b)(i)(C), any and all Taxes imposed upon or asserted against Lessor, Lessee, or the Leased Property, or any part or portion thereof or interest therein by any federal, state or local government or other taxing authority in the United States, or by any foreign government or any political subdivision or taxing authority thereof, or by any territory or possession of the United States, or by any international taxing authority, in connection with or relating to

(1) the manufacture, design, construction, preparation, installation, testing, mortgaging, financing, refinancing, ownership, purchase, acquisition, acceptance, rejection, importation, delivery, nondelivery, lease, insuring, inspection, regulation, assembly, possession, repossession, use, operation, leasing, subleasing, condition, maintenance, modification, rebuilding, products, by-products, waste, presence, repair, sale, return, abandonment, storage, redelivery, transfer of title, exportation or other application or disposition of, or the imposition of any Lien (or the

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AUG 11 1981

AUG 11 1981

incurrence of any liability to refund or pay over any amount as a result of any Lien) on, the Leased Property, or any part or portion thereof or rights or interest therein;

(2) payments of Basic Rent, Excess Rent or Supplemental Rent or the receipts or earnings rising therefrom or received with respect to the Leased Property or any part or portion thereof or interest therein, or payable pursuant to the Lease;

(3) any Fundamental Agreement or any Related Document or amount paid or payable pursuant to any Fundamental Agreement or any Related Document;

(4) the Leased Property, or any part or portion thereof or any interest therein, the Lease, the Site Lease or any sublease to the Leased Property, or any part or portion thereof or any interest therein;

(5) the payment of any claim, refund, warranty payment or rebate to Lessee or Lessor (including replacement of any part or portion of the Leased Property) by any person including manufacturers and contractors, provided that this clause (5) shall not be construed to extend to a refund or rebate of an amount to Lessor (a) to the extent Lessee establishes that such refund or rebate does not reimburse Lessor for any loss or expense or diminution in value of the Leased Property and (b) for which there is no offsetting obligation to pay such amounts to Lessee; or

(6) otherwise with respect to or in connection with the transactions contemplated by the Fundamental Agreements.

(C) Excluded Taxes. The Taxes described in Section 19(b)(i)(B) for which Lessee is not required to provide indemnification under Section 19(b)(i)(A) are the following:

(1) any Tax included in Lessor's Cost;

(2) any Tax that is (a) imposed on, based on or measured by the gross income or receipts (other than gross receipts taxes in the nature of property taxes, sales, value added, use or similar taxes) or net income of Lessor (including without limitation and however described capital gains taxes, minimum taxes on income, taxes on items of tax preference, unincorporated business taxes, franchise taxes and any withholding of such taxes), (b) computed by reference to multiple bases one of which is net income, or (c) an income tax or surcharge, addition to tax, penalty, fine or other similar charge in respect thereof, of Lessor other than with respect to any item referred to in Section 19(b)(i)(B)(5);

(3) any Tax (or any allocable portion thereof) imposed against Lessor by any state or local taxing authority in the United States which constitutes a doing business, franchise or similar tax;

AUG 09 1991

(4) any Tax resulting from the willful misconduct or gross negligence of Lessor;

(5) any Tax enacted in substitution for any of the foregoing;

(6) any Tax on the disposition of the Leased Property by Lessor unless after an Event of Default has occurred and is continuing (or would be continuing but for the exercise of remedies); and

(7) any Tax to the extent incurred or imposed in respect of any period after the earlier of the termination of this Lease in accordance with the terms hereof or, if an Event of Default shall have occurred and be continuing, the date upon which Lessor, in the exercise of its remedies under the Lease, transfers title to or possession of the Leased Property to a Person other than Lessee.

Notwithstanding anything to the contrary contained in this Section 19(b)(i)(C), the provisions of this Section 19(b)(i)(C) shall not apply to any Taxes imposed in respect of the receipt or accrual of any indemnity payment made by Lessee pursuant to this Section 19(b).

(ii) Payment of Taxes, Indemnity Amounts and Refunds.

(A) Tax Filings and Payments. Lessee shall timely prepare and file all reports and returns that are required to be made with respect to Indemnified Taxes. Lessee shall, to the extent permitted by law, cause all billings of such Indemnified Taxes to be made to Lessor in care of Lessee, make payment thereof and, from time to time on written request of Lessor, submit written evidence of such payment. Lessor shall furnish Lessee, promptly after receipt, copies of all requests for information from any taxing authorities relating to any Indemnified Taxes with respect to Lessor, and shall request such taxing authority to contact Lessee regarding any such information; provided, however, that the failure of Lessor to give such written notice to Lessee shall not (1) reduce Lessee's obligations under this Section 19(b) or (2) release Lessee from its obligations under this Section 19(b), unless such failure materially, adversely affects Lessee's ability to contest such claim.

(B) Date of Indemnity Payment. Except as provided in Section 19(b)(ii)(A) above (dealing with Indemnified Taxes paid in connection with a return or report prepared and filed by Lessee), each amount payable to Lessor pursuant to this Section 19(b) in respect of Indemnified Taxes (an "Indemnity Payment") shall be paid in immediately available funds within thirty (30) days after written notice by Lessor to Lessee certifying that such Taxes have first been paid, directly or by offset by Lessor.

(iii) Subsequent Refunds. If Lessor shall obtain a refund (including without limitation the offset of a refund against a further tax liability) of all or any part of any Tax paid by Lessee, Lessor shall pay Lessee an amount equal to the sum of (A) the amount of such refund, (1) reduced by reasonable

AUG 28 1991

expenses not previously reimbursed and Taxes payable with respect to receipt thereof, but (2) increased by the amount of any tax benefit realized by Lessor in connection with such payment to Lessee, and (B) any amounts payable under Section 19(b)(iv) below (relating to interest); provided, however, that notwithstanding the foregoing portion of this sentence, Lessor shall not be obligated to make any payment to Lessee pursuant to this sentence as long as an Event of Default shall have occurred and be continuing under this Lease or any other Fundamental Agreement.

(iv) Interest. If Lessor receives a refund (including without limitation the offset of refund against further tax liability) of all or part of any Indemnified Taxes for which an Indemnity Payment was made by Lessee pursuant to this Section 19(b), Lessor shall pay promptly to Lessee any interest actually received from or credited by the taxing authority with respect thereto, computed after taking into account any taxes payable by Lessor as a result of the receipt or accrual of such interest, and increased by any taxes saved by reason of the deductibility of the payment or accrual by Lessor of the amount payable to Lessee hereunder or of the taxes described in this Section 19(b)(iv).

(v) Reimbursements by Lessor Generally. If, for any reason, Lessee is required to make any payments with respect to any Taxes imposed on Lessor in respect of the transaction contemplated by the Fundamental Agreements or the Facility which Taxes are not the responsibility of Lessee under this Section 19(b), then Lessor shall pay to Lessee an amount that equals the amount paid by Lessee with respect to such Taxes.

(vi) Survival. The obligations contained in this Section 19(b) shall survive the termination of this Lease. The obligations of Lessee in respect of all such indemnities, obligations, adjustments and payments are expressly made for the benefit of, and shall be enforceable by, Lessor, at the option of Lessor without declaring this Lease to be in default or taking other action hereunder.

(c) After-Tax Basis. The indemnity amounts payable under this Section 19 shall be computed on an "after-tax" basis, so that any such indemnity payment shall be an amount which, when reduced by the increase in the federal, state and local tax liability of Lessor based upon or measured by Lessor's net income as a result of such payment and after taking into account any present or future tax benefits (such as offsets resulting from any additional deductions or credits due to increased tax liabilities to any taxing authorities), shall equal the claim in respect of which such indemnity is payable.

(d) Control of Litigation, Subrogation. Provided no Default shall have occurred and be continuing, Lessee shall have the right to control litigation related to any claim against Lessor for which Lessee would be liable under this Section 19, using legal counsel reasonably acceptable to Lessor, and to determine the settlement of claims therein. To the extent that Lessee has made an indemnity payment to Lessor pursuant to this Section 19 or

AUG 9 1981

otherwise, Lessee shall be subrogated to Lessor's rights in the affected transaction.

Section 20. Assignment.

(a) Generally. This Lease shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.

(b) Assignment by Lessor. Lessor may not assign any interest under this Lease (i) if such assignment would constitute a breach under the Power Purchase Agreement, (ii) in any manner that will cause the Facility to lose its status as a QF or (iii) in any manner that will subject the Facility or Lessee to additional regulation by any federal, state or local governmental authority or regulatory commission (including, without limitation, the SEC, the FERC and the PUC) as a "public utility," a "public utility holding company," an "electric utility," an "electric utility holding company" or an "electrical corporation" under any federal, state or local law rule or regulation (including, without limitation, the PUHCA, the FPA and the State PUC Law). Otherwise, Lessor may assign and reassign (whether as security or otherwise) all or any part of its rights, title and interest in and to this Lease or the Leased Property or the Rent due or to become due to Lessor hereunder to a person experienced in financing, owning or operating hydroelectric or alternative energy projects. Any such assignment shall be subject to the rights of Lessee under this Lease.

(c) Assignment by Lessee. Lessee shall not, without Lessor's prior written consent, which consent shall not be unreasonably withheld, assign to anyone its rights hereunder or any of its interest in the Leased Property. In connection with any such consent of Lessor, Lessee shall provide such information concerning the proposed assignee and the proposed assignment as Lessor shall reasonably request. Lessor may withhold such consent if such information is not provided by Lessee to Lessor's reasonable satisfaction or if the information provided indicates, in Lessor's judgment, that such assignment is likely to have such an adverse impact that is not insubstantial. Lessee may not assign any interest under this Lease (i) if such assignment would constitute a breach under the Power Sales Agreement, (ii) in any manner that will cause the Facility to lose its status as a QF or (iii) subject the Facility or Lessee to regulation by any federal, state or local governmental authority or regulatory commission (including, without limitation, the SEC, FERC and the PUC) as a "public utility," a "public utility holding company," an "electric utility," an "electric utility holding company" or an "electrical corporation" under any federal, state or local law rule or regulation (including, without limitation, the PUHCA, the FPA and the State PUC Law). Unless specifically agreed by Lessor, no assignment, whether or not consented to, shall in any way relieve Lessee from any obligation under this Lease, and Lessee hereby waives any rights it may now have or hereafter acquire to avoid any such obligation by reason of such assignment or any circumstances arising from such assignment. Lessee agrees to indemnify and hold harmless Lessor against any and all, claims, demands, liabilities and reasonable out-of-pocket expenses, of whatever nature, relating to or in any way arising out of such assignment, including, without limitation, reasonable

AUG 08 1991

out-of-pocket expenses incurred in evaluating any proposed assignment, and all reasonable out-of-pocket costs, damages, charges, attorneys' fees and expenses arising out of or necessitated by assertion of any such claim or demand with regard to such assignment. Any assignment entered into in violation of this Section 20(c) shall be void.

Section 21. Addresses and Payments.

(a) Addresses. All notices or other communications required or permitted to be given hereunder shall be in writing, shall be addressed as provided below and shall be considered as properly given (i) if delivered in person, (ii) if sent by overnight delivery service (including, without limitation, Federal Express, ETA, Emery, Purolator, DHL, Air Borne and other similar overnight delivery services), (iii) in the event overnight delivery services are not readily available, if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested or (iv) if sent by prepaid telegram, facsimile copy or by telex and confirmed. Notice so given shall be effective upon receipt by the addressee; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. For the purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of thirty (30) days' notice to the other parties in the manner set forth hereinabove. The initial addresses of the parties hereto are as follows:

- | | |
|-------------|---|
| (1) Lessor: | Westinghouse Credit Corporation
One Oxford Centre
Pittsburgh, Pennsylvania 15219
Attention: Manager, Administration,
Major Industries
Finance Group
Facsimile: (412) 393-3387 |
| (2) Lessee: | Smith Falls Hydropower
699 East South Temple
Salt Lake City, Utah 84102
Attention: David B. Van Otten
Facsimile: (801) 363-6661 |

(b) Payments. All payments required or permitted hereunder shall be made in lawful currency of the United States. Any wire fund transfers shall be paid to the account of the intended recipient as set forth below. Any party may change its account by giving notice to the other party in the manner set forth above.

- | | |
|-------------|--|
| (1) Lessor: | Lessor's account at
Citibank, N.A.
399 Park Avenue
New York, New York
Account No. 3848-7299
Attention: ABA No. 021-000089 |
|-------------|--|

AUG 09 1991

(2) Lessee:

Lessee's account at
First Security Bank of Utah
15 East 100 South
Salt Lake City, Utah 84111
Account No. 060 00556 10
Attention: Christian M. Feinauer
Cash Management Officer
(801) 350-5163

Section 22. Waivers. Lessor's failure at any time to require strict performance by Lessee of any of the provisions hereof shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provision. No express or implied waiver by Lessor of any Default or Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default or of any other Default or Event of Default. Failure by Lessor to collect the Rent reserved herein or any other sums as and when the same fall due, or to exercise its right to take possession of the Facility or the Site as herein provided, shall not waive or in any way affect Lessor's rights under this Lease or extend the time for making said payments. None of the conditions or provisions of this Lease shall be held to have been waived by any act or knowledge of Lessor, its agents or employees, but only by an instrument in writing signed by an officer of Lessor and delivered to Lessee.

Section 23. Quiet Enjoyment. Lessor covenants that Lessee and its permitted successors and assigns, so long as no Default shall have occurred and be continuing, may and shall peaceably and quietly have, hold, possess, use and enjoy the Leased Property as provided in this Lease without suit, molestation or interruption by Lessor or by reason of Lessor's acts.

Section 24. Lessor's Right to Perform for Lessee. If Lessee fails to make any payment of Rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, Lessor may itself, upon ten (10) days' prior written notice to Lessee, make such payment or perform or comply with such agreement, and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Default Rate, shall be deemed Supplemental Rent, payable by Lessee upon demand.

Section 25. Resistance to Regulatory Change. If the FERC or the PUC shall issue any order, judgment, regulation or decision the effect of which is to rescind, terminate, repeal, invalidate, suspend, enjoin, amend or modify the Power Purchase Agreement, then, under such circumstances, if such regulatory change shall be known to Lessee and if, as a result of such regulatory change, there shall exist in the good faith opinion of Lessor a reasonable possibility that such regulatory change will have a material and adverse effect on any of the Fundamental Agreements, the Related Documents or the documents contemplated thereby, Lessee shall diligently and timely (a) make all filings, (b) pursue all remedies and appeals and (c) take such other lawful action, in each case as shall be necessary or, in the good faith

123
422 08 1991

opinion of Lessee or Lessor, desirable to (i) prevent such regulatory change from becoming final and nonappealable or otherwise irrevocable, (ii) postpone the effectiveness of such regulatory change and (iii) cause such regulatory change to be revoked or amended or modified so as to eliminate the reasonable possibility of such material adverse effect.

Section 26. Distributions to General Partners. Lessee hereby covenants that it shall not make any distribution of cash, securities or other property to any General Partner while any Default shall have occurred and be continuing.

Section 27. Governing Law; Entire Agreement. This Lease shall be governed by the laws of the State of Idaho and, together with the Financing Agreement and the other Fundamental Agreements, constitutes the entire agreement between the parties pertaining to the lease of the Leased Property by Lessor to Lessee. No other agreement, oral or written, express or implied, has been made between the parties, except as referred to herein.

Section 28. Amendment; Invalidity; Payments. This Lease may not be altered or amended except by an agreement in writing signed by Lessor and Lessee. If any provision of this Lease or the application thereof to any party or circumstances is held invalid or unenforceable, the remainder of this Lease and the application of such provision to other parties or circumstances shall not be affected thereby, and to this end the provisions of this Lease are declared severable. Notwithstanding any provision hereof to the contrary, any payment required under this Lease which is due on a day which is not a Business Day may be paid on the next day which is a Business Day.

Section 29. Counterparts. THIS LEASE WILL BE SIMULTANEOUSLY EXECUTED IN TWO (2) COUNTERPARTS, EACH OF WHICH, WHEN SO EXECUTED AND DELIVERED, SHALL CONSTITUTE AN ORIGINAL, FULLY ENFORCEABLE COUNTERPART FOR ALL PURPOSES EXCEPT THAT ONLY THE COUNTERPART STAMPED OR MARKED "COUNTERPART NUMBER 1", THE RECEIPT OF WHICH HAS BEEN ACKNOWLEDGED BY LESSOR, SHALL CONSTITUTE "CHATTEL PAPER" OR OTHER "COLLATERAL" WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE IN EFFECT IN ANY JURISDICTION.

Section 30. Scope of Liability. Notwithstanding any other provision of this Agreement or any of the other Fundamental Agreements, there shall be no recourse against the Shareholder, the General Partners, Hydro-Flow, INE or any of their respective Affiliates (other than Lessee), stockholders, officers, directors or employees, for any liability to Lessor arising in connection with any breach or default under this Lease except to the extent the same is enforced against Lessee or the Collateral, and Lessor shall look solely to Lessee and the Collateral in enforcing rights and obligations under and in connection with this Lease, provided, however, the foregoing provisions of this Section 30 shall not:

(a) Constitute a waiver, release or discharge of any of the indebtedness under, or of any of the terms, covenants, conditions or provisions of, this Lease or any other Fundamental Agreement, and the same shall continue until fully paid, discharged, observed, or performed;

AUG 08 1991

(b) Limit or restrict the right of Lessor to name Lessee or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Lease, the Collateral Documents or any other Fundamental Agreement, or for injunction or specific performance; or

(c) In any way limit or restrict any right or remedy of Lessor (or any assignee or beneficiary thereof or successor thereto) with respect to, and Lessee and any other party hereto shall remain fully liable to the extent that it would otherwise be liable for, any fraud, misrepresentation or misappropriation of Facility revenues, Proceeds or any other earnings, revenues, rents, issues, profits or proceeds from or of the Collateral that should or would have been paid as provided herein or paid or delivered to Lessor (or any assignee or beneficiary thereof or successor thereto) towards any payment required under this Lease or any other Fundamental Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of the date first above written.

LESSOR:

WESTINGHOUSE CREDIT CORPORATION

By _____
Title: Senior Investment Manager

LESSEE:

SMITH FALLS HYDROPOWER
by its general partners:

AMERICAN PACIFIC POWER CORP.

By: _____
David B. Van Otten, President

PACIFIC WEST POWER CORP.

By: _____
Gary E. May, President

AMERICA WEST HYDRO, INC.

By: _____
R. Fred Moss, President

ACKNOWLEDGMENT

Receipt of Counterpart Number 1 of the Lease is hereby acknowledged.

LESSOR:

WESTINGHOUSE CREDIT CORPORATION

By _____
Title: Senior Investment Manager

SCHEDULE II

DESCRIPTION OF SITE

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SCHEDULE II

DESCRIPTION OF FEE PROPERTY

A tract of land in the West Half of the Northeast Quarter (W 1/2 NE 1/4) of Section Twenty-six (26), Township Sixty-five (65) North, Range Two (2) West, B.M., Boundary County, Idaho; more particularly described as follows:

Beginning at a point on the north line of the Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) of said Section Twenty-six (26), which is North 89 degrees 46' 32" East, 476.29 feet from the northwest corner of said Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4); thence North 00 degrees 13' 23" West, 175.00 feet; thence North 89 degrees 46' 32" East, 313.48 feet; thence South 18 degrees 13' 11" East, 184.00 feet; thence South 12 degrees 40' 05" East, 49.72 feet, to the center of Smith Creek; thence up the center of Smith Creek, South 28 degrees 20' 26" West, 127.92 feet; thence leaving the centerline of the creek, South 89 degrees 46' 32" West, 319.88 feet; thence North 00 degrees 13' 23" West, 160.90 feet, to the TRUE POINT OF BEGINNING.

TOGETHER WITH an easement 100 feet in width for access and utilities through the Northwest Quarter of the Northeast Quarter (NW 1/4 NE 1/4) of said Section Twenty-six (26); said strip being 50 feet on each side of the following described centerline:

Beginning at a point on the north line of the above described property which is South 89 degrees 46' 32" West, 52.57 feet from the northeast corner of the above described property; thence North 18 degrees 13' 13" West, 27.77 feet; thence North 62 degrees 49' 13" West, 68.33 feet; thence North 03 degrees 42' 02" West, 115.88 feet; thence North 25 degrees 59' 34" West, 116.34 feet; thence North 42 degrees 21' 30" East, 130.65 feet; thence North 49 degrees 57' 12" East, 106.56 feet; thence North 01 degrees 39' 14" West, 132.54 feet; thence North 38 degrees 40' 06" West, 96.06 feet; thence North 24 degrees 43' 39" East, 138.37 feet; thence North 07 degrees 38' 20" East, 140.62 feet; thence North 43 degrees 47' 47" East, 220.51 feet; thence North 85 degrees 12' 25" East, 165.20 feet to the westerly right of way of the county road known as the West Side road, and the terminus of this easement; with the sidelines of said easement to intersect the county road right of way and adjacent boundaries.

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TOGETHER WITH an easement 100 feet in width for a pipeline through the Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) of said Section Twenty-six (26); said easement being 50 feet on each side of the following described centerline:

Beginning at a point on the west line of the Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) of said Section Twenty-six (26), which is South 00 degrees 18' 07" East, 249.21 feet from the northwest corner of said Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4); thence North 69 degrees 29' 36" East, 507.41 feet, to the west boundary of the above described property with the sidelines of said easement to be extended or shortened to intersect adjacent boundaries.

APR 20 1991

SCHEDULE III

BASIC RENT FACTORS AND CASUALTY LOSS VALUES

PART A: BASIC RENT FACTORS

<u>Rent Payment Date</u>	<u>Basic Rent Factor - %</u>
6/30/90	5.352
12/30/90	5.352
6/30/91	5.308
12/30/91	5.308
6/30/92	5.261
12/30/92	5.261
6/30/93	5.212
12/30/93	5.212
6/30/94	5.161
12/30/94	5.161
6/30/95	5.107
12/30/95	5.107
6/30/96	5.050
12/30/96	5.050
6/30/97	5.122
12/30/97	5.122
6/30/98	5.066
12/30/98	5.066
6/30/99	5.008
12/30/99	5.008
6/30/2000	4.775
12/30/2000	4.775
6/30/01	5.114
12/30/01	5.114
6/30/02	4.988
12/30/02	4.988
6/30/03	4.887
12/30/03	4.887
6/30/04	4.783
12/30/04	4.783
6/30/05	4.704
12/30/05	4.704
6/30/06	4.621
12/30/06	4.621
6/30/07	4.534
12/30/07	4.534
6/30/08	4.486
12/30/08	4.486
6/30/09	4.398
12/30/09	4.398

PART B: CASUALTY LOSS VALUES

<u>Payment Date</u>	<u>Casualty Loss Value</u>
30 DEC 1989	92.23667377
30 JAN 1990	101.87764032
30 FEB 1990	101.94068058
30 MAR 1990	102.00993034
30 APR 1990	102.07531860
30 MAY 1990	102.13835999
30 JUN 1990	102.20761091
30 JUL 1990	102.21990401
30 AUG 1990	102.23807665
30 SEP 1990	102.26216708
30 OCT 1990	102.28364213
30 NOV 1990	102.31105643
30 DEC 1990	102.34444859
30 JAN 1991	101.21642145
30 FEB 1991	101.08203919
30 MAR 1991	101.07683852
30 APR 1991	101.07354675
30 MAY 1991	101.06890743
30 JUN 1991	101.06999030
30 JUL 1991	101.01556340
30 AUG 1991	100.96653496
30 SEP 1991	100.92294007
30 OCT 1991	100.87773558
30 NOV 1991	100.83798952
30 DEC 1991	100.80373736
30 JAN 1992	99.61003736
30 FEB 1992	99.40950457
30 MAR 1992	99.33767259
30 APR 1992	99.26792923
30 MAY 1992	99.19635170
30 JUN 1992	99.13001044
30 JUL 1992	99.00814372
30 AUG 1992	98.89118629
30 SEP 1992	98.77917009
30 OCT 1992	98.66504483
30 NOV 1992	98.55587921
30 DEC 1992	98.45170546
30 JAN 1993	97.18843527
30 FEB 1993	96.91782678
30 MAR 1993	96.77541031
30 APR 1993	96.63456863
30 MAY 1993	96.49129550
30 JUN 1993	96.35273933
30 JUL 1993	96.15855391
30 AUG 1993	95.96875442
30 SEP 1993	95.78336936

<u>Payment Date</u>	<u>Casualty Loss Value</u>
30 OCT 1993	95.59526322
30 NOV 1993	95.41158254
30 DEC 1993	95.23235607
30 JAN 1994	93.89431759
30 FEB 1994	93.54839888
30 MAR 1994	93.33012670
30 APR 1994	93.11284395
30 MAY 1994	92.90649283
30 JUN 1994	92.70439274
30 JUL 1994	92.46063602
30 AUG 1994	92.22088711
30 SEP 1994	91.98517206
30 OCT 1994	91.76026881
30 NOV 1994	91.53949595
30 DEC 1994	91.32288034
30 JAN 1995	89.96202039
30 FEB 1995	89.59307326
30 MAR 1995	89.35156438
30 APR 1995	89.11702011
30 MAY 1995	88.89470230
30 JUN 1995	88.67647313
30 JUL 1995	88.41844119
30 AUG 1995	88.16426567
30 SEP 1995	87.91397166
30 OCT 1995	87.67580170
30 NOV 1995	87.44161730
30 DEC 1995	87.21144439
30 JAN 1996	86.95084272
30 FEB 1996	86.69401931
30 MAR 1996	86.44099873
30 APR 1996	86.19545784
30 MAY 1996	85.96191645
30 JUN 1996	85.73232927
30 JUL 1996	85.46328896
30 AUG 1996	85.19797204
30 SEP 1996	84.93640273
30 OCT 1996	84.68672870
30 NOV 1996	84.44090398
30 DEC 1996	84.19895361
30 JAN 1997	83.90544639
30 FEB 1997	83.61558165
30 MAR 1997	83.32938309
30 APR 1997	83.05048489
30 MAY 1997	83.78356721
30 JUN 1997	82.52046491
30 JUL 1997	82.21715301
30 AUG 1997	81.91741985
30 SEP 1997	81.62128869
30 OCT 1997	81.33702600

<u>Payment Date</u>	<u>Casualty Loss Value</u>
30 NOV 1997	81.05646591
30 DEC 1997	80.77963249
30 JAN 1998	80.47180853
30 FEB 1998	80.16747343
30 MAR 1998	79.86664990
30 APR 1998	79.57302434
30 MAY 1998	79.29112985
30 JUN 1998	79.01289282
30 JUL 1998	78.69476426
30 AUG 1998	78.38005758
30 SEP 1998	78.06879502
30 OCT 1998	77.76914885
30 NOV 1998	77.47304472
30 DEC 1998	77.18050567
30 JAN 1999	76.85775043
30 FEB 1999	76.53832347
30 MAR 1999	76.22224642
30 APR 1999	75.91316324
30 MAY 1999	75.61554853
30 JUN 1999	75.32142557
30 JUL 1999	74.98774403
30 AUG 1999	74.65731973
30 SEP 1999	74.33017384
30 OCT 1999	74.01437898
30 NOV 1999	73.70195765
30 DEC 1999	73.39293180
30 JAN 2000	73.08303547
30 FEB 2000	72.77629885
30 MAR 2000	72.47274247
30 APR 2000	72.17596538
30 MAY 2000	71.89009907
30 JUN 2000	71.60754870
30 JUL 2000	71.28725301
30 AUG 2000	70.97004941
30 SEP 2000	70.65595800
30 OCT 2000	70.35266480
30 NOV 2000	70.05257422
30 DEC 2000	69.75570711
30 JAN 2001	69.36444659
30 FEB 2001	68.97618447
30 MAR 2001	68.59094023
30 APR 2001	68.21214051
30 MAY 2001	67.84464986
30 JUN 2001	67.48031214
30 JUL 2001	67.07516473
30 AUG 2001	66.67292542
30 SEP 2001	66.27361312
30 OCT 2001	65.88547650
30 NOV 2001	65.50035859

<u>Payment Date</u>	<u>Casualty Loss Value</u>
30 DEC 2001	65.11827901
30 JAN 2002	64.71640771
30 FEB 2002	64.31732840
30 MAR 2002	63.92105923
30 APR 2002	63.53127610
30 MAY 2002	63.15238598
30 JUN 2002	62.77643728
30 JUL 2002	62.36055324
30 AUG 2002	61.94737008
30 SEP 2002	61.53690536
30 OCT 2002	61.13719917
30 NOV 2002	60.74029906
30 DEC 2002	60.34622326
30 JAN 2003	59.92892093
30 FEB 2003	59.51420085
30 MAR 2003	59.10207980
30 APR 2003	58.69614022
30 MAY 2003	58.30071077
30 JUN 2003	57.90800579
30 JUL 2003	57.47600938
30 AUG 2003	57.04649969
30 SEP 2003	56.61949287
30 OCT 2003	56.20285920
30 NOV 2003	55.78881213
30 DEC 2003	55.37736848
30 JAN 2004	54.94371489
30 FEB 2004	54.51242538
30 MAR 2004	54.08351532
30 APR 2004	53.66049085
30 MAY 2004	53.24758150
30 JUN 2004	52.83717110
30 JUL 2004	52.38812400
30 AUG 2004	51.94134088
30 SEP 2004	51.49683648
30 OCT 2004	51.06230752
30 NOV 2004	50.63013696
30 DEC 2004	50.20034011
30 JAN 2005	49.74495384
30 FEB 2005	49.29170469
30 MAR 2005	48.84060654
30 APR 2005	48.39508759
30 MAY 2005	47.95931998
30 JUN 2005	47.52581705
30 JUL 2005	47.05411665
30 AUG 2005	46.58444730
30 SEP 2005	46.11682219
30 OCT 2005	45.65880469
30 NOV 2005	45.20290720

<u>Payment Date</u>	<u>Casualty Loss Value</u>
30 DEC 2005	44.74914351
30 JAN 2006	44.27088561
30 FEB 2006	43.79452616
30 MAR 2006	43.32007750
30 APR 2006	42.85090765
30 MAY 2006	42.39110692
30 JUN 2006	41.93332464
30 JUL 2006	41.43780603
30 AUG 2006	40.94407365
30 SEP 2006	40.45213909
30 OCT 2006	39.96942564
30 NOV 2006	39.48858167
30 DEC 2006	39.00961933
30 JAN 2007	38.50730461
30 FEB 2007	38.00663751
30 MAR 2007	37.50762872
30 APR 2007	37.01358308
30 MAY 2007	36.52850523
30 JUN 2007	36.04518707
30 JUL 2007	35.52461647
30 AUG 2007	35.00557477
30 SEP 2007	34.48807192
30 OCT 2007	33.97938436
30 NOV 2007	33.47230296
30 DEC 2007	32.96683818
30 JAN 2008	32.43196863
30 FEB 2008	31.89848305
30 MAR 2008	31.36639044
30 APR 2008	30.83892938
30 MAY 2008	30.32009507
30 JUN 2008	29.80274899
30 JUL 2008	29.24829493
30 AUG 2008	28.69509752
30 SEP 2008	28.14316490
30 OCT 2008	27.59969991
30 NOV 2008	27.05756301
30 DEC 2008	26.51676283
30 JAN 2009	25.95337051
30 FEB 2009	25.39108134
30 MAR 2009	24.82990248
30 APR 2009	24.27303875
30 MAY 2009	23.74123799
30 JUN 2009	23.21074579
30 JUL 2009	22.66058602
30 AUG 2009	22.11161544
30 SEP 2009	21.56384177
30 OCT 2009	21.04119018
30 NOV 2009	20.51990662
30 DEC 2009	20.00000000

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SCHEDULE IV
EXCESS RENT AMOUNTS

<u>Rent Payment Date</u>	<u>Excess Rent Amount</u>
6/30/90	107,072.67
12/30/90	107,072.66
6/30/91	112,383.60
12/30/91	112,383.60
6/30/92	113,462.00
12/30/92	113,462.00
6/30/93	111,534.34
12/30/93	111,534.33
6/30/94	112,759.65
12/30/94	112,759.65
6/30/95	114,065.35
12/30/95	114,065.35
6/30/96	115,454.67
12/30/96	115,454.67
6/30/97	106,127.36
12/30/97	106,127.36
6/30/98	107,156.98
12/30/98	107,156.98
6/30/99	108,259.21
12/30/99	108,259.20
6/30/2000	135,626.25
12/30/2000	135,626.25
6/30/01	103,714.41
12/30/01	103,714.41
6/30/02	109,883.56
12/30/02	109,883.56
6/30/03	113,746.34
12/30/03	113,746.33
6/30/04	86,182.73
12/30/04	86,182.73
6/30/05	123,223.65
12/30/05	123,223.65
6/30/06	125,005.33
12/30/06	125,005.33
6/30/07	126,904.02
12/30/07	126,904.01
6/30/08	125,354.12
12/30/08	125,354.12
6/30/09	126,849.79
12/30/09	126,849.78

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APPENDIX A
TO THE
FACILITY AND
SITE LEASE

CERTIFICATE OF DELIVERY AND ACCEPTANCE

SMITH FALLS HYDROPOWER (Lessee under that certain Facility and Site Lease ("Lease") dated as of _____, 19__, between Lessee and WESTINGHOUSE CREDIT CORPORATION, ("Lessor")) hereby acknowledges and accepts delivery of the following Facility and a leasehold under the Ground Lease dated as of May 25, 1989 between Lessor and Lessee pertaining to the following real property:

Site: Fee titles in certain parcels and easements as to other parcels, all of which parcels are situated in Boundary County, Idaho; all of such parcels and interests are more particularly described in Appendix A to the Lessee Fee Mortgage and the Lessee Easement Mortgage.

Facility:

The 38.15MW (Gross) hydroelectric facility located on the Site, in Boundary County, Idaho, including, without limitation, any and all alterations and components from time to time incorporated in or installed as part of such Facility.

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Lease.

Lessor hereby leases to Lessee, and Lessee hereby accepts and leases from Lessor, the Facility and the Site pursuant to the Lease.

Dated: _____, 19__

SMITH FALLS HYDROPOWER
by its general partners:

PACIFIC WEST POWER CORP.

AMERICAN PACIFIC POWER CORP.

BY: _____
Gary E. May, President

By: _____
David B. Van Otten, President

AMERICA WEST HYDRO, INC.

By: _____
R. Fred Moss, President

ACKNOWLEDGMENT

This Certificate of Delivery and Acceptance is hereby acknowledged and agreed to this ____ day of _____, 19__.

Lessor

WESTINGHOUSE CREDIT CORPORATION

By _____
Title: Senior Investment Manager

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APPENDIX B
TO THE
FACILITY AND
SITE LEASE

CERTIFICATE OF DELIVERY AND ACCEPTANCE

SMITH FALLS HYDROPOWER (Lessee under that certain Facility and Site Lease ("Lease") dated as of _____, 19__, between Lessee and WESTINGHOUSE CREDIT CORPORATION, ("Lessor")) hereby acknowledges and accepts delivery of the Second Large Turbine.

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Lease.

Lessor hereby leases to Lessee, and Lessee hereby accepts and leases from Lessor, the Second Large Turbine as part of the Facility pursuant to the Lease.

Dated: _____, 19__

SMITH FALLS HYDROPOWER
by its general partners:

PACIFIC WEST POWER CORP.

AMERICAN PACIFIC POWER CORP.

BY: _____
Gary E. May, President

By: _____
David B. Van Otten, President

AMERICA WEST HYDRO, INC.

By: _____
R. Fred Moss, President

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ACKNOWLEDGMENT

This Certificate of Delivery and Acceptance is hereby acknowledged
and agreed to this ____ day of _____, 19__.

Lessor

WESTINGHOUSE CREDIT CORPORATION

By _____

Title: Senior Investment Manager

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FINANCING AGREEMENT

Dated as of May 25, 1989

Among

WESTINGHOUSE CREDIT CORPORATION,
Lessor,

SMITH FALLS HYDROPOWER,
Lessee,

AMERICAN PACIFIC POWER CORP.,
APPC,

PACIFIC WEST POWER CORP.,
PWPC,

AMERICA WEST HYDRO, INC.,
AWHI,

HYDRO-FLOW, INC.,
Hydro-Flow

and

IDAHO NATURAL ENERGY, INC.,
INE

Hydroelectric Facility
Smith Creek, Boundary County, Idaho

4942B

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INDEXED

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TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Recitals	1
1. Commitments	3
2. Closings	5
3. Conditions Precedent to Closing	5
4. Representations and Warranties	22
5. Adjustments	33
6. Fees and Expenses	33
7. Disclosure	34
8. Successors and Assigns	34
9. Governing Law and Counterparts	34
10. Notices; Payments	34
11. Amendment of Agreements	36
12. Further Assurances	36
13. Survival of Covenants and Representations	36
14. Change of Office	36
15. Change of Control	36
16. Scope of Liability	36
Execution	37

AUG 09 1991

SCHEDULES

- SCHEDULE I - DEFINITIONS
- SCHEDULE II - [RESERVED]
- SCHEDULE III - CONSTRUCTION CONTRACTS
- SCHEDULE IV-A - CONSTRUCTION BUDGET
- SCHEDULE IV-B - BASE CASE PROJECTIONS
- SCHEDULE IV-C - CONSTRUCTION SCHEDULE
- SCHEDULE V - PERMITS AND WATER PERMITS
- SCHEDULE VI - FEE PROPERTY AND EASEMENTS
- SCHEDULE VII-A - CONSENTS FOR CONSTRUCTION LOAN
- SCHEDULE VII-B - CONSENTS FOR FIRST LEASE CLOSING
- SCHEDULE VIII - ASSUMPTIONS

EXHIBITS

- EXHIBIT A - CONSTRUCTION LOAN AGREEMENT
- EXHIBIT B - LESSEE FEE MORTGAGE
- EXHIBIT C - LESSEE EASEMENT MORTGAGE
- EXHIBIT D - GENERAL PARTNER PLEDGE AND SECURITY AGREEMENT
- EXHIBIT E - SHAREHOLDER PLEDGE AGREEMENT
- EXHIBIT F-1 - HYDRO-FLOW PLEDGE AGREEMENT
- EXHIBIT F-2 - HYDRO-FLOW MORTGAGE
- EXHIBIT G - INE SECURITY AGREEMENT
- EXHIBIT H - INTERCREDITOR AGREEMENTS
- EXHIBIT I - BILL OF SALE
- EXHIBIT J - GROUND LEASE

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EXHIBIT K - LEASE

EXHIBIT L - TAX INDEMNITY AGREEMENT

EXHIBIT M - REVOLVING LOAN AGREEMENT

EXHIBIT N - AGREEMENT OF UNDERSTANDING

EXHIBIT O - ESCROW FUND AGREEMENT

EXHIBIT P - LEASE PAYMENT RESERVE AGREEMENT

EXHIBIT Q - CONSTRUCTION ESCROW AGREEMENT

EXHIBIT R - ASSIGNMENT AGREEMENT

EXHIBIT S - [RESERVED]

EXHIBIT T-1 - OPINION OF COUNSEL FOR LESSEE

EXHIBIT T-2 - OPINION OF COUNSEL FOR EACH GENERAL PARTNER

EXHIBIT T-3 - OPINION OF COUNSEL FOR HYDRO-FLOW

EXHIBIT T-4 - OPINION OF COUNSEL FOR INE

EXHIBIT T-5 - OPINION OF COUNSEL FOR EACH SHAREHOLDER

EXHIBIT U - OPINION OF COUNSEL FOR UTILITY

EXHIBIT V - [RESERVED]

EXHIBIT W-1 - OPINION OF COUNSEL FOR LESSEE

EXHIBIT W-2 - OPINION OF COUNSEL FOR EACH GENERAL PARTNER

EXHIBIT W-3 - OPINION OF COUNSEL FOR HYDRO-FLOW

EXHIBIT W-4 - OPINION OF COUNSEL FOR INE

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FINANCING AGREEMENT

This FINANCING AGREEMENT dated as of May 25, 1989, by and among WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation ("Lessor"), SMITH FALLS HYDROPOWER, a Utah general partnership ("Lessee"), AMERICAN PACIFIC POWER CORP., a Utah corporation ("APPC"), PACIFIC WEST POWER CORP., a Utah corporation ("PWPC") and AMERICA WEST HYDRO, INC., a Utah corporation ("AWHI") (APPC, PWPC, and AWHI each being each sometimes referred to as a "General Partner" and collectively the "General Partners"), HYDRO-FLOW, INC., a Utah corporation ("Hydro-Flow") and IDAHO NATURAL ENERGY, INC., an Idaho corporation ("INE"),

W I T N E S S E T H :

WHEREAS, the defined terms in Schedule I annexed hereto are hereby incorporated herein;

WHEREAS, each General Partner is a general partner of Lessee;

WHEREAS, INE is a wholly owned subsidiary of Hydro-Flow and Hydro-Flow is owned by three of the four Shareholders of the General Partners;

WHEREAS, Lessee proposes to construct a 38.15 (gross) megaWatt hydroelectric power facility (the "Facility") and owns in fee, leases or owns an easement to the Site, which is located in Boundary County, Idaho, on which the Facility will be located;

WHEREAS, Lessee proposes that Lessor finance the Facility by (a) making one or more Construction Loans to Lessee for the purpose of paying for the construction of the Facility, (b) upon completion of construction and passage of satisfactory performance tests, purchasing the Facility and leasing the Site from Lessee and simultaneously leasing the Facility and subleasing the Site to Lessee (the "Sale Leaseback") and (c) upon completion of the Sale Leaseback, making available to Lessee Revolving Loans for use during periods of low water flow;

WHEREAS, in connection with the Construction Loans, (a) Lessor and Lessee will enter into the Construction Loan Agreement, (b) Lessee will execute and deliver to Lessor the Construction Note, and (c) Lessee will execute and deliver to Lessor the Lessee Fee Mortgage pursuant to which Lessee will grant to Lessor a mortgage on the Fee Property and a security interest in all of Lessee's assets, which assets shall include, but shall not be limited to, the Power Purchase Agreement and each Related Document, to secure the Obligations, and (d) Lessee will execute and deliver to Lessor the Lessee Easement Mortgage pursuant to which Lessee will grant to Lessor a mortgage on the Easements to secure the Obligations;

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WHEREAS, in connection with the Construction Loans, (a) as security for the Obligations, each General Partner will enter into a General Partner Pledge and Security Agreement pursuant to which each General Partner will grant to Lessor a pledge of such General Partner's partnership interest in Lessee and a security interest in all of such General Partner's assets, (b) as security for the Obligations, each Shareholder will enter into a Shareholder Pledge Agreement pursuant to which such Shareholders will grant to Lessor a pledge of all of such Shareholder's shares of APPC, PWPC or AWHI, as applicable, (c) as security for the Obligations, Hydro-Flow will enter into (i) the Hydro-Flow Pledge Agreement pursuant to which Hydro-Flow will grant to Lessor a pledge of the stock of INE, (ii) the Hydro-Flow Mortgage pursuant to which Hydro-Flow will grant to Lessor a mortgage on the Hydro-Flow Parcel and a security interest in all of Hydro-Flow's assets relating to the Facility, (d) as security for the Obligations, INE will enter into the INE Security Agreement pursuant to which INE will grant to Lessor a security interest in all of INE's assets, (e) Yeates, entities affiliated with Yeates, May and Lessor will enter into the Intercreditor Agreements pursuant to which Yeates and such affiliated entities will subordinate to Lessor their respective security interests in the Pledged Stock and (f) Lessee, Lessor and Account Holder will enter into the Construction Escrow Agreement pursuant to which Lessee will establish the Construction Escrow Account to facilitate disbursement of Construction Loans;

WHEREAS, in connection with the Construction Loans, Lessor, Lessee and Utility will enter into and deliver the Agreement of Understanding with respect to Utility's exercise of the purchase right under the Power Purchase Agreement and certain other matters set forth therein;

WHEREAS, in connection with the Sale Leaseback, (a) Lessee will execute and deliver to Lessor one or more Bills of Sale pursuant to which Lessee will sell, assign and transfer the Facility to Lessor, (b) Lessee and Lessor will enter into the Ground Lease pursuant to which Lessee will lease the Site to Lessor, (c) Lessor will lease the Facility and sublease the Site to Lessee pursuant to the Lease and (d) Lessor and Lessee will enter into the Tax Indemnity Agreement pursuant to which Lessee will indemnify Lessor against the loss of certain federal income tax benefits;

WHEREAS, in connection with the Revolving Loans, (a) Lessor and Lessee will enter into the Revolving Loan Agreement and (b) Lessee will execute and deliver to Lessor the Revolving Note;

WHEREAS, in connection with the Sale Leaseback, Lessee and the Operator will enter into and deliver the Operation and Maintenance Agreement pursuant to which such parties will provide for the operation of the Facility;

WHEREAS, in connection with the Sale Leaseback, Lessee, Lessor and Account Holder will enter into the Escrow Fund Agreement pursuant to which Lessee shall establish (a) an Escrow Account into which all amounts received from Utility under the Power Purchase Agreement shall be deposited and from which disbursements for operating expenses and other distributions with respect to the Facility shall be made and (b) a Major Maintenance Account which will be a reserve for major repairs of the Facility;

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WHEREAS, in connection with the Sale Leaseback, Lessee, Lessor and Account Holder, will enter into the Lease Payment Reserve Agreement pursuant to which Lessee shall establish the Lease Payment Reserve Account which shall be a reserve for the payment of Rent and other operating expenses; and

WHEREAS, the actions described in recitals above and the other actions and events described in this Financing Agreement are referred to herein as the "Overall Transaction";

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

Section 1. Commitments.

(a) Lessor Commitment.

(i) Construction Loans. Subject to fulfillment of the conditions specified in Section 3(a), Lessor hereby agrees to enter into the Construction Loan Agreement and the other Fundamental Construction Agreements on the Construction Loan Closing Date and, subject to the conditions in Section 2 of the Construction Loan Agreement, from time to time during the Construction Loan Period to make Construction Loans to Lessee in such amounts as Lessee may request to pay Construction Costs and as do not exceed in the aggregate at any one time outstanding the Construction Loan Commitment, all pursuant to and in accordance with the Construction Loan Agreement.

(ii) Lease. Subject to fulfillment of the conditions specified in Section 3(b), Lessor hereby agrees, on the First Lease Closing Date, to purchase from Lessee all of the Facility other than the Second Large Turbine for an amount equal to Lessor's Cost of such portion of the Facility (the "Initial Payment"), to lease the Site from Lessee pursuant to the Ground Lease, to lease to Lessee such portion of the Facility and sublease to Lessee the Site pursuant to the Lease and to enter into the other Fundamental Lease Agreements. Subject to fulfillment of the conditions specified in Section 3(c), Lessor hereby agrees, on the Second Lease Closing Date, to purchase from Lessee the Second Large Turbine for an amount equal to Lessor's Cost of the Second Large Turbine (the "Final Payment") and to lease to Lessee the Second Large Turbine pursuant to the Lease.

(iii) Revolving Loans. Subject to fulfillment of the conditions specified in Section 3(b), Lessor hereby agrees, on the First Lease Closing Date, to enter into the Revolving Loan Agreement and, subject to the conditions in Section II of the Revolving Loan Agreement, to make Revolving Loans to Lessee from time to time until the Revolver Termination Date in such amounts as Lessee may request and as do not exceed in the aggregate at any one time outstanding the Revolving Loan Commitment, all pursuant to and in accordance with the Revolving Loan Agreement.

(b) Lessee Commitment.

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(i) Acceptance of Hydro-Flow and INE Assets and Execution of Fundamental Construction Agreements. Lessee hereby agrees, on or before the Construction Loan Closing Date, to accept an assignment from Hydro-Flow of all of Hydro-Flow's assets, with respect to the Overall Transaction, and of Hydro-Flow's obligations under the Mead Note, the Mead Contract and the Mead Mortgage as set forth in the Assignment Agreement, to accept an assignment from INE of all of INE's assets as set forth in the Assignment Agreement and to enter into the other Fundamental Construction Agreements.

(ii) Lease. Lessee hereby agrees, on the First Lease Closing Date, to sell to Lessor pursuant to a Bill of Sale all of the Facility (other than the Second Large Turbine), to lease the Site to Lessor pursuant to the Ground Lease, to lease from Lessor such portion of the Facility and sublease from Lessor the Site pursuant to the Lease and to enter into the other Fundamental Lease Agreements. Lessee hereby agrees that Lessor may purchase the Facility (other than the Second Large Turbine) from Lessee by applying the full amount of the Initial Payment to the Construction Loans outstanding and by paying the remaining balance, if any, to Lessee. Lessee hereby agrees, on the Second Lease Closing Date, to sell to Lessor pursuant to a Bill of Sale the Second Large Turbine and to lease from Lessor the Second Large Turbine pursuant to the Lease. Lessee hereby agrees that Lessor may purchase the Second Large Turbine from Lessee by applying the full amount of the Final Payment to the Construction Loans outstanding and by paying the remaining balance, if any, to Lessee.

(iii) Revolving Loans. Lessee hereby agrees to enter into the Revolving Loan Agreement on the First Lease Closing Date.

(c) General Partners' Commitment.

(i) Cause Lessee to Perform. The General Partners will cause Lessee to perform its obligations set forth in Section 1(b).

(ii) Pledge and Security Agreement. Each General Partner hereby agrees, on the Construction Loan Closing Date, to enter into a General Partner Pledge and Security Agreement.

(d) Hydro-Flow's Commitment.

(i) Transfer Assets to Lessee. Hydro-Flow hereby agrees, on or before the Construction Loan Closing Date, to transfer to Lessee its assets with respect to the Overall Transaction and its obligations under the Mead Note, the Mead Contract and the Mead Mortgage as set forth in the Assignment Agreement.

(ii) Pledge and Security Agreement and Mortgage. Hydro-Flow hereby agrees, on the Construction Loan Closing Date, to enter into the Hydro-Flow Pledge Agreement and the Hydro-Flow Mortgage.

(e) INE's Commitment.

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(i) Transfer Assets to Lessee. INE hereby agrees, on or before the Construction Loan Closing Date, to transfer all of its assets to Lessee as set forth in the Assignment Agreement.

(ii) Pledge and Security Agreement. INE hereby agrees, on the Construction Loan Closing Date, to enter into the INE Security Agreement.

Section 2. Closings.

The Closing for the first Construction Loan (the "Construction Loan Closing"), each of the two Closings for the Sale Leaseback and the entering into of the Revolving Loan Agreement and the other Fundamental Lease Agreements shall each take place at the offices of Orrick, Herrington & Sutcliffe, San Francisco, California ("Special Counsel"), on a Business Day chosen by Lessee upon five (5) days' prior written notice to Lessor. Closings for other Construction Loans shall be managed by Lessor in accordance with the Construction Loan Agreement.

Section 3. Conditions Precedent to Closings.

(a) Construction Loan Closing. The obligation hereunder of Lessor to enter into the Construction Loan Agreement is subject to the satisfaction of the obligations of Lessee set forth in Section 1(b), the obligations of each General Partner set forth in Section 1(c), the obligations of Hydro-Flow set forth in Section 1(d) and the obligations of INE set forth in Section 1(e) and to fulfillment of the following conditions to the satisfaction of Lessor and Special Counsel on or prior to the Construction Loan Closing Date:

(i) The following Fundamental Construction Agreements shall have been duly authorized, executed and delivered to Lessor and shall be in full force and effect on the Construction Loan Closing Date:

- (A) this Financing Agreement;
- (B) the Construction Loan Agreement;
- (C) the Construction Note;
- (D) the Lessee Fee Mortgage
- (E) the Lessee Easement Mortgage;
- (F) each General Partner Pledge and Security Agreement;
- (G) each Shareholder Pledge Agreement;
- (H) the Hydro-Flow Pledge Agreement;
- (I) the Hydro-Flow Mortgage;
- (J) the INE Security Agreement;

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APR 20 1991

- (K) the Intercreditor Agreements;
- (L) the Agreement of Understanding
- (M) the Assignment Agreement; and
- (N) the Construction Escrow Agreement.

(ii) Lessor shall have received original or conformed copies, identified to its satisfaction of the following Related Construction Documents:

- (A) the Power Purchase Agreement;
- (B) the Wheeling Agreement;
- (C) the NLI Agreement;
- (D) the Water Permits issued on or before the Construction Loan Closing Date;
- (E) the FERC License;
- (F) the Permits issued on or before the Construction Loan Closing Date;
- (G) the Collection Agreement;
- (H) each Performance Bond in effect on the Construction Loan Closing Date; and
- (I) the Construction Contracts in effect on the Construction Loan Closing Date.

(iii) Lessor shall have received the Consent to Assignment of each party listed in Schedule VII-A with respect to the Related Construction Documents to which they are a party.

(iv) Lessor shall be reasonably satisfied that the following Related Lease Documents will be executed and delivered in form satisfactory to Lessor prior to the respective dates set forth below:

- (A) the 70CFS Water Permit - July 15, 1989
- (B) the BPA Construction Reimbursement Agreement - June 15, 1989;
- (C) the BPA O&M Agreement - June 15, 1989; and
- (D) the Breaker Agreement - November 30, 1989.

(v) Lessor shall be reasonably satisfied that Lessee will be able to satisfy the obligations set forth in Sections 4(b)(iii) and (iv).

(vi) Financing statements with respect to the Overall Transaction shall have been filed in all places which are necessary or appropriate, in the opinion of Lessor and Special Counsel, to perfect the interest of Lessor in all the Collateral and the Mortgage and appropriate fixture filings shall have been filed in the Office of the County Recorder of Boundary County, Idaho.

(vii) The Title Company shall have issued to Lessor on the Construction Loan Closing Date a Title Policy with respect to the Fee Property, a Title Policy with respect to the Easements and a Title Policy with respect to the Hydro-Flow Parcel (collectively, the "Project Policies") in a form satisfactory to Lessor and Special Counsel, with such reinsurance provisions as are acceptable to Lessor, insuring respectively, that (A) Lessee has good, marketable and insurable fee title to, and that the Lessee Fee Mortgage is a valid lien on, the Fee Property second in priority only to the Mead Mortgage, free and clear of Liens other than Permitted Liens, (B) Lessee has good, marketable and insurable title to, and that the Lessee Easement Mortgage is a valid lien on, the Easements free and clear of Liens other than Permitted Liens and (C) Hydro-Flow has good marketable and insurable fee title to, and that the Hydro-Flow Mortgage is a valid first lien on the Hydro-Flow Parcel free and clear of Liens other than Permitted Liens.

(viii) Lessor shall have received certificates of such insurance as Lessee is required to maintain pursuant to the Construction Loan Agreement and copies of the insurance policy endorsements Lessee is required to provide to Utility under the Power Purchase Agreement.

(ix) Lessor shall have received a certificate of the respective secretary or an assistant secretary of each of the General Partners, dated the Construction Loan Closing Date, as to (A) such General Partner's charter or articles of incorporation and bylaws, (B) the incumbency and specimen signatures of those officers of such General Partner executing the Fundamental Construction Agreements and the Related Construction Documents and the other instruments, documents and agreements contemplated herein and therein on behalf of the General Partner and (C) the corporate authority of such General Partner and such officers to execute and deliver such documents on behalf of the General Partner.

(x) Lessor shall have received a certificate of the secretary or assistant secretary of each General Partner, dated the Construction Loan Closing Date, as to (A) Lessee's partnership agreement, (B) the incumbency and specimen signatures of those officers of such General Partner executing the Fundamental Construction Agreements, the Related Construction Documents and the other documents, instruments and agreements contemplated herein and therein on behalf of such General Partner for Lessee and (C) the partnership authority of such General Partner and such officers to execute and deliver such documents on behalf of such General Partner for Lessee.

APR 28 1991

(xi) Lessor shall have received a certificate of the respective secretary or an assistant secretary of each of Hydro-Flow and INE, dated the Construction Loan Closing Date, as to (A) such party's charter or articles of incorporation and bylaws, (B) the incumbency and specimen signatures of those officers of Hydro-Flow and INE executing the Fundamental Construction Agreements and the Related Construction Documents and the other instruments, documents and agreements contemplated herein and therein on behalf of Hydro-Flow and INE and (C) the corporate authority of such officers to execute and deliver such documents on behalf of Hydro-Flow and INE.

(xii) Special Counsel shall have received copies certified by the Secretary of State of Utah or Idaho, as appropriate, dated not earlier than seven (7) days prior to the Construction Loan Closing Date of the organizational documents of Lessee, each General Partner, Hydro-Flow and INE.

(xiii) Special Counsel shall have received copies certified not earlier than the seventh (7th) day prior to the Construction Loan Closing Date by the Secretary of State of Idaho and Utah evidencing the good standing of each General Partner, Hydro-Flow and INE in its state of incorporation or organization, the compliance by each of the General Partners, Hydro-Flow and INE with the franchise tax requirements of its state of incorporation and the qualification of Lessee, each General Partner and Hydro-Flow to do business in Idaho as a foreign corporation or a foreign general partnership, as appropriate.

(xiv) The representations and warranties of Lessee, each General Partner, Hydro-Flow and INE contained herein, in the Fundamental Construction Agreements and in the Related Construction Documents and in any document, instrument, agreement and certificate delivered pursuant thereto and hereto shall be true and correct on and as of the Construction Loan Closing Date with the same effect as though made on and as of the Construction Loan Closing Date; on the Construction Loan Closing Date each Fundamental Construction Agreement and each Related Construction Document shall be in full force and effect and there shall be no default thereunder or hereunder nor shall there have occurred any event which, but for the lapse of time or the giving of notice or both, would be such a default; and Lessor shall have received from Lessee, each General Partner, Hydro-Flow and INE a certificate to such effect dated the Construction Loan Closing Date signed by an officer of each General Partner on behalf of Lessee and an officer of such General Partner, Hydro-Flow and INE, as the case may be.

(xv) Lessor shall have received the following signed opinions, each dated the Construction Loan Closing Date and from counsel reasonably satisfactory to Lessor: opinion of counsel for Lessee in the form of Exhibit T-1 hereto, opinion of counsel for each General Partner in the form of Exhibit T-2 hereto, opinion of counsel for Hydro-Flow in the form of Exhibit T-3 hereto, opinion of counsel for INE in the form of Exhibit T-4 hereto and opinion of counsel for each Shareholder in the form of Exhibit T-5 hereto.

(xvi) Lessor shall have received an opinion of Special Counsel, satisfactory in form and substance to Lessor, as to the "tax assumptions" referred to in the Tax Indemnity Agreement.

(xvii) Lessor shall have received an opinion of FERC Counsel satisfactory in form and substance to Lessor and Special Counsel as to the status of the FERC License, the FERC License Amendments and the FERC Recertification.

(xviii) Lessor shall have received an opinion of counsel to Utility satisfactory to Lessor in the form of Exhibit U hereto.

(xix) There shall have been no change in any law regulating investments to which Lessor may be subject which shall result in the making of the Construction Loans not qualifying as a legal investments.

(xx) In Lessor's reasonable judgment, based upon its review of the Plans and Specifications, the Construction Budget, the Construction Schedule, the Construction Contracts, related performance and schedule guarantees and the resources and capabilities of vendors and contractors supplying goods and services to the Facility, Substantial Completion can be attained on or before March 31, 1990, for an amount less than or equal to \$21,000,000 and Completion can be obtained on or before March 31, 1990, for an aggregate amount less than or equal to \$21,750,000.

(xxi) In Lessor's reasonable judgment, based upon its engineering and hydrology review of the Facility, its technical design and the integrity of its equipment, the projected revenues and expenses from operating the Facility will be substantially as shown on Schedule IV-B and the purchase price for the Facility under the purchase option of the Utility in the Power Purchase Agreement will at all times equal or exceed the Casualty Loss Value of the Facility under the Lease.

(xxii) In Lessor's reasonable judgment, upon Completion the Facility will be a QF.

(xxiii) Neither Lessor's ownership nor Lessee's operation of the Facility will cause Lessor or any of its Affiliates to become subject to regulation by any federal, state or local governmental authority or regulatory commission (including, without limitation, the SEC, the FERC and the PUC) as a "public utility," a "public utility holding company," an "electric utility," an "electric utility holding company" or an "electrical corporation" under any federal, state or local law, rule or regulation (including, without limitation, the PUHCA, the FPA and the State PUC Law).

(xxiv) The Site and the Facility shall be free and clear of all Liens except for Permitted Liens and Lessor shall have received agreements and, if reasonably requested, by Lessor UCC termination statements satisfactory to Lessor whereby each of the following parties releases all of

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AUG 30 1991

its claims, rights, title and interest in and to the Site, the Facility, Lessee, INE and Hydro-Flow: BBB Power Associates, Bingham Engineering, Smith Creek Hydroelectric Group, Baybank Boston, N.A., Dominion Hydroelectric Associates and Dominion Hydroelectric Group.

(xxv) Lessee shall have properly obtained all Governmental Authorizations which are necessary to be obtained by Lessee on or before the Construction Loan Closing Date to construct the Facility and, in Lessor's reasonable opinion, all other Governmental Authorizations necessary to be obtained by Lessee after the Construction Loan Closing Date to construct and to operate the Facility can be obtained by Lessee in satisfactory form and in a timely manner without substantial difficulty or expense.

(xxvi) Lessor shall be reasonably satisfied that the following events will take place on or prior to the respective dates specified in Section 2.02(n) of the Construction Loan Agreement:

(A) Lessee shall control a sufficient portion of the property described in Schedule VI in order for the Facility's penstock to traverse the route shown in such schedule and for the powerhouse and tailrace to be located as shown in such schedule;

(B) Lessee shall have received the 70CFS Water Permit;

(C) Lessee shall have received all easements, permits, licenses and rights-of-way necessary or appropriate to complete construction of, and to operate, the Transmission Line;

(D) The FERC License shall have been amended to encompass the changes contemplated by the FERC License Amendments;

(E) Lessee shall have obtained all available waivers from regulation under the FPA, the PUHCA and State PUC Laws.

(F) Lessee shall have obtained for Lessor an exemption from any requirement that Lessor be named as a joint-licensee on the FERC License;

(G) The FERC Recertification shall have been issued; and

(H) Every Governmental Authorization or approval required in connection with the FERC License Amendments and the FERC Recertification shall have been obtained.

(xxvii) No changes shall have occurred in the Construction Budget, the Base Case Projections, the Construction Schedule or in the business or financial condition or operations of Lessee, any General Partner, Hydro, INE or the Operator that would materially adversely affect such party's ability to perform under the Fundamental Agreements or the Related Documents to which it is a party or that would materially adversely affect the economics or feasibility of constructing and operating the Facility.

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(xxviii) The Facility shall be in material compliance with all Applicable Laws.

(xxix) Lessor shall have received the certificates of insurance required to be maintained under the Construction Contracts, satisfactory in form and substance to Lessor.

(xxx) Each Shareholder shall have delivered to Lessor all certificates or instruments representing or evidencing the "Collateral", (as defined in each Shareholder Pledge and Security Agreement), which certificates or instruments shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank.

(xxxi) Hydro-Flow shall have delivered to Lessor all certificates or instruments representing or evidencing the "Collateral", as defined in the Hydro-Flow Pledge Agreement and the Hydro-Flow Mortgage, which certificates or instruments shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank.

(xxxii) Lessee shall have furnished Lessor a budget in the form of Schedule IV-A hereto (the "Construction Budget") for all anticipated costs to be incurred in connection with the construction and start-up of the Facility, including in such budget all Construction Costs, and including without limitation all interest, taxes and other carrying costs, and such other information as Lessor may reasonably require, together with a balanced statement of sources and uses of proceeds (and any other funds necessary to complete the Facility), broken down as to separate construction phases in a manner satisfactory to Lessor;

(xxxiii) Lessee shall have furnished Lessor the Base Case Projections of operating expenses and cash flow for the Facility as a whole in the form of Schedule IV-B hereto and the Construction Schedule for the Facility in the form of Schedule IV-C hereto, each reasonably satisfactory to Lessor;

(xxxiv) Lessee shall have furnished Lessor surveys of the Fee Property and the Hydro-Flow Parcel, satisfactory in form and substance to Lessor, reasonably current and certified to Lessor by a licensed surveyor satisfactory to Lessor, showing (A) as to the Fee Property and the Hydro-Flow Parcel, the exact location and dimensions thereof, including the location of all means of access thereto and all easements relating thereto and all improvements or other encroachments in or on the Fee Property or the Hydro-Flow Parcel, as appropriate; (B) that the proposed location of the Facility (including the Transmission Line) is in compliance with all applicable building and set-back lines and does not encroach on or interfere with existing easements (whether on, above or below ground); (C) the existing or proposed utility facilities servicing the Facility (including without limitation water, electricity, gas, telephone, sanitary sewer and storm water distribution and detention facilities); (D) that there are no encroachments from the Site extending to adjacent property or from adjacent property onto

4942B 1991

the Site nor any gaps, gores, projections, protrusions or other survey defects; and (E) whether the Site or any portion thereof is located in a flood hazard zone.

(xxxv) Lessor shall have received such evidence of the satisfactory fulfillment of the foregoing conditions of this Section 3(a) as Lessor or Special Counsel may reasonably require, including, without limitation, certificates of officers of Lessee, the General Partners, Hydro-Flow, INE, public officials and others.

(b) First Lease Closing. The obligation hereunder of Lessor to carry out its obligations set forth in Section 1(a) on the First Lease Closing Date and to enter into the Revolving Loan Agreement is subject to the satisfaction of the obligations of Lessee set forth in Section 1(b), the obligations of each General Partner set forth in Section 1(c), the obligations of Hydro-Flow set forth in Section 1(d) and the obligations of INE set forth in Section 1(e) and to fulfillment of the following conditions to the satisfaction of Lessor and Special Counsel on or prior to the First Lease Closing Date:

(i) The following Fundamental Lease Agreements shall have been duly authorized, executed and delivered to Lessor and shall be in full force and effect on the First Lease Closing Date:

- (A) this Financing Agreement;
- (B) the Lessee Fee Mortgage;
- (C) the Lessee Easement Mortgage;
- (D) each General Partner Pledge and Security Agreement;
- (E) each Shareholder Pledge Agreement;
- (F) the Hydro-Flow Pledge Agreement;
- (G) the Hydro-Flow Mortgage;
- (H) the INE Security Agreement;
- (I) the Intercreditor Agreements;
- (J) the Agreement of Understanding;
- (K) the Assignment Agreement;
- (L) the Construction Escrow Agreement;
- (M) the Lease;
- (N) the Ground Lease;

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- (O) the Escrow Fund Agreement;
- (P) the Tax Indemnity Agreement;
- (Q) the Lease Payment Reserve Agreement;
- (R) the Revolving Loan Agreement;
- (S) the Revolving Note;
- (T) the Operation and Maintenance Agreement; and
- (U) the Transmission Line Transfer Agreement.

(ii) The following Related Lease Documents shall not have been amended without Lessor's prior written consent and shall be in full force and effect:

- (A) the Power Purchase Agreement;
- (B) the Wheeling Agreement;
- (C) the NLI Agreement;
- (D) the Water Permits delivered to Lessor prior to the First Lease Closing Date;
- (E) the FERC License (other than the amendments which are FERC License Amendments);
- (F) the Permits delivered to Lessor prior to the First Lease Closing Date;
- (G) the Collection Agreement;
- (H) the Performance Bonds; and
- (I) the Construction Contracts.

(iii) Lessor shall have received original or conformed copies, identified to its satisfaction, of the following Related Lease Documents, each in form satisfactory to Lessor:

- (A) the Water Permits not delivered to Lessor on the Construction Loan Closing Date;
- (B) the Permits not delivered to Lessor on the Construction Loan Closing Date;
- (C) the BPA Construction Reimbursement Agreement;

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(D) the BPA O&M Agreement; and

(E) the Breaker Agreement.

(iv) Lessor shall have received the Consent to Assignment of each party listed in Schedule VII-B with respect to the Related Lease Documents to which they are a party.

(v) The Consents to Assignment received by Lessor in connection with the Construction Loan Closing and in connection with each Construction Loan have not been amended, revoked or terminated, except to the extent authorized by Lessor.

(vi) Lessor shall have received an executed Certificate of Delivery and Acceptance as contemplated by the Lease with respect to the Site and all of the Facility other than the Second Large Turbine.

(vii) Financing statements with respect to the Overall Transaction shall have been filed in all places which are necessary or appropriate, in the opinion of Lessor and Special Counsel, to perfect the interest of Lessor in all the Collateral, and the Mortgage and appropriate fixture filings shall have been filed in the Office of the County Recorder of Boundary County, Idaho.

(viii) The Title Company shall have issued to Lessor on the First Lease Closing Date a rewrite of the Project Policies in a form satisfactory to Lessor and Special Counsel, which rewrite shall (A) insure the liens of the Mortgages in an amount not less than the sum of (1) the maximum Casualty Loss Value based on the Initial Payment, (2) the unused portion of the Construction Loan Commitment and (3) the aggregate amount of all Construction Loans outstanding immediately after the First Lease Closing Date, (B) also insure Lessor's leasehold interest in the Site, (C) if not previously provided, provide ALTA extended lenders' coverage with respect to the Easements, subject only to a survey exception acceptable to Lessor, and (D) include such other endorsements as Lessor shall reasonably request.

(ix) Lessor shall have received certificates of such insurance as Lessee is required to maintain pursuant to the Lease and copies of the insurance policy endorsements Lessee is required to provide to Utility under the Power Purchase Agreement.

(x) Lessor shall have received a certificate of the respective secretary or an assistant secretary of each of the General Partners, dated the First Lease Closing Date, as to (A) such General Partner's charter or articles of incorporation and bylaws, (B) the incumbency and specimen signatures of those officers of such General Partner executing the Fundamental Lease Agreements and the Related Lease Documents and the other instruments, documents and agreements contemplated herein and therein on behalf of the General Partner and (C) the corporate authority of such General Partner and such officers to execute and deliver such documents on behalf of the General Partner.

(xi) Lessor shall have received a certificate of the secretary or assistant secretary of each General Partner, dated the First Lease Closing Date, as to (A) Lessee's partnership agreement, (B) the incumbency and specimen signatures of those officers of such General Partner executing the Fundamental Lease Agreements, the Related Lease Documents and the other documents, instruments and agreements contemplated herein and therein on behalf of such General Partner for Lessee and (C) the partnership authority of such General Partner and such officers to execute and deliver such documents on behalf of such General Partner for Lessee.

(xii) Lessor shall have received a certificate of the respective secretary or an assistant secretary of each of Hydro-Flow and INE, dated the First Lease Closing Date, as to (A) such party's charter or articles of incorporation and bylaws, (B) the incumbency and specimen signatures of those officers of Hydro-Flow and INE executing the Fundamental Lease Agreements and the Related Lease Documents and the other instruments, documents and agreements contemplated herein and therein on behalf of Hydro-Flow and INE and (C) the corporate authority of such officers to execute and deliver such documents on behalf of Hydro-Flow and INE.

(xiii) Special Counsel shall have received copies certified not earlier than seven (7) days prior to the First Lease Closing Date of the organizational documents of Lessee and each General Partner.

(xiv) Special Counsel shall have received copies certified not earlier than seven (7) days prior to the First Lease Closing Date by the Secretary of State of Idaho and Utah evidencing the good standing of each General Partner, Hydro-Flow and INE in its state of incorporation or organization, the compliance by each of the General Partners, Hydro-Flow and INE with the franchise tax requirements of its state of incorporation and the qualification of Lessee, each General Partner and Hydro-Flow to do business in Idaho as a foreign corporation or a foreign general partnership, as appropriate.

(xv) The representations and warranties of Lessee, each General Partner, Hydro-Flow and INE contained herein, in the Fundamental Lease Agreements and in the Related Lease Documents and in any certificate delivered pursuant thereto and hereto shall be true and correct on and as of the First Lease Closing Date with the same effect as though made on and as of the First Lease Closing Date; on the First Lease Closing Date each Fundamental Lease Agreement and each Related Lease Document shall be in full force and effect and there shall be no default thereunder or hereunder nor shall there have occurred any event which, but for the lapse of time or the giving of notice or both, would be such a default; and Lessor shall have received from Lessee, each General Partner, Hydro-Flow and INE a certificate to such effect dated the First Lease Closing Date signed by an officer of each General Partner on behalf of Lessee and an officer of such General Partner, Hydro-Flow and INE, as the case may be.

(xvi) Lessor shall have received the following signed opinions, each dated the First Lease Closing Date and from counsel reasonably

AUG 09 1991

satisfactory to Lessor: opinion of counsel for Lessee satisfactory to Lessor, in the form of Exhibit W-1 hereto, opinion of counsel for each General Partner in the form of Exhibit W-2 hereto, opinion of counsel for Hydro-Flow in the form of Exhibit W-3 hereto, and opinion of counsel for INE in the form of Exhibit W-4 hereto.

(xvii) Lessor shall have received an opinion of Special Counsel dated the First Lease Closing Date, satisfactory in form and substance to Lessor, as to the "tax assumptions" referred to in the Tax Indemnity Agreement.

(xviii) Lessor shall have received a signed opinion of FERC Counsel satisfactory in form and substance to Lessor and Special Counsel as to the FERC License, the FERC License Amendments, the FERC Recertification and the Facility having been built in accordance with the FPA.

(xix) There shall have been no change in any law regulating investments to which Lessor may be subject which shall result in the purchase of the Facility by Lessor on the First Lease Closing Date not qualifying as a legal investment.

(xx) In Lessor's reasonable judgment, based upon its review of the Plans and Specifications, the Construction Budget, the Construction Schedule, the Construction Contracts, related performance and schedule guarantees and the resources and capabilities of vendors and contractors supplying goods and services to the Facility, Completion can be obtained on or before March 31, 1990, for an aggregate amount less than or equal to \$21,750,000.

(xxi) Neither Lessor's ownership nor Lessee's operation of the Facility will cause Lessor or any of its Affiliates to become subject to regulation by any federal, state or local governmental authority or regulatory commission (including, without limitation, the SEC, the FERC and the PUC) as a "public utility," a "public utility holding company," an "electric utility," an "electric utility holding company" or an "electrical corporation" under any federal, state or local law, rule or regulation (including, without limitation, the PUHCA, the FPA and the State PUC Law).

(xxii) Lessor shall have received an acknowledgement from the Project Manager certifying that:

(A) Substantial Completion has occurred;

(B) Completion is capable of being achieved by the earlier of (1) ninety (90) days following the First Lease Closing Date or (2) March 31, 1990, for a cost not in excess of any funds available to Lessee with respect thereto;

(C) the Low-Flow Performance Tests for the Facility (except for the Second Large Turbine) have been satisfactorily performed and passed;

(D) the Facility (except for the Second Large Turbine) is capable of passing the High-Flow Performance Tests;

(E) all Governmental Authorizations necessary to operate the Facility on the First Lease Closing Date have been properly obtained and, in the Project Manager's opinion, all Governmental Authorizations necessary to be obtained after the First Lease Closing Date will be issued in satisfactory form and in a timely manner without substantial difficulty or expense; and

(F) the Facility (except for the Second Large Turbine) has been built in accordance with all Applicable Law.

(xxiii) Lessor shall have received evidence satisfactory to it that the Facility and the Site are free and clear of all vendor's, mechanic's or materialmen's liens or an endorsement to the Project Policies insuring that the Facility and the Site are free and clear of all such liens.

(xxiv) Lessor shall have received the Appraisal confirmed as of a date not more than one (1) month prior to the First Lease Closing Date.

(xxv) The Facility shall be a QF.

(xxvi) Lessee shall have properly obtained all Governmental Authorizations which are necessary to be obtained by Lessee on or before the First Lease Closing Date to complete construction of and to operate the Facility, and, in Lessor's reasonable opinion, all Governmental Authorizations necessary to be obtained by Lessee after the First Lease Closing Date to complete construction of and to operate the Facility can be obtained by Lessee in satisfactory form and in a timely manner without substantial difficulty or expense.

(xxvii) Lessee shall have provided evidence satisfactory to Lessor that the following events have taken place prior to the First Lease Closing Date:

(A) Lessee shall control a sufficient portion of the property described in Schedule VI in order for the Facility's penstock to traverse the route shown in said Schedule and for the powerhouse and tailrace to be located as shown in said Schedule;

(B) Lessee shall have received the 70CFS Water Permit;

(C) Lessee shall have received all easements, permits, licenses and rights-of-way necessary or appropriate to complete construction of, and to operate, the Transmission Line;

(D) The FERC License shall have been amended to encompass the changes contemplated by the FERC License Amendments;

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AUG 08 1991

(E) Lessee shall have obtained all available waivers from regulation under the FPA, the PUHCA and State PUC Laws.

(F) Lessee shall have obtained for Lessor an exemption from any requirement that Lessor be named as joint-licensee on the FERC License;

(G) The FERC Recertification shall have been issued; and

(H) Every governmental authorization or approval required in connection with the FERC License Amendments and the FERC Recertification has been obtained.

(xxviii) No changes shall have occurred in the Construction Budget, the Base Case Projections, the Construction Schedule or in the business or financial condition or operations of Lessee, any General Partner, Hydro, INE or the Operator that would materially adversely affect such party's ability to perform under the Fundamental Agreements or the Related Documents to which it is a party or that would materially adversely affect the economics or feasibility of constructing and operating the Facility.

(xxix) The Facility shall be in material compliance with all Applicable Law.

(xxx) Substantial Completion shall have occurred and (except for the Second Large Turbine) the Facility will not require improvements, modifications or additions in order to be rendered complete for its intended use by Lessee. The Facility will have been constructed to conform to all Plans and Specifications and to conform to all requirements of the Power Purchase Agreement and the FERC License, as required by Article 303 of the FERC License.

(xxxi) Lessee shall have obtained a non-disturbance and attornment agreement from the holder of each mortgage, deed of trust or other encumbrance on the land on which each Easement is located which is superior in right to such Easement, which agreement shall be in form and substance reasonably satisfactory to Lessor.

(xxxii) Lessee shall have furnished Lessor as built surveys of the Fee Property and the Hydro-Flow Parcel satisfying the requirements of Section 3(a)(xxxiv) and otherwise acceptable to Lessor and surveys of the Transmission Line and the Easements, satisfactory in form and substance to Lessor, reasonably current and certified to Lessor by a licensed surveyor satisfactory to Lessor, showing (A) the exact location and dimensions thereof, including the location of all means of access thereto, and all improvements or other encroachments in or on the Easements; (B) that the location of the Transmission Line is in compliance with all applicable building and set-back lines and does not encroach on or interfere with existing easements (whether on, above or below ground); and (C) such other matters as Lessor may reasonably request.

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FEB 29 1991

(xxxiii) Lessor shall have received such evidence of the satisfactory fulfillment of the foregoing conditions of this Section 3(b) as Lessor or Special Counsel may reasonably require, including, without limitation, certificates of officers of Lessee, the General Partners, Hydro-Flow and INE, public officials and others.

(c) Second Lease Closing. The obligation hereunder of Lessor to carry out its obligations set forth in Section 1(a) on the Second Lease Closing Date is subject to the satisfaction of the obligations of Lessee set forth in Section 1(b), the obligations of each General Partner set forth in Section 1(c), the obligations of Hydro-Flow set forth in Section 1(d) and the obligations of INE set forth in Section 1(e) and to fulfillment of the following conditions to the satisfaction of Lessor and Special Counsel on or prior to the Second Lease Closing Date:

(i) Lessor shall have received an executed Certificate of Delivery and Acceptance with respect to the Second Large Turbine as contemplated by the Lease.

(ii) The Title Company shall have issued to Lessor on the Second Lease Closing Date a date-down of the rewrite of the Project Policies to the Second Lease Closing Date in a form satisfactory to Lessor and Special Counsel, which rewrite shall insure the liens of the Mortgages in an amount not less than the maximum Casualty Loss Value based on Lessor's Cost of the Facility, including the Second Large Turbine, and shall include such other endorsements as Lessor shall reasonably request.

(iii) Lessor shall have received a certificate of the respective secretary or an assistant secretary of each of the General Partners, dated the Second Lease Closing Date, as to (A) such General Partner's charter or articles of incorporation and bylaws, (B) the incumbency and specimen signatures of those officers of such General Partner executing the Fundamental Lease Agreements and the Related Lease Documents and the other instruments, documents and agreements contemplated herein and therein on behalf of the General Partner and (C) the corporate authority of such General Partner and such officers to execute and deliver such documents on behalf of the General Partner.

(iv) Lessor shall have received a certificate of the secretary or assistant secretary of each General Partner, dated the Second Lease Closing Date, as to (A) Lessee's partnership agreement, (B) the incumbency and specimen signatures of those officers of such General Partner executing the Fundamental Lease Agreements, the Related Lease Documents and the other documents, instruments and agreements contemplated herein and therein on behalf of such General Partner for Lessee and (C) the partnership authority of such General Partner and such officers to execute and deliver such documents on behalf of such General Partner for Lessee.

(v) Lessor shall have received a certificate of the respective secretary or an assistant secretary of each of Hydro-Flow and INE, dated the Second Lease Closing Date, as to (A) such party's charter or articles of

AUG 09 1981

incorporation and bylaws, (B) the incumbency and specimen signatures of those officers of Hydro-Flow and INE executing the Fundamental Lease Agreements and the Related Lease Documents and the other instruments, documents and agreements contemplated herein and therein on behalf of Hydro-Flow and INE and (C) the corporate authority of such officers to execute and deliver such documents on behalf of Hydro-Flow and INE.

(vi) Special Counsel shall have received copies certified not earlier than seven (7) days prior to the Second Lease Closing Date of the organizational documents of Lessee and each General Partner.

(vii) Special Counsel shall have received copies certified not earlier than seven (7) days prior to the Second Lease Closing Date by the Secretary of State of Idaho and Utah evidencing the good standing of each General Partner, Hydro-Flow and INE in its state of incorporation or organization, the compliance by each of the General Partners, Hydro-Flow and INE with the franchise tax requirements of its state of incorporation and the qualification of Lessee, each General Partner and Hydro-Flow to do business in Idaho as a foreign corporation or a foreign general partnership, as appropriate.

(viii) The representations and warranties of Lessee, each General Partner, Hydro-Flow and INE contained herein, in the Fundamental Lease Agreements and in the Related Lease Documents and in any certificate delivered pursuant thereto and hereto shall be true and correct on and as of the Second Lease Closing Date with the same effect as though made on and as of the Second Lease Closing Date; on the Second Lease Closing Date each Fundamental Lease Agreement and Related Lease Document shall be in full force and effect and there shall be no default thereunder or hereunder nor shall there have occurred any event which, but for the lapse of time or the giving of notice or both, would be such a default; and Lessor shall have received from Lessee, each General Partner, Hydro-Flow and INE a certificate to such effect dated the Second Lease Closing Date signed by an officer of each General Partner on behalf of Lessee and an officer of such General Partner, Hydro-Flow and INE, as the case may be.

(ix) Lessor shall have received the signed opinion of counsel for Lessee reasonably satisfactory to Lessor dated the Second Lease Closing Date in the form of Exhibit W-1 hereto,

(x) Lessor shall have received an opinion of Special Counsel dated the Second Lease Closing Date, satisfactory in form and substance to Lessor, as to the "tax assumptions" referred to in the Tax Indemnity Agreement.

(xi) Lessor shall have received a signed opinion of FERC Counsel satisfactory in form and substance to Lessor and Special Counsel as to the FERC License, the FERC Recertification and the Facility having been built in accordance with the FPA.

(xii) There shall have been no change in any law regulating investments to which Lessor may be subject which shall result in the purchase

of the Second Large Turbine by Lessor on the Second Lease Closing Date not qualifying as a legal investment.

(xiii) Lessor shall have received an acknowledgement from the Project Manager certifying that:

(A) Completion has occurred;

(B) the Low-Flow Performance Tests for the Facility (including the Second Large Turbine) have been satisfactorily performed and passed;

(C) the Facility (including the Second Large Turbine) is capable of passing the High-Flow Performance Tests;

(D) all Governmental Authorizations necessary to operate the Facility on the Second Lease Closing Date have been properly obtained and, in the Project Manager's opinion, all Governmental Authorizations necessary to be obtained after the Second Lease Closing Date will be issued in satisfactory form and in a timely manner without substantial difficulty or expense; and

(E) the Facility has been built in accordance with all Applicable Law.

(xiv) Lessor shall have received evidence satisfactory to it that the Facility and the Site are free and clear of all vendor's, mechanic's or materialmen's liens or an endorsement to the Title Policy insuring that the Facility and the Site are free and clear of all such liens.

(xv) Lessee shall have properly obtained all Governmental Authorizations which are necessary to be obtained by Lessee on or before the Second Lease Closing Date to complete construction of and to operate the Facility and, in Lessor's reasonable opinion, all Governmental Authorizations necessary to be obtained by Lessee after the Second Lease Closing Date to complete construction of and to operate the Facility can be obtained by Lessee in satisfactory form and in a timely manner without substantial difficulty or expense.

(xvi) No changes shall have occurred in the Base Case Projections or in the business or financial condition or operations of Lessee, any General Partner, Hydro, INE or the Operator that would materially adversely affect such party's ability to perform under the Fundamental Agreements or the Related Documents to which it is a party or that would materially adversely affect the economics or feasibility of operating the Facility.

(xvii) The Facility shall be in material compliance with all Applicable Law.

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JUN 10 1991

(xviii) Completion shall have occurred and the Facility will not require improvements, modifications or additions in order to be rendered complete for its intended use by Lessee. The Facility will have been constructed to conform to all engineering and warranty specifications and to conform to all requirements of the Power Purchase Agreement and the FERC License.

(xix) Lessor shall have received such evidence of the satisfactory fulfillment of the foregoing conditions of this Section 3(c) as Lessor or Special Counsel may reasonably require, including, without limitation, certificates of officers of Lessee, the General Partners, Hydro-Flow and INE, public officials and others.

Section 4. Representations and Warranties.

(a) Lessor. Lessor represents and warrants to Lessee on the Construction Loan Closing date, the First Lease Closing Date and the Second Lease Closing Date that:

(i) Lessor is acquiring the Notes for its own account for investment and not with a view to the distribution or resale thereof, subject to any requirement of law that the disposition of the Notes be at all times within Lessor's control;

(ii) Lessor understands that the Notes have not been registered under the Securities Act of 1933, as amended, and that the Notes must be held indefinitely unless subsequent disposition thereof is registered under said Act or is a transaction exempt from registration;

(iii) Lessor is making the Construction Loans and Revolving Loans and is buying the Facility with its general assets and no funds used to make such Loans or buy the Facility will be furnished directly or indirectly out of the assets of or in connection with any employee benefit plan (or its related trust) as defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended; and

(iv) Lessor is not and will not take any action to become "a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)" within the meaning of 18 CFR §292.206 as in effect on the date hereof.

(b) Lessee. Lessee represents and warrants to Lessor (1) on the Construction Loan Closing Date and on the date of each Construction Loan (provided, however, that, where reference is made in this Section 4(b) to the Fundamental Agreements or the Related Documents, such representations and warranties are made only with respect to the Fundamental Construction Agreements and the Related Construction Documents, as the case may be) and (2) on the First Lease Closing Date, the Second Lease Closing Date and the date of each Revolving Loan (provided, however, that where reference is made in this Section 4(b) to the Fundamental Agreements or the Related Documents,

RECEIVED
AUG 29 1991

such representations and warranties are made only with respect to the Fundamental Lease Agreements and the Related Lease Documents, as the case may be), that:

(i) Lessee is a general partnership duly organized, validly existing and in good standing under the laws of the State of Utah, with its principal place of business (as such terms is used in the Utah Uniform Commercial Code) in Salt Lake City, Utah, and it has no place of business outside of Utah and does not do and has not done business under any name other than Smith Falls Hydropower;

(ii) Lessee has full power and authority to execute, deliver and perform this Financing Agreement and the other Fundamental Agreements and the Related Documents to which it is a party (the "Lessee Documents") and to own or lease its properties and to carry on its business as now conducted and as contemplated by the Construction Loan Agreement and the Lease;

(iii) This Financing Agreement has been duly authorized, executed and delivered by Lessee and, assuming due authorization, execution and delivery by the other parties hereto, constitutes the legal, valid and binding obligations of Lessee enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

(iv) The Lessee Documents have each been duly authorized, executed and delivered by Lessee and, upon such execution and delivery and assuming due authorization, execution and delivery by the other parties thereto, will constitute the legal, valid and binding obligations of Lessee enforceable against it in accordance with the terms thereof and hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

(v) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by Lessee of the Lessee Documents or for the installation, use and maintenance of the Facility;

(vi) Neither the execution, delivery or performance by Lessee of the Lessee Documents, nor compliance with the terms and provisions thereof or hereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, of Lessee or any order, writ, injunction or decree of any court or governmental authority against Lessee or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which Lessee is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the

AUG 09 1991

imposition of any lien upon any of its properties other than the liens in favor of Lessor under the Fundamental Agreements;

(vii) There are no suits or proceedings pending or, to the knowledge of Lessee, threatened in any court or before any regulatory commission, board or other governmental administrative agency against or affecting Lessee which might have a material adverse effect on the business or operations of Lessee, financial or otherwise, or on its ability to fulfill its obligations under the Lessee Documents;

(viii) Pursuant to the Bills of Sale and the Ground Lease, Lessor will acquire on the First Lease Closing Date or the Second Lease Closing Date, as applicable, legal and equitable title to the Facility and a leasehold interest in the Site, respectively, and such title and leasehold interest will be free of all Liens except Liens of materialmen, mechanics and workmen for which endorsements have been issued by the Title Company;

(ix) Neither Lessee, any predecessor in interest nor anyone authorized to act on its behalf has directly or indirectly offered any interest in the Facility or the Site for sale to, or solicited any offer to acquire any of the same from, anyone other than Lessor and no more than thirty-five (35) other "accredited investors" within the meaning of Regulation D of the Securities Act of 1933, as amended, or investors that were otherwise sufficiently knowledgeable and experienced in financial and business matters to be capable of evaluating the merits and risks of such an investment and had the opportunity to ask responsible officers of Lessee, INE and Hydro-Flow any questions they wished to ask and to request and obtain any information they wished to review in connection with such investment;

(x) Neither (A) the Lessee Documents, (B) the balance sheets of Lessee as of December 31, 1988, and the related statements of operations of Lessee for December 31, 1988 nor (C) any document or certificate or, taken together, other written material furnished to Lessor by or on behalf of Lessee pursuant hereto or in connection herewith, contains or will contain, as of its date, any untrue statement of a material fact or omits or will omit to state, as of its respective date, a material fact regarding Lessee or the Facility necessary in order to make the statements contained therein and herein regarding Lessee or the Facility not misleading;

(xi) Lessee does not know of any fact (other than matters of a general application to the hydroelectric energy industry and matters which have been disclosed to Lessor by Lessee in writing on or before the Construction Loan Closing Date) which materially adversely affects or, so far as Lessee can now foresee, involves any substantial probability of materially adversely affecting the business, operations, properties or financial condition of Lessee or the performance of Lessee of its obligations under the Lessee Documents;

(xii) Neither the execution, delivery or performance by Lessee of the Lessee Documents, nor any transaction contemplated by the Lessee

Documents, violates any Applicable Law concerning sale/leasebacks, fraudulent conveyances, bulk sales or the vendor-in-possession doctrine;

(xiii) Other than the payments by Lessor to Dimark of one percent (1%) of Lessor's Cost, no broker's or finder's fees or commissions are, will or may become payable arising out of any actions or omissions to act on the part of Lessee or any of its Affiliates in connection with the Overall Transaction;

(xiv) Lessee has filed or caused to be filed all federal, state and local sales, use, property and income tax returns which are required to be filed by it and has paid or caused to be paid all taxes shown to be due and payable on such returns prior to the date that the same are delinquent or (except to the extent being contested in good faith and for the payment of which adequate reserves have been provided) due and payable on any assessment received by Lessee;

(xv) All necessary Governmental Authorizations (including, without limitation, those which may be provisional or subject to the continued operation of the Facility) required by the FERC, the PUC, the EPA, the Boundary County Water Pollution Control District and any other regulatory or governmental authority having jurisdiction with respect to the construction, ownership, use or operation of the Facility and the Site and with respect to the transactions contemplated by the Fundamental Agreements and the Related Documents have been validly obtained (in each case subject to any periodic or occasional renewal or reissuance of such Governmental Authorizations in the normal course of business), such Governmental Authorizations are listed in Schedule V and are in full force and effect and constitute or will constitute sufficient authorization for such ownership, use, operation and transactions, and there are no actions or proceedings pending or, to Lessee's knowledge, threatened that could result in a revocation, termination, failure to issue or adverse modification or amendment of any such Governmental Authorization;

(xvi) No release, emission or discharge into the environment of hazardous substances, as defined under CERCLA, or hazardous waste as defined under the RCRA, or air pollutants as defined under the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, or pollutants as defined under the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended, has in the past or is presently occurring in excess of federal, state or local permitted releases or reportable quantities, or other concentrations, standards or limitations under the foregoing laws or any state law governing the protection of health and the environment or under any other federal, state or local laws or regulations in connection with the construction, fuel supply, power generation and transmission or waste disposal, or any other operations or processes relating to the Facility or the Site; the Facility and Lessee's use and proposed use thereof are not and will not be in violation of any environmental, occupational safety and health or other law now in effect;

(xvii) Neither Lessee nor any Person for whose conduct Lessee is responsible ever, except in accordance with Applicable Law, (A) owned, occupied or operated a site or structure on or in which any hazardous

AUG 09 1991

substance was or is stored, transported or disposed of, (B) transported or arranged for the transportation of any hazardous substance or (C) caused or has been held legally responsible for any release or threatened release of any hazardous substance, or received notification from any federal, state or other governmental authority of any release or threatened release of, or to pay the costs or expenses incurred for which Lessee is or may be responsible with respect to the release of, any hazardous substance from any site or structure owned, occupied or operated by Lessee or by any Person for whose conduct Lessee is or may be responsible;

(xviii) Based on the assumption that Lessor is not and will take no action to become "a person primarily engaged in the generation or sale of electrical power (other than electrical power solely from cogeneration facilities or small power production facilities)" within the meaning of 18 CFR §292.206, neither Lessor's ownership nor Lessee's operation of the Facility will cause Lessor or any of its Affiliates to become subject to regulation by any federal, state or local governmental authority or regulatory commission (including, without limitation, the SEC, the FERC and the PUC) as a "public utility," a "public utility holding company," an "electric utility," an "electric utility holding company" or an "electrical corporation" under any federal, state or local law rule or regulation (including, without limitation, the PUHCA, the FPA and the State PUC Law);

(xix) Lessee is and will remain a general partnership with the single purpose of operating the Facility, and it does not and will not own any securities of any other person;

(xx) On or before the First Lease Closing Date, the Facility will be a QF and the FERC Recertification will have occurred;

(xxi) The Power Purchase Agreement is a complete statement of Lessee's agreement with the Utility regarding the sale of electricity generated by the Facility and no other agreement with any other governmental or regulatory authority is required for the sale of electricity generated by the Facility;

(xxii) Except to the extent the Consents to Assignment listed on Schedule VII-B which have not been received are necessary for an effective assignment of the respective Related Document, all of the Related Documents have been effectively assigned to Lessee; and

(xxiii) Lessee has no ERISA Plans.

(c) General Partner. Each General Partner for itself represents and warrants to Lessor (1) on the Construction Loan Closing Date and on the date of each Construction Loan Advance (provided, however, that, where reference is made in this Section 4(c) to the Fundamental Agreements or the Related Documents, such representations and warranties are made only with respect to the Fundamental Construction Agreements and the Related Construction Documents, as the case may be) and (2) on the First Lease Closing Date, the Second Lease Closing Date and the date of each Revolving Loan

(provided, however, that where reference is made in this Section 4(c) to the Fundamental Agreements or the Related Documents, such representations and warranties are made only with respect to the Fundamental Lease Agreements and the Related Lease Documents, as the case may be), that:

(i) Such General Partner is a corporation duly organized, validly existing and in good standing under the laws of the State of Utah;

(ii) Such General Partner has full power and authority to execute, deliver and perform this Financing Agreement, such General Partner's General Partner Pledge and Security Agreement and all other instruments, documents and agreements contemplated hereby or thereby (the "General Partner Documents") and to own or lease its properties and to carry on its business as now conducted, and the General Partners together have full power and authority to execute, deliver and perform the Lessee Documents on behalf of Lessee;

(iii) The General Partner Documents have been duly authorized, executed and delivered by such General Partner and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of such General Partner enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

(iv) The General Partner Documents have been duly executed and delivered by such General Partner and the Lessee Documents have each been duly authorized by Lessee and will be executed and delivered by such General Partner on behalf of Lessee; assuming due authorization, execution and delivery by the other parties thereto, the General Partner Documents constitute and, upon execution and delivery by the General Partners on behalf of Lessee, the Lessee Documents will each constitute, the legal, valid and binding obligation of each General Partner and of Lessee, as appropriate, enforceable against it in accordance with the terms thereof and hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

(v) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by such General Partner of the General Partner Documents on its own behalf or of the Lessee Documents on behalf of Lessee;

(vi) Neither the execution, delivery or performance by such General Partner of the General Partner Documents on its own behalf or the Lessee Documents on behalf of Lessee, nor compliance with the terms and provisions hereof or thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents of such General Partner or any order, writ, injunction or decree of any court or governmental

authority against such General Partner or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which such General Partner is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties other than the liens in favor of Lessor under the Fundamental Agreements;

(vii) There are no suits or proceedings pending or, to the knowledge of such General Partner, threatened in any court or before any regulatory commission, board or other governmental administrative agency against or affecting such General Partner which might have a material adverse effect on the business or operations of such General Partner, financial or otherwise, or on its ability to fulfill its obligations under the General Partner Documents;

(viii) Neither such General Partner nor anyone authorized to act on its behalf has directly or indirectly offered any interest in the Facility or the Site for sale to, or solicited any offer to acquire any of the same from, anyone other than Lessor and no more than thirty-five (35) other "accredited investors" within the meaning of Regulation D of the Securities Act of 1933, as amended, or investors that were otherwise sufficiently knowledgeable and experienced in financial and business matters to be capable of evaluating the merits and risks of such an investment and had the opportunity to ask responsible officers of Lessee, INE and Hydro-Flow any questions they wished to ask and to request and obtain any information they wished to review in connection with such investment;

(ix) Such General Partner does not know of any fact (other than matters of a general application to the hydroelectric energy industry and matters which have been disclosed to Lessor by Lessee in writing on or before the Construction Loan Closing Date) which materially adversely affects or, so far as such General Partner can now foresee, will materially adversely affect the business, operations, properties or financial condition of such General Partner or Lessor or the performance of such General Partner of its obligations under this Financing Agreement or of Lessee of its obligations under the Lessee Documents;

(x) Neither the execution, delivery or performance by such General Partner of this Financing Agreement, nor any transaction contemplated by this Financing Agreement, violates any Applicable Law concerning sale/leasebacks, fraudulent conveyances, bulk sales or the vendor-in-possession doctrine;

(xi) Such General Partner has filed or caused to be filed all federal, state and local sales, use, property and income tax returns which are required to be filed by it and has paid or caused to be paid all taxes shown to be due and payable on such returns prior to the date that the same are delinquent or (except to the extent being contested in good faith and for the payment of which adequate reserves have been provided) due and payable on any assessment received by such General Partner;

(xii) All necessary Governmental Authorizations (including, without limitation, those which may be provisional or subject to the continued operation of the Facility) required as of the date hereof by the FERC, the PUC, the EPA and any other regulatory or governmental authority having jurisdiction with respect to the construction, ownership, use or operation of the Facility and the Site and with respect to the transactions contemplated by the Fundamental Agreements and the Related Documents have been validly obtained (in each case subject to any periodic or occasional renewal or reissuance of such Governmental Authorizations in the normal course of business), such Governmental Authorizations are listed in Schedule V and are in full force and effect and constitute or will constitute sufficient authorization for such ownership, use, operation and transactions, and there are no actions or proceedings pending or, to such General Partner's knowledge, threatened that could result in a revocation, termination or adverse modification or amendment of any such Governmental Authorization; and

(xiii) Except to the extent the Consents to Assignment listed on Schedule VII-B which have not been received are necessary for an effective assignment of the respective Related Document, all of the Related Documents have been effectively assigned to Lessee; and

(xiv) Such General Partner has no ERISA Plans.

(d) Hydro-Flow. Hydro-Flow represents and warrants to Lessor (1) on the Construction Loan Closing Date and on the date of each Construction Loan (provided, however, that, where reference is made in this Section 4(d) to the Fundamental Agreements or the Related Documents, such representations and warranties are made only with respect to the Fundamental Construction Agreements and the Related Construction Documents, as the case may be) and (2) on the First Lease Closing Date, the Second Lease Closing Date and the date of each Revolving Loan (provided, however, that where reference is made in this Section 4(d) to the Fundamental Agreements or the Related Documents, such representations and warranties are made only with respect to the Fundamental Lease Agreements and the Related Lease Documents, as the case may be), that:

(i) Hydro-Flow is a corporation duly organized, validly existing and in good standing under the laws of the State of Utah and is in good standing and qualified to do business in the State of Idaho;

(ii) Hydro-Flow has full power and authority to execute, deliver and perform this Financing Agreement, the Hydro-Flow Pledge Agreement, the Hydro-Flow Mortgage, the Assignment Agreement and the documents, instruments and agreements contemplated hereby and thereby (the "Hydro-Flow Documents") and to own or lease its properties and to carry on its business as now conducted;

(iii) The Hydro-Flow Documents have been duly authorized, executed and delivered by Hydro-Flow and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding obligation of Hydro-Flow enforceable against it in

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accordance with the terms thereof and hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

(iv) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by Hydro-Flow of the Hydro-Flow Documents or the pledge by Hydro-Flow of the Collateral pursuant to the Hydro-Flow Pledge Agreement and the Hydro-Flow Mortgage;

(v) Neither the execution, delivery or performance by Hydro-Flow of the Hydro-Flow Documents nor compliance with the terms and provisions hereof and thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, of Hydro-Flow or any order, writ, injunction or decree of any court or governmental authority against Hydro-Flow or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which Hydro-Flow is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties other than the liens in favor of Lessor under the Hydro-Flow Documents;

(vi) There are no suits or proceedings pending or, to the knowledge of Hydro-Flow, threatened in any court or before any regulatory commission, board or other governmental administrative agency against or affecting Hydro-Flow which might have a material adverse effect on the business or operations of Hydro-Flow, financial or otherwise, or on its ability to fulfill its obligations under the Hydro-Flow Documents;

(vii) Neither Hydro-Flow nor anyone authorized to act on its behalf has directly or indirectly offered any interest in the Facility or the Site for sale to, or solicited any offer to acquire any of the same from, anyone other than Lessor and no more than thirty-five (35) other "accredited investors" within the meaning of Regulation D of the Securities Act of 1933, as amended, or investors that were otherwise sufficiently knowledgeable and experienced in financial and business matters to be capable of evaluating the merits and risks of such an investment and had the opportunity to ask responsible officers of Lessee, INE and Hydro any questions they wished to ask and to request and obtain any information they wished to review in connection with such investment;

(viii) Hydro-Flow does not know of any fact (other than matters of a general application to the hydroelectric or alternative energy industries and matters which have been disclosed to Lessor by Lessee or Hydro-Flow on or before the Construction Loan Closing Date) which materially adversely affects or, so far as Hydro-Flow can now foresee, will materially adversely affect the business, operations, properties or financial condition of Hydro-Flow or Lessor or the performance of Hydro-Flow of its obligations under the Hydro-Flow Documents;

(ix) Neither the execution, delivery or performance by Hydro-Flow of the Hydro-Flow Documents, nor any transaction contemplated by the Hydro-Flow Documents, violates any Applicable Law concerning sale/leasebacks, fraudulent conveyances, bulk sales or the vendor-in-possession doctrine;

(x) Hydro-Flow has filed or caused to be filed all federal, state and local sales, use, property and income tax returns which are required to be filed by it and has paid or caused to be paid all taxes shown to be due and payable on such returns prior to the date that the same are delinquent or (except to the extent being contested in good faith and for the payment of which adequate reserves have been provided) due and payable on any assessment received by Hydro-Flow;

(xi) The Pledged INE Shares (as defined in the Hydro-Flow Pledge Agreement) have been duly authorized and are validly issued and non-assessable, and the Pledged INE Shares delivered by Hydro-Flow are owned by Hydro-Flow free and clear of any and all liens, pledges, encumbrances or charges, and Hydro-Flow has not optioned or otherwise agreed to sell, hypothecate, pledge or otherwise encumber or dispose of the Pledged Shares;

(xii) The pledge of the Collateral (as defined, respectively, in the Hydro-Flow Pledge Agreement and the Hydro-Flow Mortgage), upon delivery to Lessor of the certificates representing the Pledged INE Shares (as defined in the Hydro-Flow Pledge Agreement) creates a valid security interest in the Collateral, which security interest is a perfected and first priority security interest, securing the payment of the Obligations (as defined, respectively, in the Hydro-Flow Pledge Agreement and the Hydro-Flow Mortgage);

(xiii) On and as of the date any additional shares of stock of INE become Pledged INE Shares, the foregoing representations and warranties shall apply to such additional shares;

(xiv) Hydro-Flow has delivered to Lessor its annual financial statement for the fiscal year ended December 31, 1988; there has been no material adverse change in the business, condition or operations (financial or otherwise) of Hydro-Flow since December 31, 1988;

(xv) Except to the extent the Consents to Assignment listed on Schedule VII-B which have not been received are necessary for an effective assignment of the respective Related Document, all of the Related Documents to which Hydro-Flow was at any time a party and all of Hydro-Flow's right, title or interest in the Facility, the Site or the assets related thereto have been effectively assigned to Lessee; and

(xvi) Hydro-Flow has no ERISA Plans.

(e) INE. INE represents and warrants to Lessor (1) on the Construction Loan Closing Date and on the date of each Construction Loan Advance (provided, however, that, where reference is made in this Section 4(e)

to the Fundamental Agreements or the Related Documents, such representations and warranties are made only with respect to the Fundamental Construction Agreements and the Related Construction Documents, as the case may be) and (2) on the First Lease Closing Date, the Second Lease Closing Date and the date of each Revolving Loan (provided, however, that where reference is made in this Section 4(e) to the Fundamental Agreements or the Related Documents, such representations and warranties are made only with respect to the Fundamental Lease Agreements and the Related Lease Documents, as the case may be), that:

(i) INE is a corporation duly organized, validly existing and in good standing under the laws of the State of Idaho;

(ii) INE has full power and authority to execute, deliver and perform this Financing Agreement, the INE Security Agreement, the Assignment Agreement and the documents, instruments and agreements contemplated hereby and thereby (the "INE Documents") and to own or lease its properties and to carry on its business as now conducted;

(iii) The INE Documents have been duly authorized, executed and delivered by INE and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding obligation of INE enforceable against it in accordance with the terms thereof and hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

(iv) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by INE of the INE Documents;

(v) Neither the execution, delivery or performance by INE of the INE Documents nor compliance with the terms and provisions hereof and thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, of INE or any order, writ, injunction or decree of any court or governmental authority against INE or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which INE is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties other than the liens in favor of Lessor under the INE Documents;

(vi) There are no suits or proceedings pending or, to the knowledge of INE, threatened in any court or before any regulatory commission, board or other governmental administrative agency against or affecting INE which might have a material adverse effect on the business or operations of INE, financial or otherwise, or on its ability to fulfill its obligations under the INE Documents;

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OCT 9 1991

(vii) Neither INE nor anyone authorized to act on its behalf has directly or indirectly offered any interest in the Facility or the Site for sale to, or solicited any offer to acquire any of the same from, anyone other than Lessor and no more than thirty-five (35) other "accredited investors" within the meaning of Regulation D of the Securities Act of 1933, as amended, or investors that were otherwise sufficiently knowledgeable and experienced in financial and business matters to be capable of evaluating the merits and risks of such an investment and had the opportunity to ask responsible officers of Lessee, INE and Hydro-Flow any questions they wished to ask and to request and obtain any information they wished to review in connection with such investment;

(viii) INE does not know of any fact (other than matters of a general application to the hydroelectric or alternative energy industries and matters which have been disclosed to Lessor by Lessee or INE on or before the Construction Loan Closing Date) which materially adversely affects or, so far as INE can now foresee, will materially adversely affect the business, operations, properties or financial condition of INE or Lessor or the performance of INE of its obligations under the INE Documents;

(ix) Neither the execution, delivery or performance by INE of the INE Documents, nor any transaction contemplated by the INE Documents, violates any Applicable Law concerning sale/leasebacks, fraudulent conveyances, bulk sales or the vendor-in-possession doctrine;

(x) INE has filed or caused to be filed all federal, state and local sales, use, property and income tax returns which are required to be filed by it and has paid or caused to be paid all taxes shown to be due and payable on such returns prior to the date that the same are delinquent or (except to the extent being contested in good faith and for the payment of which adequate reserves have been provided) due and payable on any assessment received by INE;

(xi) The pledge of the Collateral (as defined in the INE Security Agreement) creates a valid security interest in the Collateral, which security interest is a perfected and first priority security interest, securing the payment of the Obligations (as defined in the INE Security Agreement);

(xii) INE has delivered to Lessor its annual financial statement for the fiscal year ended December 31, 1988; there has been no material adverse change in the business, condition or operations (financial or otherwise) of INE since December 31, 1988;

(xiii) Except to the extent the Consents to Assignment listed on Schedule VII-B which have not been received are necessary for an effective assignment of the respective Related Document, all of the Related Documents to which INE was at any time a party and all of INE's right, title or interest in the Facility, the Site or the assets related thereto have been effectively assigned to Lessee; and

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(xiv) INE has no ERISA Plans.

Section 5. Adjustments.

(a) Change in Assumptions. If, on or prior to the First Lease Closing Date:

(i) the assumptions set out in Schedule VIII are determined by Lessor to be incorrect or are changed by Lessor and Lessee by mutual agreement;

(ii) Lessee provides to Lessor evidence satisfactory to Lessor that the property taxes to be assessed against the Site, will during the Term of the Lease, be \$230,000 or less per annum; or

(iii) there occurs any change in the Code or any regulations or temporary regulations promulgated thereunder or any judicial decision, revenue procedure, revenue ruling or information release is released or issued that affects such assumptions;

then the Basic Rent Factors and Casualty Loss Values will be recalculated upward or downward to maintain Lessor's Net Economic Return. The amount of any adjustment pursuant to this Section 5(a) shall be made, in the first instance, by Lessor (based upon the assumptions and methods of calculation employed in the original calculation of scheduled Basic Rent Factors and Casualty Loss Values) and, if requested by Lessee, such recalculation shall be verified at Lessee's expense by a nationally recognized certified public accounting firm acceptable to Lessor.

(b) Tax Law Change. If, on or prior to the First Lease Closing Date, a Proposed Tax Law Change or a Tax Law Change shall occur, then Lessor shall, upon Lessee's request, recompute the Basic Rent Factors and Casualty Loss Values as provided in Section 5(a) above to reflect any such Proposed Tax Law Change or Tax Law Change.

Section 6. Fees and Expenses. If the Facility is purchased by Lessor in accordance herewith, Lessor shall pay or cause to be paid its reasonable fees and out-of-pocket expenses incurred in connection with the preparation, execution and delivery of all documents as contemplated herein, including, without limitation, the fees and expenses of Lessor, Special Counsel, the independent appraisers, engineers, hydrologists, architects and similar expert consultants (including without limitation those who monitor construction progress and review construction invoices), title insurance premiums, recording, filing and similar fees, printing costs, the brokers fee equal to one percent (1%) of Lessor's Cost payable to Dimark and all other reasonable out-of-pocket expenses of Lessor and its counsel ("Transaction Costs") up to an aggregate amount equal to \$450,000, and Lessee, each General Partner, Hydro-Flow and INE shall be jointly and severally liable for, and shall pay or cause to be paid, all such Transaction Costs to the extent that such Transaction Costs exceed an aggregate amount equal to \$450,000. If the Facility is not purchased by Lessor hereunder, Lessee, each General Partner, Hydro-Flow and INE shall be jointly and severally liable for, and shall pay or

AUG 6 8 1991

cause to be paid, all such Transaction Costs unless the transactions contemplated hereby are not consummated due to Lessor's failure to comply with the obligations set forth in this Financing Agreement that are required to be satisfied by Lessor on or prior to the Second Lease Closing Date.

Section 7. Disclosure. Neither Lessor, Lessee, any General Partner, Hydro, INE nor any Affiliate thereof shall make any public disclosure or allow any public dissemination of any information related to the Overall Transaction except (a) as appropriate in connection with a permitted assignment hereunder or under the Lease, (b) as expressly agreed to by the parties in writing, (c) to its legal, accounting, financial and other similar advisors or (d) as required by Applicable Law.

Section 8. Successors and Assigns. This Financing Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns. Each of Lessee, the General Partners, INE and Hydro may not sell, transfer or assign any of its rights or obligations hereunder without the prior written consent of Lessor.

Section 9. Governing Law and Counterparts. The terms of this Financing Agreement and all rights and obligations of the parties hereto shall be governed by the laws of the State of Utah. Such terms, rights and obligations may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought. This Financing Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, but all of such counterparts shall together constitute a single instrument.

Section 10. Notices; Payments.

(a) Notices. All notices or other communications required or permitted to be given hereunder shall be in writing, shall be addressed as provided below and shall be considered as properly given (i) if delivered in person, (ii) if sent by overnight delivery service (including, without limitation, Federal Express, ETA, Emery, Purolator, DHL, Air Borne and other similar overnight delivery services), (iii) in the event overnight delivery services are not readily available, if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested or (iv) if sent by prepaid telegram or by telex and confirmed. Notice so given shall be effective upon receipt by the addressee; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. For the purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of thirty (30) days' notice to the other parties in

the manner set forth hereinabove. The initial addresses of the parties hereto are as follows:

- (1) Lessor: Westinghouse Credit Corporation
One Oxford Centre
Pittsburgh, Pennsylvania 15219
Attention: Manager, Administration
Major Industries Finance Group
- (2) Lessee: South Falls Hydropower
699 East South Temple, Suite 220
Salt Lake City, Utah 84102
Attention: David B. Van Otten
- (3) Hydro-: Hydro-Flow, Inc.
Flow 699 East South Temple, Suite 220
Salt Lake City, Utah 84102
Attention: David B. Van Otten
- (4) INE: Idaho Natural Energy, Inc.
699 East South Temple, Suite 220
Salt Lake City, Utah 84102
Attention: David B. Van Otten
- (5) APPC: American Pacific Power Corp.
699 East South Temple, Suite 220
Salt Lake City, Utah 84102
Attention: David B. Van Otten
- (6) PWPC: Pacific West Power Corp.
699 East South Temple, Suite 220
Salt Lake City, Utah 84102
Attention: Gary E. May
- (7) AWHI: America West Hydro, Inc.
699 East South Temple, Suite 220
Salt Lake City, Utah 84102
Attention: R. Fred Moss

(b) Payments. All payments required or permitted hereunder shall be made in lawful currency of the United States. Any wire fund transfers shall be paid to the account of the intended recipient as set forth below. Any party may change its account by giving notice to the other party in the manner set forth above.

- (1) Lessor: Lessor's account at
Citibank, N.A.
399 Park Avenue
New York, New York
Account No. 3848-7299
Attention: ABA No. 021-000089

AUG 6 9 1991

(2) Lessee: Lessee's account at
First Security Bank of Utah
15 East 100 South
Salt Lake City, Utah 84111
Account No. 060 00556 10
Attention: Christian M. Feinauer
Cash Management Officer
(801) 350-5163

Section 11. Amendment of Agreements. Lessee, each General Partner, Hydro-Flow and INE each hereby agrees that the Fundamental Agreements, the Related Documents and the documents contemplated thereby may not be terminated, changed, amended, modified or supplemented, nor may any waiver of any of the terms thereof be granted, without the prior written consent of Lessor, provided, however, that the FERC License may be modified to encompass the FERC License Amendments.

Section 12. Further Assurances. Lessor, Lessee, each General Partner, Hydro-Flow and INE will cooperate with the other parties hereto and take such actions as are reasonably necessary to effect the Overall Transaction. Lessee, at its own expense, will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, conveyances, documents and assurances as Lessor may from time to time reasonably request in writing in order to carry out more effectively the intent and purposes of this Financing Agreement, the Fundamental Agreements, the Related Documents and the documents and transactions contemplated thereby.

Section 13. Survival of Covenants and Representations. All covenants, representations and warranties made by any party hereto in this Financing Agreement and in the Fundamental Agreements, the Related Documents and any certificate delivered pursuant thereto shall survive the delivery of this Financing Agreement, the Fundamental Agreements, the Related Documents and the documents contemplated thereby.

Section 14. Change of Office. Lessee, each General Partner, INE and Hydro-Flow shall each give Lessor sixty (60) days' prior written notice of any change in such party's name, identity or structure or change in the location of its principal place of business or its chief executive office (as such terms are used in the Idaho and Utah Uniform Commercial Code).

Section 15. Change of Control. No General Partner shall sell, assign or otherwise transfer its general partnership interest in Lessee without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

Section 16. Scope of Liability. Notwithstanding any other provision of the Fundamental Agreements or any other language contained in this Agreement, there shall be no recourse against the Shareholders, the General Partners, Hydro-Flow, INE or any of their respective Affiliates, stockholders, officers, directors or employees, for any liability to Lessor arising in connection with

AUG 09 1991

any breach or default under this Agreement except to the extent the same is enforced against Lessee or the Collateral, and Lessor shall look solely to Lessee and the Collateral in enforcing rights and obligations under and in connection with this Agreement, provided, however, the foregoing provisions of this Section 16 shall not:

(a) Constitute a waiver, release or discharge of any of the indebtedness under, or of any of the terms, covenants, conditions or provisions of, this Agreement or any other Fundamental Agreement, and the same shall continue until fully paid, discharged, observed, or performed;

(b) Limit or restrict the right of Lessor to name Lessee or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Agreement, the Collateral Documents or any other Fundamental Agreement, or for injunction or specific performance; or

(c) In any way limit or restrict any right or remedy of Lessor (or any assignee or beneficiary thereof or successor thereto) with respect to, and Lessee and any other party hereto shall remain fully liable to the extent that it would otherwise be liable for, any fraud, misrepresentation or misappropriation of Facility revenues, Proceeds or any other earnings, revenues, rents, issues, profits or proceeds from or of the Collateral that should or would have been paid as provided herein or paid or delivered to Lessor (or any assignee or beneficiary thereof or successor thereto) towards any payment required under this Agreement or any other Fundamental Agreement.

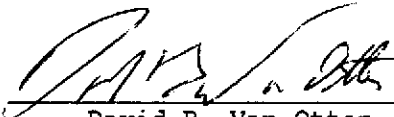
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IN WITNESS WHEREOF, the parties hereto have executed this Financing Agreement as of the date first above written.

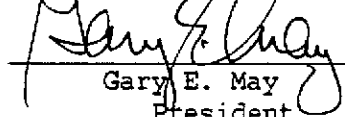
LESSEE:

SMITH FALLS HYDROPOWER

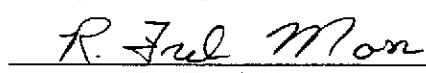
By AMERICAN PACIFIC POWER CORP.
a general partner

By 
David B. Van Otten
President

By PACIFIC WEST POWER CORP.,
a general partner

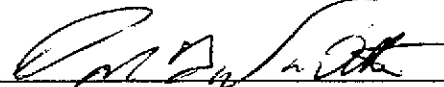
By 
Gary E. May
President

By AMERICA WEST HYDRO INC.,
a general partner

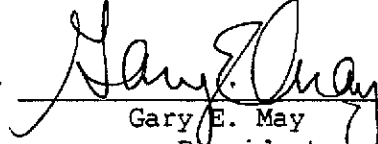
By 
R. Fred Moss
President

GENERAL PARTNERS:

AMERICAN PACIFIC POWER CORP.

By 
David B. Van Otten
President

PACIFIC WEST POWER CORP.

By 
Gary E. May
President

AMERICA WEST HYDRO, INC.

By 
R. Fred Moss
President

LESSOR:

WESTINGHOUSE CREDIT CORPORATION

By 
Glenn E. Smith
Senior Investment Manager

HYDRO-FLOW:

HYDRO-FLOW, INC.

By 
David B. Van Otten
President

INE:

IDAHO NATURAL ENERGY, INC.

By 
David B. Van Otten
President

PRINCE, YEATES & GELDZAHLER
LAWYERS

CITY CENTRE I, SUITE 900
175 EAST FOURTH SOUTH
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 524-1000

PARK CITY OFFICE
614 MAIN STREET
P. O. BOX 38
PARK CITY, UTAH 84060
(801) 649-7440

OF COUNSEL
LYLE M. WARD

TELECOPIER
(801) 524-1099

F. S. PRINCE (RETIRED)
ROBERT M. YEATES
DAVID S. GELDZAHLER
DENIS R. MORRILL
JON C. HEATON
JOHN R. ASHTON
RONALD F. SYSAK
RICHARD L. BLANCK
JOHN M. BRADLEY
D. JAY GAMBLE
STEVEN L. TAYLOR
GORDON STRACHAN
C. CRAIG LILJENQUIST
ANITA TORTI MOSELEY
J. RANDALL CALL
JOHN S. CHINDLUND
WILLIAM A. MEADERS, JR.
GEOFFREY W. MANGUM
JAMES A. BOEVERS
RONALD E. NEHRING
DAVID K. BROADBENT
J. SCOTT LUNDBERG
THOMAS J. ERBIN
PAUL J. TOSCANO
SAMUEL ALBA
ERIK STRINDBERG
ROBERT G. WING
GAIL S. REICH
BRIAN S. KING
GARY R. THORUP
CARL W. BARTON
THOMAS M. MELTON
GREGORY E. LINDLEY†
M. DAVID ECKERSLEY
DON R. SCHOW
SALLY BUCK McMINIMEE
JOSEPH A. WALKOWSKI‡

† ADMITTED IN TEXAS ONLY
‡ REGISTERED PATENT ATTORNEY

August 10, 1989

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AUG 11 1989

EXPRESS COURIER

Mr. Gary Spackman
Manager, Water Rights Permits Section
State of Idaho Dept. of Water Resources
1301 North Orchard Street
State House Mail
Boise, Idaho 83720

Department of Water Resources

Re: Assignment of Water Permits 98-7612 and 98-7650

Dear Mr. Spackman:

This letter is to confirm our telephone conversation of today's date, in which we discussed the above-referenced matter. Your letter of August 8, 1989, makes two requests: (1) that we send you the documents clearly specifying or requesting the transfer of permit number 98-7650; and (2) that we forward you a copy of the Financing Agreement. Enclosed is a copy of the Financing Agreement for your files. As we discussed on the telephone, however, I believe you have already received the specific request to transfer permit number 98-7650 in a letter from my office, dated July 19, 1989. You should also have received a similar letter for permit number 98-7612 in May of this year. Thus, I believe you now have all documents necessary to allow the transfer of the above-referenced water permits.

I am happy to provide you with any additional information you desire. My clients are anxious to have this transfer completed as quickly as possible, as certain deadlines imposed by Westinghouse are fast approaching. Should you have any comments or additional questions, please contact me.

Sincerely,

PRINCE, YEATES & GELDZAHLER

Carl W. Barton

Carl W. Barton

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AUG 09 1991

CWB:jb

cc via fax: Mr. David B. Van Otten 363-6111
John W. Hollingsworth (415) 773-5759

enclosure

PRINCE, YEATES & GELDZAHLER
LAWYERS

CITY CENTRE I, SUITE 900
175 EAST FOURTH SOUTH
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 524-1000

PARK CITY OFFICE
614 MAIN STREET
P. O. BOX 38
PARK CITY, UTAH 84060
(801) 649-7440

OF COUNSEL
LYLE M. WARD

TELECOPIER
(801) 524-1099

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THOMAS M. MELTON
GREGORY E. LINDLEY†
M. DAVID ECKERSLEY
DON R. SCHOW
SALLY BUCK McMINIMEE
JOSEPH A. WALKOWSKI‡

July 20, 1989

EXPRESS COURIER

Mr. Gary Spackman, Manager
Water Right Permits Section
State of Idaho
Department of Water Resources
1301 North Orchard Street
State House Mail
Boise, Idaho 83720

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JUL 21 1989

Department of Water Resources

Re: Approval of Assignment of Water Permits No.
98-7612 (300 cfs) and No. 98-7650 (70 cfs)

Dear Mr. Spackman:

Thank you for your letter of June 27, 1989, to Greg Lindley of my office with respect to the above-referenced Water Permits. Hopefully, the contents of this letter will satisfy your concerns in approving the assignment of the two above-referenced Water Permits from Idaho Natural Energy, Inc. to Smith Falls Hydropower.

Enclosed for your files are good-standing certificates issued by the Idaho Secretary of State for Westinghouse Credit Corporation and Chicago Title Insurance Company. You have already received the assumed name filing for Smith Falls Hydropower, a Utah general partnership, and good standing certificates for American Pacific Power Corp., a Utah corporation, Pacific West Power Corp., a Utah corporation, and America West Hydro, Inc., a Utah corporation. Accordingly, each of the entities which are a party to the exhibits to the request for assignment of the two Water Permits are qualified to do business in the State of Idaho.

You were also concerned that the documents you have received to date did not clearly specify the transfer of the 70 cfs Permit (No. 98-7650). I will shortly forward to you a

AUG 09 1991

Mr. Gary Spackman
July 20, 1989
Page 2

separate request for assignment, with the attached exhibits, for the assignment of such 70 cfs permit. Once you have received the 70 cfs request for assignment documents, you should hopefully be able to expeditiously approve the two assignments from Idaho Natural Energy to Smith Falls Hydropower. Should you have any questions, do not hesitate to call me. As you may know, Westinghouse Credit Corporation has imposed rigid deadlines on Smith Falls Hydropower with respect to the assignment of these two Water Permits. Smith Falls Hydropower would appreciate your prompt action in this matter.

Thank you in advance for your cooperation and prompt assistance. Should you have any questions, do not hesitate to contact me.

Sincerely,

PRINCE, YEATES & GELDZAHLER

Carl W. Barton
Carl W. Barton

CWB:cf

Enclosures

cc: David B. Van Otten (by fax)
Gary E. May (by fax)
R. Fred Moss (by fax)
John W. Hollingsworth, Esq. (by fax)

2920D

UNRECORDED
AUG 09 1991

State of Idaho

Department of State

CERTIFICATE OF CORPORATE STATUS OF

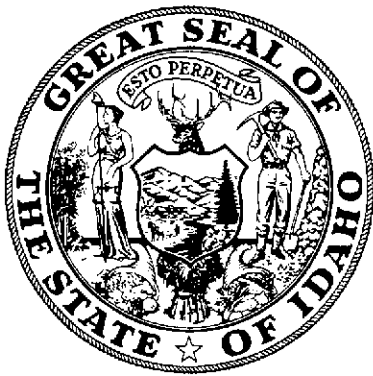
WESTINGHOUSE CREDIT CORPORATION

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of Delaware and was issued a certificate of qualification in Idaho on May 7, 1956.

I FURTHER CERTIFY That the corporation's authority to do business has not been forfeited.

Dated July 12, 1989.



Pete T. Cenarrusa

SECRETARY OF STATE

by

Jeannie Brown

RECORDED

AUG 09 1991



Department of State.

**CERTIFICATE OF CORPORATE STATUS
OF**

CHICAGO TITLE INSURANCE COMPANY OF IDAHO

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of Idaho and was issued a certificate of incorporation in Idaho on October 15, 1975.

I FURTHER CERTIFY That the corporation's authority to do business has not been forfeited.

Dated July 19, 1989



Pete T. Cenarrusa
SECRETARY OF STATE

by *Elizabeth M. Zabala*

RECORDED

AUG 09 1991

PRINCE, YEATES & GELDZAHLER
LAWYERS

CITY CENTRE I, SUITE 900
175 EAST FOURTH SOUTH
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 524-1000

PARK CITY OFFICE
614 MAIN STREET
P. O. BOX 38
PARK CITY, UTAH 84060
(801) 649-7440

OF COUNSEL
LYLE M. WARD

TELECOPIER
(801) 524-1099

F. S. PRINCE (RETIRED)
ROBERT M. YEATES
DAVID S. GELDZAHLER
DENIS R. MORRILL
JON C. HEATON
JOHN P. ASHTON
RONALD F. SYSAK
RICHARD L. BLANCK
JOHN M. BRADLEY
D. JAY GAMBLE
STEVEN L. TAYLOR
GORDON STRACHAN
C. CRAIG LILJENQUIST
ANITA TORTI MOSELEY
J. RANDALL CALL
JOHN S. CHINDLUND
WILLIAM A. MEADERS, JR.
GEOFFREY W. MANGUM
† ADMITTED IN TEXAS ONLY
‡ REGISTERED PATENT ATTORNEY

JAMES A. BOEVERS
RONALD E. NEHRING
DAVID K. BROADBENT
J. SCOTT LUNDBERG
THOMAS J. ERBIN
PAUL J. TOSCANO
SAMUEL ALBA
ERIK STRINDBERG
ROBERT G. WING
GAIL S. REICH
BRIAN S. KING
GARY R. THORUP
CARL W. BARTON
THOMAS M. MELTON
GREGORY E. LINDLEY†
M. DAVID ECKERSLEY
DON R. SCHOW
SALLY BUCK MCMINNIE
JOSEPH A. WALKOWSKI‡

July 19, 1989

Mr. Gary Spackman, Division Chief
Water Rights Allocation Division
State of Idaho
Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: Smith Creek Hydroelectric Project - Request for
Approval of Assignment of Water Permits

Dear Mr. Spackman:

Pursuant to a financing transaction for the Smith Creek Hydroelectric Project in Boundary County, Idaho (the "Project"), we respectfully request written approval pursuant to Section 42-207 of the Idaho Code by the State of Idaho, Department of Water Resources (the "Department") of the assignment by Idaho Natural Energy, Inc. ("INE") to Smith Falls Hydropower, a Utah general partnership (the "Partnership"), of INE's right, title and interest in the following permits:

(1) Water Permit No. 98-7650.

(The foregoing permit is referred to hereinafter as the "Water Permit").

The Department is further requested to approve under the above-referenced statutory provision the collateral assignment by the Partnership of its interest in the Water Permit to Westinghouse Credit Corporation, a Delaware corporation ("Westinghouse").

The Financing Transaction

INE has assigned any and all interest of INE in the Project to the Partnership, including INE's interest in any

AUG 09 1991

Mr. Gary Spackman, Division Chief
July 19, 1989
Page 2

permits or approvals for diversion and use of water relating to the Project. Westinghouse has begun to provide construction financing for the Project. Westinghouse has a security interest in all of the Partnership's right, title and interest in and to the Project. Following construction of the Project, the Partnership proposes a sale and leaseback of the Project to Westinghouse to finance operation and maintenance of the Project on a permanent basis.

Documentation

The parties to the above-described transaction declare that the assignment of the Water Permit is made in good faith and not for the purposes of speculation or delay. Pursuant to Section 42-207 of the Idaho Code, copies of the following documents are submitted herewith:

1. The assignment from INE and Hydro-Flow, Inc., a Utah corporation, to the Partnership (the "Assignment"), submitted herewith as Exhibit A, said exhibit being hereby incorporated herein and made a part hereof.
2. Two Mortgages, Assignment of Lease and Rents, Security Agreement and Fixture Filing by the Partnership in favor of Westinghouse (collectively, the "Mortgage"), submitted herewith as Exhibit B, said exhibit being hereby incorporated herein and made a part hereof.
3. The Mortgage, Assignment of Lease and Rents, Security Agreement and Fixture Filing by Hydro-Flow in favor of Westinghouse (the "Hydro-Flow Mortgage"), submitted herewith as Exhibit C, said exhibit being hereby incorporated herein and made a part hereof.
4. The Facility Lease between the Partnership and Westinghouse, submitted herewith as Exhibit D, said exhibit being hereby incorporated herein and made a part hereof.

Status of the Parties After Transfer

The Partnership has already requested the transfer of another water permit for 300 cfs (Permit 98-7612) and awaits a response in that regard. If and when the Department shall have given its approval to the proposed transfer, assignment and

AUG 08 1989

Mr. Gary Spackman, Division Chief
July 19, 1989
Page 3

mortgage of the Water Permit, the Partnership will be the Permit holder, and Westinghouse will have a security interest in the Water Permit. Thus, with this request, the Partnership desires the assignment from INE of two (2) water permits, the 300 cfs permit and the Water Permit (70 cfs).

Please be advised that Westinghouse, by reason of the foregoing Mortgages, shall not be deemed to be under any liability of any kind to the Department under, pursuant, or in respect of the Water Permit and shall not be deemed to have assumed any of the obligations of the Partnership under the Water Permit until and unless Westinghouse assumes in writing the obligations of the Partnership under the Water Permit.

Contingent upon the final written approval by the Department of the transfer of the Water Permit, the Partnership accepts all of the terms and conditions of the said Water Permit and agrees to be bound thereby to the same extent as though it was the original Permit applicant and holder thereunder.

Request for Notice

Westinghouse requests that the Department furnish to Westinghouse copies of all written notices given to the Partnership with respect to any default of the Partnership thereunder simultaneously with the giving of such notice to the Partnership. Westinghouse further requests that it shall have no less than the amount of time granted to the Partnership to cure under the Water Permit within which to cure any such default, and so long as Westinghouse commences to cure or causes to be cured any such default and the elimination of any such default is carried on with due diligence and within a reasonable time, then there shall be no interruption of, interference with, or termination of the Water Permit. The Department further agrees that upon receipt of unqualified written assumption by Westinghouse, or its successors or assigns, of the Partnership's obligations under the Water Permit, Westinghouse will be substituted in the place and stead of the Partnership under the Water Permit.

Plase send a copy of all notices to and correspondence with the Partnership, or its successors or assigns, to Westinghouse. The addresses for notices for the Partnership and for Westinghouse are as follows:

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AUG 03 1989

Mr. Gary Spackman, Division Chief
July 19, 1989
Page 4

Partnership: Smith Falls Hydropower
c/o American Pacific Power Corp.
699 East South Temple, Suite 220
Salt Lake City, Utah 84302
Attn: David B. Van Otten

Westinghouse: Westinghouse Credit Corporation
One Oxford Centre
Pittsburgh, Pennsylvania 15219
Attn: Manager, Administration,
Major Industries Finance
Group

INE, the Partnership, and Westinghouse respectfully request the Department to expedite its consideration of the application for approval of the transfer and assignment of the Water Permit. Such approval may take the form of a returned, executed acknowledgment and consent as provided in this letter request, or any other form required by the Department to effectuate its approval. Expedited consideration of this application would be deeply appreciated.

Please contact Carl Barton at Prince, Yeates & Geldzahler, (801) 524-1000, if you have any questions or require additional information.

Respectfully submitted,

IDAHO NATURAL ENERGY, INC.
699 East South Temple
Suite 220
Salt Lake City, Utah 84102
Attn: David B. Van Otten

IDAHO NATURAL ENERGY, INC.

By: *David B. Van Otten*
David B. Van Otten, President

SMITH FALLS HYDROPOWER
c/o American Pacific
Power Corp.
699 East South Temple
Suite 220
Salt Lake City, Utah 84102
Attn: David B. Van Otten

SMITH FALLS HYDROPOWER

By its general partners:

AMERICAN PACIFIC POWER CORP.

By: *David B. Van Otten*
David B. Van Otten, President

AUG 09 1991

Mr. Gary Spackman, Division Chief
July 19, 1989
Page 5

PACIFIC WEST POWER CORP.

By: *Gary E. May*
Gary E. May, President

AMERICA WEST HYDRO, INC.

By: *R. Fred Moss*
R. Fred Moss, President

WESTINGHOUSE CREDIT
CORPORATION
One Oxford Centre
Pittsburgh, PA 15219

Attn: Manager
Administration
Major Industries
Finance Group

WESTINGHOUSE CREDIT CORPORATION

By: *Glenn E. Smith*
Glenn E. Smith
Senior Investment Manager

ACKNOWLEDGED AND AGREED TO:

WATER RIGHTS ALLOCATION DIVISION
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

By: _____
Name:
Title:

CWB:cf
2917D
75947-01-01

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PRINCE, YEATES & GELDZAHLER
LAWYERS

CITY CENTRE 1, SUITE 900
175 EAST FOURTH SOUTH
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 524-1000

PARK CITY OFFICE
614 MAIN STREET
P. O. BOX 38
PARK CITY, UTAH 84060
(801) 649-7440

OF COUNSEL
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RONALD F. SYSAK
RICHARD L. BLANCK
JOHN M. BRADLEY
D. JAY GAMBLE
STEVEN L. TAYLOR
GORDON STRACHAN
C. CRAIG LILJENQUIST
ANITA TORTI MOSELEY
J. RANDALL CALL
JOHN S. CHINDLUND
WILLIAM A. MEADERS, JR.
GEOFFREY W. MANGUM
† ADMITTED IN TEXAS ONLY
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ROBERT G. WING
GAIL S. REICH
BRIAN S. KING
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THOMAS M. MELTON
GREGORY E. LINDLEY†
M. DAVID ECKERSLEY
DON R. SCHOW
SALLY BUCK M'MINIMEE
JOSEPH A. WALKOWSKI‡

June 28, 1989

RECEIVED
JUN 29 1989

EXPRESS COURIER

Department of Water Resources

Mr. Gary Spackman
Division Chief
Water Rights Allocation Division
State of Idaho
Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: Smith Creek Hydroelectric Project/Request for
Approval of Assignment of Water Permits

Dear Mr. Spackman:

Pursuant to our recent telephone conversation, I am enclosing copies of Certificates of Corporate Status for American Pacific Power Corp., Pacific West Power Corp., and American West Hydro, Inc., the three corporate general partners of Smith Falls Hydropower. As you knew, these Certificates evidence that these three Utah corporations are qualified to do business in Idaho.

I have also enclosed a Certificate of Assumed Business Name for Smith Falls Hydropower as filed and recorded with the County Recorder of Boundary County, Idaho. It is our understanding from our Idaho counsel that this filing is all that is required for a general partnership to qualify to do business in Idaho.

I look forward to receiving your letter regarding the approval of the assignment of Water Permit No. 98-7612 from Idaho Natural Energy, Inc. to Smith Falls Hydropower. We would like to work out any details and issues as quickly as possible so that we can obtain your approval. As you know, we will also be seeking approval of the assignment of Water Permit No. 98-7650, approved May 30, 1989, from Idaho Natural Energy, Inc.

AUG 09 1991

Mr. Gary Spackman
June 28, 1989
Page 2

to Smith Falls Hydropower. I expect that your concerns regarding the assignment of Permit No. 98-7612 will be identical to those regarding the assignment of Permit No. 98-7650. Accordingly, if we can resolve the issues surrounding Permit No. 98-7612, we hope that all issues surrounding Permit No. 98-7650 will also be resolved and the approval can be expeditiously granted.

Please contact me if I can be of any further assistance in the resolution of those issues.

Sincerely,

PRINCE, YEATES & GELDZAHLER

Gregory E. Lindley
Gregory E. Lindley *by: tad*

GEL/tad
Enclosures
cc: Mr. David B. Van Otten (w/encl.)

0624Q

RECEIVED
AUG 09 1991



Department of State.

**CERTIFICATE OF CORPORATE STATUS
OF**

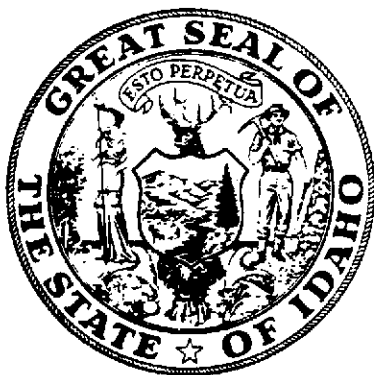
AMERICAN PACIFIC POWER CORP.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of Utah and was issued a certificate of authority in Idaho on May 11, 1989.

I FURTHER CERTIFY That the corporation's authority to do business has not been forfeited.

Dated May 19, 1989



Pete T. Cenarrusa

SECRETARY OF STATE

by *Larry J Clark*

RECORDED

AUG 09 1991



Department of State.

**CERTIFICATE OF CORPORATE STATUS
OF**

PACIFIC WEST POWER CORP.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of Utah and was issued a certificate of authority in Idaho on May 16, 1989.

I FURTHER CERTIFY That the corporation's authority to do business has not been forfeited.

Dated May 19, 1989



Pete T. Cenarrusa

SECRETARY OF STATE

by *Wayne J. Clark*

RECORDED

AUG 09 1991



Department of State.

**CERTIFICATE OF CORPORATE STATUS
OF**

AMERICA WEST HYDRO, INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of Utah and was issued a certificate of authority in Idaho on May 11, 1989.

I FURTHER CERTIFY That the corporation's authority to do business has not been forfeited.

Dated May 19, 1989



Pete T. Cenarrusa

SECRETARY OF STATE

by

Long J Clark

FILED
MAY 09 1991

JUN 29 1989

0158055

Department of Water Resources **CERTIFICATE OF ASSUMED BUSINESS NAME**

IT IS HEREBY CERTIFIED:

1. Business is, or will be, conducted in the County of Boundary, State of Idaho, under the assumed name of Smith Falls Hydropower, a partnership by American Pacific Power Corp., Pacific West Power Corp., and America West Hydro, Inc., General Partners, with its main place of business at 699 East South Temple,

Suite 220, Salt Lake City, UT 84102.

2. The real name and the residences of all the members of the partnership are as follows:

American Pacific Power Corp. 699 East South Temple, Suite 220,
Salt Lake City, UT 84102

Pacific West Power Corp. 699 East South Temple, Suite 220,
Salt Lake City, UT 84102

America West Hydro, Inc. 699 East South Temple, Suite 220,
Salt Lake City, UT 84102

3. The nature of the partnership is to engage in the business of constructing, developing, selling, leasing and/or operating a hydroelectric power plant.

4. No other person is interested as a partner or otherwise in the business or the conduct of it.

5. This Certificate is executed and filed pursuant to § 53-501, Idaho Code, relating to the conduct of business under an assumed name.

STATE OF IDAHO

County of Boundary

DATED this 9th day of May, 1989.

Filed for record at the request of

David B. Van Osten & Associates
on the 11th day of May, 1989 at 1:00
o'clock P.M., and recorded in Book 70
of Index on page 239

Norma J. Ester
County Recorder

By C. Thornton
Deputy

Fee \$ 6.00 pd
Mail to City Center Plaza I

SLC, Ut 84111

SMITH FALLS HYDROPOWER
(Name of Business)

By David B. Van Osten, President of
American Pacific Power Corp., a
General Partner of Smith Falls
Hydropower

AUG 09 1991

STATE OF UTAH)
 : ss.
County of SALT LAKE)

On this 9th day of May, 1989, before me, the undersigned Notary Public, personally appeared David B. Van Otten, known to me to be the President of one of the partners in the partnership of Smith Falls Hydropower, who subscribed said partnership name to the foregoing instrument, and acknowledged to me that he executed the same in said partnership name.

Marsha Van Otten
Notary Public in and for the State
of Utah, residing at Davis County
My commission expires: 2-14-90

\JKB\M\110

MICROFILMED
AUG 09 1991



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

June 27, 1989

Gregory E. Lindley, Attorney at Law
City Centre I., Suite 900
175 E. 4th South
Salt Lake City, Utah 84111

RE: Water Right Permit #98-7612 and #98-7650: Request for
Approval of Assignment of Water Permits for Smith Creek
Hydroelectric Project

Dear Mr. Lindley:

Thank you for your telephone call on June 21, 1989.

I have reviewed the mortgage, assignment and other security documents which Carl Barton sent to me. The documents appear to convey permit to appropriate water number 98-7612 for security purposes. There is some reference to an additional permit for 70 cfs, presumably permit to appropriate water number 98-7650. The conveyance documents are not clear, however, about the assignment of permit to appropriate water number 98-7650. Furthermore, the all-inclusive mortgage and deed of trust refers to "water right permits" as those permits listed in a financing agreement. I have looked through the documents and cannot find a copy of the financing agreement.

The Idaho Code requires that any person or entity that receives an interest in a water right permit by deed, bill of sale, assignment or mortgage, must be a resident of the state of Idaho or, if a corporation or partnership, the entity must be organized or qualified to do business in and under the laws of the state of Idaho.

As I read the mortgage, assignment and security documents, it appears that the following entities are taking an interest in the water right permits: Westinghouse, Chicago Title Insurance Company, Smith Falls Hydropower (the partnership), and the underlying corporate entities that make up Smith Falls Hydropower. Proof of authority to do business must be submitted for all of the above entities.

The Idaho Code also requires a finding that the transfer of interest is not for purposes of speculation. I cannot find any indication of speculation in reading the documents submitted.

AUG 09 1991

In a letter to me from David B. Van Otten, several requests were made of the Department of Water Resources:

1. That the Department recognize Smith Falls Hydropower as the the permit holder, and Westinghouse as the secured party.
2. That the Department acknowledge Westinghouse is under no obligation of any kind to the Department.
3. That the Department furnish Westinghouse copies of all written notices with respect to any default.
4. That Westinghouse be granted the same amount of time granted to the partnership to cure any defects.
5. That Westinghouse be substituted for the partnership under the water permits if the department receives a written assumption by Westinghouse.

Once the requested documentation is submitted proving authority to do business in the state of Idaho, and the language in the transfer documents is clarified to include both permits, the Department of Water Resources will recognize Smith Falls Hydropower as the owner of the permits, with Westinghouse and Chicago Title holding some related security interest. We will place Westinghouse and Chicago Title in our computer data base as secured parties. I will also place a note in the file which directs that Westinghouse Credit Corporation receive notice.

I cannot guarantee, however, that all notices will reach Westinghouse Credit Corporation. Some mass mailings are sent to owners of permits that are not sent to other parties listed as having an interest. As a result, Westinghouse may not receive notice of some matters affecting the permit.

The department may not be able to grant the amount of time to Westinghouse that was granted to the partnership to cure any defaults. Certain time limits for compliance are set by statute. If the partnership receives adequate notice, additional time may not be permitted.

If Westinghouse can show that it has, in fact, stepped into the shoes of the partnership under its agreements, the department will recognize the right of Westinghouse to replace the partnership. If there are questions regarding ownership or use, however, these are matters beyond the jurisdiction of the department, and probably should more properly be resolved in court.

Sincerely,



GARY SPACKMAN, Manager
Water Right Permits Section

RECEIVED
AUG 9 1991

GS:js

AUG 09 1991

48 FERC 152,046

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Idaho Natural Energy, Inc.
Smith Falls Hydropower

Project No. 8436-048

ORDER APPROVING TRANSFER OF LICENSE
(Issued July 24, 1989)

Idaho Natural Energy, Inc. seeks Commission approval to transfer its license for the Smith Creek Project to Smith Falls Hydropower. The project is located on Smith Creek in Boundary County, Idaho. The purpose of the transfer is to facilitate the financing of the project.

Idaho Natural Energy, Inc. has fully complied with the terms of the license and agrees to pay the annual charges that have accrued to the date of the transfer. Smith Falls Hydropower is qualified to hold the license and operate the property under license and agrees to accept all of the terms and conditions of the license and to be bound by the license as if it were the original licensee.

No protests or motions to intervene were filed in response to the public notice of the application to transfer the license. Transfer of the license for this project is consistent with the Commission's regulations and is in the public interest.

The Director orders:

(A) Transfer of the license for this project is approved.

(B) Approval of the transfer is contingent upon transfer of title of the properties under license and delivery of all license instruments to Smith Falls Hydropower which shall be subject to all terms and conditions of the license as though it were the original licensee. Smith Falls Hydropower shall submit certified copies of all instruments of conveyance within 60 days from the date of this order.

98-7612 permit
98-7650 permit

(C) This order is issued under authority delegated to the Director and is final unless appealed to the Commission within 30 days from the date of this order. Smith Falls Hydropower shall acknowledge acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet within 60 days from the date of this order.

Sincerely
Dean L. Shumway
Dean L. Shumway
Director, Division
of project Review

Project No. 8436-042

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, Smith Falls Hydropower this _____ day of _____, 19____, has caused its corporate name to be signed hereto by _____ its _____ President, and its corporate seal to be affixed hereto and attested by _____ its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____ 19____, a certified copy of the record of which is attached hereto.

By _____
President

Attest:

Secretary

(executed in quadruplicate)

AUG 09 1991

WR2814NP
OD-140

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS SUMMARY REPORT

DATE: 08/09/89
PAGE: 1

WR-NUMBER:
98-07612

CURRENT OWNER:
IDAHO NATURAL ENERGY INC.
699 E. SOUTH TEMPLE
SUITE 220
SALT LAKE CITY, UT 841020000

PRIORITY DATE:
04-12-1985

STAGE:
PERMIT

COUNTY: BOUNDARY
SOURCE: SMITH CREEK
WATER USE:
POWER

TRIBUTARY: KOOTENAI RIVER
DIVERSION RATE:
300.000
TOTAL: 300.000
DIVERSION VOLUME:

PERIOD FROM: 01/01
PERIOD TO: 12/31

REMARKS: PRIOR TO DIVERTING WATER FOR THE PROJECT, THE PERMIT HOLDER SHALL INSTALL MEAS. DEVICES ACCEPTABLE TO THE DIRECTOR ON THE DIVERSION TO THE HYDROPOWER PLANT & ON THE BYPASS REACH. THE DIRECTOR RETAINS JURISDICTION OF THE PERMIT TO REVISE THIS COND. TO REQUIRE CONTINUOUS MEASUREMENT & RECORDING OF THE BYPASS FLOW RATE & PERIODIC REPORTING OF THE MEASUREMENTS TO THE DEPT. WATER USED UNDER THIS PERMIT SHALL BE DISCHARGED INTO THE NATURAL CHANNEL UPSTREAM FROM SMITH CREEK FALLS & SHALL MEET ID. WATER QUALITY STANDARDS. THE ADEQUACY OF THE PROJECT DESIGN TO PROTECT PUBLIC & EMPLOYEE SAFETY DURING ALL PHASES OF CONSTRUCTION & OPERATION OF THE PROJECT SHALL BE REVIEWED & CERTIFIED BY A PROFESSIONAL ENGINEER LICENSED TO PRACTICE IN THE STATE OF ID. A MIN. FLOW OF 27 CFS MEASURED IMMEDIATELY BELOW THE P/D SHALL BE LEFT IN THE NATURAL CHANNEL OF SMITH CREEK AT ALL TIMES THAT THE HYDROPOWER PROJECT IS OPERATING. ALL WATER SHALL BE LEFT IN THE NATURAL CHANNEL OF SMITH CREEK AT ANY TIME THE HYDROPOWER PROJECT IS NOT OPERATING. PRIOR TO OPERATION OF THE HYDROPOWER FACILITY, THE PERMIT HOLDER SHALL PROVIDE AN OPERATION PLAN TO THE DEPT. FOR REVIEW & APPROVAL. THE OPERATION PLAN SHALL PROVIDE FOR THE PROTECTION OF PUBLIC SAFETY & INSURE AN UNINTERRUPTED FLOW OF WATER OVER SMITH CREEK FALLS DURING CHANGES OF OPERATION OF THE HYDROPOWER FACILITY.
FEET OF HEAD = 1440. HORSEPOWER = 40926.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot
	64N	03W	1	SE NE	

PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	65N	02W	26	NW NE		

WR-NUMBER:
98-07650

CURRENT OWNER:
IDAHO NATURAL ENERGY INC.
550 LINDEN DR.
IDAHO FALLS, ID 83401

PRIORITY DATE:
12-19-1988

STAGE:
PERMIT

COUNTY: BOUNDARY
SOURCE: SMITH CREEK
WATER USE:
POWER

TRIBUTARY: KOOTENAI RIVER
DIVERSION RATE:
70.000
TOTAL: 70.000
DIVERSION VOLUME:

PERIOD FROM: 01/01
PERIOD TO: 12/31

=====

WR-NUMBER: 98-07650 (cont'd)

=====

REMARKS: WATER USED UNDER THIS PERMIT SHALL BE DISCHARGED INTO THE NATURAL CHANNEL UPSTREAM FROM SMITH CREEK FALLS & SHALL MEET IDAHO WATER QUALITY STANDARDS. THE ADEQUACY OF THE PROJECT DESIGN TO PROTECT PUBLIC & EMPLOYEE SAFETY DURING ALL PHASES OF CONSTRUCTION & OPERATION OF THE PROJECT SHALL BE REVIEWED & CERTIFIED BY A PROFESSIONAL ENGINEER LICENSED TO PRACTICE IN THE STATE OF IDAHO. A COPY OF THE CERTIFICATION SHALL BE FILED WITH THE DEPT. A MIN. FLOW OF 27 CFS MEASURED IMMEDIATELY BELOW THE POINT OF DIVERSION SHALL BE LEFT IN THE NATURAL CHANNEL OF SMITH CREEK AT ALL TIMES THAT THE HYDROPOWER PROJECT IS OPERATING. ALL WATER SHALL BE LEFT IN THE NATURAL CHANNEL OF SMITH CREEK AT ANY TIME THE HYDROPOWER PROJECT IS NOT OPERATING. PRIOR TO OPERATION OF THE HYDROPOWER FACILITY, THE PERMIT HOLDER SHALL PROVIDE AN OPERATION PLAN TO THE DEPT. FOR REVIEW & APPROVAL. THE OPERATION PLAN SHALL PROVIDE FOR THE PROTECTION OF PUBLIC SAFETY & INSURE AN UNINTERRUPTED FLOW OF WATER OVER SMITH CREEK FALLS DURING CHANGES OF OPERATION OF THE HYDROPOWER FACILITY. THIS PERMIT & ANY SUBSEQUENT LICENSE ISSUED SHALL BE LIMITED TO A TERM OF 40 YRS. ENDING ON JUNE, 2019 & SHALL BE SUBJECT TO REVIEW BY THE DIRECTOR. UPON FINDINGS BASED ON THE PUBLIC INTEREST, THE WATER RIGHT MAY BE RENEWED, AMENDED OR REVOKED.

POINT OF DIVERSION:	Twp	Rge	Sec	Tract	Lot	
	64N	03W	1	SE NE		
PLACE OF USE:	Twp	Rge	Sec	Tract	Lot	Acres
	65N	02W	26	SW NE		

=====

END OF REPORT



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

August 8, 1989

Carl W. Barton, Attorney at Law
City Centre I, Suite 900
175 East 4th South
Salt Lake City, UT 84111

RE: Assignment of Water Permits Nos. 98-7612 and 98-7650

Dear Mr. Barton:

I received two packages by Federal Express containing information regarding the assignment of permits to appropriate water nos. 98-7612 and 98-7650. The last letter dated July 20, 1989, states that documents clearly specifying the transfer of permit no. 98-7650 would be forwarded to me. I have not yet received these documents.

I am also somewhat overwhelmed by the volume of contractual documents that have been sent to me. I appreciate your efforts in forwarding the agreements, but have difficulty digesting all of the documents. In my letter on June 27, 1989, I stated that the all inclusive mortgage and deed of trust discusses "water right permits" as those permits listed in a financing agreement. I cannot find the financing agreement unless it is buried in the documents in a place I cannot locate it.

If these two issues can be resolved, I will be happy to issue a letter recognizing the assignment of permits nos. 98-7612 and 98-7650.

Respectfully,

A handwritten signature in cursive script that reads "Gary Spackman".

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

AUG 09 1991

S T A T E O F I D A H O
D E P A R T M E N T O F W A T E R R E S O U R C E S

Statehouse
Boise, Idaho 83720
(208) 334-7900
June 2, 1989

IDAHO NATURAL ENERGY INC.
550 LINDEN DR.
IDAHO FALLS, ID 83401

P E R M I T A P P R O V A L N O T I C E

RE: PERMIT NO. 98-07650

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. We direct your attention to the conditions of approval on the final page.

Be sure to note the special condition requiring you to install a measuring device, or a flow measurement port, or to provide a certified measurement or computation of flow based upon the design of the system to be prepared by a professional engineer.

Please note the requirement that as a permit holder you must commence the excavation or construction of diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The enclosed blue card must be completed and returned to this office as soon as you commence construction, no later than one year from the date the permit was approved.

We have enclosed a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit into a license.

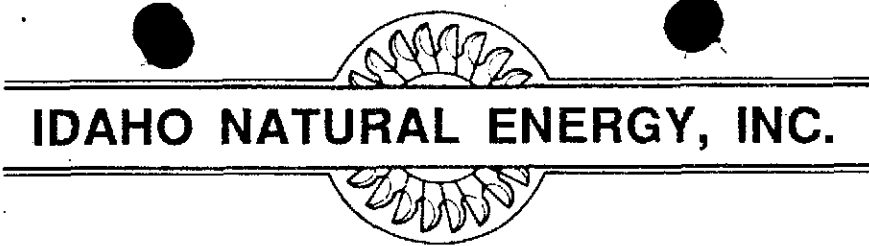
Sincerely,

GARY SPACKMAN, Supervisor
Water Right Permits Section

GS: SC
Enclosures

RECEIVED

AUG 09 1991



IDAHO NATURAL ENERGY, INC.

May 19, 1989

FAXED TO: (208) 327-7866

Mr. L. Glen Saxton, Chief
Water Allocation Bureau
State of Idaho
Department of Water Resources
1301 North Orchard Street,
Statehouse Mail
Boise, Idaho 83720

RECEIVED
MAY 24 1989

Department of Water Resources

RE: Application for Permit 98-7650 - Smith Creek.

Dear Mr. Saxton:

We are in receipt of your May 15, 1989 letter. We believe that the facts as stated are correct with the following exceptions:

1. The energy output is being sold to the Eugene Water and Electric Board, Eugene, Oregon; not Puget Sound Power & Light. A Power Purchase Agreement was executed on 10/28/88.
2. We are not upgrading Northern Light's lines to the BPA substation. Instead, we are building a \$2.5 million, 115 KV Transmission line essentially following the Northern Lights existing distribution line corridor. We are putting in all new poles and acquiring easements (143) for an "off highway corridor" jointly with Northern Lights. We are paying for all easement acquisition and will deed the new Transmission line over to Northern lights between the 6th and 9th years free and clear of all liens and encumbrances. In other words, we are giving Northern Lights a \$2.5 million transmission line. This will be in lieu of wheeling payments.

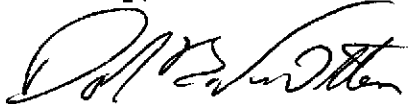
3. Under current design, all of the penstock will be buried.

For purposes of clarification, Boundary County will receive an estimated \$175,000 of new property taxes each year. The State of Idaho will receive approximately \$490,000 of sales taxes on equipment during the 1989/90 construction years. The state will receive about \$61,000 of taxes from the kilowatt/hour tax each year.

RECEIVED
AUG 09 1991

We hope that the information provided herein will be sufficient to expedite the processing of the water rights for an additional 70 cfs as applied for. Thank you for your efforts to get this application processed on a timely basis. If any further information is required, please call Dave Van Otten or Fred Moss at (801) 363-6111.

Sincerely,



David B. Van Otten
President

cc: Gary Spackman, DWR, Boise
Ted S. Sorenson, Idaho Falls

MICROFILMED
AUG 09 1991

May 15, 1989

Idaho Natural Energy, Inc.
c/o Ted S. Sorenson
550 Linden Drive
Idaho Falls, ID 83401

RE: APPLICATION FOR PERMIT 98-7650 - SMITH CREEK

Gentlemen:

The department is presently conducting final review of the above referenced application which is the second water right filing in connection with the Smith Creek project in northern Idaho. Permit 98-7612 was the first filing for the project.

Among the criteria considered by the department in the approval of a project is an evaluation of the local public interest as provided in Section 42-203A, Idaho Code. This criterion was considered in depth before Permit 98-7612 was issued.

The department's understanding in connection with Permit 98-7612 is that the power will be sold to Puget Sound Power and Light (PSPL). The power will be transported over upgraded Northern Lights lines to the BPA substation at Bonners Ferry to be sold to (PSLP). In reality, however, the energy is intended to replace energy which would otherwise be delivered to Northern Lights by BPA and BPA will credit PSLP with the same energy delivered to its system.

While PSPL does not serve Idaho customers, identified benefits to Idaho considered in the approval of Permit 98-7612 include the following:

1. Boundary County will receive increased property taxes.
2. The state will monetarily benefit from the kilowatt hour tax.
3. Construction will employ some Idaho citizens and provide on a short benefit to the local economy. Local retail firms would provide some of the construction materials.
4. The water fall will be preserved. Most of the penstock will be buried.

RECEIVED

AUG 09 1991

May 15, 1989

5. The local power system grid will be upgraded at the project sponsor's expense and local entities will receive wheeling payments.

Idaho law provides for any water right permit or license to be conditioned to provide for a term review of the right after some fixed time period. The need for power use in Idaho will be a part of this review at the end of the fixed term.

The department requests that you confirm that these benefits are still applicable to the proposed project with respect to Application 98-7650. If any of the factors have changed, the department requests that you provide a detailed discussion and analysis of the factors. Upon receipt and review of the information, the department will be able to further consider the above referenced application.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: N. Region
Idaho Natural Energy, Inc.
address:
699 E. S. Temple
Suite 220
Salt Lake City, UT 84102

RECEIVED

AUG 09 1991

To Rita

Date 4/5 Time 4:20

WHILE YOU WERE OUT

Fred Moss

of 98-7650

Phone 801-363-6111

Telephoned		Please call	☒
Called to see you		Will call again	☐
Wants to see you		Returned your call	☐

Message Status on permit.

would like approval
but did not request
expedition..

from Kim kw
4/5/89
Operator

Form No. 202a.
4/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

INITIAL REVIEW BY: JK DATE: 12-27-84 APPLICATION: 98-7650

REQUIRED INFORMATION

- ☒ Name: (If applicant is a corporation or partnership, names must be provided for the director, officers, and other partners.)
- ☒ Address:
- ☒ Source: (See USGS Quad for names of water sources)
- ☒ Point of Diversion: (10 acres for spring, lot & block descriptions for Subdivisions, local name)
- ☒ County:
- ☒ Quantity: (flow and/or volume)
- ☒ Period of use:
- ☒ Nature of proposed use: (Include description of use)
- ☒ Description of diverting works:
- ☒ Time required for beneficial use of water:
- ☒ Place of use or acres irrigated:
- ☒ Map:
- ☒ Signature: (If applicant is corp., partnership, or municipality title of signator is required)
- ☒ Fee:
- ☒ yes ☐ No* In form to receipt:

ADDITIONAL INFORMATION

YES NO

- ☒ ☐ Overlapping place of use: (Describe source & relationship to present application on the back.)
- ☒ ☐ Overlapping point of diversion:
- ☒ ☐ Field check required: Field check by: _____
- ☒ ☐ Field report attached:
- ☒ ☐ Critical groundwater area:
- ☒ ☐ Groundwater management area:
- ☒ ☐ Send dam safety information:
- ☒ ☐ Send power requirement letter: -?
- ☒ ☐ Send fish farm requirement letter:
- ☒ ☐ Power residency affidavit:
- ☒ ☐ Power efficiency form:
- ☒ ☐ Within trust water boundry: (If yes, attach Trust Water Supplementary Analysis Sheet.)
- ☒ ☐ Diversion greater than 5 cfs or 500 af: (If yes, attach Large Diversion supplementary analysis sheet.)
- ☐ ☐ *REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT

DATE REQUESTED: _____

Additional information on reverse side: _____

RECEIVED
MAR 23 1989

Department of Water Resources

PROCESSING

YES NO

- ☒ In form for advertising:
☒ Statewide advertising:
☒ Fee amount, receipt number and date recorded on application:

SEND COPIES TO

YES NO

- ☒ I.D. Health and Welfare
☒ I.D. Fish and Game
☐ I.D. Lands
☐ Adjudication Bureau

YES NO

- ☐ U.S. BLM
☒ U.S. Forest Svc.
☐ Water District # _____
☐ Other _____

FINAL REGIONAL PROCESSING REVIEW

YES ☒ NO ☒

- ☒ Affidavit of publication received:
☒ Application published correctly: If not, record action taken.

- ☒ Publication dates and paper recorded on application:
☒ Protests received, Final date for protest 2/6/89
☒ Protests, dates, resolution of protest recorded on application:
☒ Recommendations attached:
☒ Measuring device required:
☒ Measuring port required:
☒ Water delivered by water master? District # _____
☒ Special conditions of approval or cover letter: (see additional info. below)
☒ See Below For Additional Information
Recommended Date of Priority 12/19/88
Recommended by: RUN Date 3/22/89

STATE OFFICE REVIEW

P19 P17A 04-01F-08A 17K-17G
25-27-30
KW 4/7/89

See below for additional information. By _____

ADDITIONAL INFORMATION

Overlap Review Conducted ☒ yes ☐ no (If no, explain) _____
SEE 98-07612

OK to allow 2 yrs. for development

Form No.
7/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CHECKLIST OF REQUIREMENTS
LARGE DIVERSION SUPPLEMENTARY
ANALYSIS SHEET*

EFFECT ON EXISTING RIGHTS

- ☒ Yes ☐ No Springs/surface streams with 5 or less existing users
☐ Identify number of impacted rights
☐ Name and address of users
☐ Location of points of diversion
☐ Nature of use of the existing rights
- ☐ Yes ☒ No Groundwater
☐ Plat showing proposed well and any other wells &/or
springs within 1/2 mile radius
- ☐ Yes ☐ No Statement of design construction, or operation techniques
which will be used to reduce impact on existing rights

SUFFICIENCY OF WATER SUPPLY

Water Requirements of Proposed Project

- ☒ Required diversion rate during peak use (Maximum rate)
☒ Required diversion rate during average use period
☒ Annual volume
☒ Season of use
☒ Volume to be consumptively used/year

Quantity of Water Available from Source

- ☐ Flow rates for surface water sources available during peak
and average water demand period
☐ Properties of aquifers
☐ Other sources available for supplementation

GOOD FAITH, DELAY OR SPECULATION

- ☒ Copies of deeds, leases, easements, and right-of-ways from _____
- ☒ Power applications affidavit form 205/206 is required
☒ Yes ☐ No Other needed permits, licenses, or approvals required. If
yes, USFS SPECIAL USE, FERC.

FINANCIAL RESOURCES

- ☐ Current certified financial statement
☐ Financial commitment letter/financial statement from
committed party
☐ Project design/plans along with cost estimation to
complete project

*For applications of more than 5 cfs. or more than 500 AF.

LOCAL PUBLIC INTEREST

Comments received from:

- | | | |
|---------------------------------------|--|--|
| ☐ City | ☐ Idaho Fish & Game | ☐ Irrigation District |
| ☐ County | ☐ Idaho Health & Welfare | ☐ Canal Company |
| ☐ Reservations | ☐ Division of Environment | ☐ Other _____ |

Project impacts/implications report

COMMENTS

ADDITIONAL INFORMATION IN FILE # 9809612

POWER CALCULATIONS FOR APPLICATION NO. 98-7650

38110. 51500
P = Kilowatts .74 X hp

Q = cfs 70 (+300)

H = feet 1590

e = efficiency

see
98-7612

- 1.) Affidavit of Residency
- 2.) Ownership of Facilities
- 3.) *Financial Ability
- 4.) Feasibility of Project
 - a. Plans, drawings
 - b. Economic analysis
- 5.) *Compliance w/FERC

*only for projects of more than 25 cfs
or more than 500 horsepower.

$$e = \frac{P(11.8)}{QH} = \frac{38110(11.8)}{370 \times 1590} = \frac{449698}{588300} = 0.76 \text{ } \checkmark \text{ OK}$$

Based on the above calculations the proposed project
must have an 76 % efficiency.

OVERLAP REVIEW

P/D 98-7612 power - same system

P/U 98-4020 - domestic

AUG 09 1991

BYPASSED AREA only rights on Smith Creek are:

98-4021 domestic

98-7612 - same development as this app.

98-7652 - app., orig. & domestic

KW
4/7/89



State of Idaho

DEPARTMENT OF WATER RESOURCES

NORTHERN REGION, Suite 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814 • (208) 765-4639

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

March 9, 1989

Dept. of Fish & Game
2320 Government Way
Coeur d'Alene, Id. 83814

Re: 98-7650

Gentlemen:

Enclosed is information which may be of interest to your Agency relating to an application recently filed with the Idaho Department of Water Resources.

Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager

RGH/pms
Enclosure

PHOTO FILMED
AUG 09 1991





State of Idaho

DEPARTMENT OF WATER RESOURCES

NORTHERN REGION, Suite 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814 • (208) 765-4639

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

March 9, 1989

U.S. Forest Service
Panhandle National Forest
1201 Ironwood Dr.
Coeur d'Alene, Id. 83814

Re: 98-7650

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Enclosed is information which may be of interest to your Agency relating to an application recently filed with the Idaho Department of Water Resources.

Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager

RGH/pms
Enclosure

AUG 09 1991



NOTICE OF CORRECTION

NOTICE IS HEREBY GIVEN THAT APPLICATION FOR PERMIT NO. 98-7650 in the name of Idaho Natural Energy INC. was advertised incorrectly on January 19 & 26, 1989.

The place of use was incorrectly advertised as T65N R20W S26 SWNE; whereas, correctly it should be T65N R02W S26 SWNE.

Protests to the above-referenced correction must be filed with the Director, Dept. of Water Resources, 1910 Northwest Blvd., Suite 210, Coeur d'Alene, Id. 83814 on or before March 6, 1989.

R. KEITH HIGGINSON, Dir.

Published in the Times-News on 2/16 & 23/89.

RECEIVED
MILWAUKEE

AUG 09 1989

98-07650

IDAHO NATURAL ENERGY INC.
550 LINDEN DR.
IDAHO FALLS, ID 83401

Source: SMITH CREEK

Tributary: KOOTENAI RIVER

Diversion Pt: SENE Sec 1 T 64N R 03W

Use: POWER (70.000 CFS)

Date Filed: 12/19/1988

In: T65N R02W S26 SWNE

MICROFILMED

AUG 09 1991

BORENSON ENGINEERING

CONSULTING ENGINEER

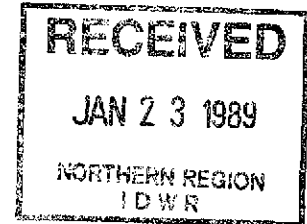
550 LINDEN DRIVE

IDAHO FALLS, IDAHO 83401

208-522-8069

January 13, 1989

Tom D. King
Senior Water Resource Agent
Idaho Dept. of Water Resources
Northern District
1910 Northwest Blvd.
Suite 210
Couer d'Alene, ID 83814



SUBJECT: IDAHO NATURAL ENERGY INC. WATER RIGHT APPLICATION

Dear Mr. King:

Pursuant to your letter dated January 3, 1989, I am enclosing the following information:

1. The maximim annual volume of water will be used by Idaho Natural Energy on the Smith Creek Hydroelectric Project.

The annual water volume to be used is broken down into two sections. Section 1 includes water right Permit #98-7612 which was approved March 15, 1988 for 300 cfs. The second section is for 70 cfs which is now being applied for.

Annual Water Volumes Used

300 cfs	217,190 acre feet per year
70 cfs	50,678 acre feet per year

TOTAL	267,868 acre feet per year
-------	----------------------------

2. A copy of item # 12 (Forest Service Special Use Permit).

Should you have any other questions, please contact me at 522-8069.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ted S. Sorenson".

Ted S. Sorenson P.E.
Project Engineer

AUG 09 1991

GD:mm

Enclosure

cc: Idaho Natural Energy Inc.

SORENSEN ENGINEERING

CONSULTING ENGINEER

550 LINDEN DRIVE

IDAHO FALLS, IDAHO 83401

208-522-8069

January 13, 1989

Tom D. King
Senior Water Resource Agent
Idaho Dept. of Water Resources
Northern District
1910 Northwest Blvd.
Suite 210
Couer d'Alene, ID 83814

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-------	----------------------------

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Sincerely,



Ted S. Sorenson, P.E.
Project Engineer

GD:mm

Enclosure

cc: Idaho Natural Energy Inc.

RECEIVED
JAN 19 1989

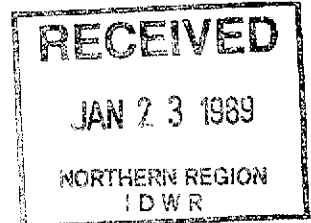
FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

NOV 15 1988

Project No. 8436-012-Idaho
Smith Creek Project
Idaho Natural Energy, Inc.

Mr. R. Fred Moss
Project Manager
Idaho Natural Energy, Inc.
699 East South Temple, Suite 220
Salt Lake City, UT 84102



Dear Mr. Moss:

This acknowledges that the U.S. Forest Service Special Use Permit filed by you on September 22, 1988, fulfills the requirements of article 101 of the license for the subject project.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Mark Robinson".

J. Mark Robinson
Director, Division of Project
Compliance and Administration

AUG 09 1991

DECISION NOTICE REGARDING THE CONTENT OF A
SPECIAL USE PERMIT FOR THE
SMITH CREEK HYDROELECTRIC PROJECT
FERC #8436-001
BONNERS FERRY RANGER DISTRICT
IDAHO PANHANDLE NATIONAL FOREST

On April 10, 1987, the Federal Energy Regulatory Commission issued license #8436 authorizing construction of the Smith Creek Hydro-electric project. At that time, the Forest Service provided several of the general conditions contained in that license, and stated that additional conditions would be imposed after further information became available.

An environmental assessment has been prepared and is available for review. Based on that assessment, and in consultation with other agencies, we have selected the environmental protection and mitigation clauses and plans included in the subject permit, for the following reasons:

1. They provide for the development of a renewable energy source, needed by the country and developed in a manner having acceptable environmental impacts.
2. They provide for an acceptable method to control erosion and maintain water quality at the highest possible levels considering the scope of the project.
3. They provide for the protection of the fisheries and riparian resource by bypassing predetermined minimum and maximum stream flows for channel and fish habitat maintenance.
4. The Biological Evaluation determined that there would be no effect to Treated and Endangered species.
5. They provide for transportation management along the effected segments of the Smith Creek road during the construction phase, and require a method of monitoring the effect of the penstock, especially along the road, during the life of the project.
6. Monitoring of the project's effects on fish populations and habitat conditions in Smith Creek will be required.
7. It is compatible with the Idaho Panhandle National Forest Plan implemented in 1987.

Based on the environmental analysis, I have determined that the selection of the clauses for the permit is not a major Federal action that would significantly affect the quality of the human environment. Therefore, an environmental impact statement is not required. This determination was made considering the following factors:

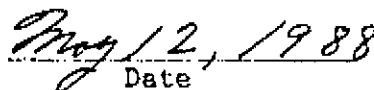
RECEIVED
AUG 09 1987

1. The permit and license conditions imposed by the Forest Service and FERC for this project will adequately mitigate or prevent significant adverse impacts to the quality of the National Forest environment.
2. The degree of ecosystem disturbance will be major but generally temporary and localized to small areas.
3. The cumulative and secondary effects will be mitigated to nonsignificant levels.
4. There will be a minor irretrievable loss of timber growth resulting from some land being used for the facilities of the project. The construction of the facilities will be essentially a minor irreversible land allocation, although the facilities could be removed and the land rehabilitated.
5. Cultural resource surveys have been completed. There will be no effects on cultural resources because no sites are in an affected area.
6. There are no known effects on consumers, civil rights groups, minority groups or women; nor are there any adverse effects on prime farmland or rangeland, wetlands or floodplains.

This decision will be implemented upon the issuance of a Forest Service special use permit. After that occurrence, construction may begin after the approval of the required implementation plans, site plans, and compliance with the conditions of the permit, stipulations, and license conditions.

The Federal Energy Regulatory Commission has issued a license for the Smith Creek project, therefore the decision to issue a special use permit is not subject to appeal. This decision relating to the discretionary clauses contained in the Special Use permit is subject to administrative appeal. Appeals must be postmarked by June 27, 1988. [CFR 211.18(c)(1)]


Forest Supervisor


Date

RECEIVED
MAY 12 1988
FBI - C 8 1988

USDA - Forest Service SPECIAL USE PERMIT LICENSED PROJECT Act of October 21, 1976 (P.L. 94-579) 36 CFR 251.50 et seq.	a. Record No. (1-2) 7 0	b. Region (3-4) 0 1	c. Forest (5-6) 0 4
	d. District (7-8) 0 7	e. Holder No. (9-12) 4 0 1 0 - 0 1	f. Kind of Use (13-15) 6 1 1
	g. State (16-17) 1 6	h. County (18-20) 0 2 1	k. Card No. (21) 1

Permission is hereby granted to Idaho Natural Energy Inc.
 of 699 East South Temple, Salt Lake City, Utah 84102, hereinafter
 called the Holder, for the non-exclusive use, subject to the conditions set out
 below, of the following described lands or improvements:

1. A road right-of-way, 1600 feet in length, and 30 feet in width, across the NE1/4NE1/4, Sec. 1, T.64N., R.3W, B.M., and Lot 4, Sec. 6, T.64N., R.2W, B.M. for access to the diversion site.
2. An area approximately 200 ft. by 200 ft., within the SE1/4NE1/4, Sec. 1, T.64N., R.3W., B.M. to accommodate the diversion and parking site area.
3. A right-of-way for a penstock, 6900 ft. in length and 50 ft. in width, across the following lands:

T.64N., R.3W. B.M.
 Sec. 1; E1/2NE1/4.

T.64N., R.2W. B.M.
 Sec. 6; Lot 4.

T.65N., R.2W. B.M.
 Sec. 31; SE1/4SW1/4,
 S1/2SE1/4;
 Sec. 32, SW1/4SW1/4.

4. A right-of-way for a penstock, 18,720 ft. in length and 20 ft. in width, along the Smith Creek Road #281, crossing the following lands:

T.65N., R.2W., B.M.

Sec 32; S1/2SW1/4, SW1/4SE1/4, N1/2SE1/4;

Sec 33; NW1/4SW1/4, S1/2NW1/4, SW1/4NE1/4, N1/2NE1/4;

Sec 34; NW1/4NW1/4;

Sec 27; S1/2SW1/4, SW1/4SE1/4, N1/2SE1/4;

Sec 26; NW1/4SW1/4, W1/2NW1/4.

This permit is subject to the following attachments and exhibits, attached hereto and made a part hereof:

Attachment 1-Project map, by M.Stevens, 4/1/88

Attachment 2-Construction Stipulations

Attachment 3-Biological Assessment

Attachment 4-Road Maintenance Stipulations

Attachment 5-Bonding Cost Estimates

Exhibit A-Project Safety Plan

Exhibit B-Operations Monitoring Plan

Exhibit C-Road Maintenance Plan

Exhibit D-Spoil Disposal Plan

Exhibit E- Public Information Plan

Exhibit F- Recreation Site Plan

Exhibit G- Fire Prevention Plan

Exhibit H- Construction Drawings

APR 20 1991

This authorization covers 54 acres and is issued for the purpose of construction, operation and maintenance of the Smith Creek Hydroelectric Project, Licensed as Federal Energy Regulatory Commission #8436. The project includes the following improvements and activities:

A hydro-electric facility consisting of concrete diversion dam approximately 8 ft. high by 75 ft. wide with overflow and headgate structures, a steel penstock, 25,620 ft. in length and from 60 to 72 inches in diameter, and an access road 1600 ft. in length leading from the Smith Creek Road #281 to the diversion site.

The powerhouse and connecting powerline are on private land.

This permit is made subject to the following terms, provisions, and conditions.

1. Development plans; layout plans; construction, reconstruction, or alteration of improvements plans; or revision of layout or construction plans for this area must be approved in advance and in writing by the Forest Supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the authorized officer has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the holder as follows: Merchantable timber at appraised value and young growth timber below merchantable size at current damage appraisal value; provided, that the Forest Service reserves the right to dispose of the merchantable timber to others than the holder at no stumpage cost to the holder. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the authorized officer. Removal of hazards shall be done after securing approval from the authorized officer.
2. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. For example, trash, debris, unusable machinery, etc., will be disposed of separately; other materials will be stacked, stored neatly, or within buildings. Disposal will be at an approved existing location, except as otherwise agreed to by the authorized officer.
3. This permit is subject to all valid claims and existing rights.
4. The holder, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations that are applicable to the area or operations covered by this permit.
5. The holder shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the authorized officer or his authorized agent.
6. The holder shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the National Forests by the holder, or by any agents or employees of the holder acting within the scope of their agency or employment.

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7. The holder shall fully repair all damage to National Forest roads and trails caused by the holder in the exercise of the privileges granted by this permit.
8. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.
9. Upon abandonment, termination, revocation, or cancellation of this permit, the holder shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the holder fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the holder of liability for the cost of their removal and restoration of the site.
10. This permit is transferable in accordance with 36 CFR 251.59.
11. In case of change of address, the holder shall immediately notify the Forest Supervisor.
12. All or part of the use under this permit may be temporarily suspended by the Forest Service for breach of any condition contained herein. Continued use in violation of such suspension shall result in action toward cancellation of the permit. This permit may be terminated with the consent of the Federal Energy Regulatory Commission (FERC) upon breach of any conditions herein, at the discretion of the Regional Forester or the Chief, Forest Service. This permit shall terminate if the holder does not have a current valid license under the Federal Power Act.
13. The holder shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of National Forest lands under this permit.
14. This permit is not exclusive. The Forest Service reserves the right to use or permit others to use any part of the permitted area for any purpose, provided such use does not interfere with the rights and privileges hereby authorized, or authorized under the Federal Power Act. The holder shall allow officers of the United States free and unrestricted access to the project lands and project works in the performance of their official duties.
15. All construction, reconstruction, substantial change, or alteration shall be submitted for approval by the authorized officer issuing this permit; the proposed action may commence only upon approval by said authorized officer of plans, specifications, and written construction stipulations; such construction stipulations shall become part of this permit during the term of the proposed action as long as deemed necessary by said authorized officer.
16. Fees, Licensed project

The holder shall pay annually, in advance, a sum determined by the Forest Service to be the fair market value of the use rights granted by this permit. As long as the holder makes payments, in accordance with Section 10(e) of the Federal Power Act, to the Federal Energy Regulatory Commission (FERC) for the use of this land in an amount determined to be the approximate fair market rental of the lands, the fee for this permit is waived in its entirety. In the event the Forest Service determines that payments to FERC are significantly less than fair market rental or if the

holder discontinues such payments, the Forest Service reserves the right to establish an appropriate fee and appropriate conditions of payment. Any fees paid by the holder to FERC shall be credited toward the fee due from the holder for this permit.

17. Permit Term, Licensed Project

Unless sooner canceled or terminated by the authorized officer, in accordance with the provisions of the permit, the term of this permit shall be concurrent with Federal Energy Regulatory Commission (FERC) license No. 8436 and become void on 4/01/2036; but the Forest Service may grant a new permit to occupy and use the same National Forest System land, provided that FERC grants a new license under the Federal Power Act. The new permit must comply with the laws and regulations governing the occupancy and use of National Forest System lands at that time.

18. Project Safety

The holder shall carry out all operations in a skillful manner, having due regard for the safety of employees and the public, and shall safeguard unsafe areas. The holder shall regularly inspect its facilities and provide further effective safety measures as needed for safety protection. The holder shall prepare and display a safety plan which identifies potential hazard areas, especially for the public, and the measure to protect public safety. This plan marked Exhibit A shall then become part of this authorization.

19. Water Pollution

The holder shall discharge no waste or byproduct if it contains any substances in concentrations that would result in violation of water quality standards set forth by the State; would impair present or future beneficial uses of water; would cause pollution, nuisance, or contamination; or would unreasonably degrade the quality of any waters. During the construction and operation of the project, the holder shall protect project water quality by using the existing Best Management Practices mutually agreed to by the Forest Service and the State. This list of BMP's will be made available to the holder.

20. Measurements, Waterflow

The permittee shall (prior to operation of the project) install to standards established by the U.S. Geological Survey, a stream gaging facility which will provide a continuous yearly record of streamflow. This station shall be located at a suitable site downstream of and near the diversion structure. All data shall be made available to the Forest Service, the Idaho Department of Fish and Game and the Kootenai Indian Tribe upon request. The daily records of flows shall be submitted annually by December 31 of each year for the preceding October 1 - September 30 water year to: District Ranger, Bonners Ferry Ranger District, Route 4, P. O. Box 4860, Bonners Ferry, ID 83805.

21. Esthetics

The holder shall protect the scenic and esthetic values of the area under this permit during construction, operation, and maintenance of the project improvements.

AUG 08 1991

22. Grizzly Bear Protection

This special-use authorization includes land which is part of the habitat of the grizzly bear. Therefore, in compliance with Forest Service responsibilities under the Endangered Species Act of 1973, 16 U.S.C. 1531, the following conditions apply to this special-use authorization:

- a. The authorized officer may order an immediate temporary suspension of all human activities permitted by this authorization until such conflict can be resolved. Such action is necessary in order to prevent confrontation or conflict between humans and grizzly bears. The holder shall immediately comply with such order. The United States shall not be liable for any consequences from such a suspension. Such suspension may be appealed to the next higher level as provided in 36 CFR 211.18.
- b. The holder, their agents, employees, contractors and subcontractors will comply with the requirements of the Biological Assessment For Endangered Species, identified as Attachment Three, in the area of the proposed Smith Creek Hydroelectric Project in the conduct of any and all activities authorized. The authorized officer may review and revise the plan as needed.
- c. The holder assumes full responsibility and shall hold the United States harmless from any and all claims by the corporation or by third parties for any damages to life or property arising from the activities authorized by this special-use authorization and encounters with grizzly bears, or from suspension, revocation or termination of activities authorized by this special-use authorization.
- d. Intentional or negligent acts by the holder, their agents, employees, contractors and subcontractors that result in injury or death of a grizzly bear will be cause for revocation or termination of this authorization in whole or in part.
- e. Failure to comply with provisions a, b or c may result in suspension, revocation or termination of this authorization in whole or in part, and may cause criminal action to be taken against the holder under provisions of the Endangered Species Act of 1973, as amended, or other applicable authority.

23. Damage - High Hazard Clause

The holder is hereby made liable for all injury, loss, or damage, including but not limited to fire suppression costs, directly or indirectly resulting from or caused by the holder's use and occupancy of the area covered by the permit, regardless of whether the holder is negligent or otherwise at fault, provided that the maximum liability without fault shall not exceed \$1,000,000 for any one occurrence, and provided further that the holder shall not be liable when such injury, loss, or damage results wholly, or in part, from a negligent act of the United States, or from an act of a third party not involving the facilities of the holder.

Determination of liability for injury, loss, or damage, including fire suppression costs, in excess of the specified maximum, shall be according to the laws governing ordinary negligence.

24. Risk and Hazards

Avalanches, rising waters, high winds, falling limbs or trees, landslides and other hazards are natural phenomena in the forest that present risks to the holder's property that the holder hereby assumes. The holder is

responsible for inspecting its site, right-of-way, and the immediate adjoining area for dangerous trees, hanging limbs, and other evidence of hazardous conditions and, after securing permission from the Forest Service, is responsible for removing such hazards.

25. Signs

The holder shall erect no signs or advertising devices on the area covered by this permit without prior approval of the Forest Service as to location, design, size, color, and message. The holder shall maintain or renew erected signs as necessary to meet and presentable standards.

26. Area Access

The holder agrees to permit the free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the holder of the privileges thereof.

27. Plans, Part of Authorization

The holder shall prepare the following plans in consultation with Forest Service and other appropriate agencies.

Monitoring plan (operations)

Road Maintenance plan (Basis provided in Attachment Four)

The holder shall submit these plans for Forest Service approval three months prior to beginning initial operations. Said plan shall be attached hereto and marked as Exhibit B and C.

28. Nondiscrimination in Employment

In connection with the performance of work under this permit, including construction, maintenance, and operation of the facility, the holder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or handicap in accordance with the Civil Rights Act of 1964, as amended.

The holder shall include and require compliance with the above nondiscrimination provisions in any subcontract made with respect to the operations under this authorization.

The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the breach or violation occurs.

29. Forest Service Representative

The District Ranger, Bonners Ferry Ranger District, Telephone No. 208-267-5561, is responsible for administering this special-use authorization. The holder should contact the District Ranger regarding any questions concerning the occupancy and use authorized and the provisions of this authorization.

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30. Permit Amendment, Licensed Project

The Regional Forester may review the terms and conditions of this permit upon any modification of project facilities or after 30 years from the date of issuance. At such time, the Regional Forester may incorporate in the permit such new terms, conditions, and stipulations as existing or prospective conditions may warrant; provided, that such modification shall not unreasonably reduce the use herein authorized.

In Witness Whereof, the parties hereto have caused this permit to be duly executed on this 12 day of May 1988.

Holder

USDA - Forest Service

by R. Fred Moss by John Morden
Name R. Fred Moss WILLIAM MORDEN
Title Sec./Tree. Forest Supervisor
Company Idaho Natural Energy Inc. Idaho Panhandle National Forest

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CONSTRUCTION STIPULATIONS

The Stipulations, made as of the 12th day of May, 19 88, by and between Idaho Natural Energy Inc., hereinafter referred to as the holder, and U.S. Department of Agriculture, Forest Service, acting by and through its authorized officer, hereinafter referred to as the Forest Service.

Whereas the holder has been issued a special-use authorization dated 5/12/88 for the use and occupancy of National Forest land for the use (and maintenance) of a hydroelectric project, and, whereas, such authorization requires that all construction conform with approved plans, specifications, and stipulations.

Now, therefore, the holder hereby agrees to the following terms and conditions, and the Forest Service hereby authorizes the construction to proceed in accordance with these terms and conditions.

CS-1. Suspension/Revocation

The Forest Service may temporarily suspend construction/reconstruction and/or terminate the special-use authorization without administrative proceedings upon breach of any of the conditions herein.

CS-2. Plans, Part of Authorization

The holder shall prepare the following plans in consultation with Forest Service and other appropriate agencies.

Spoil disposal plan
Public Information Plan
Recreation Site Plan

The holder shall submit these plans for Forest Service approval prior to the beginning of construction. Said plans shall be attached hereto and marked as Exhibits D, E and F respectively.

CS-3. Fire Plan Part of Authorization

A project fire plan describing the holder's responsibilities for prevention and suppression of fires, developed by the holder, and subject to Forest Service approval, shall become part of this authorization, as Exhibit G to be attached hereto. The holder shall obtain Forest Service approval for said plan before beginning any on-the-ground construction and shall strictly follow its terms.

CS-4. Designation of Construction Manager

The holder shall designate a construction manager for the project construction. This individual or his/her designated representatives, shall be qualified to represent the holder and shall be present or have a qualified acting representative present at all times while project construction activities are taking place. This individual shall be the person who receives the on-the-ground approvals and directions from the designated Forest Service representative(s).

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CS-5. Forest Service Representative

The Forest Supervisor shall designate the authorized Forest Service representative for the construction period of this permit in writing.

CS-6. Construction Inspections by Holder

The holder shall perform daily (or on a schedule otherwise agreed to by the Forest Service in writing) inspections of holder's operations while they are proceeding. The holder shall document these inspections (in the form of a diary) and shall deliver such documentation to the Forest Service on a weekly basis. The inspections must specifically include fire plan compliance, public safety, and environmental protection. The holder shall act immediately to correct any items found not to be in compliance.

A registered professional engineer or a designated representative under his/her direction shall conduct daily inspections of the construction activities to assure compliance with the approved construction drawings and specifications.

CS-7. Site Development Schedule

As a part of this authorization, the holder shall, in consultation with the Forest Service, prepare a schedule for the progressive development of the permitted site and installation of facilities. Such a schedule shall be prepared annually and submitted not later than 30 days prior to start up of ground disturbing activities, and shall set forth an itemized priority list of planned improvements and the planned date for completion. This schedule shall be made a part of this authorization. The holder may accelerate the scheduled date for installation of any improvement authorized, provided the holder has met other scheduled priorities; and provided further, that the holder has completed all priority installations authorized to the satisfaction of the Forest Service prior to the scheduled due date.

The holder shall submit all construction drawings and specifications to the Forest Service for approval a minimum of 30 days before start of construction. All construction drawings and specifications for facilities must have the approval with signature and stamp of a registered professional engineer, and must have the approval of the Forest Service prior to the construction. These plans shall then become part of this authorization as Exhibit H, to be attached hereto. In the event that significant changes to the approved drawings and specifications are required during the course of construction, the holder shall submit such proposed changes to the Forest Service for review and approval a minimum of seven days prior to making the changes on the ground, unless waived in writing by the Forest Service representative.

The holder shall ensure that construction bid invitations are in compliance with this authorization and with all applicable environmental protection standards.

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The final project design shall be based on an accurate site specific survey of the land including all topographical features such as water courses, rock outcrops, existing improvements, etc.

The holder shall furnish to officers of the United States such information as may be required concerning the construction, operation, and maintenance of the project, and any alteration thereof.

When requested in writing by the Forest Service, the holder shall provide for a plan-in-hand field review with the Forest Service for any aspect of the project prior to Forest Service approval of construction drawings and specifications or subsequent changes thereto.

CS-8. Bonds, Performance

As a further guarantee of the faithful performance of the provisions of this permit and these stipulations, the holder agrees to deliver and maintain an surety bond in an amount which shall be determined annually from the site development schedule. Estimates for bond amounts shall be displayed in Attachment Five. Before undertaking additional construction or alteration work not provided for at the time the bond amount was set or when the improvements are to be removed and the area restored, the holder shall deliver and maintain a surety bond in an amount set by the Forest Service, which amount shall not be in excess of the estimated loss the Government would suffer upon default in performance of this work. Should the sureties or the bonds delivered under this authorization become unsatisfactory to the Forest Service, the holder shall, within thirty (30) days of demand, furnish a new bond with surety, solvent and satisfactory to the Forest Service.

In lieu of surety bond, and as directed by the Forest Service, the holder may deposit into a Federal Depository, and maintain therein, cash in the amounts provided for, or negotiable securities of the United States having a market value at time of deposit of not less than the dollar amounts provided, or the holder may deliver an irrevocable letter of credit from an eligible issuing institution of not less than the dollar amount provided. This letter of credit shall satisfy current established guidelines and be approved by the Forest Service.

The Forest Service shall release the holder's surety bond, or return deposits or the letter of credit in lieu of bond, thirty (30) days after certification by the Forest Service that installations under the development plan are complete, and upon the holder furnishing proof satisfactory to the Forest Service that all claims for labor and material on said installations have been paid by the holder or released and satisfied. The holder agrees that all moneys deposited under this authorization may, upon failure on holder's part to fulfill all and singular the requirements herein set forth or made a part hereof, be retained by the United States to be applied to the satisfaction of holder's obligations assumed under the authorization and construction stipulations, without prejudice whatever to any other rights and remedies of the United States.

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Use of Explosives

- a. The holder shall use only electronic detonators for blasting, except near high-voltage powerlines. The Forest Service may allow specific exceptions when in the public interest.
- b. In the use of explosives, the holder shall exercise the utmost care not to endanger life or property and shall comply with the requirements of the Forest Service. The holder shall be responsible for any and all damages resulting from the use of explosives and shall adopt precautions to prevent damage to surrounding objects. The holder shall furnish and erect special signs to warn the public of the holder's blasting operations. The holder shall post guards at all entrances to the blasting area and place and maintain such signs so they are clearly evident to the public during all critical periods of the blasting operations, and shall ensure that they include a warning statement to have radio transmitters turned off.
- c. The holder shall store all explosives in a secure manner, in compliance with State and local laws and ordinances, and shall mark all such storage places "DANGEROUS - EXPLOSIVES." Where no local laws or ordinances apply, the holder shall provide storage that is satisfactory to the authorized officer and in general not closer than 1,000 feet from the road or from any building or camping area.
- d. When using explosives, the holder shall adopt precautions to prevent damage to landscape features and other surrounding objects. When directed by the authorized officer, the holder shall leave trees within an area designated to be cleared as a protective screen for surrounding vegetation during blasting operations. The holder shall remove and dispose of trees so left when blasting is complete. When necessary, and at any point of special danger, the holder shall use suitable mats or some other approved method to smother blasts.

CS-10. Erosion Control, Topsoil, Revegetation

The holder shall be responsible for the prevention and control of soil erosion, caused either directly or indirectly by construction or operation of the project, and shall provide preventive and control measures as required by the Forest Service, and the Erosion and Sedimentation Control Plan developed by the holder under Article # 105 of the FERC license.

The holder shall strip topsoil from construction areas and deposit it in storage piles apart from other excavated material. After removing the desired amount of material, the holder shall evenly spread the stored topsoil over exposed subsoil in appropriate areas to the extent practicable, and shall revegetate the area disturbed.

To the extent practicable on National Forest System lands, the holder shall establish a vegetative cover on all cut and fill slopes, borrow areas, and other disturbed areas capable of growing a vegetative cover of grasses or other suitable vegetation, as required by the Forest Service. The holder shall seed or plant at a time of the year, in a manner, and with species that the Forest Service considers offer the best chance of success. The holder shall repeat such seeding and planting regularly as conditions allow, until such areas are accepted in

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writing by the Forest Service as satisfactorily revegetated and stabilized.

The holder shall install erosion control measures for adverse weather conditions by October 15 each year and keep them current with the operation until the Forest Service notifies the holder that the adverse conditions of that season are over.

CS-11. Winterization

The holder shall take necessary measures to ensure that a suitable conveyance or channel is adequate to pass the inflow design flood for spring runoff and to prevent erosion or siltation due to the construction.

CS-12. Unattended Construction Equipment

The holder shall not place construction equipment on National Forest land prior to actual use or allow it to remain on National Forest land subsequent to actual use. The holder shall remove equipment from National Forest System land unless a permit is issued for equipment storage.

CS-13. Timber Cutting, by Holder

The holder agrees, as directed by the Forest Service, to cut into commercially usable lengths and deck for disposal by the Forest Service any and all merchantable timber not purchased by the holder which is cut from the National Forest lands occupied hereunder. The Forest Service shall dispose of this material, provided that the Forest Service may sell or otherwise dispose of standing merchantable timber to third parties when it is possible to fell and remove such timber without undue interference with the operations of the holder. Unmerchantable material, slash, including tops, limbs, logs and stumps shall be disposed of by the holder. The following disposal methods, as described in Forest Service Specifications for construction of Roads and Minor Drainage Structures 1985 shall be used; for tops, limbs, and logs chipping (method 6) or piling and burning (method 7); For stumps scattering (method 4) or piling and burning (method 7). In designated sensitive areas construction slash shall be placed in a neat compacted windrow at the toe of completed embankment slopes to reduce soil erosion and sedimentation from construction areas.

CS-14. Traffic Safety

When construction is in progress adjacent to or on Forest Service controlled roads open to public travel, the holder shall furnish, install, and maintain temporary traffic controls to provide the public with adequate warning and protection from hazardous or potentially hazardous conditions associated with the holder's operations. Devices must be appropriate to current conditions and must be covered or removed when not needed. Except as otherwise agreed, flagmen and devices must be as specified in the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD).

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CS-15. Construction Traffic Schedule

The holder shall make every attempt to allow open road periods daily for forest user traffic.

The holder shall allow for grazing permittees to trail cattle past the construction sites on or about July 1st and again on September 30th of the penstock construction year.

The holder shall plan construction schedules so as to minimize traffic delays during the three major summer weekend holidays, Memorial Day, July 4th and Labor Day and the beginning dates of general deer hunting season.

A schedule of activities shall be posted at at least three key traffic locations and schedules announced to the Forest Service District office, the Bonners Ferry radio station KBFI and the Chamber of Commerce visitor center once per week, or as the construction schedules change.

CS-16. Surveys, Land Corners

The holder shall protect, in place, all public land survey monuments, private property corners, and forest boundary markers. In the event that any such land markers or monuments are destroyed in the exercise of the privileges authorized by this authorization, depending on the type of monument destroyed, the holder shall reestablish or reference same in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the County Surveyor, or (3) the specifications of the Forest Service.

Further, the holder shall ensure that any such official survey records affected are amended as provided by law.

CS-17. Traffic Control Device

When construction is in progress, the traffic counter site at mile post 0.4 on the Smith Creek road shall be protected from damage. The holder shall be responsible for any and all damage. If the installation requires replacement, the Forest Service will be involved in the site selection and will supply the special wire.

CS-18 Road Repair

The holder shall be required to repair the portion of the Smith Creek road 281 damaged due to installation of the penstock to a condition which is equal to or better than it would have been had the hydro project not been constructed. The holder is required, at a minimum, to restore the road to a condition acceptable to the Forest Service. This may include, but is not limited to the following items:

- Return the road prism to its full width, including ditches and shoulder areas.
- Repair or replace damaged cross drainage culverts.
- Repair or replace damaged underdrains.
- Repair or replace damaged retaining wall structures.
- Replace damaged pavement structure including granular base course, bituminous surface course, and chip seal.
- Shape back slopes.
- Revegetate disturbed cut and fill slopes, and borrow and waste areas.

In addition, the holder shall be held liable for all increased costs, if any over the original contract prices, resulting from the modification of the Smith Creek Road repair contract No. 50-028-165. This contract, scheduled for work and completion in 1988, was modified because of the hydroelectric project.

CS-19. Cultural Resource Discoveries

If, prior to or during excavation work, items of potential cultural, historical, archeological, or paleontological value are reported or discovered, or a known deposit of such items is disturbed, the holder shall immediately cease excavation in the area so affected. The holder shall then notify the Forest Service and shall not resume excavation until it receives written approval from the authorized officer.

If it deems it necessary or desirable, the Forest Service may require the holder to have performed recovery, excavation, and preservation of the site and its artifacts at the holder's expense. At the option of the Forest Service, this authorization may be terminated at no liability by the United States when such revocation is deemed necessary or desirable to preserve or protect archaeological, paleontological, or historic sites and artifacts.

CS-20. Water Rights

This authorization confers no ownership of the water to the holder. Construction may begin after the holder provides the authorized officer with a sufficient showing that the holder has a right to use the water.

In Witness Whereof, the parties hereto have caused this permit to be duly executed on this 12 day of may 1988.

Holder

USDA - Forest Service

by R. Fred Moss
Name R. Fred Moss
Title Sec. / Tres.
Company Idaho Natural Energy Inc.

by John C. Russell
For Forest Supervisor
Idaho Panhandle National Forest

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ATTACHMENT THREE

BIOLOGICAL ASSESSMENT
FOR ENDANGERED SPECIES IN THE AREA
OF THE PROPOSED
SMITH CREEK HYDROELECTRIC PROJECT

September, 1987

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BIOLOGICAL ASSESSMENT

For construction of a hydroelectric facility on Smith Creek, Boundary County, Idaho by Idaho Natural Energy, Inc.

I. Introduction

The proponent of Smith Creek Hydro must abide by federal environmental statute(s) during the planning and construction phases of the project. This report addresses threatened and/or endangered species.

The purpose of this Biological Assessment is to determine if the proposed action may affect a Federally listed, proposed, or candidate threatened or endangered species. This assessment includes all lands involved in the proposed action, including Federal lands administered by USDA Forest Service and private lands.

Two listed animal species are known to exist within the vicinity of the proposed project: grizzly bear (threatened) and Bald eagle (endangered). The woodland caribou (endangered) and gray wolf (endangered) are also known to occur within the ecosystem of the Selkirk Mountains but based on current and historic evidence may only occur sporadically within the local vicinity of the proposed project.

A botanical survey of the project area completed on July 2, 1986 revealed the presence of no known threatened, endangered, proposed, or

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candidate plant species. A copy of the survey report has previously been submitted to the Forest Service and other agencies for their review.

II. Description of Proposal

A detailed description of the proposed project is included in the Application for License for the Smith Creek Hydroelectric Project, Boundary County, Idaho dated July 1984, Amendment of License dated March 10, 1985 and the resultant Order Issuing License, dated April 10, 1987 and the attached Environmental Assessment dated February 10, 1987. Copies are on file with the Bonners Ferry Ranger District, Idaho Panhandle National Forests.

III. Status of T & E Species in Project Area

A. Grizzly Bear

The project area lies within the Long Smith grizzly bear management unit of the Selkirk Mountains Grizzly Bear Ecosystem (see Figure 1). The Long Smith Unit totalling 103.6 square miles in size, has been impacted by other development activities, including roading, logging and grazing. The major impact has been from roading (21.3 square miles) followed by grazing (1.7 square miles) and logging (0.24 square miles). Currently 80.36 square miles within the unit are in a relatively undisturbed condition and available for use by grizzly bears. The remaining portions of the unit are sufficiently influenced by human activities to preclude bear use or



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
NORTHERN DISTRICT

COEUR D'ALENE, IDAHO 83814

1910 Northwest Blvd. Suite 210

January 3, 1989

Idaho Natural Energy Inc.
550 Linden Dr.
Idaho Falls, Id. 83401

Gentlemen:

Enclosed is your Receipt No. N2200 for the application filing fee of \$925.00. The application is currently being processed, but before it can be approved, we must know the annual volume (Acre Feet per Annum) of water you will be using. We must also have a copy of the engineer report that you refer to in Item No. 12 of your application and the plans for increasing the output of the facility.

If you have any questions, please contact me at this office.

Sincerely,

TOM D. KING
Senior Water Resource Agent

TDK/pms

Enc. - Receipt

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