FINAL ENVIRONMENTAL ASSESSMENT

FEDERAL ENERGY REGULATORY COMMISSION
OFFICE OF HYDROPOWER LICENSING

Moyie River Hydroelectric Project
FERC Project No. 1991-009 -Idaho

I. APPLICATION

On April 1, 1996, the City of Bonners Ferry (City), Idaho filed an application for a new license with the Federal Energy Regulatory Commission (Commission) for the continued operation and maintenance of the existing 3,950-kilowatt (kW) Moyie River Hydroelectric Project (project). The project occupies 1.55 acres of land that are owned by the United States and located within the Idaho Panhandle National Forest. The forest lands occupied by the project are located in the upper reach of the reservoir. The remainder of the project lands are owned by the City. The project is located near Moyie Springs, in Boundary County, Idaho (figure 1).

The Federal Energy Regulatory Commission issued a Draft Environmental Assessment (DEA) for comment on September 15, 1998. In response, we received 6 comment letters. We list the commenting entities in "Comments on the DEA," section IV.C. All comment letters were considered carefully. Some sections of the DEA have been modified as a result of our reevaluation and are identified in Appendix B, "Comments on the DEA and Staff Responses."

II. PURPOSE AND NEED FOR ACTION

A. Purpose of Action

The Federal Power Act (FPA) provides the Commission with the exclusive authority to license nonfederal water power projects on navigable waterways and federal lands.

For the project, the Commission must decide (1) whether to issue a new license to the City, and, if so, (2) what, if any, conditions should be placed on that license to protect or enhance existing environmental resources or to mitigate for any adverse environmental impacts that would occur due to project operation and maintenance.

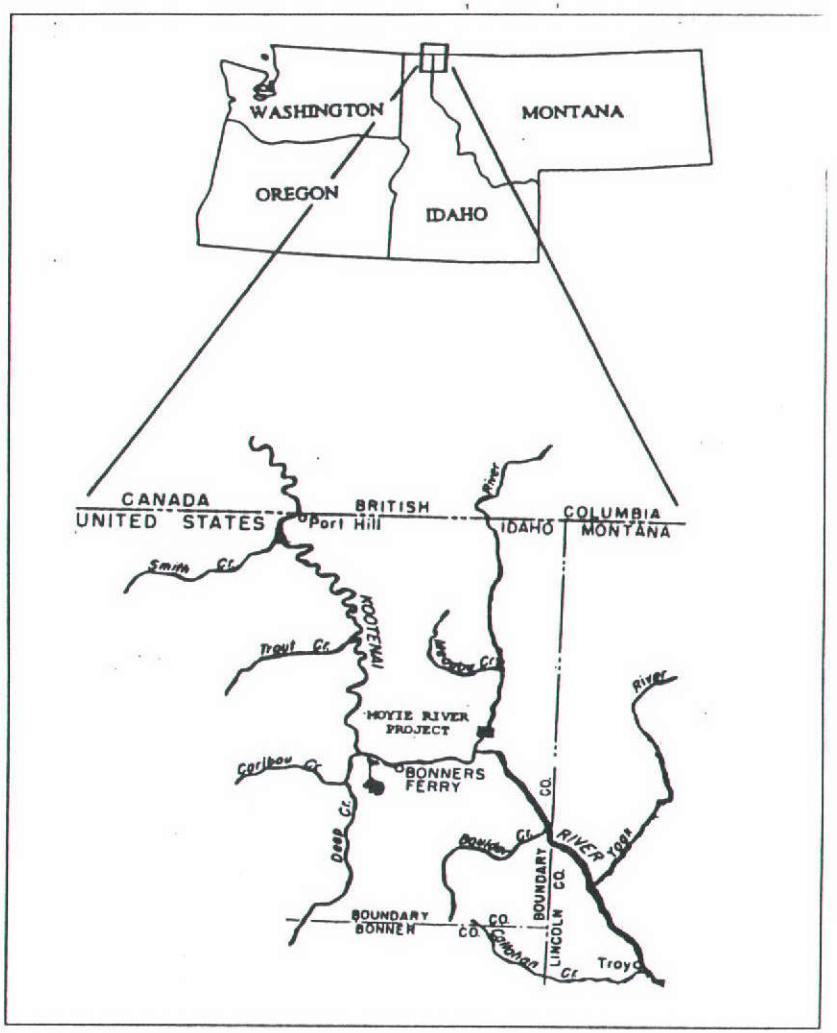


Figure 1. Location of the Moyie River Hydroelectric Project.

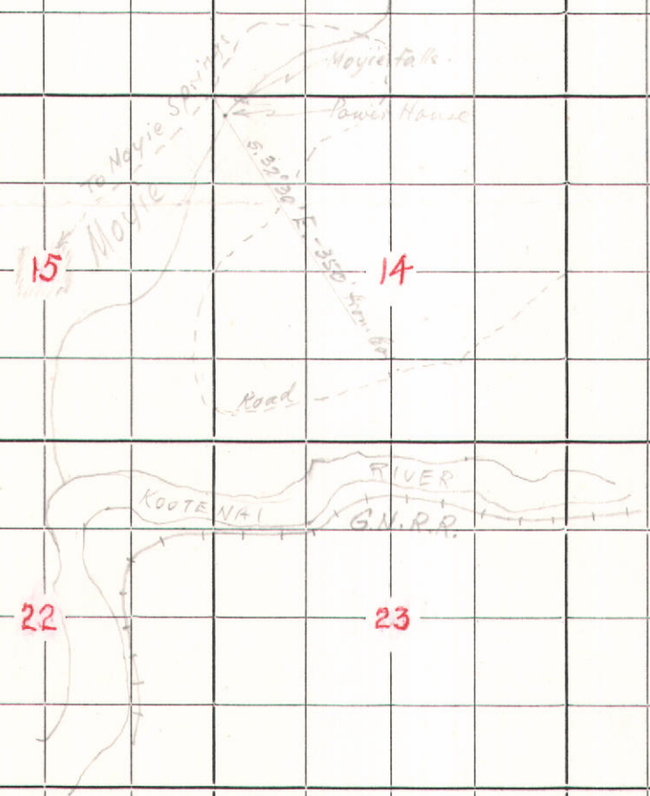

18713

R-2 E.

2 1

10 11 12

T. 62 N.



15 14 13

22 23 24

Q = 160 cfs.

Scale: 2 Inches Equals 1 Mile. Draw Map In Ink.

18713

NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE.

Notice is hereby given that at 10:00 A. M. on the 6th day of December, 1955, at Bonners Ferry, County of Boundary, State of Idaho, before Geo. Unternahrer, Probate Judge ,proof will be submitted of the application to beneficial use of 160 cubic feet per second of the waters of Moyie River in accordance with the terms and conditions of Permit No. 18713 heretofore issued by the Department of Reclamation of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Village of Bonners Ferry, a Municipal Corporation.

The use to which said water has been applied is Production of power.

The amount applied to beneficial use is 160 cfs.

The place where said water is used NW¼ NW¼ Section 14, Township 62 North, Range 2 East, Boise Meridian.

The name of the canal or ditch or other works by which said water is conducted to such place of use is, rock tunnel and steel uenstock.

The right to take water from such works is based upon Permit No. 18713.

The source of supply from which such water is diverted is Moyie River, a tributary of the Kootenai River.

The date of priority which said user is prepared to establish is September 2, 1938.

MARK R. KULP
State Reclamation Engineer

1st Pub. Nov. 10, 1955
Last Pug. Dec. 1, 1955 18713

Affidavit of Publication

STATE OF IDAHO
County of Boundary } ss.

W.A. Chubb

being first duly sworn upon his oath, deposes and says: That he is the Publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of Village of Bonners Ferry

a Notice of Proof Application of Water To Beneficial Use

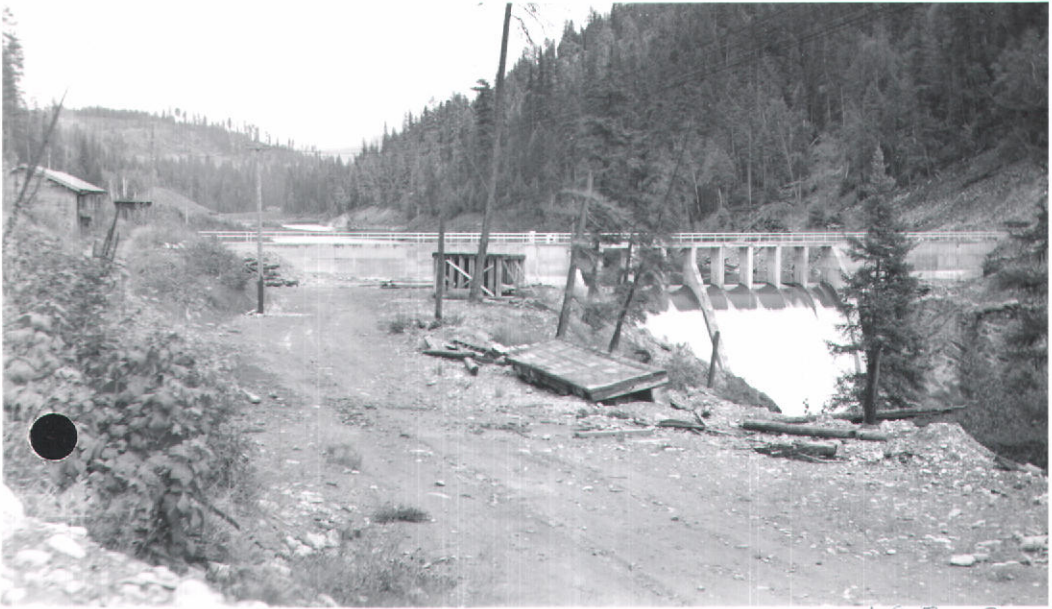
Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for Four consecutive issues, commencing with the issue dated Nov. 10 1955, and ending with the issue dated Dec. 1, 1955.

W. A. Chubb
Co-Publisher
Foreman

Subscribed and sworn to before me this ____ day of ____, 195__.

Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

18713



18713



1873

18713

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

Village of Bonners Ferry
Bonners Ferry, Idaho

Permit No. 18713

Examination for Completion of works

740' between P.D. & [illegible]

County Boundary 150' " power house

62 N - 2 E

Q = 160 cfs. (37500 cfs Spillway Capy)

S. = Magic River

P.D = N 43°35' E 1070 feet
for SW cor. S.11 T62N. R2E.
and in SW¼ SW¼ S11. T62N R2E.

Conc. to Klein & Rock tunnel.

Elev - Elev 31-1950

Purpose = Power.

Place of Use - S 30°15' E. 575 feet
for NW cor S.14 T62N. R2E.
in NW¼ NW¼ S.14 T62N. R2E.

Return to River Same

RECEIVED
OCT 4 1951
Department of Reclamation

5' d. gate & tunnel
Iron screen over tunnel
Inlet spee approx 13¾ & 9, 1½ sp
9" wide Arneo control

Spillway Capy = 21000 cfs
with 3' freeboard.

tunnel is 8' d. round

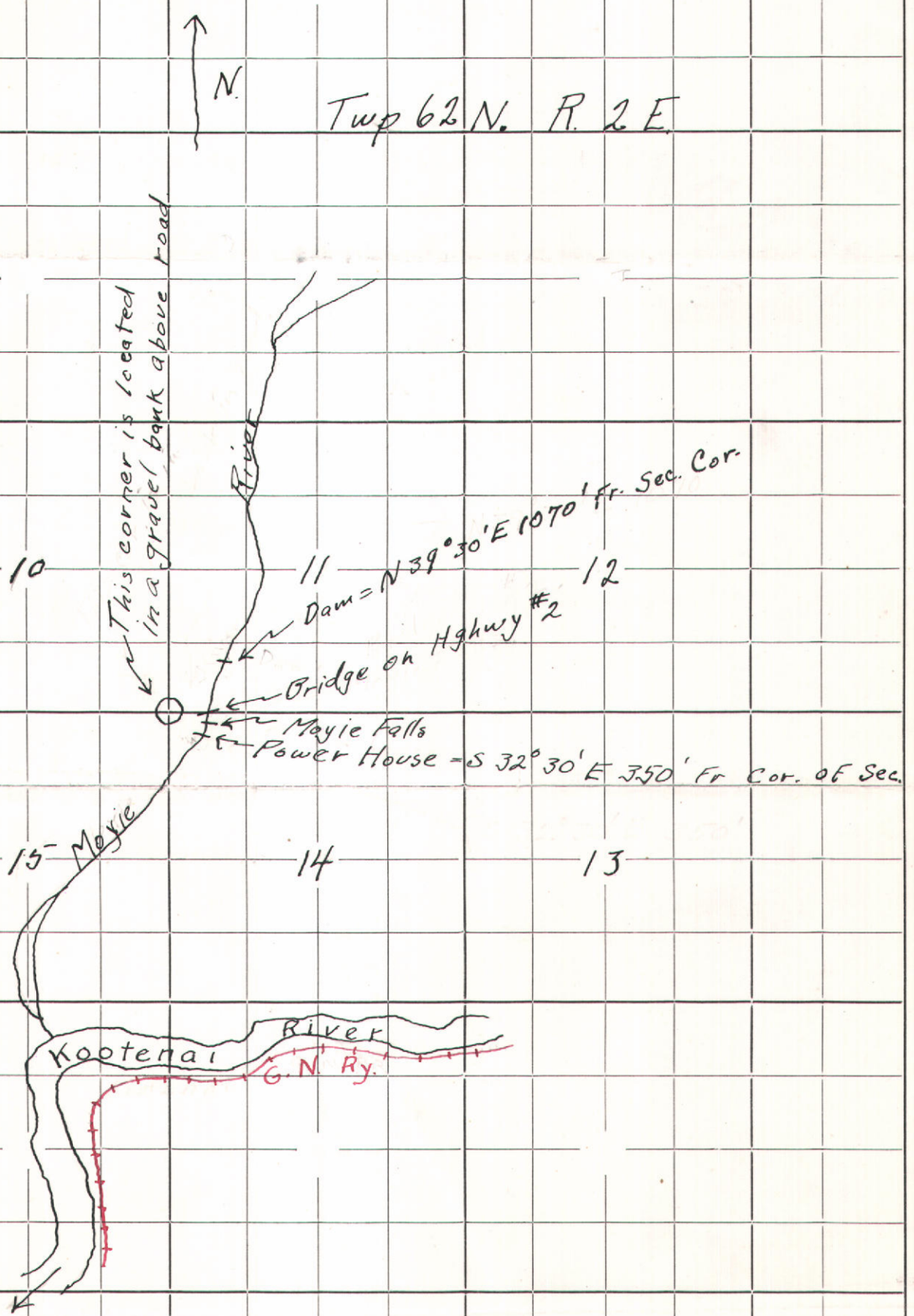
212' static head

1800 Kw on 2000 Kw plant
3200 hp.

Surge pipe 8' d. concrete
North of highway approx 50'

5' d. steel tunnel for bare
& cliff to power house.
approx 100 feet

Generating 1000 Kw today
2500 volts



Scale: 2 Inches Equals 1 Mile. Draw Map In Ink.

18713

NOTICE FOR PUBLICATION

Notice is hereby given that at 10:00 A. M., on the 4th day of December, 1950, at Bonners Ferry, County of Boundary, State of Idaho, before M. D. Pace, a notary public, proof will be submitted of the completion of works for the diversion of 160 cubic feet per second of the waters of Moyie River in accordance with the terms and conditions of a certain permit heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name of the person or corporation holding said permit is Village of Bonners Ferry.

2. The postoffice address of such person or principal place of business of such corporation is Bonners Ferry, County of Boundary, State of Idaho.

3. The number of such permit is 18713, and the date set for the completion of such work is December 31, 1950.

4. Said water is to be used for power purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 160 cubic feet per second.

The place where said water is diverted is in the SW¼SW¼ Section 11, Twp. 62.N.R. 2. E. and the place of use of said water is in the NW¼NW¼ Section 14, Twp. 62.N. R. 2. E. B. M. 18713

MARK R. KULP,
State Reclamation Engineer.

First publication Nov. 2, 1950.
Last publication Nov. 23, 1950.

Affidavit of Publication

STATE OF IDAHO }
County of Boundary } ss.

R. L. Myers being first duly sworn upon his oath, deposes and says: That he is the co-publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of State Reclamation Engineer

a Notice for Publication

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for four consecutive issues, commencing with the issue dated Nov. 2 1950, and ending with the issue dated Nov. 23, 1950.

R. L. Myers
Co-Publisher
~~Foreman~~

Subscribed and sworn to before me this 4th day of December, 1950.

M. D. Pace
Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

Notary Public for the State of Idaho
residing at Bonners Ferry, Idaho
My Commission Expires May 8, 1954.

18713

IN WITNESS WHEREOF, the Commission has caused its name to be signed hereto by Nelson Lee Smith, its _____ Chairman, and its seal to be affixed hereto and attested by Leon M. Fuquay, its _____ Secretary, this 5th day of April, 1950, pursuant to its order dated September 21, 1949, attached hereto.

FEDERAL POWER COMMISSION

By Nelson Lee Smith
Chairman.

Attest:

Leon M. Fuquay
Secretary.

JTT:ea
10-25-49

18713

IN TESTIMONY OF ACCEPTANCE of all the provisions, terms, and conditions of this license, the Licensee, this 7th day of March, 19 50, has caused its corporate name to be signed hereto by Myrl A. Folch, its _____ Chairman, Board of Trustees, and its corporate seal to be affixed hereto and attested by H. M. Duroker, its _____ Clerk, pursuant to a resolution of its Board of Trustees duly adopted on the 7th day of March, 19 50, a certified copy of the record of which is attached hereto.

VILLAGE OF BONNERS FERRY

By Myrl A. Folch
Chairman, Board of Trustees

Attest:

H. M. Duroker
Clerk.

(Executed in triplicate)

18713

NOTICE FOR PUBLICATION

NOTICE OF APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER CHAPTER 28, SESSION LAWS OF 1947.

Notice is hereby given that on the 30th day of January 1948, at 10:00 o'clock A. M., a hearing will be held by the State Reclamation Engineer, or his deputy, at 107 State House, Boise, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18731. The said protests and evidence may be submitted either orally or by affidavit by any person or persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension.

1. The number of said Permit is 18731.

2. The name and post office address of the person or persons or corporation holding this permit are Village of Bonners Ferry, Bonners Ferry, Idaho.

3. The amount of water claimed by the said permit or permits is 150 cubic feet per second from Moyie River which is tributary to Kootenai River.

18713

MARK R. KULP,
State Reclamation Engineer
First publication Jan. 15, 1948.
Second publication Jan. 22, 1948.

Affidavit of Publication

STATE OF IDAHO }
County of Boundary } ss.

R. L. Myers

being first duly sworn upon his oath, deposes and says: That he is the co-publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of State Reclamation Engineer

a Application for Extension of Time for Completion of Works

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for two consecutive issues, commencing with the issue dated Jan. 15 1948., and ending with the issue dated Jan. 22, 1948.

R. L. Myers
Co-Publisher ~~Proprietor Foreman~~

Subscribed and sworn to before me this 4 day of Feb., 1948.

Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

18713

INVITATION TO BIDDERS
Construction of Moyie Power Dam

Contractors are invited to submit a written formal bid for the construction of a concrete gravity dam and appurtenant works, as a part of the municipal hydro-electric power system for the Village of Bonners Ferry, Boundary County, Idaho.

The proposed project is located on the Moyie river, approximately 10 miles northeast of the Village of Bonners Ferry, near the Bonners Ferry-Troy Highway (U. S. No. 2). Bids will be received at the office of the Village Clerk, Power and Light Office, Bonners Ferry, up to 8:00 P. M., February 3rd, 1948.

The work involves the following approximate quantities: 45 acres clearing; diversion and care of river; 5670 cubic yards solid rock excavation; 1080 cubic yards unclassified excavation; 900 lineal feet tunnel excavation; 60 feet shaft excavation; excavating, screening and hauling 13,500 cubic yards gravel; excavating, screening, and hauling 6,400 cubic yards sand; mixing and placing 15,000 cubic yards concrete; placing 230,000 lbs. of reinforcement steel; installing gates, structural steel, trash racks, penstock tubes, and other miscellaneous work. The Village will supply cement, steel, gates, pipe, and other materials, and a limited amount of electric power will be made available to the contractor.

Plans and specifications may be obtained upon payment of $25.00, at the office of H. M. Buroker, Superintendent of Power and Light, Bonners Ferry, Idaho, or at the office of:

C. F. Griggs, Consulting Engineer
819 Paulsen Bldg.,
Spokane, Washington.

Checks offered as payment for plans and specifications must be made payable to the Village of Bonners Ferry.

The Board of Trustees reserves the right to reject any and all bids.

BOARD OF TRUSTEES,
Village of Bonners Ferry,
Boundary County, Idaho
H. M. BUROKER, Clerk.

18713

First publication Jan. 8, 1948.
Last publication Jan. 22, 1948.

Affidavit of Publication

STATE OF IDAHO }
County of Boundary } ss.

R. L. Myers

being first duly sworn upon his oath, deposes and says: That he is the co-publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of Village of Bonners Ferry

a Invitation to Bidders

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for three consecutive issues, commencing with the issue dated Jan. 8 1948, and ending with the issue dated Jan. 22, 1948.

R. L. Myers
Co-Publisher Proprietor/Foreman

Subscribed and sworn to before me this 4 day of Feb., 1948.

Owen Critchfield
Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

18713

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

IN THE MATTER OF THE APPLICATION OF VILLAGE OF BONNERS FERRY, A MUNICIPAL CORPORATION NO. 26042, IN THE OFFICE OF THE COMMISSIONER OF RECLAMATION OF THE STATE OF IDAHO, FOR PERMIT TO APPROPRIATE CERTAIN WATERS AT MOYIE RIVER, IDAHO.

PETITION ON APPEAL

Comes now the Bonners Ferry Lumber Company, a corporation and does hereby appeal from the judgment of the Commissioner and the Department of Reclamation of the State of Idaho, approving that certain application known and numbered as "Application No. 26042" in the office of the Department of Reclamation of the State of Idaho, and granting to the Village of Bonners Ferry, a municipal corporation of the State of Idaho, a permit No. 18173 to appropriate certain waters of Moyie River in Boundary County, Idaho, which decision, order and judgment was made and entered on or about the 31st day of December, 1938;

Said judgment being in the form of the approval actually made and entered upon said Application No. 26042, a true and certified copy of which said application and approval thereof is submitted and filedherewith, and said judgment consisting also of an order by the Commissioner of Reclamation, a true copy of which is hereunto attached, and made a part hereof, and marked Exhibit "A";

Said decision, order and judgment was made by the Commissioner of Reclamation of the State of Idaho, after a hearing on a protest filed by the Bonners Ferry Lumber Company, a corporation, that a copy of said protest is hereunto attached, marked Exhibit "B", and made a part of this petition; that the Bonners Ferry Lumber Company, a corporation, petitioner herein, formally appeared at said hearing upon which said decision, order and judgment was based;

The point or points of diversion attempted to be

18713

EXHIBIT "A"

IN THE DEPARTMENT OF RECLAMATION OF THE

STATE OF IDAHO

IN the Matter of Protests Against
Issuance of Permit Under Application
No. 26042

O R D E R

Under date of September 2, 1938 the Village of Bonners Ferry, a municipal corporation of Bonners Ferry, Boundary County, Idaho, made application for permit to appropriate and divert 160 cubic feet of water per second from Moyie River in Boundary County, Idaho. The point of diversion being designated as North 43° 30' East, 1070 feet distant from the Southwest Corner of Section 11, Township 62 North, Range 2, East, B. M., and is in the Southwest Quarter of Southwest Quarter (SW¼SW¼) of the above named section, the water to be appropriated and used for power purposes.

Notice of the pending application was published as required by law, whereupon, C. O. Graue on December 16, 1938 filed protest against issuance of permit on the following grounds:

"Comes now, C. O. Graue, whose residence and post office address is Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company or from C. O. Graue to enter upon the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; for the purpose of making a survey;

"That the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said lands; that any and all information with reference to said survey which is contained in said application and in said maps was secured by trespass upon the lands belonging to this protestant.

18713

II

That no maps or plats accompanied the application and no maps were filed with said application as required by Section 41-202 of the Idaho Code Annotated, as amended by Chapter 145 of the 1935 Session Laws of Idaho, and that no maps or plats whatever were filed with said application as provided by said section; that the maps and plats certified to by Guy C. McGee were filed on or about the 7th day of November, 1938; that said Guy C. McGee, engineer, certified that the survey upon which said application, maps and plats were based was made on the 27th day of October, 1938.

III

That the point of diversion was not stated in said application at the time the same was filed; that the survey determining the point of diversion was not made until the 27th day of October, 1938; that the certificate of the engineer, Guy C. McGee endorsed upon the plats states that the map was made from notes taken during an actual survey made on the 27th day of October, 1938.

IV

That the application did not state the point of return of the water appropriated to the stream from which it was taken at the time the application was filed; that it was not possible for the application to show the point of return until after the 27th day of October, 1938, for the reason that the application and map submitted therewith as certified to by Guy C. McGee was made from information secured by an actual survey made on October 27, 1938;

V

That the maps submitted and filed on or about the 7th day of November, 1938 were not prepared or filed in accordance with the laws of the State of Idaho or the Manual of Instruction for Filing Water Rights, and do not comply with the regulation of the Commissioner of Reclamation, and do not comply with Section 41-202, of the Idaho Code Annotated; that said maps do not show the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines and other works proposed to be used in the diversion of water.

18713

VI

"That no conturemaps showing the area of the reservoir was filed or submitted with said application;

VII

"That the application was not properly advertised as required by the laws of Idaho.

VIII

"That Application No. 26042 conflicts with Permit R-651 issued to C. O. Graue, September 30, 1938.

IX

"That Application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. O. Graue. "

X

On the same day Bonners Ferry Lumber Company filed protest against issuance of permit as follows:

"Comes Now the Bonners Ferry Lumber Company, Limited, a corporation, organized under the laws of the State of Wisconsin and authorized to transact business in the State of Idaho, with its principal place of business at Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Bonners Ferry Lumber Company, Limited, a corporation, is the owner of the West half of Section 11, Township 62, North, Range 2 East Boise Meridian, Boundary County, Idaho; that the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees acquired no right from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey; that the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said land; that any and all information contained in said Application No. 26042 and said maps was secured by trespass upon said lands belonging to this protestant.

II

"That Application No. 26042 does not comply with the laws of

the State of Idaho in that it does not contain the information required by the statutes and rules of the Department of Reclamation.

III

"That this protestant states on information and belief that Application No. 26042 was left with the Commissioner's office on or about the 2nd day of September, 1938; that at said time no plats were submitted with said application; that said application did not describe the works to be constructed in the event the permit was granted; that the said application did not describe the diversion point, and did not described the point of use;

"This protestant further states that the maps and information now contained in said application were not submitted to the Department of Reclamation until on or about the 7th day of November, 1938; that said application did not contained sufficient facts to permit the Commissioner of Reclamation to receive the same as an application for permit under the laws of Idaho, when the same was submitted with the Commissioner of Reclamation on the 2nd day of September, 1938; and that all material facts now stated in said application for permit No. 26042 were not filed with the Commissioner of Reclamation until on or about the 7th day of November, 1938."

Whereupon, a hearing on protest was called and heard in the office of the State Commissioner of Reclamation in the State House at Boise, Idaho, at 10 o'clock A.M. on the 30th day of December, 1938; Robert H. Elder Esq. of Coeur d'Alene, Idaho appeared as attorney for the protestant and C. C. Wilson, Esq., of Bonners Ferry, Idaho appeared as attorney for the applicant.

With reference to the protest of the Bonners Ferry Lumber Company, Limited, the undisputed evidence is that the lumber company had, prior to the filing of application for permit number 26042, executed an option to C. O. Graue to purchase the land upon whibh it is alleged that trespass was committed; so it would appear that protestant Bonners Ferry Lumber Company has no further interest in the land and its protest must

be disregarded.

With reference to protest of C. O. Graue, paragraph one whibh goes to the question of trespass in securing the information necessary to make the application, the State of Idaho has no statute defining trespass in such a situation as here exists. It is the view of the Commissioner that the question of trespass is in the same relationship as a question with reference to right of way, ownership of land, damage to property, etc. It must be conceded as a question over which the Department of Reclamation has no authority of jurisdiction, but is one for the Courts to adjudicate and determine rather than for the administrative officer.

In any event trespass does not seem to be sufficiently proved. The only evidence with reference to trespass introduced is that of engineer Sewell in which he testified that he made a survey of the site of the proposed development and found that brush had been cut over a considerable area; young growth of timber had been destroyed and there had been a bench mark cut in the root of one of the large trees, and also stakes on the ground.

Page 7 transcript: In answer to the question "could you tell whether or not that survey was made in connection with the proposed development here by the Village of Bonners Ferry"; the witness Sewell answered, "It was made from the County Road to the approximate point of diversion named in the application.", which obviously is not conclusive evidence that the survey was made by engineers or agents of the Village of Bonners Ferry.

Paragraph 2 involves the question as to whether or not sufficient information was furnished with the application for permit. Section 41-202 Idaho Code Annotated provides "That the application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and appropriation of water to a beneficial use, showing the character, location and dimensions of the proposed reservoir, dam, canals, diversion pipe line, and other works proposed to be used by them in the diversion of water." ***

18713

It is admitted that full and complete information was not contained in the application as first submitted, but it is provided in Section

41-204 "It should be the duty of the department to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of proposed use. If upon such examination the application is found defective, it shall be the duty of the department of reclamation to return the same for correction within thirty days from the receipt of such application; and the date of such return, with the reason therefor, shall be endorsed on the application and a record made thereof in a book kep for recording receipt of such application. A like record shall be kept of the date of the return of the corrected application, then such corrected application shall be returned to the department of reclamation within a period of sixty days from the date indorsed thereon by the department."

The record herein shows that the application was first received in the Department of Reclamation at 9 o'clock A. M., September 2, 1938, and returned for correction October 1, 1938. The corrected application was received with all necessary information November 7, 1938. The filing fee of forty-four dollars and seventy-five cents ($44.75) was paid September 26, 1938.

The objections contained in paragraph 3, 4, 5 and 6 are disposed of under paragraph 2 above.

Paragraph 7 alleges that this application was not properly advertised by the laws of Idaho, but does not set forth in what respect.

Paragraph 8 alleges that application number 26042 conflicts with Permit R-651, issued to C. C. Graus, September 30, 1938. There can be no merit to this contention for the reason that the stuatute providing that "first in time is first in right" shall govern, and the same rules shall apply to objection number 9.

In view of the foregoing, and of all the facts and circumstances developed, with reference to the above mentioned protest, it would seem that such protest must be rejected and dismissed, and that a permit be issued to protestee, the Village of Bonners Ferry.

18713

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of December, 1938, and attached the seal of my office.

R. W. FARIS
Commissioner of Reclamation

SEAL

18713

EXHIBIT "A"

IN THE DEPARTMENT OF RECLAMATION OF THE

STATE OF IDAHO

IN the Matter of Protests Against
Issuance of Permit Under Application
No. 26042

O R D E R

Under date of September 2, 1938 the Village of Bonners Ferry, a municipal corporation of Bonners Ferry, Boundary County, Idaho, made application for permit to appropriate and divert 160 cubic feet of water per second from Moyie River in Boundary County, Idaho. The point of diversion being designated as North 45° 30' East, 1070 feet distant from the Southwest Corner of Section 11, Township 62 North, Range 2, East, B. M., and is in the Southwest Quarter of Southwest Quarter (SW¼SW¼) of the above named section, the water to be appropriated and used for power purposes.

Notice of the pending application was published as required by law, whereupon, C. O. Graue on December 16, 1938 filed protest against issuance of permit on the following grounds:

"Comes now, C. O. Graue, whose residence and post office address is Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company or from C. O. Graue to enter upon the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; for the purpose of making a survey;

"That the survey made by Guy G. McGee on the 27th day of October, 1938 was made by trespass upon said lands; that any and all information with reference to said survey which is contained in said application and in said maps was secured by trespass upon the lands belonging to this protestant.

18713

II

That no maps or plats accompanied the application and no maps were filed with said application as required by Section 41-202 of the Idaho Code Annotated, as amended by Chapter 145 of the 1935 Session Laws of Idaho, and that no maps or plats whatever were filed with said application as provided by said section; that the maps and plats certified to by Guy C. McGee were filed on or about the 7th day of November, 1938; that said Guy C. McGee, engineer, certified that the survey upon which said application, maps and plats were based was made on the 27th day of October, 1938.

III

That the point of diversion was not stated in said application at the time the same was filed; that the survey determining the point of diversion was not made until the 27th day of October, 1938; that the certificate of the engineer, Guy C. McGee endorsed upon the plats states that the map was made from notes taken during an actual survey made on the 27th day of October, 1938.

IV

That the application did not state the point of return of the water appropriated to the stream from which it was taken at the time the application was filed; that it was not possible for the application to show the point of return until after the 27th day of October, 1938, for the reason that the application and map submitted therewith as certified to by Guy C. McGee was made from information secured by an actual survey made on October 27, 1938;

V

That the maps submitted and filed on or about the 7th day of November, 1938 were not prepared or filed in accordance with the laws of the State of Idaho or the Manual of Instruction for Filing Water Rights, and do not comply with the regulation of the Commissioner of Reclamation, and do not comply with Section 41-202, of the Idaho Code Annotated; that said maps do not show the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines and other works proposed to be used in the diversion of water.

18713

VI

"That no contourmaps showing the area of the reservoir was filed or submitted with said application;

VII

"That the application was not properly advertised as required by the laws of Idaho.

VIII

"That Application No. 26042 conflicts with Permit R-651 issued to C. O. Graue, September 30, 1938.

IX

"That Application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. O. Graue. "

X

On the same day Bonners Ferry Lumber Company filed protest against issuance of permit as follows:

"Comes Now the Bonners Ferry Lumber Company, Limited, a corporation, organized under the laws of the State of Wisconsin and authorized to transact business in the State of Idaho, with its principal place of business at Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Bonners Ferry Lumber Company, Limited, a corporation, is the owner of the West half of Section 11, Township 62, North, Range 2 East Boise Meridian, Boundary County, Idaho; that the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees acquired no right from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey; that the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said land; that any and all information contained in said Application No. 26042 and said maps was secured by trespass upon said lands belonging to this protestant.

18713

II

"That Application No. 26042 does not comply with the laws of

the State of Idaho in that it does not contain the information required by the statutes and rules of the Department of Reclamation.

XII

"That this protestant states on information and belief that Application No. 26042 was left with the Commissioner's office on or about the 2nd day of September, 1938; that at said time no plats were submitted with said application; that said application did not describe the works to be constructed in the event the permit was granted; that the said application did not describe the diversion point, and did not described the point of use;

"This protestant further states that the maps and information now contained in said application were not submitted to the Department of Reclamation until on or about the 7th day of November, 1938; that said application did not contained sufficient facts to permit the Commissioner of Reclamation to receive the same as an application for permit under the laws of Idaho, when the same was submitted with the Commissioner of Reclamation on the 2nd day of September, 1938; and that all material facts now stated in said application for permit No. 26042 were not filed with the Commissioner of Reclamation until on or about the 7th day of November, 1938."

Whereupon, a hearing on protest was called and heard in the office of the State Commissioner of Reclamation in the State House at Boise, Idaho, at 10 o'clock A.M. on the 30th day of December, 1938; Robert H. Elder Esq. of Coeur d'Alene, Idaho appeared as attorney for the protestant and C. C. Wilson, Esq., of Bonners Ferry, Idaho appeared as attorney for the applicant.

With reference to the protest of the Bonners Ferry Lumber Company, Limited, the undisputed evidence is that the lumber company had, prior to the filing of application for permit number 26042, executed an option to C. C. Crane to purchase the land upon which it is alleged that trespass was committed; so it would appear that protestant Bonners Ferry Lumber Company has no further interest in the land and its protest must

be disregarded.

With reference to protest of C. O. Grene, paragraph one which goes to the question of trespass in securing the information necessary to make the application, the State of Idaho has no statute defining trespass in such a situation as here exists. It is the view of the Commissioner that the question of trespass is in the same relationship as a question with reference to right of way, ownership of land, damage to property, etc. It must be conceded as a question over which the Department of Reclamation has no authority of jurisdiction, but is one for the Courts to adjudicate and determine rather than for the administrative officer.

In any event trespass does not seem to be sufficiently proved. The only evidence with reference to trespass introduced is that of engineer Sewell in which he testified that he made a survey of the site of the proposed development and found that brush had been cut over a considerable area; young growth of timber had been destroyed and there had been a bench mark cut in the root of one of the large trees, and also stakes on the ground.

Page 7 transcript: In answer to the question "could you tell whether or not that survey was made in connection with the proposed development here by the Village of Bonners Ferry"; the witness Sewell answered, "It was made from the County Road to the approximate point of diversion named in the application.", which obviously is not conclusive evidence that the survey was made by engineers or agents of the Village of Bonners Ferry.

Paragraph 2 involves the question as to whether or not sufficient information was furnished with the application for permit. Section 41-202 Idaho Code Annotated provides "That the application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and appropriation of water to a beneficial use, showing the character, location and dimensions of the proposed reservoir, dam, canals, diversion pipe line, and other works proposed to be used by them in the diversion of water." ***

1875

It is admitted that full and complete information was not contained in the application as first submitted, but it is provided in Section

41-204 "It should be the duty of the department to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of proposed use. If upon such examination the application is found defective, it shall be the duty of the department of reclamation to return the same for correction within thirty days from the receipt of such application; and the date of such return, with the reason therefor, shall be endorsed on the application and a record made thereof in a book kep for recording receipt of such application. A like record shall be kept of the date of the return of the corrected application, then such corrected application shall be returned to the department of reclamation within a period of sixty days from the date indorsed thereon by the department."

The record herein shows that the application was first received in the Department of Reclamation at 9 o'clock A. M., September 2, 1938, and returned for correction October 1, 1938. The corrected application was received with all necessary information November 7, 1938. The filing fee of forty-four dollars and seventy-five cents ($44.75) was paid September 26, 1938.

The objections contained in paragraph 3, 4, 5 and 6 are disposed of under paragraph 2 above.

Paragraph 7 alleges that this application was not properly advertised by the laws of Idaho, but does not set forth in what respect.

Paragraph 8 alleges that application number 26042 conflicts with Permit R-851, issued to C. C. Graue, September 30, 1938. There can be no merit to this contention for the reason that the stuatute providing that "first in time is first in right" shall govern, and the same rules shall apply to objection number 9.

In view of the foregoing, and of all the facts and circumstances developed, with reference to the above mentioned protest, it would seem that such protest must be rejected and dismissed, and that a permit be issued to protestee, the Village of Bonners Ferry.

18713

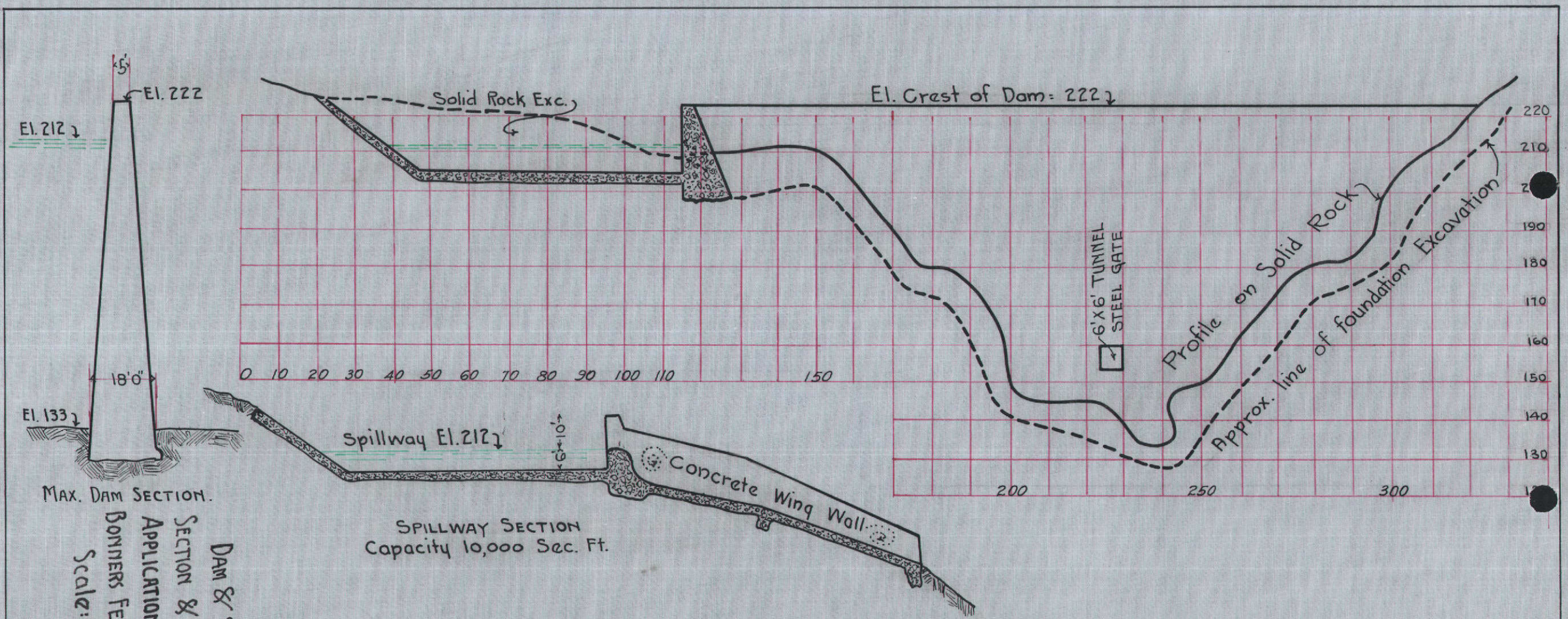
8

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of December, 1936, and attached the seal of my office.

SEAL

H. W. FARIS
Commissioner of Reclamation

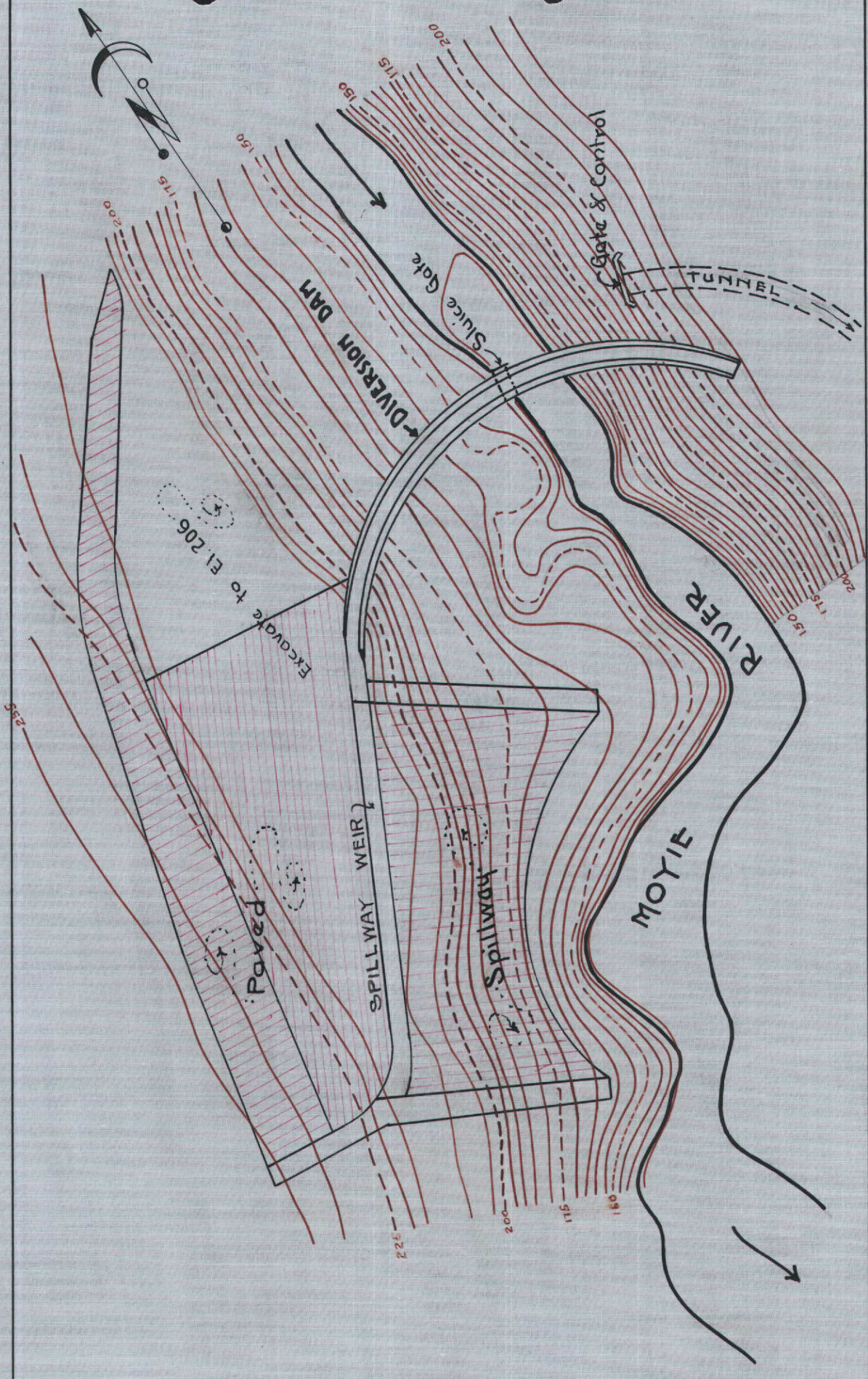
18713



Dam & Spillway
Section & Elevation
Application No. 26042
Bonners Ferry, Idaho.
Scale: 1 in = 30 ft.

18713

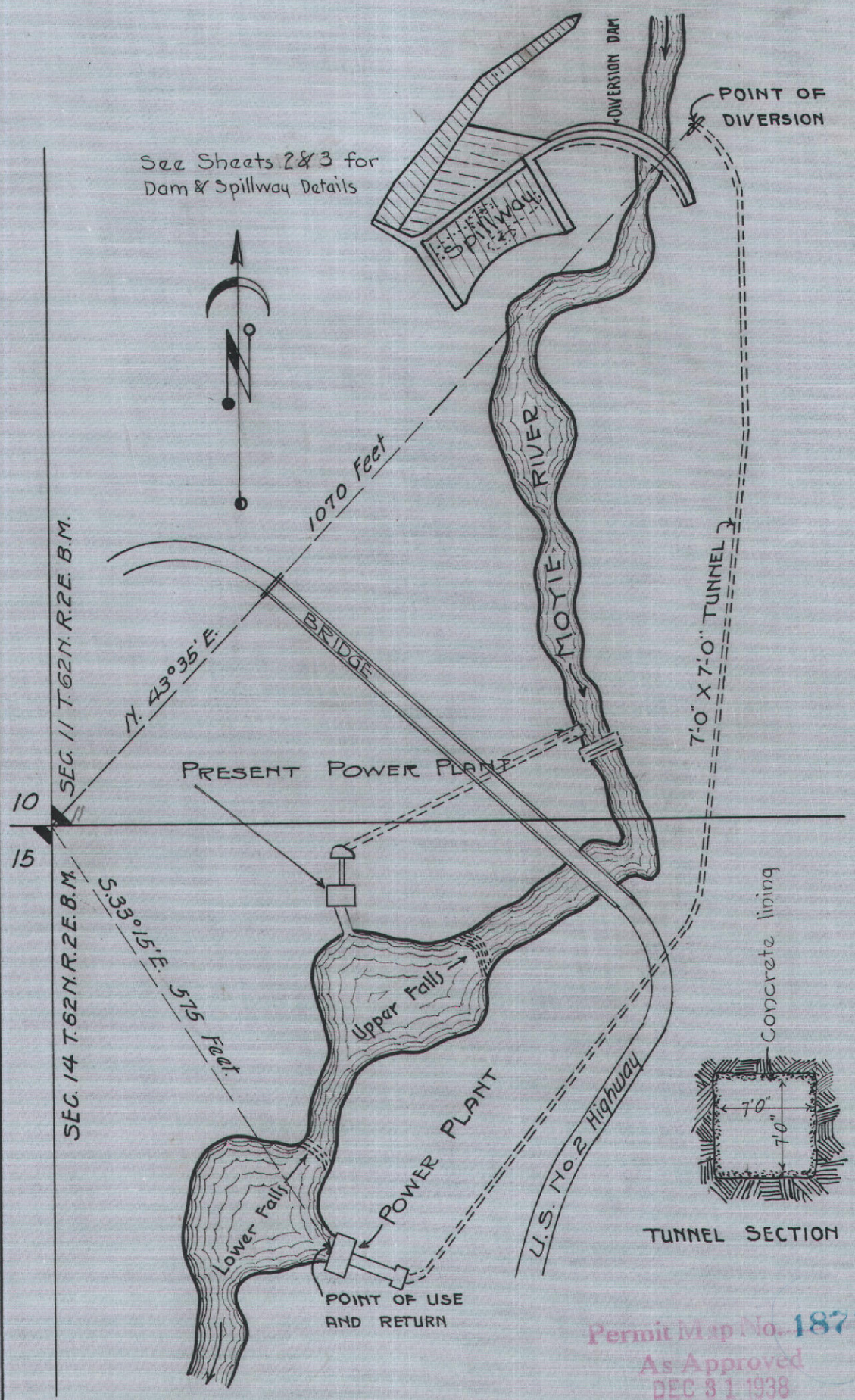
Permit Map No. 18713
As Approved
DEC 31 1936
R. W. PARIS
Commissioner of Reclamation



TOPOGRAPHIC MAP OF DAM SITE

TO ACCOMPANY APPLICATION No. 26042
BY THE VILLAGE OF BONNERS FERRY
BOUNDARY CO. IDAHO
OCT. 29, 1938 SCALE 1 in. = 50 ft.

Permit Map No. 18713
As Approved
DEC 31 1938
R. W. FARIS
Commissioner of Reclamation



Permit Map No. 18713
As Approved
DEC 31 1938
R. W. FARIS
Commissioner of Reclamation

I, Guy C. McGee, of Bonners Ferry, Idaho. an Engineer, Licensed by the State of Idaho, do hereby certify that this map was made from notes taken during an actual survey made by me on Oct. 27, 1938, and that it correctly represents the works described in Application No. 26042.

Guy C. McGee.

MAP OF POWER SITE
TO ACCOMPANY APPLICATION No. 26042
BY THE VILLAGE OF BONNERS FERRY
BOUNDARY CO. IDAHO.

OCT. 29, 1938 SCALE 1 in. = 150 ft.

18713 1

ENGINEER'S CERTIFICATE

If appropriation exceeds 25 cubic feet per second or 6250 acre feet the further requirement must be met:

1. The map must bear the certificate of a licensed engineer substantially in the following form:

CERTIFICATE OF ENGINEER

I,....., of....., an engineer licensed by the State of Idaho, do hereby certify that this map was made from notes taken during an actual survey made by me (or under my immediate supervision) on....., 19....., and that it correctly represents the works described in the accompanying application, and has written thereon the area in each smallest legal subdivision which it is proposed to irrigate.

.....
Engineer.

2. The tie to point of diversion, (and in case of mining and power filings, to point of return) must be shown on the map.

3. Maps must show cross sections or table of elements of the various canals to be constructed to permit of a determination of capacities to be provided.

PLANS OF DAMS

If a dam exceeding 10 feet in height is to be constructed, separate plans and specifications of same must be filed in duplicate. These plans and specifications are not a requirement in connection with the granting of a permit and can be filed subsequent to making the application. They must, however, be filed and approval secured from the Commissioner of Reclamation prior to the beginning of actual construction work. Such plans should contain the following information:

1. Profile of the dam site taken on axis of dam, scale.

2. Cross section of the dam at maximum section showing complete details and dimensions.

3. Plan of dam showing location of stream bed, outlet canal or tunnel, controlling works and spillway.

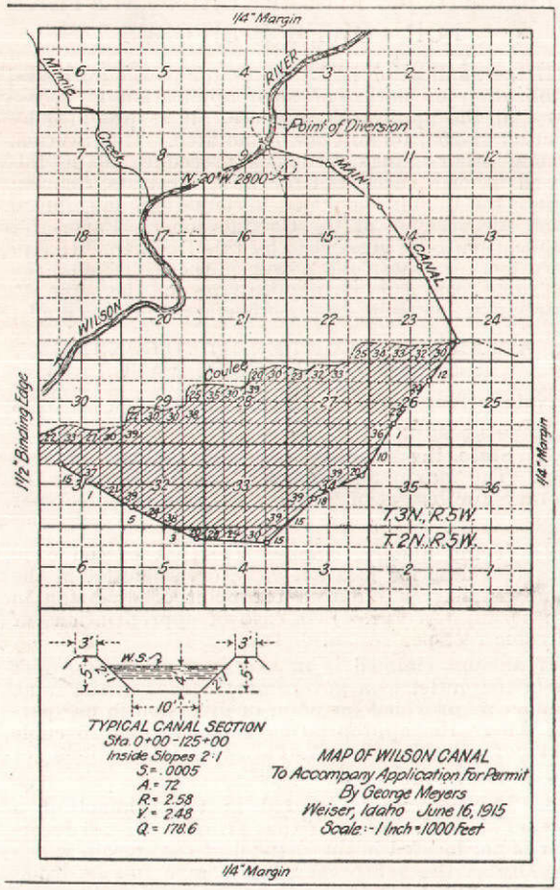
4. Plans showing in detail sections of controlling works, outlet tunnel or canal and spillway. These sections to be shown in sufficient number to make absolutely definite all features of the structure.

5. Contour map of dam site at not to exceed 5 foot contour interval.

6. Where suitable foundation is not evident from surface indications a geological section beneath the axis of the dam should be submitted. This section should show the nature of the material below the surface, thickness of strata and means of determining same.

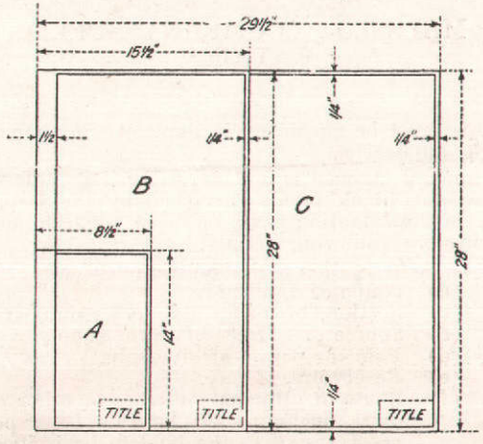
7. Specifications must be submitted which shall be as complete as to detail as would be submitted to contractors bidding on the work.

8. Name of stream, number of permit and name of permit holder must be given on all plans and specifications.



EXAMPLE OF MAP REQUIREMENTS

STANDARD SIZES OF MAPS



	Length	Width	Binding Edge	Margin
Size "A"	14 In.	8½ In.	1½ In.	¼ In.
Size "B"	28 In.	15½ In.	1½ In.	¼ In.
Size "C"	29½ In.	28 In.	1½ In.	¼ In.

Protestants Exs C. Apr 12/30/38 mm

STATE OF IDAHO
Department of Reclamation
BOISE

REGULATIONS AND INSTRUCTIONS

PROCEDURE FOR SECURING WATER RIGHT

I. File application, maps and fee with Department of Reclamation.
II. Approval of application by the Commissioner of Reclamation.
(Approved application constitutes only a permit to construct the diversion works, and is not evidence of a matured water right).
III. File bond on or before date set in permit.
IV. Commencement of construction work and completion in accordance with provisions of permit.
V. Proof of such completion offered to Commissioner of Reclamation on or before the date set for same in permit and payment of fees for certificate of completion of works.
VI. Issuance by Commissioner of Reclamation of certificate of completion of works.
VII. Application of water to beneficial use and proof of such beneficial use made to Commissioner of Reclamation on or before the date set for same in permit; also payment of fees for license.
VIII. Issuance by Commissioner of Reclamation of water license which constitutes a perpetual water right.

FEES

Filing fees for application for permit:

$5.00 if the quantity of water claimed is one cubic foot per second (50 miners' inches), or less, and 25 cents for each additional cubic foot per second, or fraction thereof.

For storage rights:

$5.00 if the quantity of water is 250 acre feet, or less, and 25 cents for each additional 250 acre feet, or fraction thereof.

All fees must be paid in cash or postal money order when the application is filed.

Make all remittances payable to Commissioner of Reclamation.

Instructions for Preparing Applications

A. APPLICATION FOR PERMIT TO APPROPRIATE WATER

Note—This form of permit is referred to as a "Use Permit."

1. Subdivisions I and II are to be filled in only in case the applicant is a corporation.

2. State the quantity of water claimed in cubic feet per second. The maximum amount of water allowable per acre for irrigation is one miners' inch or one-fiftieth of one cubic foot per second.

3. Give name of stream, spring or lake constituting the source of supply. If the stream or other

18713

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

IN THE MATTER OF THE PROTEST AGAINST THE APPROVAL OF APPLICATION TO APPROPRIATE THE PUBLIC WATERS, NUMBER 26042, IN ACCORDANCE WITH THE PROVISIONS OF HOUSE BILL NUMBER 293, 1935 SESSION LAWS.

C. O. Graue, Coeur d'Alene, Idaho, and BONNERS FERRY LUMBER COMPANY, LIMITED, a corporation, Coeur d'Alene, Idaho,

Protestants

VILLAGE OF BONNERS FERRY, IDAHO,

Protestee.

NOTICE OF HEARING

You, and each of you, are hereby notified that on the 30th day of December, 1938, at 10:00 A. M., in the office of the Commissioner of Reclamation, at Boise, Idaho, a hearing will be held in the matter of the protests against the approval of application for permit to appropriate one hundred sixty cubic feet per second of the waters of the Moyie River for power purposes.

That the Protestants are required to appear at the office of the Commissioner of Reclamation, at Boise, Idaho, on the date set for the hearing and show cause, if any there be, why said Application No. 26042 should not be approved and permit issued thereunder, and said Protestants and Protestee on said date may file such affidavits in support of their respective allegations as they may desire;

That there have been filed in the Department of Reclamation of the State of Idaho, at Boise, Idaho, on December 15th, 1938, by C. O. Graue, of Coeur d'Alene, Idaho, and by the Bonners Ferry Lumber Company, Limited, a corporation, Coeur d'Alene, Idaho, protests against the granting of said Application No. 26042;

18713

FINAL ENVIRONMENTAL ASSESSMENT

FEDERAL ENERGY REGULATORY COMMISSION
OFFICE OF HYDROPOWER LICENSING

Moyie River Hydroelectric Project
FERC Project No. 1991-009 -Idaho

I. APPLICATION

On April 1, 1996, the City of Bonners Ferry (City), Idaho filed an application for a new license with the Federal Energy Regulatory Commission (Commission) for the continued operation and maintenance of the existing 3,950-kilowatt (kW) Moyie River Hydroelectric Project (project). The project occupies 1.55 acres of land that are owned by the United States and located within the Idaho Panhandle National Forest. The forest lands occupied by the project are located in the upper reach of the reservoir. The remainder of the project lands are owned by the City. The project is located near Moyie Springs, in Boundary County, Idaho (figure 1).

The Federal Energy Regulatory Commission issued a Draft Environmental Assessment (DEA) for comment on September 15, 1998. In response, we received 6 comment letters. We list the commenting entities in "Comments on the DEA," section IV.C. All comment letters were considered carefully. Some sections of the DEA have been modified as a result of our reevaluation and are identified in Appendix B, "Comments on the DEA and Staff Responses."

II. PURPOSE AND NEED FOR ACTION

A. Purpose of Action

The Federal Power Act (FPA) provides the Commission with the exclusive authority to license nonfederal water power projects on navigable waterways and federal lands.

For the project, the Commission must decide (1) whether to issue a new license to the City, and, if so, (2) what, if any, conditions should be placed on that license to protect or enhance existing environmental resources or to mitigate for any adverse environmental impacts that would occur due to project operation and maintenance.

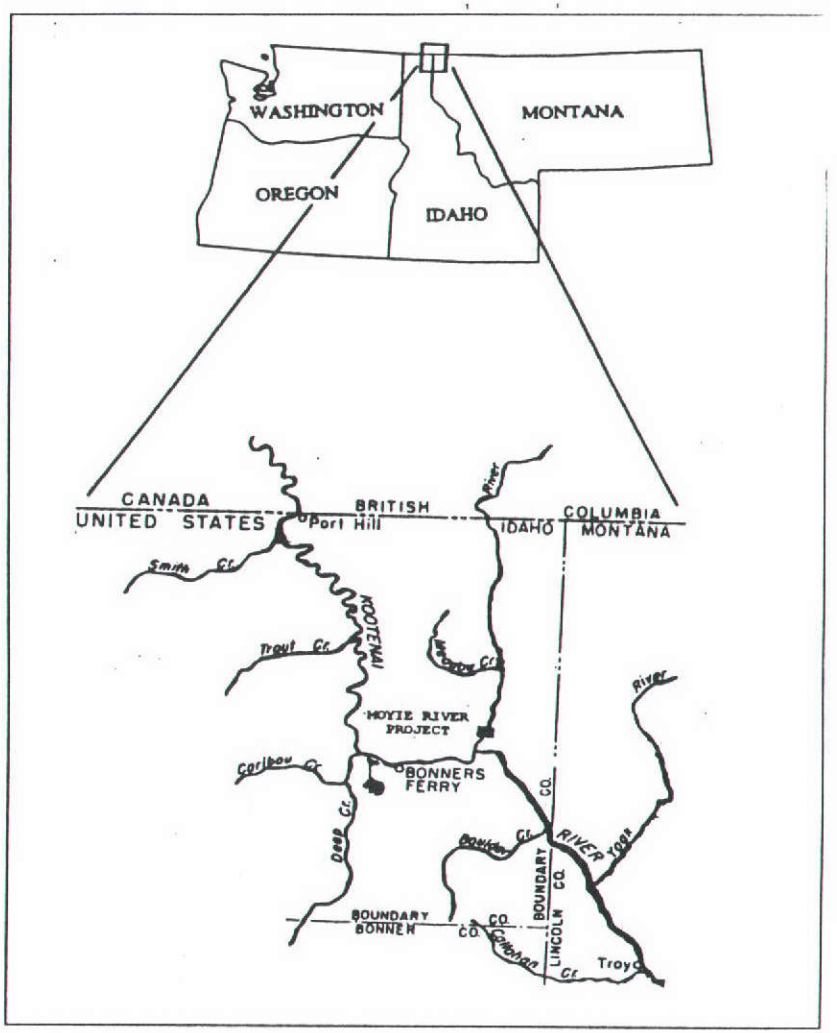


Figure 1. Location of the Moyie River Hydroelectric Project.

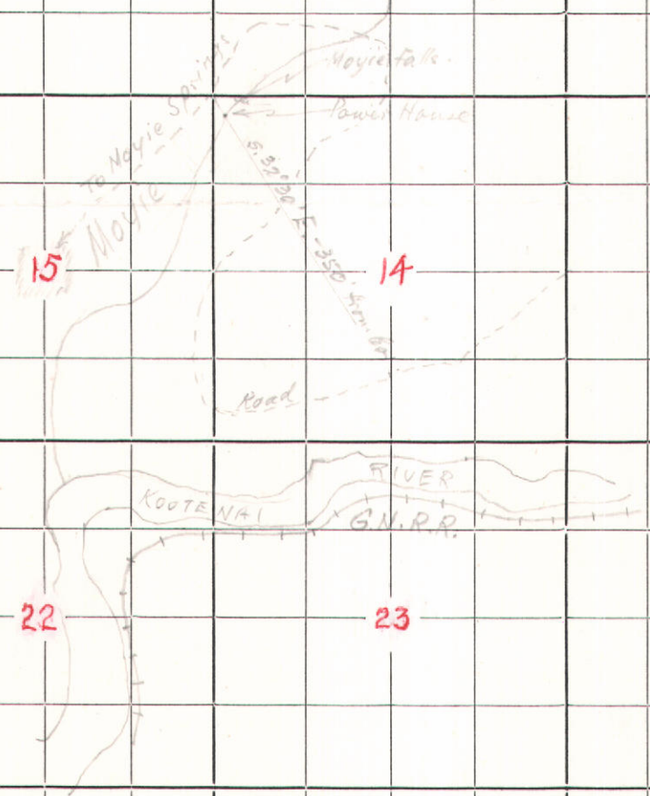

18713

R-2 E.

2 1

10 11 12

T. 62 N.



15 14 13

22 23 24

Q = 160 cfs.

Scale: 2 Inches Equals 1 Mile. Draw Map In Ink.

18713

NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE.

Notice is hereby given that at 10:00 A. M. on the 6th day of December, 1955, at Bonners Ferry, County of Boundary, State of Idaho, before Geo. Unternahrer, Probate Judge ,proof will be submitted of the application to beneficial use of 160 cubic feet per second of the waters of Moyie River in accordance with the terms and conditions of Permit No. 18713 heretofore issued by the Department of Reclamation of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Village of Bonners Ferry, a Municipal Corporation.

The use to which said water has been applied is Production of power.

The amount applied to beneficial use is 160 cfs.

The place where said water is used NW¼ NW¼ Section 14, Township 62 North, Range 2 East, Boise Meridian.

The name of the canal or ditch or other works by which said water is conducted to such place of use is, rock tunnel and steel uenstock.

The right to take water from such works is based upon Permit No. 18713.

The source of supply from which such water is diverted is Moyie River, a tributary of the Kootenai River.

The date of priority which said user is prepared to establish is September 2, 1938.

MARK R. KULP
State Reclamation Engineer

1st Pub. Nov. 10, 1955
Last Pug. Dec. 1, 1955 18713

Affidavit of Publication

STATE OF IDAHO
County of Boundary } ss.

W.A. Chubb

being first duly sworn upon his oath, deposes and says: That he is the Publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of Village of Bonners Ferry

a Notice of Proof Application of Water To Beneficial Use

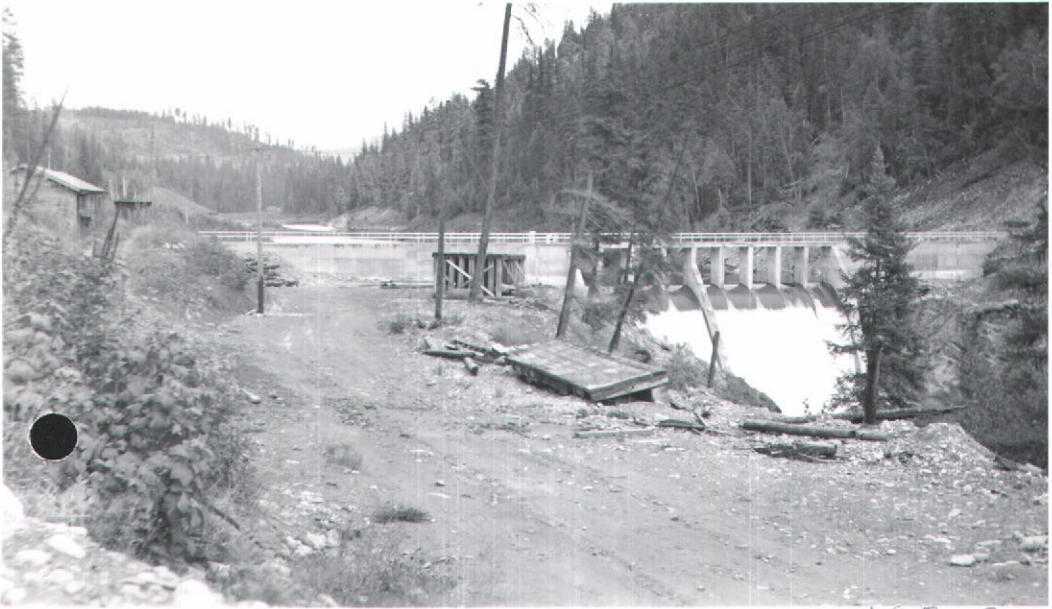
Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for Four consecutive issues, commencing with the issue dated Nov. 10 1955, and ending with the issue dated Dec. 1, 1955.

W. A. Chubb
Co-Publisher
Foreman

Subscribed and sworn to before me this ____ day of ____, 195__.

Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

18713



18713



1873

18713

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

Village of Bonners Ferry
Bonners Ferry, Idaho

Permit No. 18713

Examination for Completion of works

740' between P.D. & [illegible]

County Boundary 150' " power house

62 N - 2 E

Q = 160 cfs. (37500 cfs Spillway Capy)

S. = Magic River

P.D = N 43°35' E 1070 feet
for SW cor. S.11 T62N. R2E.
and in SW¼ SW¼ S11. T62N R2E.

Conc. to Klein & Rock tunnel.

Elev - Elev 31-1950

Purpose = Power.

Place of Use - S 30°15' E. 575 feet
for NW cor S.14 T62N. R2E.
in NW¼ NW¼ S.14 T62N. R2E.

Return to River Same

RECEIVED
OCT 4 1951
Department of Reclamation

5' d. gate & tunnel
Iron screen over tunnel
Inlet spee approx 13¾ & 9, 1½ sp
9" wide Arneo control

Spillway Capy = 21000 cfs
with 3' freeboard.

tunnel is 8' d. round

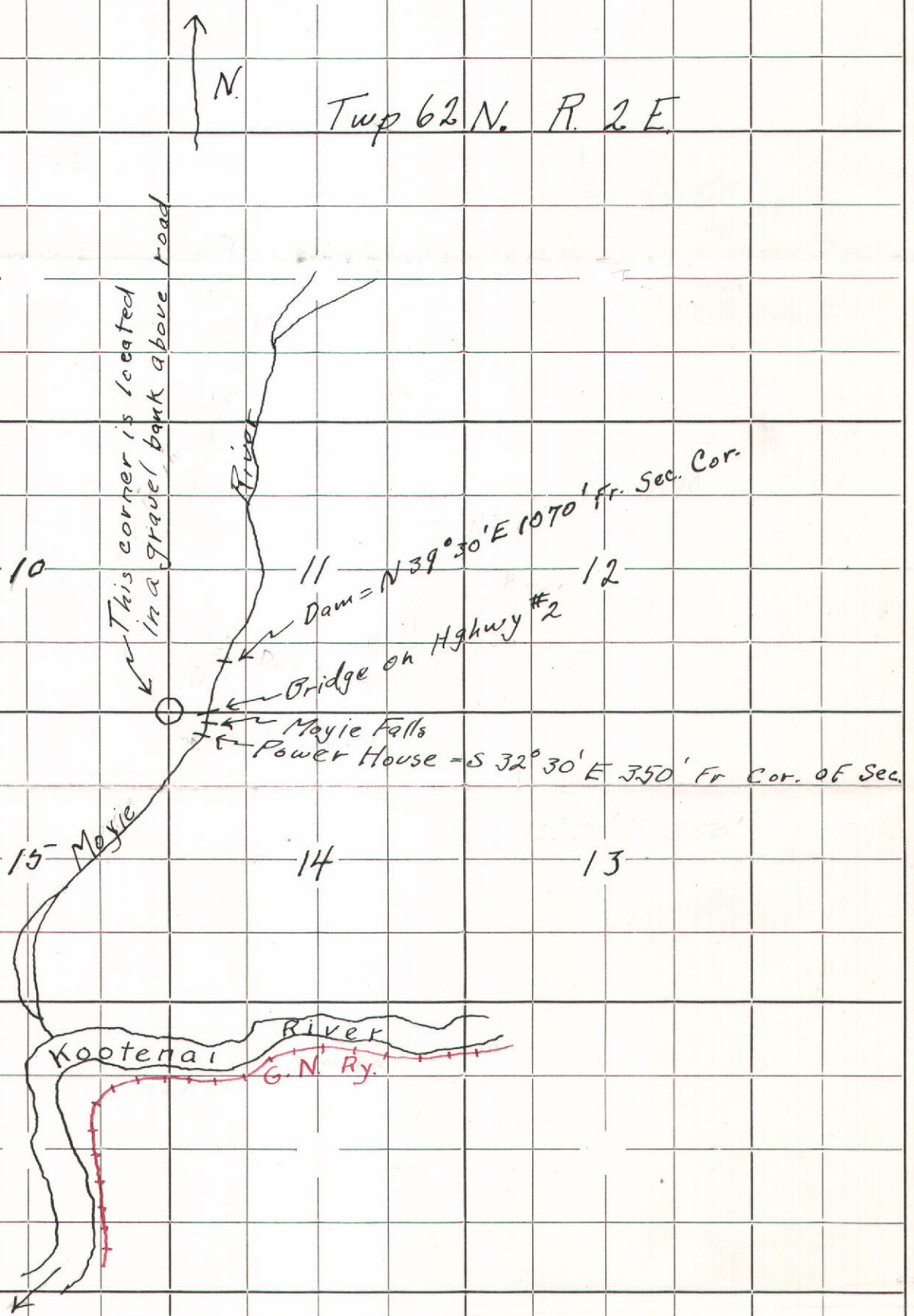
212' static head

1800 Kw on 2000 Kw plant
3200 hp.

Surge pipe 8' d. concrete
North of highway approx 50'

5' d. steel tunnel for bare
& cliff to power house.
approx 100 feet

Generating 1000 Kw today
2500 volts



Scale: 2 Inches Equals 1 Mile. Draw Map In Ink.

18713

NOTICE FOR PUBLICATION

Notice is hereby given that at 10:00 A. M., on the 4th day of December, 1950, at Bonners Ferry, County of Boundary, State of Idaho, before M. D. Pace, a notary public, proof will be submitted of the completion of works for the diversion of 160 cubic feet per second of the waters of Moyie River in accordance with the terms and conditions of a certain permit heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name of the person or corporation holding said permit is Village of Bonners Ferry.

2. The postoffice address of such person or principal place of business of such corporation is Bonners Ferry, County of Boundary, State of Idaho.

3. The number of such permit is 18713, and the date set for the completion of such work is December 31, 1950.

4. Said water is to be used for power purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 160 cubic feet per second.

The place where said water is diverted is in the SW¼SW¼ Section 11, Twp. 62.N.R. 2. E. and the place of use of said water is in the NW¼NW¼ Section 14, Twp. 62.N. R. 2. E. B. M. 18713

MARK R. KULP,
State Reclamation Engineer.

First publication Nov. 2, 1950.
Last publication Nov. 23, 1950.

Affidavit of Publication

STATE OF IDAHO }
County of Boundary } ss.

R. L. Myers being first duly sworn upon his oath, deposes and says: That he is the co-publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of State Reclamation Engineer

a Notice for Publication

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for four consecutive issues, commencing with the issue dated Nov. 2 1950, and ending with the issue dated Nov. 23, 1950.

R. L. Myers
Co-Publisher
~~Foreman~~

Subscribed and sworn to before me this 4th day of December, 1950.

M. D. Pace
Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

Notary Public for the State of Idaho
residing at Bonners Ferry, Idaho
My Commission Expires May 8, 1954.

18713

IN WITNESS WHEREOF, the Commission has caused its name to be signed hereto by Nelson Lee Smith, its _____ Chairman, and its seal to be affixed hereto and attested by Leon M. Fuquay, its _____ Secretary, this 5th day of April, 1950, pursuant to its order dated September 21, 1949, attached hereto.

FEDERAL POWER COMMISSION

By Nelson Lee Smith
Chairman.

Attest:

Leon M. Fuquay
Secretary.

JTT:ea
10-25-49

18713

IN TESTIMONY OF ACCEPTANCE of all the provisions, terms, and conditions of this license, the Licensee, this 7th day of March, 19 50, has caused its corporate name to be signed hereto by Myrl A. Folch, its _____ Chairman, Board of Trustees, and its corporate seal to be affixed hereto and attested by H. M. Duroker, its _____ Clerk, pursuant to a resolution of its Board of Trustees duly adopted on the 7th day of March, 19 50, a certified copy of the record of which is attached hereto.

VILLAGE OF BONNERS FERRY

By Myrl A. Folch
Chairman, Board of Trustees

Attest:

H. M. Duroker
Clerk.

(Executed in triplicate)

18713

NOTICE FOR PUBLICATION

NOTICE OF APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER CHAPTER 28, SESSION LAWS OF 1947.

Notice is hereby given that on the 30th day of January 1948, at 10:00 o'clock A. M., a hearing will be held by the State Reclamation Engineer, or his deputy, at 107 State House, Boise, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18731. The said protests and evidence may be submitted either orally or by affidavit by any person or persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension.

1. The number of said Permit is 18731.

2. The name and post office address of the person or persons or corporation holding this permit are Village of Bonners Ferry, Bonners Ferry, Idaho.

3. The amount of water claimed by the said permit or permits is 150 cubic feet per second from Moyie River which is tributary to Kootenai River.

18713

MARK R. KULP,
State Reclamation Engineer
First publication Jan. 15, 1948.
Second publication Jan. 22, 1948.

Affidavit of Publication

STATE OF IDAHO }
County of Boundary } ss.

R. L. Myers

being first duly sworn upon his oath, deposes and says: That he is the co-publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of State Reclamation Engineer

a Application for Extension of Time for Completion of Works

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for two consecutive issues, commencing with the issue dated Jan. 15 1948., and ending with the issue dated Jan. 22, 1948.

R. L. Myers
Co-Publisher ~~Proprietor Foreman~~

Subscribed and sworn to before me this 4 day of Feb., 1948.

Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

18713

INVITATION TO BIDDERS
Construction of Moyie Power Dam

Contractors are invited to submit a written formal bid for the construction of a concrete gravity dam and appurtenant works, as a part of the municipal hydro-electric power system for the Village of Bonners Ferry, Boundary County, Idaho.

The proposed project is located on the Moyie river, approximately 10 miles northeast of the Village of Bonners Ferry, near the Bonners Ferry-Troy Highway (U. S. No. 2). Bids will be received at the office of the Village Clerk, Power and Light Office, Bonners Ferry, up to 8:00 P. M., February 3rd, 1948.

The work involves the following approximate quantities: 45 acres clearing; diversion and care of river; 5670 cubic yards solid rock excavation; 1080 cubic yards unclassified excavation; 900 lineal feet tunnel excavation; 60 feet shaft excavation; excavating, screening and hauling 13,500 cubic yards gravel; excavating, screening, and hauling 6,400 cubic yards sand; mixing and placing 15,000 cubic yards concrete; placing 230,000 lbs. of reinforcement steel; installing gates, structural steel, trash racks, penstock tubes, and other miscellaneous work. The Village will supply cement, steel, gates, pipe, and other materials, and a limited amount of electric power will be made available to the contractor.

Plans and specifications may be obtained upon payment of $25.00, at the office of H. M. Buroker, Superintendent of Power and Light, Bonners Ferry, Idaho, or at the office of:

C. F. Griggs, Consulting Engineer
819 Paulsen Bldg.,
Spokane, Washington.

Checks offered as payment for plans and specifications must be made payable to the Village of Bonners Ferry.

The Board of Trustees reserves the right to reject any and all bids.

BOARD OF TRUSTEES,
Village of Bonners Ferry,
Boundary County, Idaho
H. M. BUROKER, Clerk.

18713

First publication Jan. 8, 1948.
Last publication Jan. 22, 1948.

Affidavit of Publication

STATE OF IDAHO }
County of Boundary } ss.

R. L. Myers

being first duly sworn upon his oath, deposes and says: That he is the co-publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of Village of Bonners Ferry

a Invitation to Bidders

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for three consecutive issues, commencing with the issue dated Jan. 8 1948, and ending with the issue dated Jan. 22, 1948.

R. L. Myers
Co-Publisher Proprietor/Foreman

Subscribed and sworn to before me this 4 day of Feb., 1948.

Owen Critchfield
Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

18713

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

IN THE MATTER OF THE APPLICATION OF VILLAGE OF BONNERS FERRY, A MUNICIPAL CORPORATION NO. 26042, IN THE OFFICE OF THE COMMISSIONER OF RECLAMATION OF THE STATE OF IDAHO, FOR PERMIT TO APPROPRIATE CERTAIN WATERS AT MOYIE RIVER, IDAHO.

PETITION ON APPEAL

Comes now the Bonners Ferry Lumber Company, a corporation and does hereby appeal from the judgment of the Commissioner and the Department of Reclamation of the State of Idaho, approving that certain application known and numbered as "Application No. 26042" in the office of the Department of Reclamation of the State of Idaho, and granting to the Village of Bonners Ferry, a municipal corporation of the State of Idaho, a permit No. 18173 to appropriate certain waters of Moyie River in Boundary County, Idaho, which decision, order and judgment was made and entered on or about the 31st day of December, 1938;

Said judgment being in the form of the approval actually made and entered upon said Application No. 26042, a true and certified copy of which said application and approval thereof is submitted and filedherewith, and said judgment consisting also of an order by the Commissioner of Reclamation, a true copy of which is hereunto attached, and made a part hereof, and marked Exhibit "A";

Said decision, order and judgment was made by the Commissioner of Reclamation of the State of Idaho, after a hearing on a protest filed by the Bonners Ferry Lumber Company, a corporation, that a copy of said protest is hereunto attached, marked Exhibit "B", and made a part of this petition; that the Bonners Ferry Lumber Company, a corporation, petitioner herein, formally appeared at said hearing upon which said decision, order and judgment was based;

The point or points of diversion attempted to be

18713

EXHIBIT "A"

IN THE DEPARTMENT OF RECLAMATION OF THE

STATE OF IDAHO

IN the Matter of Protests Against
Issuance of Permit Under Application
No. 26042

O R D E R

Under date of September 2, 1938 the Village of Bonners Ferry, a municipal corporation of Bonners Ferry, Boundary County, Idaho, made application for permit to appropriate and divert 160 cubic feet of water per second from Moyie River in Boundary County, Idaho. The point of diversion being designated as North 43° 30' East, 1070 feet distant from the Southwest Corner of Section 11, Township 62 North, Range 2, East, B. M., and is in the Southwest Quarter of Southwest Quarter (SW¼SW¼) of the above named section, the water to be appropriated and used for power purposes.

Notice of the pending application was published as required by law, whereupon, C. O. Graue on December 16, 1938 filed protest against issuance of permit on the following grounds:

"Comes now, C. O. Graue, whose residence and post office address is Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company or from C. O. Graue to enter upon the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; for the purpose of making a survey;

"That the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said lands; that any and all information with reference to said survey which is contained in said application and in said maps was secured by trespass upon the lands belonging to this protestant.

18713

II

That no maps or plats accompanied the application and no maps were filed with said application as required by Section 41-202 of the Idaho Code Annotated, as amended by Chapter 145 of the 1935 Session Laws of Idaho, and that no maps or plats whatever were filed with said application as provided by said section; that the maps and plats certified to by Guy C. McGee were filed on or about the 7th day of November, 1938; that said Guy C. McGee, engineer, certified that the survey upon which said application, maps and plats were based was made on the 27th day of October, 1938.

III

That the point of diversion was not stated in said application at the time the same was filed; that the survey determining the point of diversion was not made until the 27th day of October, 1938; that the certificate of the engineer, Guy C. McGee endorsed upon the plats states that the map was made from notes taken during an actual survey made on the 27th day of October, 1938.

IV

That the application did not state the point of return of the water appropriated to the stream from which it was taken at the time the application was filed; that it was not possible for the application to show the point of return until after the 27th day of October, 1938, for the reason that the application and map submitted therewith as certified to by Guy C. McGee was made from information secured by an actual survey made on October 27, 1938;

V

That the maps submitted and filed on or about the 7th day of November, 1938 were not prepared or filed in accordance with the laws of the State of Idaho or the Manual of Instruction for Filing Water Rights, and do not comply with the regulation of the Commissioner of Reclamation, and do not comply with Section 41-202, of the Idaho Code Annotated; that said maps do not show the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines and other works proposed to be used in the diversion of water.

18713

VI

"That no conturemaps showing the area of the reservoir was filed or submitted with said application;

VII

"That the application was not properly advertised as required by the laws of Idaho.

VIII

"That Application No. 26042 conflicts with Permit R-651 issued to C. O. Graue, September 30, 1938.

IX

"That Application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. O. Graue. "

X

On the same day Bonners Ferry Lumber Company filed protest against issuance of permit as follows:

"Comes Now the Bonners Ferry Lumber Company, Limited, a corporation, organized under the laws of the State of Wisconsin and authorized to transact business in the State of Idaho, with its principal place of business at Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Bonners Ferry Lumber Company, Limited, a corporation, is the owner of the West half of Section 11, Township 62, North, Range 2 East Boise Meridian, Boundary County, Idaho; that the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees acquired no right from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey; that the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said land; that any and all information contained in said Application No. 26042 and said maps was secured by trespass upon said lands belonging to this protestant.

II

"That Application No. 26042 does not comply with the laws of

the State of Idaho in that it does not contain the information required by the statutes and rules of the Department of Reclamation.

III

"That this protestant states on information and belief that Application No. 26042 was left with the Commissioner's office on or about the 2nd day of September, 1938; that at said time no plats were submitted with said application; that said application did not describe the works to be constructed in the event the permit was granted; that the said application did not describe the diversion point, and did not described the point of use;

"This protestant further states that the maps and information now contained in said application were not submitted to the Department of Reclamation until on or about the 7th day of November, 1938; that said application did not contained sufficient facts to permit the Commissioner of Reclamation to receive the same as an application for permit under the laws of Idaho, when the same was submitted with the Commissioner of Reclamation on the 2nd day of September, 1938; and that all material facts now stated in said application for permit No. 26042 were not filed with the Commissioner of Reclamation until on or about the 7th day of November, 1938."

Whereupon, a hearing on protest was called and heard in the office of the State Commissioner of Reclamation in the State House at Boise, Idaho, at 10 o'clock A.M. on the 30th day of December, 1938; Robert H. Elder Esq. of Coeur d'Alene, Idaho appeared as attorney for the protestant and C. C. Wilson, Esq., of Bonners Ferry, Idaho appeared as attorney for the applicant.

With reference to the protest of the Bonners Ferry Lumber Company, Limited, the undisputed evidence is that the lumber company had, prior to the filing of application for permit number 26042, executed an option to C. O. Graue to purchase the land upon whibh it is alleged that trespass was committed; so it would appear that protestant Bonners Ferry Lumber Company has no further interest in the land and its protest must

be disregarded.

With reference to protest of C. O. Graue, paragraph one whibh goes to the question of trespass in securing the information necessary to make the application, the State of Idaho has no statute defining trespass in such a situation as here exists. It is the view of the Commissioner that the question of trespass is in the same relationship as a question with reference to right of way, ownership of land, damage to property, etc. It must be conceded as a question over which the Department of Reclamation has no authority of jurisdiction, but is one for the Courts to adjudicate and determine rather than for the administrative officer.

In any event trespass does not seem to be sufficiently proved. The only evidence with reference to trespass introduced is that of engineer Sewell in which he testified that he made a survey of the site of the proposed development and found that brush had been cut over a considerable area; young growth of timber had been destroyed and there had been a bench mark cut in the root of one of the large trees, and also stakes on the ground.

Page 7 transcript: In answer to the question "could you tell whether or not that survey was made in connection with the proposed development here by the Village of Bonners Ferry"; the witness Sewell answered, "It was made from the County Road to the approximate point of diversion named in the application.", which obviously is not conclusive evidence that the survey was made by engineers or agents of the Village of Bonners Ferry.

Paragraph 2 involves the question as to whether or not sufficient information was furnished with the application for permit. Section 41-202 Idaho Code Annotated provides "That the application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and appropriation of water to a beneficial use, showing the character, location and dimensions of the proposed reservoir, dam, canals, diversion pipe line, and other works proposed to be used by them in the diversion of water." ***

18713

It is admitted that full and complete information was not contained in the application as first submitted, but it is provided in Section

41-204 "It should be the duty of the department to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of proposed use. If upon such examination the application is found defective, it shall be the duty of the department of reclamation to return the same for correction within thirty days from the receipt of such application; and the date of such return, with the reason therefor, shall be endorsed on the application and a record made thereof in a book kep for recording receipt of such application. A like record shall be kept of the date of the return of the corrected application, then such corrected application shall be returned to the department of reclamation within a period of sixty days from the date indorsed thereon by the department."

The record herein shows that the application was first received in the Department of Reclamation at 9 o'clock A. M., September 2, 1938, and returned for correction October 1, 1938. The corrected application was received with all necessary information November 7, 1938. The filing fee of forty-four dollars and seventy-five cents ($44.75) was paid September 26, 1938.

The objections contained in paragraph 3, 4, 5 and 6 are disposed of under paragraph 2 above.

Paragraph 7 alleges that this application was not properly advertised by the laws of Idaho, but does not set forth in what respect.

Paragraph 8 alleges that application number 26042 conflicts with Permit R-651, issued to C. C. Graus, September 30, 1938. There can be no merit to this contention for the reason that the stuatute providing that "first in time is first in right" shall govern, and the same rules shall apply to objection number 9.

In view of the foregoing, and of all the facts and circumstances developed, with reference to the above mentioned protest, it would seem that such protest must be rejected and dismissed, and that a permit be issued to protestee, the Village of Bonners Ferry.

18713

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of December, 1938, and attached the seal of my office.

R. W. FARIS
Commissioner of Reclamation

SEAL

18713

EXHIBIT "A"

IN THE DEPARTMENT OF RECLAMATION OF THE

STATE OF IDAHO

IN the Matter of Protests Against
Issuance of Permit Under Application
No. 26042

O R D E R

Under date of September 2, 1938 the Village of Bonners Ferry, a municipal corporation of Bonners Ferry, Boundary County, Idaho, made application for permit to appropriate and divert 160 cubic feet of water per second from Moyie River in Boundary County, Idaho. The point of diversion being designated as North 45° 30' East, 1070 feet distant from the Southwest Corner of Section 11, Township 62 North, Range 2, East, B. M., and is in the Southwest Quarter of Southwest Quarter (SW¼SW¼) of the above named section, the water to be appropriated and used for power purposes.

Notice of the pending application was published as required by law, whereupon, C. O. Graue on December 16, 1938 filed protest against issuance of permit on the following grounds:

"Comes now, C. O. Graue, whose residence and post office address is Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company or from C. O. Graue to enter upon the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; for the purpose of making a survey;

"That the survey made by Guy G. McGee on the 27th day of October, 1938 was made by trespass upon said lands; that any and all information with reference to said survey which is contained in said application and in said maps was secured by trespass upon the lands belonging to this protestant.

18713

II

That no maps or plats accompanied the application and no maps were filed with said application as required by Section 41-202 of the Idaho Code Annotated, as amended by Chapter 145 of the 1935 Session Laws of Idaho, and that no maps or plats whatever were filed with said application as provided by said section; that the maps and plats certified to by Guy C. McGee were filed on or about the 7th day of November, 1938; that said Guy C. McGee, engineer, certified that the survey upon which said application, maps and plats were based was made on the 27th day of October, 1938.

III

That the point of diversion was not stated in said application at the time the same was filed; that the survey determining the point of diversion was not made until the 27th day of October, 1938; that the certificate of the engineer, Guy C. McGee endorsed upon the plats states that the map was made from notes taken during an actual survey made on the 27th day of October, 1938.

IV

That the application did not state the point of return of the water appropriated to the stream from which it was taken at the time the application was filed; that it was not possible for the application to show the point of return until after the 27th day of October, 1938, for the reason that the application and map submitted therewith as certified to by Guy C. McGee was made from information secured by an actual survey made on October 27, 1938;

V

That the maps submitted and filed on or about the 7th day of November, 1938 were not prepared or filed in accordance with the laws of the State of Idaho or the Manual of Instruction for Filing Water Rights, and do not comply with the regulation of the Commissioner of Reclamation, and do not comply with Section 41-202, of the Idaho Code Annotated; that said maps do not show the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines and other works proposed to be used in the diversion of water.

18713

VI

"That no contourmaps showing the area of the reservoir was filed or submitted with said application;

VII

"That the application was not properly advertised as required by the laws of Idaho.

VIII

"That Application No. 26042 conflicts with Permit R-651 issued to C. O. Graue, September 30, 1938.

IX

"That Application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. O. Graue. "

X

On the same day Bonners Ferry Lumber Company filed protest against issuance of permit as follows:

"Comes Now the Bonners Ferry Lumber Company, Limited, a corporation, organized under the laws of the State of Wisconsin and authorized to transact business in the State of Idaho, with its principal place of business at Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Bonners Ferry Lumber Company, Limited, a corporation, is the owner of the West half of Section 11, Township 62, North, Range 2 East Boise Meridian, Boundary County, Idaho; that the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees acquired no right from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey; that the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said land; that any and all information contained in said Application No. 26042 and said maps was secured by trespass upon said lands belonging to this protestant.

18713

II

"That Application No. 26042 does not comply with the laws of

the State of Idaho in that it does not contain the information required by the statutes and rules of the Department of Reclamation.

XII

"That this protestant states on information and belief that Application No. 26042 was left with the Commissioner's office on or about the 2nd day of September, 1938; that at said time no plats were submitted with said application; that said application did not describe the works to be constructed in the event the permit was granted; that the said application did not describe the diversion point, and did not described the point of use;

"This protestant further states that the maps and information now contained in said application were not submitted to the Department of Reclamation until on or about the 7th day of November, 1938; that said application did not contained sufficient facts to permit the Commissioner of Reclamation to receive the same as an application for permit under the laws of Idaho, when the same was submitted with the Commissioner of Reclamation on the 2nd day of September, 1938; and that all material facts now stated in said application for permit No. 26042 were not filed with the Commissioner of Reclamation until on or about the 7th day of November, 1938."

Whereupon, a hearing on protest was called and heard in the office of the State Commissioner of Reclamation in the State House at Boise, Idaho, at 10 o'clock A.M. on the 30th day of December, 1938; Robert H. Elder Esq. of Coeur d'Alene, Idaho appeared as attorney for the protestant and C. C. Wilson, Esq., of Bonners Ferry, Idaho appeared as attorney for the applicant.

With reference to the protest of the Bonners Ferry Lumber Company, Limited, the undisputed evidence is that the lumber company had, prior to the filing of application for permit number 26042, executed an option to C. C. Crane to purchase the land upon which it is alleged that trespass was committed; so it would appear that protestant Bonners Ferry Lumber Company has no further interest in the land and its protest must

be disregarded.

With reference to protest of C. O. Grene, paragraph one which goes to the question of trespass in securing the information necessary to make the application, the State of Idaho has no statute defining trespass in such a situation as here exists. It is the view of the Commissioner that the question of trespass is in the same relationship as a question with reference to right of way, ownership of land, damage to property, etc. It must be conceded as a question over which the Department of Reclamation has no authority of jurisdiction, but is one for the Courts to adjudicate and determine rather than for the administrative officer.

In any event trespass does not seem to be sufficiently proved. The only evidence with reference to trespass introduced is that of engineer Sewell in which he testified that he made a survey of the site of the proposed development and found that brush had been cut over a considerable area; young growth of timber had been destroyed and there had been a bench mark cut in the root of one of the large trees, and also stakes on the ground.

Page 7 transcript: In answer to the question "could you tell whether or not that survey was made in connection with the proposed development here by the Village of Bonners Ferry"; the witness Sewell answered, "It was made from the County Road to the approximate point of diversion named in the application.", which obviously is not conclusive evidence that the survey was made by engineers or agents of the Village of Bonners Ferry.

Paragraph 2 involves the question as to whether or not sufficient information was furnished with the application for permit. Section 41-202 Idaho Code Annotated provides "That the application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and appropriation of water to a beneficial use, showing the character, location and dimensions of the proposed reservoir, dam, canals, diversion pipe line, and other works proposed to be used by them in the diversion of water." ***

1875

It is admitted that full and complete information was not contained in the application as first submitted, but it is provided in Section

41-204 "It should be the duty of the department to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of proposed use. If upon such examination the application is found defective, it shall be the duty of the department of reclamation to return the same for correction within thirty days from the receipt of such application; and the date of such return, with the reason therefor, shall be endorsed on the application and a record made thereof in a book kep for recording receipt of such application. A like record shall be kept of the date of the return of the corrected application, then such corrected application shall be returned to the department of reclamation within a period of sixty days from the date indorsed thereon by the department."

The record herein shows that the application was first received in the Department of Reclamation at 9 o'clock A. M., September 2, 1938, and returned for correction October 1, 1938. The corrected application was received with all necessary information November 7, 1938. The filing fee of forty-four dollars and seventy-five cents ($44.75) was paid September 26, 1938.

The objections contained in paragraph 3, 4, 5 and 6 are disposed of under paragraph 2 above.

Paragraph 7 alleges that this application was not properly advertised by the laws of Idaho, but does not set forth in what respect.

Paragraph 8 alleges that application number 26042 conflicts with Permit R-851, issued to C. C. Graue, September 30, 1938. There can be no merit to this contention for the reason that the stuatute providing that "first in time is first in right" shall govern, and the same rules shall apply to objection number 9.

In view of the foregoing, and of all the facts and circumstances developed, with reference to the above mentioned protest, it would seem that such protest must be rejected and dismissed, and that a permit be issued to protestee, the Village of Bonners Ferry.

18713

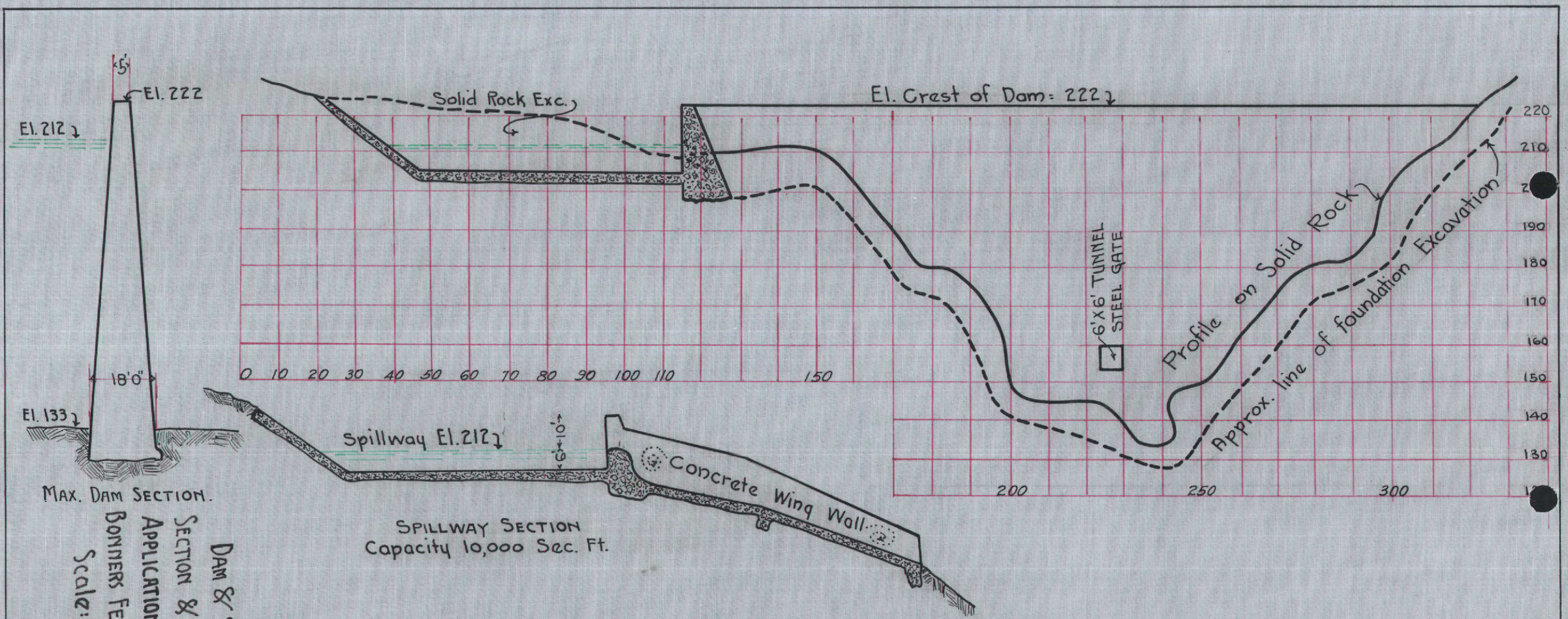
8

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of December, 1936, and attached the seal of my office.

SEAL

H. W. FARIS
Commissioner of Reclamation

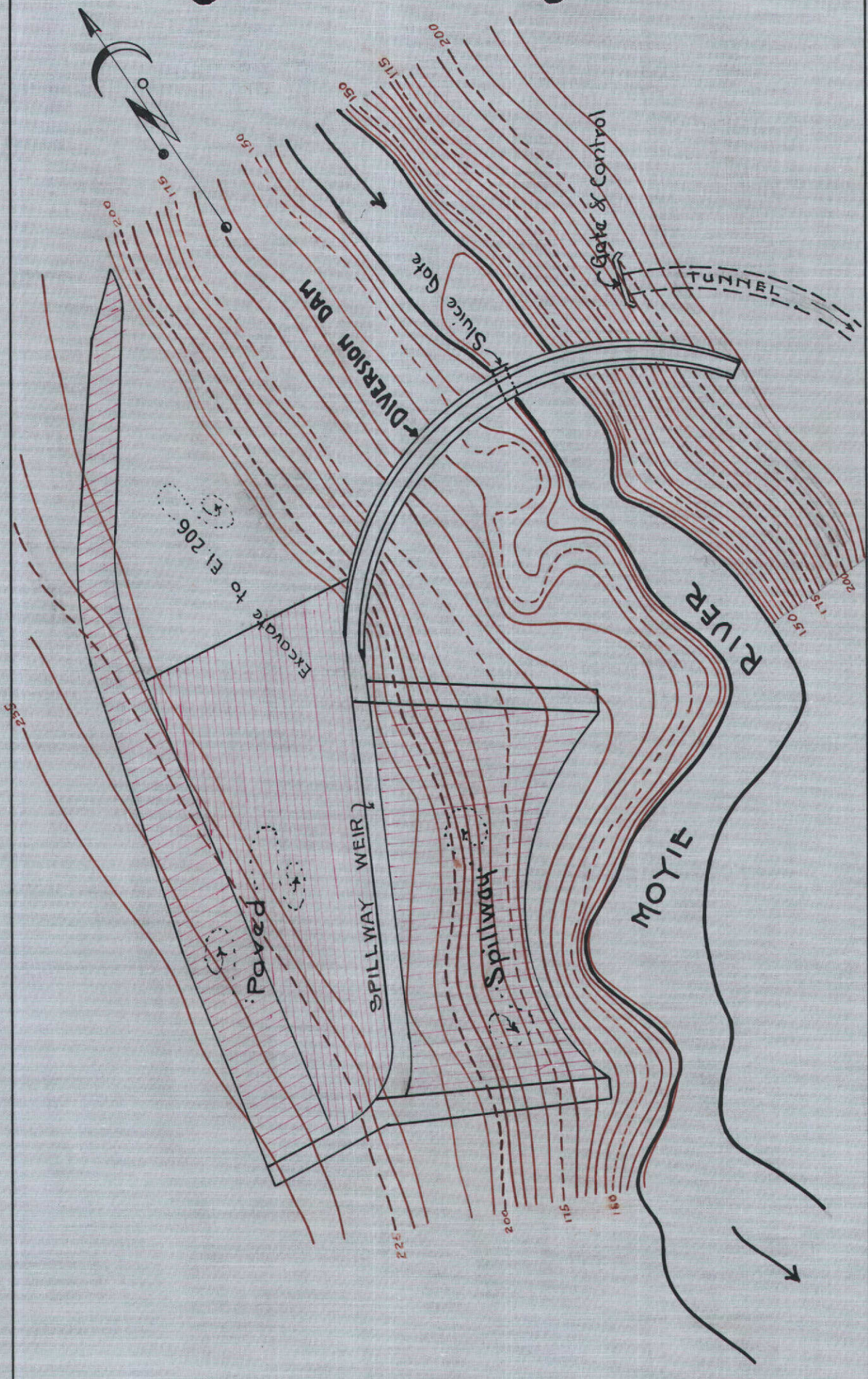
18713



Dam & Spillway
Section & Elevation
Application No. 26042
Bonners Ferry, Idaho.
Scale: 1 in = 30 ft.

18713

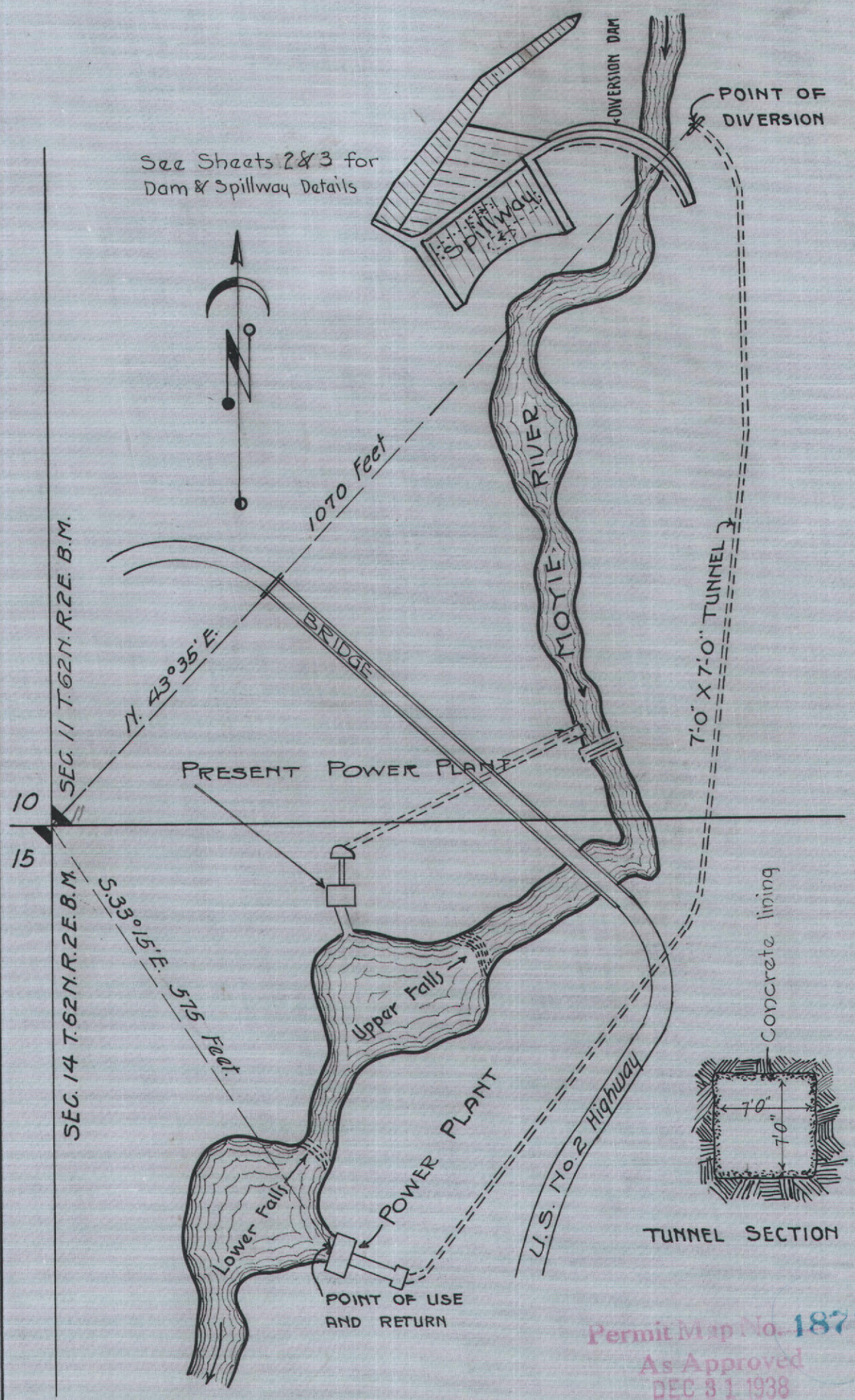
Permit Map No. 18713
As Approved
DEC 31 1936
R. W. PARIS
Commissioner of Reclamation



TOPOGRAPHIC MAP OF DAM SITE

TO ACCOMPANY APPLICATION No. 26042
BY THE VILLAGE OF BONNERS FERRY
BOUNDARY CO. IDAHO
OCT. 29, 1938 SCALE 1 in. = 50 ft.

Permit Map No. 18713
As Approved
DEC 31 1938
R. W. FARIS
Commissioner of Reclamation



Permit Map No. 18713
As Approved
DEC 31 1938
R. W. FARIS
Commissioner of Reclamation

I, Guy C. McGee, of Bonners Ferry, Idaho. an Engineer, Licensed by the State of Idaho, do hereby certify that this map was made from notes taken during an actual survey made by me on Oct. 27, 1938, and that it correctly represents the works described in Application No. 26042.

Guy C. McGee.

MAP OF POWER SITE
TO ACCOMPANY APPLICATION No. 26042
BY THE VILLAGE OF BONNERS FERRY
BOUNDARY CO. IDAHO.

OCT. 29, 1938 SCALE 1 in. = 150 ft.

18713 1

ENGINEER'S CERTIFICATE

If appropriation exceeds 25 cubic feet per second or 6250 acre feet the further requirement must be met:

1. The map must bear the certificate of a licensed engineer substantially in the following form:

CERTIFICATE OF ENGINEER

I,....., of....., an engineer licensed by the State of Idaho, do hereby certify that this map was made from notes taken during an actual survey made by me (or under my immediate supervision) on....., 19....., and that it correctly represents the works described in the accompanying application, and has written thereon the area in each smallest legal subdivision which it is proposed to irrigate.

.....
Engineer.

2. The tie to point of diversion, (and in case of mining and power filings, to point of return) must be shown on the map.

3. Maps must show cross sections or table of elements of the various canals to be constructed to permit of a determination of capacities to be provided.

PLANS OF DAMS

If a dam exceeding 10 feet in height is to be constructed, separate plans and specifications of same must be filed in duplicate. These plans and specifications are not a requirement in connection with the granting of a permit and can be filed subsequent to making the application. They must, however, be filed and approval secured from the Commissioner of Reclamation prior to the beginning of actual construction work. Such plans should contain the following information:

1. Profile of the dam site taken on axis of dam, scale.

2. Cross section of the dam at maximum section showing complete details and dimensions.

3. Plan of dam showing location of stream bed, outlet canal or tunnel, controlling works and spillway.

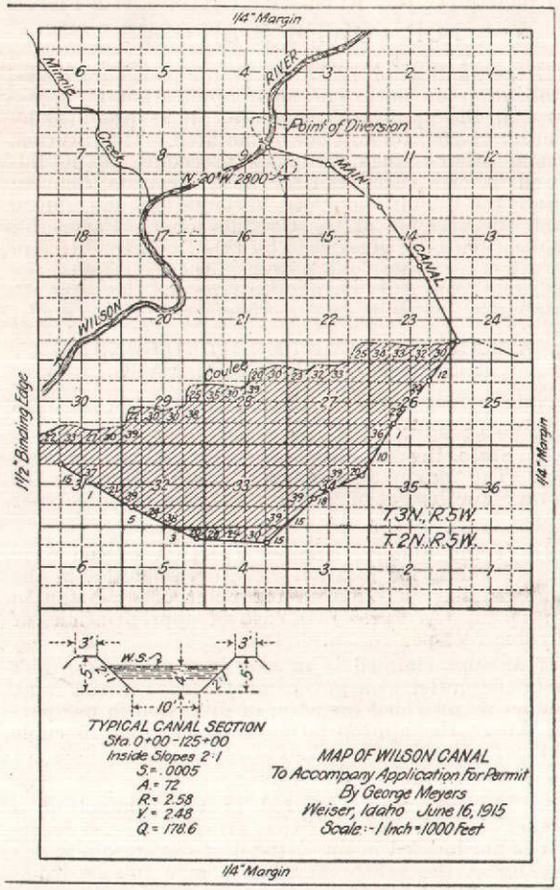
4. Plans showing in detail sections of controlling works, outlet tunnel or canal and spillway. These sections to be shown in sufficient number to make absolutely definite all features of the structure.

5. Contour map of dam site at not to exceed 5 foot contour interval.

6. Where suitable foundation is not evident from surface indications a geological section beneath the axis of the dam should be submitted. This section should show the nature of the material below the surface, thickness of strata and means of determining same.

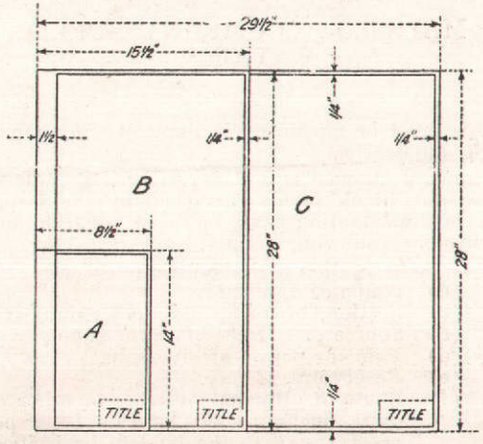
7. Specifications must be submitted which shall be as complete as to detail as would be submitted to contractors bidding on the work.

8. Name of stream, number of permit and name of permit holder must be given on all plans and specifications.



EXAMPLE OF MAP REQUIREMENTS

STANDARD SIZES OF MAPS



	Length	Width	Binding Edge	Margin
Size "A"	14 In.	8½ In.	1½ In.	¼ In.
Size "B"	28 In.	15½ In.	1½ In.	¼ In.
Size "C"	29½ In.	28 In.	1½ In.	¼ In.

Protestants Exs C. Apr 12/30/38 mm

STATE OF IDAHO
Department of Reclamation
BOISE

REGULATIONS AND INSTRUCTIONS

PROCEDURE FOR SECURING WATER RIGHT

I. File application, maps and fee with Department of Reclamation.
II. Approval of application by the Commissioner of Reclamation.
(Approved application constitutes only a permit to construct the diversion works, and is not evidence of a matured water right).
III. File bond on or before date set in permit.
IV. Commencement of construction work and completion in accordance with provisions of permit.
V. Proof of such completion offered to Commissioner of Reclamation on or before the date set for same in permit and payment of fees for certificate of completion of works.
VI. Issuance by Commissioner of Reclamation of certificate of completion of works.
VII. Application of water to beneficial use and proof of such beneficial use made to Commissioner of Reclamation on or before the date set for same in permit; also payment of fees for license.
VIII. Issuance by Commissioner of Reclamation of water license which constitutes a perpetual water right.

FEES

Filing fees for application for permit:

$5.00 if the quantity of water claimed is one cubic foot per second (50 miners' inches), or less, and 25 cents for each additional cubic foot per second, or fraction thereof.

For storage rights:

$5.00 if the quantity of water is 250 acre feet, or less, and 25 cents for each additional 250 acre feet, or fraction thereof.

All fees must be paid in cash or postal money order when the application is filed.

Make all remittances payable to Commissioner of Reclamation.

Instructions for Preparing Applications

A. APPLICATION FOR PERMIT TO APPROPRIATE WATER

Note—This form of permit is referred to as a "Use Permit."

1. Subdivisions I and II are to be filled in only in case the applicant is a corporation.

2. State the quantity of water claimed in cubic feet per second. The maximum amount of water allowable per acre for irrigation is one miners' inch or one-fiftieth of one cubic foot per second.

3. Give name of stream, spring or lake constituting the source of supply. If the stream or other

18713

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

IN THE MATTER OF THE PROTEST AGAINST THE APPROVAL OF APPLICATION TO APPROPRIATE THE PUBLIC WATERS, NUMBER 26042, IN ACCORDANCE WITH THE PROVISIONS OF HOUSE BILL NUMBER 293, 1935 SESSION LAWS.

C. O. Graue, Coeur d'Alene, Idaho, and BONNERS FERRY LUMBER COMPANY, LIMITED, a corporation, Coeur d'Alene, Idaho,

Protestants

VILLAGE OF BONNERS FERRY, IDAHO,

Protestee.

NOTICE OF HEARING

You, and each of you, are hereby notified that on the 30th day of December, 1938, at 10:00 A. M., in the office of the Commissioner of Reclamation, at Boise, Idaho, a hearing will be held in the matter of the protests against the approval of application for permit to appropriate one hundred sixty cubic feet per second of the waters of the Moyie River for power purposes.

That the Protestants are required to appear at the office of the Commissioner of Reclamation, at Boise, Idaho, on the date set for the hearing and show cause, if any there be, why said Application No. 26042 should not be approved and permit issued thereunder, and said Protestants and Protestee on said date may file such affidavits in support of their respective allegations as they may desire;

That there have been filed in the Department of Reclamation of the State of Idaho, at Boise, Idaho, on December 15th, 1938, by C. O. Graue, of Coeur d'Alene, Idaho, and by the Bonners Ferry Lumber Company, Limited, a corporation, Coeur d'Alene, Idaho, protests against the granting of said Application No. 26042;

18713

State of Idaho
License and Certificate of Water Right

Water License No. 18713 Amount 160 cubic feet per second

Water District No. Priority September 2, 1938

THIS IS TO CERTIFY that VILLAGE OF BONNERS FERRY

of Bonners Ferry, Idaho , made application for a permit to appropriate the public waters of the State of Idaho, dated September 2 , 19 38 ; that Permit No. 18713 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 160 second feet, was issued thereunder on October 31 , 19 51 , showing that said works were completed on the 4th day of December , 19 50 ; and that on the 6th day of December , 19 55 ,

VILLAGE OF BONNERS FERRY

of Bonners Ferry , State of Idaho , made proof to the satisfaction of the State Reclamation Engineer of Idaho, of the right to use the waters of Moyie River , a tributary of Kootenai River , for the purpose of power use , under Use Permit No. 18713 of the Department of Reclamation and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume 9 of Licenses at page 5705 , on the 7th day of May , 19 56 ;

The right hereby confirmed dates from September 2 , 19 38 ;

The Point of Diversion is located

in the SW ¼ SW ¼, Sec. 11 , Tp. 62 N., R. 2 E. , B. M. Boundary County

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 160 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
			For use at the Village of Bonners Ferry for power purposes.		

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this 7th day of May , 19 56 .

MARK R. KULP
State Reclamation Engineer.

(SEAL)

98 2059
98-2060

NOTICE OF WATER FILINGS UNDER H. B. 293, 1935 SESSION LAWS

Date of Notice Nov. 9 1938
Date of Publication Nov. 24 1938
Last Date for Protest Dec. 19 1938

IF PROTESTED

Date of Notice of Hearing Dec. 20 1938
Date of Hearing Dec. 30 1938
Notice of Appeal Filed ..... 19...

No. 18713

98-2060

APPLICATION FOR PERMIT
TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO

Application No. 26042
Permit No. 18713
District No.

1. Name of Applicant: VILLAGE OF BONNERS FERRY, a municipal corporation.

Postoffice address Bonners Ferry County: Boundary State: Idaho

I. If applicant is a corporation, give:
(a) Date and place of incorporation:
(b) Amount of capital stock:
(c) Amount paid in:
(d) Names and addresses of directors: Board of Trustees, Bonners Ferry, Idaho

II. The financial resources of the applicant are:
(a) Cash on hand:
(b) Treasury stock:
(c) Bonds to be issued:
(d) Other resources:

2. Quantity of water claimed: one hundred and sixty cubic feet per second.

3. Source of water supply: Moyie River which is a tributary of Kootenai River.

4. Location of point of diversion: N. 43° 35' E. 1070 feet distant from the SW corner of Section 11, T. 62 N., R. 2 E., B. M., and is in the $SW\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 11, T. 62 N., R. 2 E., B. M., County of Boundary.

5. Water is to be used for: Power purposes

6. If for mining, milling, power or manufacturing purposes, give:
(a) Point of use of water: S. 33° 15' E. 575 feet distant from NW corner of Section 14 T. 62 N., R. 2 E., B. M., in the $NW\frac{1}{4}$ of $NW\frac{1}{4}$ of Section 14, T. 62 N., R. 2 E., B. M.
(b) Amount of power generated: 2900 H. P., under 200 feet head.
(c) Water is to be returned to Moyie River at a point S. 33° 15' E. 575 feet distant from the NW corner of Section 14, T. 62 N., R. 2 E., B. M., in the $NW\frac{1}{4}$ of $NW\frac{1}{4}$ of Section 14, T. 62 N., R. 2 E., B. M.

7. Estimated cost of works: $ 250,000.00

8. Kind of works: Reinforced concrete dam and rock tunnel.

9. Height of dam 90 feet; length of dam at top 210 feet; length of dam at bottom 20 feet; material used in dam: reinforced concrete

10. Size of headgate: Width 7 feet; height 7 feet.

11. Ditch: Width at bottom feet; width at water line feet; depth of water feet; dimensions of ~~flume~~: Tunnel 7' x 7'
Diameter of pipe inches; length of conduit 1400 feet ~~miles~~
Average grade per mile 50 feet.

12. The time required for the completion of such work is Five years.

13. The time required for the complete application of the water to the proposed use is Five additional years.

14. The land to be irrigated is described in the following tabulation: See remarks.

15. (a) Is reservoir to be used? No If so, fill in (b) and (c) below.
(b) Name of Reservoir and number of Storage Permit:
(c) Date of filing of Application for Storage Permit and Name of Applicant:

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

VILLAGE OF BONNERS FERRY *Applicant.*

By H. M. BUROKER *Agent.*

Date of first receipt at Department of Reclamation: 9:00 A. M., Sept. 2, 1938

Returned to applicant for correction: Oct. 1, 1938

Corrected application received: Nov. 7, 1938

APPROVAL OF COMMISSIONER OF RECLAMATION

The number of this permit is 18713
Recorded in Book 68 Page 18713 Approved Dec. 31, 1938
This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:
Bond in the sum of $ 1000.00 to be filed on or before March 1, 1939
Work to begin on or before and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.
One-fifth of the work above specified to be completed on or before June 30, 1941
The whole of said work to be completed on or before December 31, 1943
Beneficial use of water appropriated in accordance herewith, to be made on or before December 31, 1948.

Witness my hand this 31st day of December, 1938.

R. W. FARIS
Commissioner of Reclamation.

Remarks:

14.

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

In testimony whereof, we, BARZILLA W. CLARK, Governor of the State of Idaho, and IRA H. MASTERS, Secretary of State of the State of Idaho, have hereunto caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed this 31st day of December, 1938.

STATE OF IDAHO

By BARZILLA W. CLARK
Governor

(SEAL)

Countersigned:

By IRA H. MASTERS
Secretary of State

APPROVAL OF STATE RECLAMATION ENGINEER

WHEREAS, Application for Extension of Time for Completion of Works, under Permit to Appropriate the Public Waters of the State of Idaho, No. 18713, has been made by the owner thereof, Village of Bonners Ferry, Bonners Ferry, Idaho, which appli-cation was duly advertised for a period of two consecutive weeks in the Bonners Ferry Herald, stating that on the 6th day of December, 1943, a hearing would be held for the purpose of receiving any protests, testimony or evidence regarding such applica-tion; and,

WHEREAS, At the time set for the hearing no protest, testimony or evidence had been presented, either orally or by affidavit; and,

WHEREAS, It appears that the owner of said Permit is entitled to a further extension of time within which to complete work:

NOW, THEREFORE, I, James Spofford, State Reclamation Engineer of the State of Idaho, by virtue of authority vested in me under Chapter 79 (Senate Bill No. 93), 1943 Session Laws, hereby extend the time for Completion of Works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18713, to December 31, 1947.

WITNESS MY HAND, this 8th day of January, A. D. 1944.

JAMES SPOFFORD
State Reclamation Engineer

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Approval of State Reclamation Engineer

WHEREAS, App;ication for extension of time for Completion of Works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18713, has been made by the owner thereof, Village of Bonners Ferry, which application was duly advertised in the Bonners Ferry Herald for a period of two consecutive weeks, stating that on the 30th day of January, 1948, a hearing would be held for the purpose of receiving any protests, testimony or evidence regarding such application; and,

WHEREAS, At the time set for the hearing no protest, testimony or evidence had been presented, either orally or by affidavit; and,

WHEREAS, It appears that the owner of said permit is entitled to a further extension of time within which to complete work:

NOW, THEREFORE, I, Mark R. Kulp, State Reclamation Engineer of the State of Idaho, by virtue of authority vested in me under Chapter 28 of the Session Laws of 1947, hereby extend the time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18713, to December 31, 1950.

WITNESS MY HAND, this 11th day of February, 1948.

MARK R. KULP
State Reclamation Engineer

CERTIFICATE OF COMPLETION OF WORKS

TO ALL WHOM IT MAY CONCERN:

This is to certify that VILLAGE OF BONNERS FERRY, A Municipal Corporation, of Bonners Ferry, County of Boundary, and State of Idaho, the holder of Permit No. 18713, issued upon Application No. 26042 bearing date of priority of September 2, 1938, authorizing the diversion of 160 second feet of the waters of Moyie River, a tributary of Kootenai River, County of Boundary, State of Idaho, for power purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 160 second feet of the waters of Moyie River; that the point of diversion of said waters is in the SW¼ SW¼ Section 11, Township 62 North, Range 2 East, B.M. and that the place of use of said water is in the NW¼ NW¼ Section 14, Township 62 North, Range 2 East, B.M.

Witness my hand this 31st day of October, A. D. 1951.

MARK R. KULP
State Reclamation Engineer

Proof of completion of works made December 4, 1950
Certificate of completion of works issued October 31, 1951.

NOTICE ISSUED FOR 160 SEC FT
Page* 5705

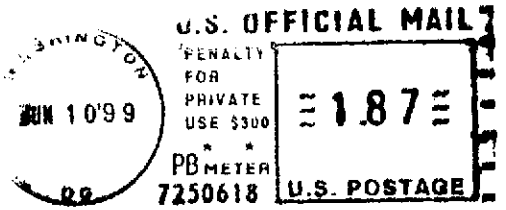
98-2036
2066

FEDERAL ENERGY REGULATORY COMMISSION

ROUTING CODE _____

WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300



P-1991 101465
DIRECTOR
IDAHO DEPT. OF WATER RESOURCES
1301 NORTH ORCHARD ST. (ZIP 83706-2237
POST OFFICE BOX 83720-0098
BOISE, ID 83720-0098

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Bonners Ferry, Idaho) Project No. 1991-009

ORDER ISSUING MAJOR NEW LICENSE

(Issued June 9, 1999)

On April 1, 1996, the City of Bonners Ferry (City), Idaho filed an application, pursuant to Part 1 of the Federal Power Act (FPA), 1/ for a new license authorizing the continued operation and maintenance of the 3,938-kilowatt (kW) Moyie River Hydroelectric Project No. 1991, located on the Moyie River, a tributary to the Kootenai River. The project occupies 1.55 acres of land that are owned by the United States and located within the Idaho Panhandle National Forest (Forest Service). The forest lands occupied by the project are located in the upper reach of the reservoir. The remainder of the project lands are owned by the City.

The original license for the Moyie River Hydroelectric Project was issued on September 21, 1949 and expired on April 1, 1998. 2/ For the reasons discussed below, I will issue a new license to the City for the Moyie River Hydroelectric Project.

I. BACKGROUND

On October 23, 1996, the Federal Energy Regulatory Commission (Commission) issued a public notice soliciting motions to intervene in the proceeding by January 6, 1997. 3/ Idaho Rivers United and the state of Idaho filed timely motions to intervene dated January 3, 1997, and January 3, 1997. River Odysseys West, Inc. and American Whitewater Affiliation filed untimely motions to intervene dated January 8, 1997, and February 10, 1998, respectively. 4/

1/ 16 U.S.C. §§ 791(a) - 825r.

2/ The original license has an effective date of April 1, 1948. 8 FPC 1140 (1949). An annual license was issued on April 10, 1998, and since then project operations have continued pursuant to annual licenses pending disposition of the City's application for a new license.

3/ 61 Fed. Reg. 57404 (November 6, 1996).

4/ Notices granting late intervention were issued April 27, (continued...)

Commission staff issued a draft environmental assessment (DEA) for the project on September 15, 1998, 5/ in which they recommend the project be licensed as proposed by the City with additional environmental conditions. Staff found that, with these conditions, licensing the project would not be a major federal action significantly affecting the quality of the human environment.

Idaho Rivers United, the City of Bonners Ferry, Idaho Department of Parks & Recreation, American Whitewater Affiliation, and Forest Service, filed comments on the DEA. Staff considered these comments in preparing the final environmental assessment (FEA), which was issued on April 1, 1999, and is incorporated by reference and made part of this order.

All comments and recommendations filed by the interested parties were considered in determining whether, and under what conditions, to issue this license.

II. PROJECT DESCRIPTION

The Moyie River Project consists of: (1) a 92-foot-high concrete dam, impounding a 450-acre-foot reservoir, (2) a combination penstock/pressure tunnel about 990 feet long, (3) three powerhouses with a total installed capacity of 3,938 kW, (4) a 1.3-mile-long, 13.8-kilovolt transmission line, and (5) appurtenant facilities. A more detailed description of the project works is in ordering paragraph B(1).

The existing project is operated in a run-of-river mode, with the reservoir water surface elevation kept at 2,023 feet. The turbines use about 360 cubic feet per second (cfs). Flows up to 360 cfs in the Moyie River are diverted to the powerhouse for generation. When river flows exceed 360 cfs, the excess water is spilled over the dam into the bypassed reach. Flow from the turbines is returned to the Moyie River.

III. APPLICANT'S PLANS AND CAPABILITIES

In accordance with Sections 10(a)(2)(C) and 15(a) of the FPA, 6/ staff evaluated the City's record as a licensee with respect to the following: (A) conservation efforts; (B)

4/ (...continued)
1999.

5/ 63 Fed. Reg. 50224 (September 21, 1998).

6/ 16 U.S.C. §§ 803 and 808.

compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable electric service; (E) need for power; (F) transmission line improvements; and (G) cost effectiveness of plans. I accept the staff's conclusion in each of these areas.

A. Conservation Efforts

The City actively promotes energy conservation to its customers. The City has developed the following programs to conserve energy: (1) provide customers with electric use efficiency publications and handouts, (2) install electric hot water tank insulation wraps, (3) enforce the Northwest Energy Code and (4) provide technical assistance for proposed commercial construction.

Staff has reviewed the City's efforts to conserve and help its customers to conserve electricity and finds the City is making a good faith effort to conserve electricity.

B. Compliance History and Ability to Comply with the New License

We have reviewed the City's compliance with the terms and conditions of the existing license. We find the City's overall record of making timely filings and compliance with its license is satisfactory.

C. Safe Management, Operation, and Maintenance of the Project

The staff reviewed the City's plans to manage, operate, and maintain the project safely. The City proposes no change in project operation that would adversely affect project safety. Based on our review of the City's public safety records, the City's plans are adequate.

The City practices safe management, operation, and maintenance of the Moyie River Hydroelectric Project.

D. Ability to Provide Efficient and Reliable Electric Service

The staff reviewed the City's operating plans and its ability to provide efficient and reliable electric service. From the City's record of forced outages, the staff concludes that the lost generation was not significant compared to the total annual generation for this project.

The City has the ability to provide efficient and reliable electric service with the Moyie River Hydroelectric Project.

E. Need for Power

The staff considered the short- and long-term need for the power generated by the Moyie River Hydroelectric Project and the cost of alternative power if the City does not receive a new license for the project. The staff concludes that: (1) the power from the existing Moyie River Hydroelectric Project helps the City meet part of it's power needs; and (2) over the 30-year term of a new license, replacing project power would cost the City about $629,000 annually.

The City is a small municipal utility providing service to about 2,000 customers. The Moyie River Hydroelectric Project provides a small part of the City's power needs and the Bonneville Power Administration supplies the rest.

The proposed project is located in the Northwest Power Pool Area (NWPP) of the Western System Coordinating Council (WSCC) region. In their April 1997 report, WSCC projects a regional energy growth rate of 1.8 percent. For the NWPP area, the report shows 4,119 megawatts (MW) of proposed capacity being added during the forecast period that extends to 2006.

On July 1, 1998, the Northwest Power Planning Council (Council) adopted the Fourth Northwest Conservation and Electric Power Plan. As in their last report, the Council predicts a range of electricity demand from low to high growth. The medium forecast of electricity demand shows that the region could add about 5,920 average MW over the planning period.

F. Transmission Line Improvements

The City has no plans to make any transmission line improvements to the line associated with the project.

G. Project Modifications

The City proposes no modifications to the project facilities.

IV. WATER QUALITY CERTIFICATION

Under Section 401(a)(1) of the Clean Water Act (CWA), 7/ the Commission may not issue a license for a hydroelectric project unless the state water quality certifying agency has issued a

---

7/ 33 U.S.C. § 1341(a)(1).

water quality certification for the project or has waived certification by failing to act upon a request for certification within a reasonable time, not to exceed one year.

The City applied to the Idaho Department of Environmental Quality (IDEQ) for a water quality certificate (WQC) for the Moyie River Hydroelectric Project on January 9, 1996. The IDEQ granted certification on July 11, 1996. The certification contains conditions requiring the City to: (1) maintain base flow rates below the project at approximately normal low flow rates during dredging activities; (2) conduct maintenance dredging activities during low flow conditions between July 1 and September 15; (3) monitor turbidity during maintenance dredging; (4) cease dredging if turbidity concentrations exceed 50 nephelometric turbidity units (NTU) instantaneously or 25 NTU for 10 consecutive days over background, and best management practices (BMPs) shall be installed or initiated before dredging activities can resume; (5) exercise the drain valve only when discharge over the dam is 2000 cfs or greater; (6) monitor turbidity prior to and during drain valve exercises; (7) close the drain valve if turbidity levels exceed criteria for more than 1 hour following initial discharge; (8) keep on-site petroleum absorbent and clean-up during dredging activities; (9) notify DEQ prior to valve exercises and dam maintenance activities that involve dredging; (10) submit a copy of the monitoring data to DEQ following maintenance activities; and (11) comply with the requirements set forth in the Idaho Water Quality Standards and Wastewater Treatment Requirements for all other activities.

Also, the certificate has the following conditions: (1) certification does not authorize any surface water discharge of decant water that is generated by dredging; and (2) the Idaho WQC becomes null and void if the project is abandoned or stops generating electricity for three years.

The WQC conditions are included in this license as Appendix A and are made part of this license.

V. THREATENED AND ENDANGERED SPECIES

Section 7(a) of the Endangered Species Act of 1973 (ESA) 8/ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of designated critical habitat. Federally listed species that are known to occur in the project area include the threatened bull trout and bald eagle, and the endangered gray wolf and white sturgeon.

8/ 16 U.S.C. § 1536(a).

In the FEA, staff concludes that issuing a new license with their recommended enhancement measures would not affect the bull trout, bald eagle, gray wolf, and white sturgeon. 9/

VI. SECTION 4(e) FINDINGS AND CONDITIONS

Section 4(e) of the FPA 10/ states the Commission may issue a license only after a finding that the license will not interfere or be inconsistent with the purpose for which the reservation was created or acquired. Section 3(2) of the FPA 11/ defines reservations as including national forests. Section 4(e) also requires that licenses issued for hydroelectric projects located within United States reservations must include all conditions that the secretary of the department under whose supervision the reservation falls (in this proceeding, the Secretary of the U.S. Department of Agriculture) shall deem necessary for the adequate protection and utilization of the reservation.

There is no evidence or allegation in this proceeding to indicate that the relicensing of the project will interfere with the purposes of the Idaho Panhandle National Forest. The Forest Service did not file any conditions under Section 4(e) of the FPA. I therefore find that this license will not interfere or be inconsistent with the purpose for which the reservation was created.

VII. RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

Under the provisions of Section 10(j)(1) of the FPA, 12/ the Commission is required to include license conditions, based upon recommendations of state and federal fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act, for the protection of, mitigation of adverse impacts to, and enhancement of fish and wildlife resources affected by the project. If the Commission believes that any such recommendations may be inconsistent with the purpose and requirements of Part I of the FPA, or other applicable law, Section 10(j)(2) of the FPA requires the Commission and the agencies to attempt to resolve such inconsistencies, giving due weight to the recommendations, expertise, and statutory

9/ See Section V.C.3 of the FEA.

10/ 16 U.S.C. § 797(e).

11/ 16 U.S.C. § 796(2).

12/ 16 U.S.C. § 803(j)(1).

responsibilities of such agencies. If the Commission still does not adopt a recommendation, it must explain how the recommendation is inconsistent with Part I of the FPA or other applicable law and how the conditions imposed by the Commission adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources.

By letter dated February 9, 1998, Interior made a recommendation pursuant to Section 10(j) of the FPA 11/ that the City be required to develop a plan, in consultation with the U.S. Fish and Wildlife Service, Idaho Department of Fish and Game (IDFG), and other interested resource agencies, for the removal and treatment of sediment accumulated behind the project dam. IDFG made no recommendations in response to the Notice of Ready for Environmental Analysis.

Article 401 requires preparation of a sediment removal plan and disposal plan. I conclude that this license includes conditions consistent with all recommendations made by Interior that are within the scope of Section 10(j) of the FPA.

VIII. OTHER ISSUES

A. Aquatic Resources

The City proposes to continue to operate the project in a run-of-river mode. Therefore, we conclude in the FEA, Section V.C.1, that requiring the City to continue to operate the project run-of-river would continue to ensure the benefits to aquatic life and water quality in the Moyie River and have included the recommendation in the license as Article 402.

B. Terrestrial Resources

The City proposes to install one or two goose nest boxes in the upper part of the project reservoir to enhance waterfowl habitat. Staff concludes that this would benefit waterfowl. Article 404 requires the City to install and maintain two nest boxes and to consult with IDFG on the design and location.

C. Aesthetic Resources

The City proposed to release a minimum flow of 9 cubic feet per second. The River Odysseys West, Inc. and Idaho Rivers United recommend that the City release 200 cfs flow over the Moyie Falls during summer weekends in June July and August. No other entity, governmental organization, or member of the public

11/ Idaho Department of Fish and Game did not submit Section 10(j) recommendations for the project.

has recommended or requested specific bypassed reach flows greater than 9 cfs.

In our FEA, we studied providing different minimum flows. Based on the viewing acceptability and the cost of providing the minimum flow, we recommend that the City release minimum flows of 9 cfs to maintain the aesthetic quality of the Moyie Falls. Article 403 includes in the license a requirement for the City to release the minimum flow, for interim period, and requires a final release plan to filed with the Commission.

D. Cultural Resources

The City conducted a cultural resources report of the Moyie River Hydroelectric Project area and found four historic sites that are considered eligible for the National Register of Historic Places. Article 405 is included in this license to protect these historic sites and any other archeological or historic sites that may be discovered during project operation and maintenance.

E. Recreation Plan

In the FEA, we determined that the City should prepare a final recreation plan for Commission approval. Article 406 as included in the license, requires the City to file a final recreation plan.

F. Use and Occupancy of Project Lands and Waters

Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Article 407 allows the City to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape plantings. Such uses must be consistent with the purpose of protecting and enhancing the scenic, recreational, and environmental values of the project.

G. Administrative Conditions

The Commission collects annual charges from licensees for the administration of the FPA. Article 201 provides for the collection of such funds. Article 202 requires the filing of aperture cards for project drawings. Article 203 requires the establishment and maintenance of an amortization reserve account. Article 501 requires the City to reimburse the owner of a storage reservoir or other headwater improvement project that directly benefits the licensee's project. The benefits will be assessed in accordance with Subpart B of the Commission's regulations.

IX. CONSISTENCY WITH COMPREHENSIVE PLANS

Section 10(a)(2)(A) of the FPA 14/ requires the Commission to consider the extent to which a hydroelectric project is consistent with federal and state comprehensive plans for improving, developing, or conserving waterways affected by the project. 15/ Under Section 10(a)(2)(A), federal and state agencies filed 33 comprehensive plans that address various resources in Idaho. Of these, Commission staff identified and reviewed 8 plans relevant to this project. 16/ No conflicts were found.

X. COMPREHENSIVE DEVELOPMENT

In determining whether a proposed hydroelectric power project will be best adapted to a comprehensive plan for developing a waterway for beneficial public uses, pursuant to Section 10(a)(1), the Commission considers a number of public interest factors, including the projected economic benefits of project power.

Under the Commission's current approach to evaluating the economics of hydropower projects, as articulated in Mead Corp., 17/ the Commission employs an analysis that uses current costs to compare the costs of the project and likely alternative power without incorporating forecasts concerning the effects of

14/ 16 U.S.C. § 803(a)(2)(A).

15/ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (1997).

16/ (1) U.S. Fish and Wildlife Service and Canadian Wildlife Service. May 1986. North American Waterfowl Management Plan. (2) U.S. Fish and Wildlife Service. Undated. Fisheries USA: the recreational fisheries policy of the U.S. Fish and Wildlife Service. (3) National Park Service. January 1982. The Nationwide Rivers Inventory. (4) Idaho Department of Parks and Recreation. July 1998. Idaho Statewide Comprehensive Outdoor Recreation and Tourism Planning: Assessment and Policy Plan. (5) Northwest Power Planning Council. December 1994. 1994 Columbia River Basin Fish and Wildlife Program. (6) Northwest Power Planning Council, September 1988, Protected Areas, Amendments, and Response to Comments. (7) Northwest Power Planning Council. July 1998, Fourth Northwest Conservation and Electric Power Plan. and (8) U.S. Forest Service, September 1987, Forest Plan-Idaho Panhandle National Forests.

17/ 72 FERC ¶ 61,027 (1995).

potential future inflation, escalation, or deflation. The purpose of the Commission's economic analysis is to provide a general estimate of the power benefits and the costs of a project, and reasonable alternatives to project power. In making its decision, the Commission considers the project power benefits both with the applicant's proposed mitigation and enhancement measures and with the Commission's proposed modifications and additions to the applicant's proposal.

As proposed by the City, the project would produce an average of 26.2 gigawatt-hours (GWh) of energy annually at an annual cost of about $347,000 or 13.2 mills per kilowatt-hour (mills/kWh). The current annual value of the project's power would be $629,000 (23.9 mills/kWh). We base this value on the City's cost of buying wholesale power from the Bonneville Power Administration. To determine whether the proposed project is currently economically beneficial, we subtract the project's cost from the value of the project's power. Thus, based on current costs, the project as proposed by the City would cost about $281,000 (10.7 mills/kWh) annually less than the current cost of alternative power. With staff's recommendations 18/, the project would cost $280,0000 (10.7 mills/kWh) annually less than the cost of alternative power.

Sections 4(e) and 10(a)(1) of the FPA 19/ require the Commission, in acting on applications for license, to give equal consideration to developmental and environmental values. Any license issued shall be in the Commission's judgment best adapted to a comprehensive plan for improving or developing the waterways for beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

Based on the record in this proceeding, and for the reasons discussed herein, I conclude that the proposed project with our additional protection, mitigation, and enhancement measures will be best adapted to a comprehensive plan for developing the

18/ Staff's recommend measures include: (1) continued run-of-river operation; (2) preparation a cultural resources management plan to ensure the historical integrity of the project facilities, and that other historical sites are not affected by the continue operation and maintenance of the project facilities; and (3) preparation of a recreation plan that would provide: a) portable toilets during April through July, b) interpretive display on the new Highway 2, and c) evaluation of an alternative access route leading to the. upper end of the reservoir.

19/ 16 U.S.C. § § 797(e) and 803(a)(1).

waterway for beneficial public uses. The 26.2 GWh of clean, domestic, and reliable energy that would be produced by the project would displace fossil-fueled electric generation, thereby conserving nonrenewable fossil fuels and avoiding the emission of additional noxious gases caused by the combustion of those fuels. The other environmental measures -- run-of-river operation, developing a dredging plan, installing nesting boxes and developing a recreation plan -- would reduce project effects and enhance the natural resources of the project area.

XI. LICENSE TERM

Section 15 (e) of the FPA 20/ specifies that any license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years, nor more than 50 years from the date on which the license is issued. Commission policy is to grant 30-year license terms for projects with little or no redevelopment, new construction, or new environmental mitigation and enhancement requirements; 40-year terms for projects with a moderate amount thereof; and 50-year terms for projects with extensive amounts thereof.

The environmental mitigation and enhancement costs of the new license for the Moyie River Hydroelectric Project warrant a term of 30 years.

XII. SUMMARY OF FINDINGS

Background information, analysis of impacts upon the environment, and support for related license articles are contained in the FEA. Issuance of this license 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 license.

The Commission orders:

(A) This license is issued to the City of Bonners Ferry (licensee) for a period of 30 years, effective the first day of the month this license is issued, to operate, and maintain the Moyie River Hydroelectric Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which are incorporated by reference as part of this license, and to the

20/ 16 U.S.C. § 808 (e).

regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G:

EXHIBITS	FERC NO.	TITLE
G-1	1991-1009	Project boundary (revised January 7, 1998)

(2) Project works consisting of: 1) a 376-foot-long, 92-foot-high concrete gravity dam, with an impoundment of 450-acre-feet; (2) a 117-foot-long ogee crest spillway integral with the dam, with a crest elevation of 2023 feet mean sea level; (3) a combination penstock/pressure tunnel about 990 foot long; (4) three powerhouses with a total installed capacity 3,938 kilowatts; (5) a 1.3-mile-long, 13.8-kilovolt (kV) transmission line; and (6) appurtenant facilities.

The project works generally described above are more specifically described in Exhibit A of the application and shown by Exhibit F:

EXHIBITS	FERC NO.	TITLE
F-1	1991-1001	Project Features (revised January 7, 1998)
F-2	1991-1002	Plans and sections
F-3	1991-1003	Powerhouse area plan (revised January 7, 1998)
F-4	1991-1004	Powerhouse No. 1, plan and section
F-5	1991-1005	Powerhouse No. 2 plan views
F-6	1991-1006	Powerhouse No. 2 section
F-7	1991-1007	Powerhouse No. 3 plan views
F-8	1991-1008	Powerhouse No. 3 section

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

(C) Exhibits A , F and G are approved and made part of the license.

(D) This license is subject to the articles set forth in Form L-1 (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Lands of the United States." The license is also subject to the following additional articles:

Article 201. The licensee shall pay the United States the following annual charges, effective the first day of the month that this order is issued:

(a) For the purpose of reimbursing the United States for the cost of administering Part I of the FPA, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 3,938 kilowatts.

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 1.55 acres of its lands, a reasonable amount as determined in accordance with the provisions of the Commission's regulations, in effect from time to time.

Article 202. Within 45 days of the date of issuance of this order, the licensee shall file three sets of aperture cards of the drawings approved in ordering paragraph (C). All aperture cards should be reproduced on silver or gelatin 35 mm microfilm. All microfilm should be mounted on a Type D (3 1/4" x 7 3/8") aperture cards.

Prior to microfilming, the FERC Drawing Number (1991-1001 through 1991-1009) shall be shown in the margin below the title block of the approved drawings. Also, the exhibit number shall be revised to agree with the exhibit number assigned in ordering paragraphs (B)(1) and (B)(2) of this order. After mounting, the FERC Drawing Number should be typed in the upper right corner of each aperture card. Additionally, the Project Number, FERC exhibit (i.e., F-1), Drawing Title, and date of this order should be typed in the upper left corner of each aperture card. See Figure 1.

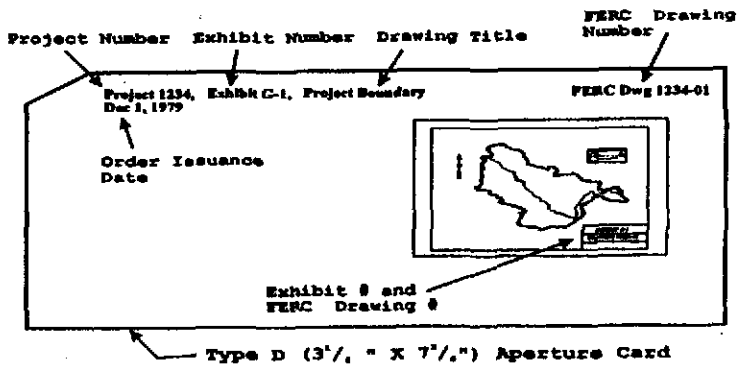


Figure 1. Sample Aperture Card Format

Two sets of aperture cards should be filed with the Secretary of the Commission. The remaining set of aperture cards should be filed with the Commission's Portland Regional Office.

Article 203. Pursuant to Section 10(d) of the FPA, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee shall set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of thirteen monthly balances of amounts properly includible in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such

ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on ten-year government bonds (reported as the Treasury Department's ten-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 401. At least 90 days before starting sediment removal from the reservoir, the licensee shall file with the Commission, for approval, a plan to remove and dispose of accumulated sediment from the project reservoir. The purpose of sediment removal is to clear the area of the reservoir in the vicinity of a slidegate covering a safety valve at the base of the project dam. Sediment removal may not commence until the Commission has approved the plan.

The licensee shall prepare the plan after consultation with the Idaho Division of Environmental Quality, the United States Fish and Wildlife Service, the Kootenai Tribe and with each federal agency with managerial authority over any part of project lands. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and make recommendations prior to filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

Any future removal and disposal of accumulated sediment from the reservoir that may become necessary during the license term shall be carried out in accordance with the plan.

Article 402. The licensee shall operate the project in a run-of-river mode to ensure continuous flow in the river below the project and to minimize lake fluctuation to protect aquatic resources.

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

Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement between the licensee and the Idaho Division of Environmental Quality. If the flow is so modified, the licensee shall notify the Commission as

soon as possible, but no later than 10 days after each such incident.

Article 403. As an interim measure, the licensee shall release from the Moyie Dam into the Moyie River during daylight hours (8 am until dusk) during weekends in June, July, and August an average flow of 9 cubic feet per second (cfs), or inflow, to the project reservoir, whichever is less, as measured below the dam to maintain the aesthetic quality of the Moyie Falls.

Within six months from the date of issuance of the license, the licensee shall file, for Commission approval, a final plan for providing aesthetic flows over Moyie Falls. This plan should establish a daily time for flows over the falls, and also identify the dates and months the flows will be provided, and the mechanism that will be used to release the minimum flow. The plan shall be developed in consultation with the Idaho Department of Parks and Recreation and Idaho Rivers United.

The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the consulted entities, and specific descriptions of how each entities comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations prior to filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. The licensee shall provide the interim flow identified above, until such time the final plan is approved by the Commission.

Article 404. The licensee, within one year of license issuance, shall provide the Commission with verification that two Canada goose nest boxes have been installed on the project reservoir to enhance waterfowl nesting. The licensee shall consult with the Idaho Department of Fish and Game on the design and location of the nest boxes prior to their installation. The licensee shall annually inspect and maintain in good repair the goose nest boxes for the life of the license.

Article 405. Within one year of the date of issuance of this license, the licensee shall prepare a cultural resource management plan. The plan shall be prepared in consultation with the SHPO, the Tribal Councils, the Superintendents of the Bureau of Indian Affairs, the Flathead Agency, and the Northern Idaho Agency and should be based on the Secretary of the Interior's Standards and Guidelines for Archeology and Historic

Preservation. The plan shall include but not be limited to: (1) the steps that would be followed to protect known sites, or unknown sites if discovered, from impacts caused by land-disturbing activities or project operation and maintenance; and (2) a schedule to evaluate the significance of the sites and to avoid or mitigate any impacts to National Register eligible sites. The plan should be filed for Commission approval, together with the written comments from the consulted parties. Steps should be taken to protect eligible sites from further impact until notified by the Commission that all these requirements have been satisfied.

The Commission may require changes to the cultural resources management plan based on the filings. The licensee shall not implement a cultural resources management plan or begin any land-clearing or land-disturbing activities in the vicinity of any discovered sites until informed by the Commission that the requirements of this article have been fulfilled.

Article 406. Within six months from the date of issuance of the license, the licensee shall file a revised recreation plan for Commission approval. The revised plan shall be developed in consultation with the Forest Service, Idaho Department of Parks and Recreation, Idaho Department of Fish and Game, and representatives of the American Whitewater Affiliation, Idaho Rivers United, and Rivers Odysseys West, Inc.

The revised plan shall address: (1) vehicular access to the upper end of the reservoir and take-out site (the licensee should clearly identify the location of the access and whether any restrictions will be imposed); (2) the location and wording of any direction/information signs to be implemented; (3) providing sanitary facilities at the take-out site; and, (4) a schedule for implementing the provisions of the revised plan.

The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the consulted entities, and specific descriptions of how each entities comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations prior to filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No ground disturbing or land-clearing activities for new recreation facilities shall begin until the licensee is notified that the plan is approved. Upon approval, the licensee shall implement the plan, including any changes required by the

Commission. The Commission also reserves the right to require additional recreation facilities should a need be identified during the term of the license.

Article 407. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and water for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction; (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and (3) determine that the proposed

construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

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

and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved exhibit R or approved report on recreational resources of an exhibit E; or, if the project does not have an approved exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (I) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

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

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

Article 501. If the Licensee's project was directly benefitted by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license.

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

(F) This order is issued under authority delegated to the Director and 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. Section 385.713. The filing of a request for rehearing does not operate

as a stay of the effective date of this order or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Joseph A Morgan

J. Mark Robinson
Director
Division of Licensing and Compliance

APPENDIX A

Water Quality Certification Conditions
the Moyie River Hydroelectric Project
Issued July 11, 1996
by the Idaho Department of Health and Welfare

Therefore, the Department grants certification to the Moyie River Hydroelectric Project, subject to the following conditions:

1) Base flow rates in the Moyie River below the project shall be maintained at approximately normal low flow rates during dredging activities.

2) Maintenance dredging activities shall be conducted during low flow conditions between July 1 and September 15.

3) Turbidity monitoring shall be conducted during maintenance dredging activities at the following sampling stations and monitoring frequencies:

   a. At a background station located a sufficient distance above the dam on the Moyie River to avoid a water quality influence from the dredging activities.

   b. At the point of discharge from the dam at a frequency of twice per day during each day of dredging.

   c. At the first access point on the Moyie River below the powerhouse at a frequency of twice per day during each day of dredging. Turbidity sampling at this station will not be required if water quality discharged from the dam does not exceed the criteria.

4) If turbidity concentrations in the Moyie River exceed 50 NTU instantaneously or 25 NTU for 10 consecutive days over background, dredging activities shall cease and BMPs shall be installed or initiated before dredging activities can resume. The dredging activity shall be isolated from ambient river water with silt curtains installed in accordance with manufacturers recommendations if turbidity levels exceed criteria at the down stream station and cannot be otherwise controlled.

5) The drain valve located in the dam shall only be exercised when discharge over the dam is 2000 cfs or greater.

6) Turbidity monitoring shall conducted prior to and during drain valve exercises at a location upstream from the water quality influence of the drain valve and at the station described by item 3)c, at a frequency of once before and twice during drain valve exercises.

7) Closure of the drain valve shall be initiated if turbidity levels exceed criteria for more than 1 hour following initial discharge.

8) Petroleum absorbent and clean-up shall be kept on-site during dredging activities to insure quick clean-up of spills or leaks from equipment.

9) DEQ shall be notified prior to valve exercises and dam maintenance activities that involve dredging.

10) A copy of the above monitoring data shall be submitted to DEQ following maintenance activities.

11) All other activities with the project shall comply with the requirements set forth in Idaho Water Quality Standards and Wastewater Treatment Requirements.

12) This certification does not authorize any surface water discharge of decant water that is generated by dredging.

13) If the project is abandoned or not used as an electricity generating facility for three consecutive years, this Idaho Water Quality Certification becomes null and void.

Final Environmental Assessment

Moyie River Hydroelectric Project, FERC No. 1991-009



Federal Energy Regulatory Commission
Office of Hydropower Licensing
Washington, D.C.

TABLE OF CONTENTS

Section — Page

SUMMARY . . . iii

I. APPLICATION . . . 1

II. PURPOSE AND NEED FOR ACTION . . . 1
A. Purpose of Action . . . 1
B. Need for Power . . . 3

III. PROPOSED ACTION AND ALTERNATIVES . . . 3
A. Applicant's Proposal . . . 3
1. Project Facilities and Operations . . . 3
2. Proposed Environmental Measures . . . 4
B. Staff's Modification of the City's Proposal . . . 6
C. No-Action Alternative . . . 6
D. Alternatives Considered but Eliminated from Detailed Study 6
1. Federal Takeover . . . 7
2. Nonpower License . . . 7
3. Denial of a License and Decommissioning the Project . . . 7

IV. CONSULTATION AND COMPLIANCE . . . 8
A. Agency Consultation . . . 8
B. Interventions . . . 8
C. Scoping . . . 9
D. Comments on the DEA . . . 9
E. Water Quality Certification . . . 10
F. Columbia River Basin Fish and Wildlife Program . . . 10

V. ENVIRONMENTAL ANALYSIS . . . 11
A. General Description of the Project site and Moyie River Basin . . . 12
B. Cumulative Impacts . . . 12
C. Proposed Action and Other Recommended Environmental Measures . . . 12
1. Aquatic Resources . . . 13
2. Terrestrial Resources . . . 20
3. Threatened and Endangered Species . . . 22
4. Aesthetic Resources . . . 25
5. Cultural Resources . . . 28
6. Recreation and Land Use Resources . . . 29
D. No-Action Alternative . . . 32

VI. DEVELOPMENTAL ANALYSIS . . . 32

VII. COMPREHENSIVE DEVELOPMENT AND RECOMMENDED ALTERNATIVE . . . 36

VIII. CONSISTENCY WITH COMPREHENSIVE PLANS . . . 39

IX. RECOMMENDATIONS OF FISH AND WILDLIFE AGENCIES 39

X. FINDING OF NO SIGNIFICANT IMPACT 40

XI. LITERATURE CITED 40

XII. LIST OF PREPARERS 41

APPENDIX A. 42

APPENDIX B. 46

LIST OF FIGURES

Figure Page

1. Location of the Moyie River Hydroelectric Project. 2
2. Moyie River Hydroelectric Project Facilities. 5

LIST OF TABLES

Table Page

1. Moyie River discharges at Eileen, Idaho; mean daily flows by month. 13
2. 1994 Lower Moyie River fish survey summary. 15
3. Summary of the costs of the proposed and recommended environmental measures. 34
4. Viewing enjoyment levels at the River and Canyon and Moyie Falls. 37
5. Cost of providing different minimum flows. 38
6. Resource agency recommendation analysis. 40

SUMMARY

In April 1996, the City of Bonners Ferry, Idaho (City) filed a new license application with the Federal Energy Regulatory Commission (Commission) for the Moyie River Hydroelectric Project (FERC No. 1991). The project is located on land owned by the City and lands within the Idaho Panhandle National Forest, near Moyie Springs, in Boundary County, Idaho.

This Environmental Assessment (EA) considers the effects of issuing a new hydropower license for the Moyie River Hydroelectric Project and recommends conditions the Commission staff thinks should be made a part of any license issued.

The Moyie River Hydroelectric Project is located on the Moyie River, a major tributary to the Kootenai River. The project is the only hydroelectric project on the Moyie River and has a generating capacity of about 3,950 kilowatts (kW).

The City isn't proposing to construct any new capacity or to change how the project operates.

Information filed with the Commission by the City, the state and federal resource management agencies, and the public shows the following environmental concerns regarding continued operation of the project: (1) how dredging sediment affects water quality and (2) whether minimum flow releases from the reservoir would enhance the aesthetics of the project site.

In this EA, we describe existing environmental conditions at the project and assess options for enhancing environmental resources related to the above concerns. We assess three alternatives: (1) the project as proposed by the City, (2) modifications to the proposed action based on recommendations from the resource agencies, the public, and other options developed by staff, and (3) no action. We consider, but eliminate from detailed analysis, decommissioning of the project.

The EA recommends the proposed project with staff-recommended enhancement measures, which provide for: minimum flows and new recreation facilities.

In conclusion, we find that issuing a license for the Moyie River Hydroelectric Project would not be a major federal action significantly affecting the quality of the human environment. Furthermore, we reject the no-action alternative because it would forego the opportunity to enhance environmental resources.

FINAL ENVIRONMENTAL ASSESSMENT

FEDERAL ENERGY REGULATORY COMMISSION
OFFICE OF HYDROPOWER LICENSING

Moyie River Hydroelectric Project
FERC Project No. 1991-009 -Idaho

I. APPLICATION

On April 1, 1996, the City of Bonners Ferry (City), Idaho filed an application for a new license with the Federal Energy Regulatory Commission (Commission) for the continued operation and maintenance of the existing 3,950-kilowatt (kW) Moyie River Hydroelectric Project (project). The project occupies 1.55 acres of land that are owned by the United States and located within the Idaho Panhandle National Forest. The forest lands occupied by the project are located in the upper reach of the reservoir. The remainder of the project lands are owned by the City. The project is located near Moyie Springs, in Boundary County, Idaho (figure 1).

The Federal Energy Regulatory Commission issued a Draft Environmental Assessment (DEA) for comment on September 15, 1998. In response, we received 6 comment letters. We list the commenting entities in "Comments on the DEA," section IV.C. All comment letters were considered carefully. Some sections of the DEA have been modified as a result of our reevaluation and are identified in Appendix B, "Comments on the DEA and Staff Responses."

II. *PURPOSE AND NEED FOR ACTION*

A. Purpose of Action

The Federal Power Act (FPA) provides the Commission with the exclusive authority to license nonfederal water power projects on navigable waterways and federal lands.

For the project, the Commission must decide (1) whether to issue a new license to the City, and, if so, (2) what, if any, conditions should be placed on that license to protect or enhance existing environmental resources or to mitigate for any adverse environmental impacts that would occur due to project operation and maintenance.

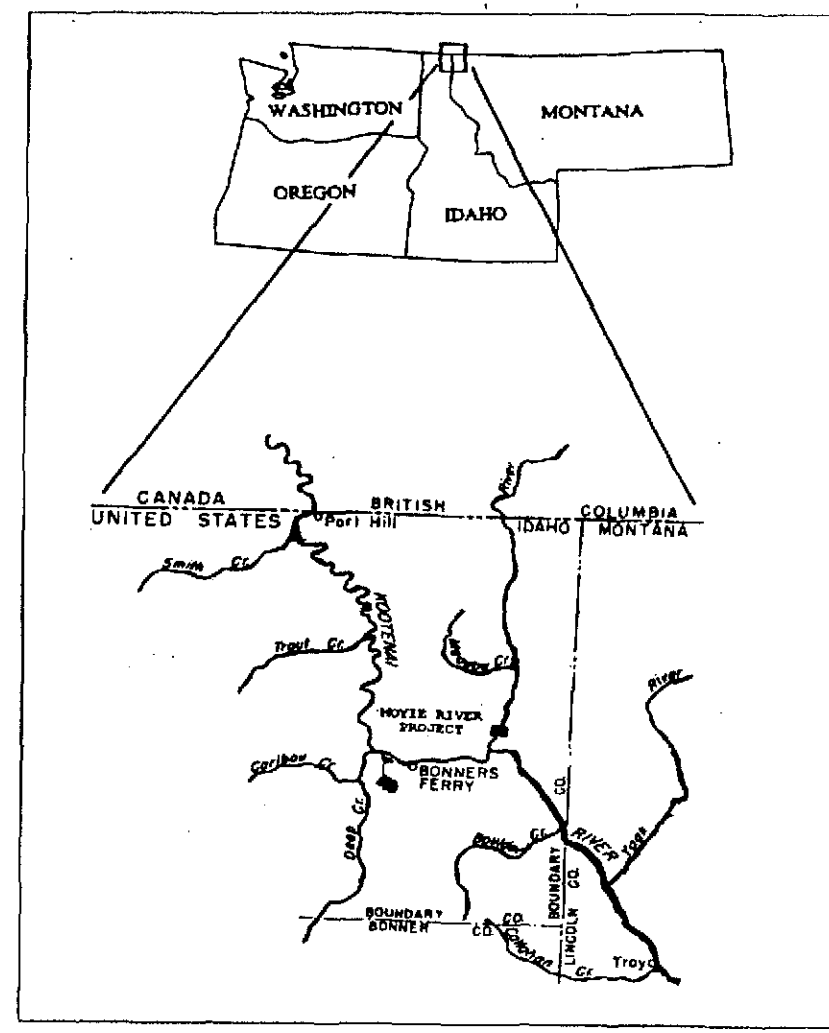


Figure 1. Location of the Moyie River Hydroelectric Project.

In this draft environmental assessment (DEA), we: (1) assess the effects of operating the project as proposed by the City, (2) analyze alternatives to the City's proposal, and (3) recommend whether or not to issue a new license to the City.

B. Need for Power

The existing project is owned by the City. The City's Electric Department is a small municipal utility providing service to about 2,000 customers. The Moyie River Hydroelectric Project provides a small part of the City's power needs and the Bonneville Power Administration supplies the rest.

The proposed project is located in the Northwest Power Pool Area (NWPP) of the Western System Coordinating Council (WSCC) region. In their April 1997 report, WSCC projects a regional energy growth rate of 1.8 percent. For the NWPP area, the report shows 4,119 megawatts (MW) of proposed capacity being added during the forecast period that extends to 2006.

On July 1, 1998, the Northwest Power Planning Council (Council) adopted the Fourth Northwest Conservation and Electric Power Plan. As in their last report, the Council predicts a range of electricity demand from low to high growth. The medium forecast of electricity demand shows that the region could add about 5,920 average MW over the planning period.

The power from the project would be useful in meeting a small part of the regional need for power. The project would continue to displace fossil-fueled electric power generation the regional utilities now use, and thereby conserve nonrenewable resources and reduce the emission of noxious byproducts caused by the combustion of fossil fuels.

III. PROPOSED ACTION AND ALTERNATIVES

A. Applicant's Proposal

1. Project Facilities and Operations

The City proposes to continue to operate and maintain the Moyie River Hydroelectric Project.

The existing project consists of: (1) a 92-foot-high concrete dam, impounding a 450-acre-foot reservoir, (2) a combination penstock/pressure tunnel about 990 feet long, (3) three powerhouses with a total installed capacity of 3,950 kW, (4) a 1.3-mile-long, 13.8-kilovolt transmission line, and (5) appurtenant facilities (figure 2).

The proposed project would generate about 26.2 gigawatthours (GWh) of energy annually.

The existing project is operated as a run-of-river project, with the reservoir water surface elevation kept at 2023 feet. The reservoir isn't used for storage or peaking. The turbines use about 360 cubic feet per second (cfs). Flows up to 360 cfs in the Moyie River are diverted to the powerhouse for generation. When river flows exceed 360 cfs, the excess water is spilled over the dam into the bypassed reach. Flow from the turbines is returned to the Moyie River.

2. Proposed Environmental Measures

The City proposes the following measures:

- Continue dredging accumulated sediments in front of the intakes and deposit dredge spoil into containment ponds to protect water quality.
- Continue to operate the project run-of-river to ensure continuous flow in the river below the project and to minimize lake fluctuation to protect aquatic resources.
- Install one or two goose nest boxes in the upper reaches of the project reservoir to enhance waterfowl habitat.
- Release minimum flows of 9 cfs during daylight hours (8 am until ½ hour before sunset) during weekends in June, July and August to maintain aesthetic quality of the Moyie Falls.
- Document the eligibility of 4 historic sites in the project area for inclusion in the National Register of Historic Places. The Idaho State Historic Preservation Officer (SHPO), the Commission staff, and the City agree the proposed project has no effect on these sites.
- Should there be a change to the project in the future or an archeological site discovered during project operation, consult with the SHPO and use best management practices followed for the preservation of cultural resources.
- Enhance the whitewater boating take-out site (station 1) by:
  - providing portable toilets during May and June,

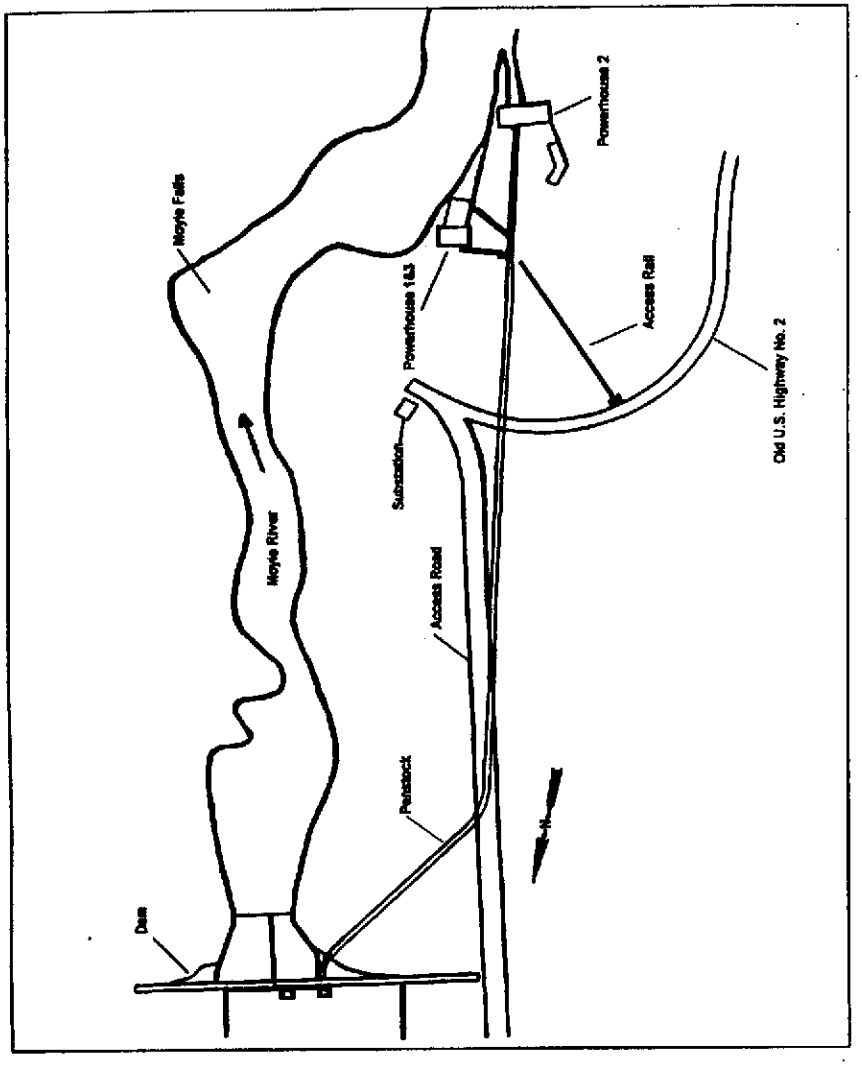


Figure 2. Moyie River Hydroelectric Project Facilities.

- installing a picnic table, a trash can, and signs encouraging visitors to clean up after themselves,
- sponsoring a community cleanup day each spring, and
- maintaining the site.

o Provide an interpretive display, including a map, at the existing scenic overlook on the new Highway 2, subject to the Idaho Transportation Department's and Boundary County's approval.

o Construct directional signs to the scenic viewpoint sites along Old Highway 2, subject to the City of Moyie Springs approval.

B. Staff's Modification of the City's Proposal

The staff considered what, if any, additional protection, mitigation, and enhancement measures would be beneficial to those resources affected by the project and its operation. After considering comments and recommendations of government agencies, non-government organizations, and the public; the staff recommends adopting the City's proposed measures with the following additions: 1) prepare a cultural resources management plan to ensure the historical integrity of the project facilities, and that other historical sites are not affected by the continued operation and maintenance and repair of the project; and 2) prepare a revised recreation plan that would provide: a) portable toilets during April through July, b) interpretive display on the new Highway 2, and c) evaluation of an alternative access route leading to the upper end of the reservoir.

C. No-Action Alternative

The City would continue to operate the Moyie River Hydroelectric Project under the terms and conditions of the existing license, and no new environmental protection, mitigation or enhancement measures would be implemented. We use this alternative as our baseline to compare to other alternatives.

D. Alternatives Considered but Eliminated from Detailed Study

We considered the following alternatives to the City's proposal but eliminated them from detailed study because they are not reasonable in the circumstances of this case.

1. Federal Takeover

We don't consider federal takeover and operation of the project to be a reasonable alternative. Federal takeover and operation of the project would require Congressional approval. While this fact alone does not eliminate this alternative from further analysis, there is no evidence to indicate that federal takeover should be recommended to Congress. No party has suggested that federal takeover would be appropriate, and no federal agency has expressed an interest in operating the project.

2. Nonpower License

Issuing a nonpower license would not provide a long-term resolution of the issues. A nonpower license is a temporary license that the Commission would terminate whenever it determines that another governmental agency would assume regulatory authority and supervision over the lands and facilities covered by the nonpower license. In this case, no government agency has suggested its willingness or ability to do so. No party has sought a nonpower license, and we have no basis for concluding that the project should no longer be used to produce power. Issuing a nonpower license, therefore, is not a realistic alternative in these circumstances.

3. Denial of a License and Decommissioning the Project

Project decommissioning could be accomplished with or without removing the diversion structure. Either alternative would involve denial of the license application and surrender or termination of the existing license with appropriate conditions. Because the power supplied by the project is needed by the City, a source of replacement power would have to be identified.

No participant has suggested decommissioning of the project without removing the diversion structure and we have no basis for recommending it.

a. Decommissioning With Removal of All Project Structures

We considered the benefits and costs of project retirement and removing the project structures and found it unreasonable.

In summary the effects of removal would be:

- The energy the project generates would be lost. The project currently produces about 26.2 GWh of electricity annually. The power is valuable because it reduces the amount of power the City has to buy.

- Removing project structures wouldn't change that Moyie Falls is an impassable upstream migratory barrier to bull trout and white sturgeon.

- Retiring and removing project structures, and controlling the sediments behind the dam would cost about $2,900,000.

- No participant has suggested that removal of all project structures (dam, penstock inlet, penstock, powerhouse, transmission line, and tailrace) would be appropriate, and we have no basis for recommending it.

IV. CONSULTATION AND COMPLIANCE

A. Agency Consultation

Commission regulations require applicants to consult with appropriate resource agencies before filing a license application. This consultation is the first step in complying with the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, and other federal statutes. Pre-filing consultation must be completed and documented. For the Moyie Project, the applicant completed all appropriate agency consultations.

After the Commission issued a public notice on December 11, 1997, stating the application was ready for environmental analysis, the following entities commented.

COMMENTING ENTITIES	DATE OF LETTER
Idaho Rivers United	February 6, 1998
Rivers Odysseys West, Inc.	February 7, 1998
United States Department of the Interior	February 9, 1998
American Whitewater Affiliation	February 9, 1998
U.S. Forest Service	March 25,1998

On March 10, 1998, the City filed a response to Idaho Rivers United, Rivers Odysseys West, Inc. and United States Department of the Interior comments.

B. Interventions

In addition to filing comments, organizations and individuals may petition to intervene and become a party to the licensing proceedings. The following entities filed for intervenor status.

INTERVENOR	FILING DATE OF MOTION TO INTERVENE
Idaho Rivers United	January 3, 1997
State of Idaho	January 3, 1997
Rivers Odysseys West, Inc.	January 8, 1997
American Whitewater Affiliation	February 10, 1998

C. Scoping

Before preparing this EA, we scoped the environmental issues for the Moyie River Hydroelectric Project to determine what issues and alternatives should be addressed. Scoping Document I, which asked for written comments on issues to be addressed in the EA, was issued on October 21, 1996. In addition to comments provided at the scoping meetings on November 19 and 20, 1996, written comments were received from the following entities.

COMMENTING ENTITIES	DATE OF LETTER
Idaho Rivers United	January 4, 1997
United States Department of Agriculture	January 6, 1997
The Greater Bonners Ferry Chamber of Commerce	January 9, 1997
Idaho Department of Parks and Recreation	January 10, 1997

A Scoping Document II was issued on August 19, 1997.

D. Comments on the DEA

The following agencies and non-governmental organizations submitted comments on the DEA.

NAME	DATE OF LETTER
Idaho Rivers United	October 6, 1998
City of Bonners Ferry	October 19, 1998
Idaho Department of Parks & Recreation	October 14, 1998
American Whitewater Affiliation	October 15, 1998
United States Forest Service	October 15, 1998
City of Bonners Ferry	November 19, 1998

E. Water Quality Certification

The City applied to the Idaho Division of Environmental Quality (IDEQ) on January 9, 1996, for a water quality certificate for the project, as required by Section 401 of the Clean Water Act. The IDEQ granted certification on July 11, 1996 (letter from Gwen P. Burr, IDEQ Regional Administrator, North Idaho Office), specifying 13 conditions to be included in a new license for the Moyie Project. The letter listing these conditions is included in Appendix A.

F. Columbia River Basin Fish and Wildlife Program

Columbia Basin Fish and Wildlife

Under section 4(h) of the Northwest Power Planning and Conservation Act, the Northwest Power Planning Council (Council) developed the Columbia River Basin Fish and Wildlife Program (Program) to protect, mitigate, and enhance the fish and wildlife resources associated with development and operation of hydroelectric projects within the Columbia River basin. Section 4(h) states that responsible federal and state agencies should provide equitable treatment for fish and wildlife resources, in addition to other purposes for which hydropower is developed, and that these agencies should take into account to the fullest extent practicable, the program adopted under the Pacific Northwest Power Planning and Conservation Act.

The Program directs agencies to consult with federal and state fish and wildlife agencies, appropriate Indian tribes, and the Council during the study, design, construction, and operation of any hydroelectric development in the basin [Section 12.1A.1 and 12.1A.2]. The Commission's regulations require applicants to initiate prefiling consultation with the appropriate federal and state fish and wildlife agencies, and the Tribes and provide these groups with post-filing opportunities to review and to comment on the application. Consultation as required by the Program and the Commission's regulations has occurred.

The Program also states that authorization for new hydroelectric projects should include conditions to mitigate the impacts of the project on fish and wildlife resources (sections 12.1A.1 and 12.1A.2). The specific provisions of section 12.1A.1 and 12.1A.2 that apply to the proposed project call for: (1) consultation with the fish and wildlife managers and the Council throughout the study, design, and operation of the project; (2) flows and reservoir levels of specific quantity and quality to protect spawning, incubation, rearing, and migration; (3) assurance that the project will not degrade water quality beyond the point necessary to sustain sensitive fish species (as

designated in consultation with fish managers); and (4) providing artificial nest structures when appropriate.

Our recommendations, including a run-of-river operation, a plan for removal and treatment of sediment accumulated behind the dam, and installation of goose nest boxes are discussed in sections V.C.1 and 2 of this EA. Our recommendations are consistent with applicable provisions of the Program listed above. Further, a condition of any license issued would reserve to the Commission the authority to require future alterations in project structures and operations to take into account, to the fullest extent practicable, the applicable provisions of the program.

As part of the Program, the Council designated over 40,000 miles of river in the Pacific Northwest region as not being suitable for hydroelectric development ("protected areas"). The project is located within a protected area designated for resident fish. However, because this is a relicensing proceeding for an existing project, it is not affected by "protected areas".1/ Even so, the Commission is expected to take protected area designations into account to the fullest extent practicable and to take the Council's judgement into account and implement that judgement in licensing decisions, unless the Commission's legal responsibilities require otherwise. 2/ The Council provided no recommendations and we have considered protection of fish and wildlife resources in protected areas through the recommendations identified above and discussed in sections V.C.1 and 2 of this EA.

V. ENVIRONMENTAL ANALYSIS

In this section, we first describe the general environmental setting of the project area. We then discuss the site-specific and cumulative effects of the resources affected by the project, including the effects of the proposed action, action alternatives, and no action.

1/ The language of section 12.2A of the Program says "The following are not affected by protected areas:

- any hydroelectric facility or its existing impoundment that as of August 10, 1988, had been licensed or exempted from licensing by the Federal Energy Regulatory Commission;
- the relicensing of such hydroelectric facility or its existing impoundment; ...

2/ See section 12.2A.2 of the Program.

A. General Description of the Project site and Moyie River Basin

The Moyie River originates in Canada, and flows southerly into Idaho. The Moyie River is a major tributary to the Kootenai River. The Moyie River has a drainage area of about 760 square miles and is about 79 miles long. The Moyie River Hydroelectric Project is located on Moyie River about 1.5 miles upstream from its confluence with the Kootenai River in Boundary County, Idaho. Average annual flow in the vicinity of the project is 885 cubic feet per second. The flow extremes range from 40 cfs to 11,000 cfs.

The climate of the basin is subject to both oceanic and continental influences. Recorded average daily temperatures vary from about 14 degrees Fahrenheit (°F) in January to mid 60°F in July and August. The annual precipitation in the basin is about 28 inches.

The Moyie River Hydroelectric Project develops the hydroelectric potential of Moyie Falls. Moyie River above the project is used for white water rafting.

B. Cumulative Impacts

According to the Council on Environmental Quality's regulations for implementing NEPA, 40 CFR §1508.7, an action may cause cumulative environmental impacts if its impacts overlap in space and/or time with impacts of past, present and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time, including hydropower and other land and water development activities.

We reviewed all resource areas to determine which could be cumulatively affected in the project area by both hydroelectric and non-hydroelectric activities.

There are no other hydroelectric facilities on the Moyie River, and no federal or state agency or other commenter has raised the issue of cumulative impacts. Also, we identified no non-hydroelectric activities in the area which, if combined with impacts of the Moyie Project, would have a cumulative impact. We therefore identified no resources that could be cumulatively affected.

C. Proposed Action and Other Recommended Environmental Measures

Only the resources that would be affected, or about which comments have been made by interested parties, are included in detail in this DEA and discussed in this section. After scoping we determined that geology and soils resources by itself, was not

an issue. However, land-disturbing activities associated with the removal of accumulated sediments from behind the project dam could have an affect on water quality and therefore could adversely affect fish and wildlife. Therefore, the removal of accumulated sediments from behind the dam is discussed in the Aquatic Resources Section, water quality, section 1.

1. Aquatic Resources

Affected Environment

a. Water Quantity

Monthly maximum, minimum and average flows for the Moyie River at the Eileen gauge, located about 3 miles (mi) above the project dam, are summarized in table 1. Flow records are available for that station from 1928 to 1978, when the gage was decommissioned; flows ranged from 40-11,000 cubic feet per second (cfs) during this period, with an annual average of 885 cfs. Because there are no major tributaries between the gauge and the project, the gauged flows approximate flows into the project.

Table 1. Moyie River discharges at Eileen, Idaho; mean daily flows by month. Data from Idaho Department of Water Resources (IDWR).

Month	Maximum cfs	Minimum cfs	Average cfs
October	1,280	70	241
November	1,630	56	298
December	3,670	63	321
January	2,400	50	246
February	3,700	75	264
March	2,890	70	396
April	8,380	132	1,675
May	9,860	550	3,852
June	7,800	240	2,375
July	3,230	110	592
August	554	68	185
September	1,190	64	163

Water enters the project through a small, elongated (1.1 mi long, 30.5 acre, 450 acre-foot), steep-sided reservoir.

Reservoir width does not exceed 300 feet (ft). Water turnover rate in the reservoir is rapid, ranging from 1.5 hours (hr) during May to 35 hrs during September, the driest month; reservoir water residence time is sufficiently short that seasonal thermal stratification does not develop. Because this is a run-of-river project, the reservoir is normally full (surface elevation about 2,030 ft), but surface elevation does vary with natural flows. During high flow periods, when water spills over the dam, surface elevation may be as much as 5 ft above normal pool elevation.

Project water use is regulated by the Idaho Department of Water Resources (IDWR). Water for generation is diverted from the reservoir at the dam through a tunnel and penstock to three powerhouses about 0.25 mi downstream, then returned to the river. Maximum diversion is 360 cfs. River flows above that level are spilled over the dam into a 0.25 mi bypassed reach between the dam and the powerhouses. Under current operation, this occurs about 42 percent of the time. When flows into the reservoir do not exceed 360 cfs, usually during June-February, the bypassed reach is dry for prolonged periods.

The City does not plan to expand capacity of the project or alter the existing flow regime in any way other than releasing 9 cfs minimum flow into the bypassed reach from 8:00 am until a half hour before sunset on weekends during June-August to provide scenic flows through the bypassed reach and over Moyie Falls.

b. Water Quality

The Moyie River is designated as special resources waters by the Idaho Department of Health and Welfare, a designation applied to waters of unique ecological significance, outstanding recreational quality, or high water quality exceeding the criteria for primary contact recreation and coldwater biota. Moyie River water quality is also given a rating of High by the Idaho Department of Health and Welfare, Division of Environmental Quality. Water quality data for the river are limited, however, and there are no known studies for the river in the United States, presumably because pollution sources in the watershed are limited and no significant ongoing water quality problems have emerged. No National Pollution Discharge Elimination System permits have been issued for point source discharges upstream from the project. Although some water quality degradation may have occurred in the past resulting from mining, timber harvesting, and road and railroad maintenance, there is no evidence of continuing abuse and persistent impacts.

c. Fisheries Resources

Fish habitats important to evaluating relicensing impacts are the Moyie reservoir, which lies within project boundaries, and the Moyie River between the powerhouses and falls at the lower end of the bypassed reach and the river's confluence with the Kootenai River, roughly 1.5 mi downstream. Although the latter area is outside the project boundary, both areas are important because they could potentially serve as downstream migratory routes and habitat for bull trout (*Salvelinus confluentus*). The river below the project is also important because it could possibly provide habitat for the white sturgeon (*Acipenser transmontanus*), although the falls are an impassible upstream migratory barrier to both fish. On June 10, 1998, bull trout in the Columbia Basin, including the Kootenai River, was federally listed as a threatened species.3/ White sturgeon in the Kootenai River are also listed as an endangered species (FWS, 1998). During 1994, the City evaluated fishery conditions in the project area downstream to the Kootenai, focusing on the Moyie below the bypassed reach.

No data are available on the exact composition of the Moyie reservoir fish fauna, but the reservoir's physical characteristics are not favorable to a good fishery. The impoundment is small and narrow, with steep banks that support little shoreline vegetation. Water passes through the reservoir very rapidly; water residence time averages 17 hrs during the warm season. The rapid exchange rate prevents development of a lake-dwelling plankton community which, in turn, probably severely limits fish productivity. Fish species representative of the watershed (table 2) may occupy the reservoir, but angler usage is low and trout are not likely to be abundant because the reservoir is an inferior trout habitat. Hatchery fish are not released there.

Table 2. 1994 Lower Moyie River fish survey summary.

Common name	Scientific name	Observed during applicant 1994 survey	Expected in watershed
Rainbow trout	*Oncorhynchus mykiss*	X	X
Kokanee salmon	*O. nerka*	X	
Cutthroat trout	*O. clarki*		X
Bull trout	*Salvelinus confluentus*		X
Brook trout	*S. Fontinalis*		X

3/ 63 Fed. Reg. 31647 (June 10, 1998).

Common name	Scientific name	Observed during applicant 1994 survey	Expected in watershed
Northern squawfish	*Ptychocheilus oregonensis*	X	X
Mountain whitefish	*Prosopium williamsoni*	X	X
Longnose dace	*Rhinichthys cataractae*	X	X
Largescale sucker	*Catostomus macrocheilus*		X
Longnose sucker	*C. catostomus*	X	X
Torrent sculpin	*Cottus rhotheus*	X	X
Slimy sculpin	*C. cognatos*	X	X
Redside shiner	*Richardsonius balteatus*	X	X
Largemouth bass	*Micropterus salmoides*	X	X
Black crappie	*Pomoxis nigromaculatus*		X
Peamouth	*Mylocheilus caurium*		X
Black bullhead	*Ictalurus melas*		X
Pumpkinseed	*Lepomis gibbosus*	X	X
Yellow perch	*Perca flavescens*		X

The Moyie River below the powerhouses and falls has two fish habitat components; an upstream area extending from the base of the bypassed reach to the mouth of Moyie Canyon, and a downstream area reaching from the canyon mouth to confluence with the Kootenai.

The upstream area is a high-gradient, riffle-pool environment bordered by steep-sided canyon walls descending into the channel in many places, and bearing little woodland or riparian vegetation. Upland canopy vegetation here is limited by the rocky, precipitous nature of the terrain.

The canyon mouth is about 0.8 mi above the river mouth, and the river bed between the canyon mouth and the Kootenai is low gradient and dominated by rocky glides. Topographic relief below

the canyon is considerably lower and the channel is more exposed; shorelines there are occupied by low-density stands of young willows and conifers set well back from the river.

The entire channel below the falls features many small rapids, cascades and a variety of pools, some up to 8 ft deep. Little to no large woody debris collects in the area to provide cover and augment fish habitats, probably because of high water velocity during runoff periods and shorelines not appropriate for lodging floating trees. Shading downstream is minimal, while shading in the canyon is considerably greater. Riparian vegetation is sparse throughout the location because of high seasonal flows, expansive cobble bars and bedrock substrates. Substrates throughout both areas are dominated by cobbles (greater than 70 percent) and gravel (about 20 percent), with very little finer sediments.

The overall quality of the fish habitat in the Moyie below the project can be characterized as good, and habitat types as diverse. Use of the area by coldwater species is probably limited, however, by lack of spawning areas in the highly cobbled river bed, lack of cover and high summer temperatures. For example, water temperatures rose to 73°F during July 1995.

The lower Moyie fish fauna was sampled during July and October 1994, using electroshocking and snorkeling to survey general summer and fall population conditions. Table 2 lists species encountered during the survey, as well as those the Idaho Department of Fish and Game reported to the applicant as Moyie watershed occupants.

Many resident watershed species appeared in the lower Moyie. The survey showed a clear pattern of seasonal use of the entire area sampled by different species, but no meaningful differences between canyon and downstream habitats.

Suckers comprised 61 percent of the population sampled during July, when the fish fauna was dominated by suckers, whitefish, squawfish and rainbow trout. During October, suckers, whitefish and squawfish were not found in the area examined, presumably having moved downstream into the warmer (55 °F vs 48 °F) Kootenai. The Lower Moyie fauna was dominated by kokanee (about 90 percent of large fish observed) and rainbow trout. Kokanee were observed spawning. Total population density in the area appeared to be much higher during summer than fall; 347 large fish primarily representing 4 species appeared to snorkelers during July, whereas only 69 fish representing two species appeared during October. A variety of forage species were present in the study area at both times, and in particular abundance during July. Centrarchid and percid game species also appeared during sampling.

White sturgeon and bull trout did not appear during the survey.

Environmental Impacts and Recommendations

a. Water Quantity

The City proposes to continue operating the project in a run-of-river mode. Run-of-river flow would benefit fisheries resources by limiting reservoir level fluctuations above the dam and providing a near-natural flow pattern downstream from the project. Therefore, we recommend the project be operated run-of-river.

b. Water Quality

Because the City proposes to continue operating the project as at present, we anticipate a new license would result in no long-term change in prevailing high water quality conditions in the project area. Operation and maintenance of a gated drain at the base of the dam, however, produces occasional short-term, artificial increases in turbidity immediately behind and below the dam that could have detrimental effects on environmental conditions in those areas. Elevated turbidity can inhibit light penetration hence photosynthesis and productivity in the water column, and can result in sedimentation that modifies the river bottom as a habitat for fish and invertebrates.

The City periodically opens and closes a 72-inch slidegate covering the drain to test proper gate function, which is essential to dam safety. The exercise lasts 1.5-2 hr, and can result in limited disturbance of the reservoir bottom and downstream release of sediments from behind the dam. The valve is typically operated during spring runoff to minimize turbidity impacts.

Moreover, in 1992, the City initiated limited hydraulic dredging behind the dam with a portable pump to remove sediments from near the valve and penstock openings to minimize downstream impacts of opening the slidegate. Slurry is pumped into two evaporation and settling ponds on City property about 3,000 ft upstream from the dam on the west side of the reservoir. Liquid does not discharge from these retention ponds. Dredging takes about one week, and the City intends to dredge sediments as required in the future. Dredging may only be necessary at intervals of many years. Dredging would occur during spring runoff when water is abundant, and would remove only small amounts of water from the river.

On May 31 and June 25-26, 1991, the City monitored water quality in the project vicinity during drain valve operations, and turbidity was a measured variable. Conditions above the

project served as background control to be compared to those below the project in the Moyie and Kootenai rivers during sediment releases. Results indicate measurable but small increases in turbidity below the project as compared to the upstream control value during gate operation, with background values in the Kootenai exceeding all turbidity values measured in the Moyie. The highest turbidity level detected during monitoring was 3.5 Nephelometric Turbidity Units (NTU), considerably lower than the 25-50 NTU upper limits imposed during dredging and drain valve operation in the Water Quality Certificate for the project. Temperature and dissolved oxygen(DO) were also monitored, but exhibited no obvious trends related to gate operations or water quality degradation.

Based on this analysis we expect that water quality in the project area is generally high, and the only important impact of continued operations would be minor downstream turbidity increases during dredging and drain valve operations. Moreover, the turbidity monitoring requirements and standards for these activities specified in the state Water Quality Certificate for the project should provide ample protection to water quality during these activities. However, because dredging could affect water quality, we recommend that the City develop a dredging plan in consultation with the resource agencies.

Pursuant to Section 10(j) of the FPA, Interior recommended that the applicant be required to develop a plan in consultation with appropriate resource agencies covering all important aspects of removing and treating sediments from behind the dam. Consistent with the above analyses, we adopt and endorse this recommendation.

During consultation and scoping no resource agency specifically requested water quality studies or monitoring, but the Kootenai Tribe recommended different investigations of baseline water quality in the river, nutrients and contaminants in the reservoir, and atmospheric gas supersaturation below the dam. The tribal requests, however, were not supported by evidence demonstrating a need for such studies. Given the apparent high water quality throughout the project area, and absence of evidence for degrading conditions associated with continuing project operations that merit study or monitoring (other than turbidity), we see no need to require such investigations.

In Scoping Documents I and II we propose to study the impacts of project operations upon nutrient availability and aquatic productivity, and upon temperature and DO relationships in the Moyie and Kootenai rivers, as aquatic resource issues that could be considered in this assessment. We find no evidence showing that current or proposed project operations would have detrimental impacts upon these resources parameters.

c. Fisheries Resources

The fish survey described above demonstrated that the lower Moyie supports a diverse ichthyofauna representative of the watershed including salmonid game species, namely rainbow trout and kokanee, and may provide a reproductive habitat for kokanee. Although less information is available for the reservoir, it also appears to be a suitable habitat for many watershed inhabitants including at least one game species, rainbow trout. Because this situation persists under existing operating conditions for the Moyie Project, and the City proposes no operational changes other than occasional 9 cfs minimum flows below the dam, we conclude that licensing the project as proposed would impose no burdens additional to those of the present on a seemingly healthy fishery resource.

In Scoping Documents we identified effects of project operations on turbine-related fish mortality as an issue that could be evaluated during this assessment.

Resource agencies did not recommend a field entrainment mortality study, but during consultation IDFG identified bull trout as an endangered species that could, potentially, pass through the project from areas further upstream. Although bull trout do not occupy the project area and probably never have used the lower Moyie for rearing, the applicant evaluated hypothetical impacts of bull trout moving through the project, including through turbine entrainment, from upstream areas.

The results indicate that almost all bull trout passing through the project would be fry, and more than 90 percent of those would pass over the spillway. For the small number of fry experiencing turbine entrainment, mortality estimates are less than 5 percent. Overall population impacts of entrainment would be negligible, assuming the species could move through the project.

Based on this evaluation, and absence of evidence that turbine mortality is a problem here for bull trout or resident species, we conclude that under existing and proposed operating conditions turbine entrainment would not have a measurable negative impact upon fish in the project area.

Unavoidable Adverse Impacts: None.

2. Terrestrial Resources

Affected Environment

The project is located in a deeply incised canyon in the panhandle of northern Idaho. The canyon walls are densely forested and composed mostly of mature mixed-conifer forest

habitat types, including Douglas fir/ninebark, Douglas fir/pinegrass, grand fir, western red cedar/pachistima, and western hemlock/pachistima. The riparian community consists of narrow bands of vegetation along the reservoir and the banks of the river. The riparian community is dominated by willow, red-osier dogwood, and occasionally alder, with a grass/forb understory.

The project area, particularly the reservoir, is occasionally used by white-tailed deer, elk, black bear, mountain lion, and migratory waterfowl. Waterfowl observed in the project vicinity include harlequin duck, mallard, Canada geese, and merganser (letter from Cal Groen, Chief, Natural Resources Policy Bureau, Idaho Fish and Game, Boise, Idaho, June 30, 1993).

Environmental Impacts and Recommendations

a. Waterfowl Enhancements

The project reservoir provides some waterfowl nesting and foraging habitat. In their March 6, 1996, comments on the draft license application, the FWS encouraged the City to consider enhancements for migratory waterfowl and shorebirds in the project area, including the possibility of using the settlement/evaporation ponds as possible enhancement sites. The City believes that the settling ponds don't offer any waterfowl habitat because they hold water for only a few days when they are used for disposal of dredged material from behind the dam, which is infrequent. The City proposes to install one or two goose nest boxes in the upper part of the project reservoir to enhance waterfowl habitat.

The FWS didn't include any waterfowl enhancement measures in their recommendations filed in response to the December 11, 1997, Ready for Environmental Analysis (REA) Notice. We agree with the City that the settling ponds would not provide suitable waterfowl habitat. Because the City proposes no change to project operation, we conclude that continued project operation would not impact migratory waterfowl and that the proposed nest boxes would enhance waterfowl habitat. We recommend that the City install and maintain two goose nest boxes. The City should also consult with the Idaho Department of Fish and Game (IDFG) in deciding the location of the nest boxes.

b. Transmission Line Impacts

Transmission lines can represent electrocution and collision hazards to large raptors. Electrocution results when a bird simultaneously touches the phase and ground wires with their wings or other parts of the body while perched on the transmission line. In their comments on the draft application, the IDFG requested information on the status of raptor proofing

of the project transmission line (letter from Cal Groen, Chief, Natural Resources Policy Bureau, IDFG, Boise, Idaho, June 30, 1993). The 1.3 mile-long, 13.8-kV transmission line is not raptor-proofed. We know of no problems of raptor electrocution or collision occurring along the project transmission line. Surrounding forest trees appear to provide suitable alternative perch sites, reducing the potential of selecting the power poles as perch sites. Intervening topography and vegetation reduce the potential for collisions. No agency has recommended raptor protection measures. Because of the short distance and apparent lack of problems, we do not recommend any protective measures at this time.

Unavoidable Adverse Impacts: None.

3. Threatened and Endangered Species

Affected Environment

Federally listed species that may occur in the project area include the endangered gray wolf (Canis lupus) and white sturgeon (Acipenser transmontanus), and the threatened bull trout (*Salvelinus confluentus*)and bald eagle (*Haliaeetus leucocephalus*) (letter from Philip Laumeyer, Field Supervisor, FWS, Spokane, Washington, February 4, 1998).4/ The harlequin duck (*Histrionicus histrionicus*), a species of concern to the State of Idaho and a Forest Service (FS) sensitive species, also uses fast flowing reaches of the Moyie River in the project area.

No bald eagle nesting or communal roosts sites were reported by the City. However, bald eagles winter along the Kootenai River and may occasionally move through the project area (City of Bonners Ferry 1996). Gray wolves are known to occur in Boundary County, but not the project area (City of Bonners Ferry 1996). Chip Korsi, IDFG biologist, says that the harlequin duck successfully breeds and rears its young in the Moyie River from just above the project reservoir up to about Meadow Creek, over a mile above the project reservoir (FERC 1996).

There is no record that bull trout, a listed threatened species, ever occupied the lower Moyie River below the falls, the project reservoir, or the 25 mi of the river within the United States, and no specimens were taken during the 1994 collections.

4/ The City reported that woodland caribou and grizzly bear occur in Boundary County, but not in the project area. The FWS didn't identify these species as being present in the area. Therefore, we don't believe the project would affect these species and further analysis of potential impacts is not required.

White sturgeon, a listed endangered species, also has not been demonstrated to inhabit the lower Moyie, has not been observed in the project area and did not appear in the 1994 survey.

The FWS also indicated the westslope cutthroat trout to be a species of concern that may occur within the project area. We found no evidence of presence of the species in or near the project vicinity. We therefore conclude that evaluating potential project impacts upon this resource is not necessary.

Environmental Impacts and Recommendations

Bald eagle: No changes in project operation are proposed that would result in the loss or alteration of suitable nesting or foraging habitat. Bald eagles occur in the project area only infrequently, such that maintenance operations would not likely disturb any foraging or roosting bald eagles that may visit the area. For these reasons we conclude that continued operation of the project as proposed would not affect the bald eagle.

Gray wolf: Because gray wolves are not known to use the project area and no changes in the project operation are proposed that would alter the surrounding habitats that might be used by gray wolves, we conclude that continued project operation would not affect the gray wolf.

Harlequin duck: In their February 12, 1996, comments on the draft application, IDFG suggested that, for the inundation of about 1 mile of harlequin duck habitat by the project reservoir, consideration be given to conservation easements and/or habitat improvement along the Moyie River or its tributary, Deer Creek, in areas with recently documented harlequin duck use. Deer Creek is a tributary that enters the Moyie above the project reservoir, but outside the project boundary. Chip Korsi (IDFG biologist) also expressed concern that the proposed boating facility enhancements may increase whitewater rafting upstream of the project to a point that it would begin to impact harlequin duck nesting and rearing (FERC 1996). The IDFG did not file any recommendations in response to December 11, 1997, REA Notice.

The City believes that given the sparse distribution of breeding harlequin ducks in north Idaho and the lack of historical evidence that the 1-mile-long project reservoir was used for nesting, the probability that the project resulted in impacts is low. The City sees no reason to mitigate for harlequin ducks and sees no opportunities to enhance their breeding habitat within the project boundaries.

The harlequin duck migrates inland from marine environments to nest and forage along fast flowing streams, preferring areas of low human disturbance. The slack water of the project

reservoir offers limited habitat to harlequin ducks, except as possible loafing sites during migratory movements. Harlequin ducks are not known to use the project reservoir or the Moyie River below the project (FERC 1996). No changes in operation are proposed that would affect harlequin duck habitat. For these reasons, we don't recommend any enhancement measures for harlequin ducks.

Both the FS and IDFG believe that harlequin duck populations seem to be doing fine under the present level of boating use, but increases in river recreation could preclude future reproduction (FERC 1996; letter from Dale Bosworth, Regional Forester, FS, Missoula, MT, October 15, 1998). The peak of the boating season (April through June) coincides with the ducks courtship and nesting periods (FERC 1996). Unintentional disturbance from the recreating public has been shown to drive harlequin ducks from their nest sites. In 1989 in Alberta's Jasper National Park, increased rafting and kayaking eliminated nesting in a prime section of the Maligne River until 1993 when human activity was banned from that stretch of the river (Turback 1997). The FS also believes that increased whitewater rafting above the canyon could adversely affect the harlequin duck, but that it is unlikely that such limited improvements would increase use (letter from Hal Salwasser, Regional Forester, FS, Missoula, MT, January 6, 1997; letter from Dale N. Bosworth, Regional Forester, FS, Missoula, MT, March, 25, 1998). We conclude that our recommended measures (including providing porta-toilets, picnic table, cleanup day, installing a trash can, and minor improvements to the take-out) would not increase use or impact the harlequin duck.

Bull Trout: Temperatures in the lower Moyie at different times are probably too high to permit occupation or use by the species, and the falls is a barrier to potential upstream movements. Bull trout appear in the river and its tributaries well upstream from the project, but possible impacts of downstream movements of adults and fry from those areas upon populations in the Kootenai drainage below the project are minimal to non-existent. For these reasons, we conclude that licensing the project under the conditions proposed would not further jeopardize the species.

White Sturgeon: During Stage I consultation IDFG indicated that the species is not a concern to them for the Moyie River Hydroelectric Project. Use of the river by white sturgeon for spawning is highly unlikely because of its small size, and the falls are a barrier to potential upstream movements. Because of this, we conclude that licensing the project under the conditions proposed would not affect the species.

Conclusion: We find that construction and operation of the project would not affect any threatened and endangered species.

Moreover, continued operation would not jeopardize the continued existence of harlequin ducks in northern Idaho.

Unavoidable Adverse Impacts: None.

4. Aesthetic Resources

Affected Environment

The Moyie River Hydroelectric Project is located in a scenic canyon setting. Directly downstream of the project dam is Moyie Falls. Moyie Falls is a series of falls, located mostly within the 0.25-mile-long bypassed reach, with a total drop in elevation of about 40 feet. The falls are visible primarily from Old Highway 2 and are cited in a few regional travel guidebooks as an area attraction. 5/

All incoming flows greater than 360 cfs are spilled over the dam and into the bypassed reach. As table 1 shows, the flow in the bypassed reach is the greatest during spring run-off, typically during April, May, and June. When flows are less than 360 cfs, no water is spilled over the dam. Thus, the bypassed reach is typically dry during the late summer and fall months.

Environmental Impacts

Releasing minimum flows at the dam into the bypassed reach can enhance the aesthetics of the project site. The City studied this issue and proposes to release a 9-cfs minimum flow into the bypassed reach from 8:00 am until a half hour before sunset on all weekends during June, July, and August.

The River Odysseys West, Inc. (ROW) and Idaho Rivers United (Idaho Rivers) recommend that the City guarantee that 200 cfs will flow over the Moyie Falls during the same summer weekends as proposed by the City (letters from Peter Grubb, President, ROW, Inc., Coeur d'Alene, Idaho, February 7, 1998, and Liz Paul, Idaho Rivers United, Boise, Idaho, February 9, 1998). ROW and Idaho Rivers state that their recommended flows are needed to meet viewing needs. No other entity, governmental organization, or member of the public has recommended or requested specific

5/ In the Scoping Document II, we said we would assess the effects of the project facilities as viewed from Highway 2 and the overlook adjacent to highway 2. We have received no comments or recommendations on this issue. Since the project facilities are not readily visible from the Highway 2 overlook and the City proposes no physical changes to the project facilities, we have eliminated this issue from further analysis.

bypassed reach flows greater than 9 cfs (reply comments from the City of Bonners Ferry, Idaho, March 10, 1998).

The City's proposal is based upon, among other things, a visual resource study conducted by CH2M Hill which examined the visual impacts of various flows in the river and over Moyie Falls (City of Bonners Ferry 1996). The study methodology involved participants viewing and rating videotapes and still photographs of seven various flow scenes (0 cfs, 9 cfs, 27 cfs, 75 cfs, 220 cfs, 577 cfs, and 1,193 cfs) from two vantage points normally available to the public for viewing the Moyie River canyon and Moyie Falls. The participants, made up of three groups, represented a broad cross section of the population. Two of the groups, senior citizens and a chamber of commerce, were located in northern Idaho, and the third group, a college class, was from southern Idaho. Data obtained from the ratings were used to establish a minimum acceptable flow rate and an optimum, or most pleasing, flow rate from a visual standpoint. 6/

The study concluded that:

- For the river and canyon scenes, flows as low as 9 cfs were acceptable viewing for 82 percent of viewers; and for Moyie Falls, flows as low as 9 cfs were acceptable viewing for 62 percent of the viewers,

- For the river and canyon scenes, 27 cfs was acceptable viewing for 77 percent of viewers and 75 cfs was acceptable viewing for 89 percent of viewers.

  For Moyie Falls, 27 cfs was acceptable viewing for 65 percent of viewers and 75 cfs was acceptable viewing for 77 percent of viewers,

- The optimum flow from a visual resource standpoint in the river and canyon was 220 cfs,

- From a visual standpoint, there is no optimum flow of water over the Moyie Falls; the visual resource was perceived to improve with increasing flows up to 1,193 cfs, and

- The Moyie Falls are more dependent upon higher flow levels for visual acceptability than the river and canyon.

6/ Analysis of the study suggested a positive correlation between scenic beauty and the independent variables of water (percent of scene in water) and water sound. Thus, the more that water was in view and greater the sound of running water, the more the scene was judged to have positive visual values.

The spillage of flows greater than or equal to 9 cfs into the bypassed reach provides acceptable viewing experiences of the Moyie Falls and the river and canyon. High quality viewing opportunities typically occur during the spring run-off months of April, May, and June. Presently, when river flows are less than 360 cfs (into the reservoir), all the flow is diverted to the powerhouse for generation. Typically this occurs during the summer and fall months. When this occurs the viewing quality of the Moyie Falls and the river and canyon is not acceptable for viewing enjoyment to most people.

Adding the proposed minimum flow regime to existing conditions would ensure that acceptable flows from a visual standpoint would exist during all late spring and summer weekends (May through August) during daylight hours, times when sightseeing and visits are most likely to occur. Providing minimum flows during daylight hours of summer weekends probably would produce additional aesthetic value because this is a time of year when additional visitors can be easily attracted to the site. 7/

Increasing the minimum flow regime from 9 cfs to 200 cfs, as recommended by ROW and Idaho Rivers, would further enhance the aesthetics of the Moyie Falls and the river and canyon.

We conclude that the proposed 9 cfs minimum flow during daylight hours of summer weekends would significantly enhance the scenic beauty of the Moyie River canyon and Moyie Falls over baseline conditions. We considered the flow recommendations of ROW and Idaho Rivers and conclude additional benefits would result. However, based on the results of the visual resource study, the greatest incremental increase in aesthetic benefits per cfs released occurs between 0 cfs and 9 cfs. As a result of comments on the DEA, there appears to be agreement that daily flow releases should end at dusk, but the City also now proposes a variation in the initiation of the daily flow releases. The timing of the daily flow releases should be an element of the revised recreation plan.

Because releasing minimum flows into the bypassed reach also affects generation, we make our recommendation in section VII.

The City has not yet selected a mechanism to release minimum flows into the bypassed reach. If we require a minimum flow in Section VII, we recommend that the City design the release mechanism in consultation with IDWR.

7/ The issue of safe access for viewing is assessed in Recreation and Land Use, section C.6.

Unavoidable Adverse Impacts: None.

5. Cultural Resources

Affected Environment

The City conducted a cultural resources report of the project area, 8/ which identified six archeological and historic sites. The report concluded that four of the six sites should be considered eligible for the National Register of Historic Places and two sites are not eligible. Of the four eligible sites, three represent mining and transportation during the early 20th Century, while the fourth, the Moyie River Hydroelectric Project itself, represents the development of hydroelectric power in northern Idaho during the same time period.

The Idaho State Historical Preservation Officer (SHPO) concurred with the findings of the archaeological report (letter from Robert M. Yohe II, State Archaeologist and Deputy SHPO, Idaho State Historical Society, Boise, Idaho, October 2, 1995). The SHPO concluded that the continued operation and maintenance of the project facilities will not impact the four eligible sites. Further, the SHPO recommends if in the future it is anticipated that project operation and maintenance will affect the known sites, or if unknown sites are discovered, additional research will be necessary.

Environmental Impacts and Recommendations

Future land-disturbing activities or maintenance activities could affect identified or unknown cultural resources.

The Department of the Interior (Interior), Bureau of Indian Affairs is concerned that the project has the potential to affect the off-reservation treaty-reserved rights and resources or interests retained by tribes because the project is located within the area ceded to the United States Government by the Confederated Tribes of the Flathead Indian Reservation. Therefore, Interior recommends the applicant be required to coordinate and document further planning activities with the Tribal Councils and the Superintendents of the Bureau of Indian Affairs, Flathead Agency, and the Northern Idaho Agency.

The City proposes to prepare documentation of the four eligible historic sites in the project area for inclusion in the National Register of Historic Places.

8/ The Northwest Archaeological Associates, Inc. did the survey for the City, July 14, 1995.

We agree with the findings of the archaeological report and the SHPO and fully support the City's efforts to have the four eligible sites listed in the National Register of Historic Places. We also agree that the continued operation of the Moyie River Hydroelectric Project would not affect the historical integrity of the eligible sites. But if land-disturbing activities become necessary in the future, additional studies will be required. Also, routine repair and maintenance work could alter the historical integrity of the project facilities, other known sites, and sites not previously identified.

Therefore, to ensure the historical integrity of the project facilities, and other historical sites are not affected by the continued operation and maintenance and repair of the project, we recommend that the City prepare a cultural resource management plan. The plan needs to be prepared in consultation with the SHPO, the Tribal Councils, the Superintendents of the Bureau of Indian Affairs, Flathead Agency, and the Northern Idaho Agency and should be based on the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The plan shall include but not be limited to: (1) the steps that would be followed to protect known sites, or unknown sites if discovered, from impacts caused by land-disturbing activities or project operation and maintenance; and (2) a schedule to evaluate the significance of the sites and to avoid or mitigate any impacts to National Register eligible sites. The plan should be filed for Commission approval, together with the written comments from the consulted parties. Steps should be taken to protect eligible sites from further impact until notified by the Commission that all these requirements have been satisfied.

Unavoidable Adverse Impacts: None.

6. Recreation and Land Use Resources

Affected Environment

The primary recreational uses at the project are whitewater boating and sight-seeing, although no developed recreational facilities exist at the project site. An undeveloped river access site exists on the west side of the reservoir, which is used mostly by whitewater boaters as a take-out location after boating the Moyie River upstream of the reservoir. Boating on the Moyie River typically occurs April through June, when flows are high due to spring run-off. An undeveloped overview located adjacent to Old Highway 2 is occasionally used by the public to view Moyie Falls, with most visits occurring from May through August. The partially paved Old Highway 2 serves as the access road to the project. The road cuts across a steep section of the canyon at the location of the overview.

Estimates of the number of people who float the Moyie River and use the access site on the reservoir for a take-out range from around 500 to 4,000 per year. This use includes private boaters and trips provided by commercial outfitters. Approximately 1,000 additional people visit the project site per year, most of whom are interested in canyon scenery, waterfalls, river whitewater, and wildlife.

The City owns all of the project area land, except for a small parcel near the upstream end of the reservoir owned by the Forest Service. The City's management of the land focuses on the use of hydroelectric facilities to produce power. However, public access to and across the site is generally permitted in order to enable the public to use the reservoir for recreational purposes.

Environmental Impacts and Recommendations

The City proposes a recreation plan to enhance recreational opportunities at the project site (City of Bonners Ferry 1996, 1997, and 1998). Specifically, the City would:

- continue to provide public access to the reservoir take-out area by allowing: (1) vehicular access to the take-out site during the boating season, and at all other times when vehicular access can be safely maintained; and (2) pedestrian access year-round.

- enhance the whitewater boating take-out site by: (1) grading the take-out area and seeding the area with appropriate native grass species; (2) providing portable toilets during May and June; (3)installing a picnic table, a trash can, and signs encouraging visitors to clean up after themselves and designating the loading/unloading area; (4) sponsoring a community cleanup day each spring; and (5) maintaining the site.

- enhance viewing opportunities of Moyie Falls and adjacent scenes by: (1) providing an interpretive display, including a map, at the existing scenic overlook on the new Highway 2, subject to the Idaho Transportation Department's and Boundary County's approval; (2) constructing directional signs to the scenic viewpoint sites along Old Highway 2, subject to the City of Moyie Springs approval; and (3) developing a small, unpaved parking area adjoining Old Highway 2, which will include a trash can and an interpretive sign that directs people to a nearby viewpoint to see the waterfalls. 9/

9/ The City also proposes to providing minimum flows over the (continued...)

The ROW, Idaho Rivers United, and American Whitewater Affiliation (collectively the NGO's) 10/ generally agree with these proposed improvements and recommend the City provide the following two modified measures: provide portable toilets during April through July, and allow vehicular access to the reservoir year-round.

The Commission's regulations concerning recreational development at licensed project states that the Commission expects the licensee to ensure public access and recreational use of project lands and waters, including toilet accommodations if needed, based on the needs of the area and to the extent that such development is not inconsistent with the primary purposes of the project (see 18 CFR, part 2, section 7).

In this case, we conclude toilets should be available at the take-out site during the entire whitewater boating season. The NGO's recommendation for portable toilets during April through July, which is intended to completely capture the entire boating season, seems reasonable.

Public access to the project is more complex. Due to the project's remoteness and steep topography, the City is concerned about public safety, increased risk of forest fires, and the potential for increased vandalism. Both the NGO's and the City make valid points: the licensee has a responsibility to ensure the public can use and enjoy the resources of the project site, yet doing so should not jeopardize the public, the natural resources of the area, or the project. Primarily based on these concerns, the Forest Service has suggested an alternative access route leading to the upper end of the reservoir. The City council considered this alternative route, and supports the idea, however nothing has been done to develop the idea beyond a concept (letter from Dale Bosworth, Regional Forester, United States Forest Service, Region 1, Missoula, Montana, March 25, 1998).

The City's commitment to maintaining vehicular access to the take-out site during the boating season, and all other times when

---

9/ (...continued)
dam and Moyie Falls during daylight hours of summer weekends. We assess this proposal in Aesthetic Resources, section C.4.

10/ Letters from: Peter Grubb, President, ROW Inc., Coeur d'Alene, Idaho, February 7, 1998; Liz Paul, Idaho Rivers United, Boise, Idaho, February 9, 1998; and John Gangemi, Conservation Director, American Whitewater Affiliation, Bigfork, Montana, February 9, 1998.

vehicular access can be safely maintained, appears to include the primary recreation season--spring, summer, and fall. However, to evaluate this issue, more details are needed concerning those conditions or situations whereby the City may opt to limit vehicular access to the reservoir take-out area.

In summary, the City's proposed improvements at the take-out site and measures to enhance viewing opportunities seem justified and appropriate; final details should be prepared for Commission approval. In addition, the City should evaluate the alternative access route leading to the upper end of the reservoir and provide more information on when and why vehicular access may be limited to the project's present take-out site. This should be done in consultation with the Idaho Department of Parks and Recreation (IDPR), IDFG, FS, ROW, Idaho Rivers, and American Whitewater Affiliation (AWA), at a minimum, and in the form of a revised recreation plan. The revised plan should be filed with the Commission within 6 months from the date of any new license.

Unavoidable Adverse Impacts: None.

D. No-Action Alternative

Under the no-action alternative, the City would continue to operate the project under the terms of the original license. The environmental enhancements proposed by the City or that we recommend would not occur.

VI. DEVELOPMENTAL ANALYSIS

In this section, we analyze the project's use of the available water resources to generate hydropower, estimate the economic benefits of the project, and estimate the cost of various environmental protection, mitigation, and enhancement measures.

Through consultation with the appropriate resource agencies, the City has been made aware of the agencies' concerns with the current operation of the project. The City's proposed environmental measures are listed in Section III(A)2.

To calculate the economic benefits of continuing to operate the project, we compare the project costs for each alternative--the project as proposed and the project with staff-recommended enhancements--to the power "benefits", as represented by the cost of obtaining the same amount of capacity and energy using other resources. Consistent with the Commission's approach to economic analysis, we equate the power benefits of the project to the current (1998) cost the City would have to pay for the same amount of power using alternative resources; we don't consider any future inflation effects in our analysis.

For any alternative, a positive net annual power benefit shows how much less it would cost the City to use the project's power instead of an alternative power source; a negative net annual benefit shows how much more it would cost the City to use the project's power rather than an alternative power source.

The City uses the power from the Moyie River Project to reduce the power it buys from the Bonneville Power Administration (BPA). Since the City uses the project to reduce the amount of energy it purchases from the BPA, we base our estimate of project benefits on BPA's wholesale power rate to utilities.

Our economic studies are based on a 30-year period of analysis and presented as annual values. We estimated the City's cost of money would be 9% for our analysis.

Environmental Measures

In the EA, we looked at the following environmental measures proposed by the applicant: (a) providing goose nesting boxes, (b) preparing documentation of eligibility of historic sites, (c) providing and maintaining a picnic table, trash can and signs, (d) sponsoring a community cleanup day, (e) maintaining the white water boating takeout, and (f) providing and installing an interpretive display and directional signs to Moyie site. The economics of these measures is presented in Table 3.

The City proposed providing public toilets during the months of May and June. The NGO's generally agreed with this measure, but requested that portable toilets be provided April through July. The economics of the NGO's proposal is presented in Table 3.

Staff proposes to add the following measures to what the City proposes: (a) prepare a cultural resources management plan, and (b) evaluate providing an alternative access route leading to the upper reservoir. The economics of our measures is presented in Table 3.

We also looked at the following environmental measures that could affect the economic benefits of the Moyie River Project: (a) plan for dredging and disposing reservoir sediment, and (b) minimum flow release mechanism.

Table 3. Summary of the costs of the proposed and recommended environmental measures.

Enhancement Measure	Capital Cost	O&M Cost	Annu Cost
applicant proposed measures:			
plan for reservoir sediment dredging and disposal		$5,400	$5,4
goose nest boxes	$ 1,500		$ 1
prepare documentation of eligibility of historic sites	$15,000		$1,5
provide public toilets May and June		$ 200	$ 2
provide and maintain picnic table, trash can and signs	$ 200	$ 400	$ 4
sponsor a community cleanup day		$ 100	$ 1
maintain the white water boating takeout		$ 300	$ 3
provide and install an interpretive display	$ 500		$
directional signs to the Moyie site	$ 1,000		$ 1
minimum flow release mechanism to release 9 cfs	$25,000		$2,4
staff proposed measures:			
prepare a cultural resources management plan	$5,000		$ 4
provide portable toilets during April through July		$ 400	$ 4
evaluate providing an alternative access route leading to the upper reservoir			minor cost
other measure:			
minimum flow release mechanism to release 27 cfs	$ 96,000		$ 9,6
minimum flow release mechanism to release 75 cfs	$267,000		$26,7
minimum flow release mechanism to release 200 cfs	$711,000		$69,2

Plan for Dredging and Disposing Reservoir Sediment

The City proposes to develop a plan for the dredging and disposing of reservoir sediment. Dredging is needed to keep sediments from accumulating in front of the intake structures for the penstock and the dewatering tube. Assuming a recurrence interval of 4 years it would cost the City $5,400 annually to dredge and dispose the sediment.

Minimum Flow Release Mechanism

In the Aesthetic Resources section of this EA, we decided that releasing minimum flows at the dam into the bypassed reach can enhance the aesthetics of the project site. The City studied this issue and proposes to release a 9-cfs minimum flow into the bypassed reach.

We estimate the City would spend about $25,000 to install a flow release mechanism to provide the 9-cfs flow. Also, since the release would reduce the project's generation, we estimate the annual cost of the lost generation ($200/year) and cost of the mechanism ($2,400/year) would be about $2,600.

ROW and Idaho Rivers recommended the City provide a flow of 200 cfs. We estimate the City would spend about $711,000 to install a flow release mechanism to provide the 200-cfs flow. The annualized cost of the lost generation ($5,800/year) and cost of the mechanism ($69,200/year) would be about $75,000.

Flows between 9 cfs and 200 cfs, such as 27 cfs and 75 cfs, which we studied in the Recreation Section, would have a total annualized cost of $10,300 for 27 cfs and $28,800 for 75 cfs.

Economics of the Project

Based on the current economic conditions, the proposed project's annual cost under the City's proposal would be about $347,000 or 13.2 mills per kilowatt-hour (mills/kWh). The current annual value of the project's power would be about $629,000 (23.9 mills/kWh).

To determine whether the proposed project is currently economically beneficial, we subtract the project's cost from the value of the project's power. Thus, based on current costs, the proposed project would cost $281,000 (10.7 mills/kWh) annually less than the current cost of alternative power.

With staff's proposed measures, the project would cost $280,000 (10.7 mills/kWh) annually less than the current cost of alternative power.

With releasing 200 cfs for aesthetics and with staff's proposed measures, the project would cost $212,000 (8.1 mills/kWh) annually less than the current cost of alternative power.

VII. COMPREHENSIVE DEVELOPMENT AND RECOMMENDED ALTERNATIVE

Sections 4(e) and 10(a)(1) of the FPA require the Commission to give equal consideration to all uses of the waterway on which the project is located. When the Commission reviews a hydropower project, the recreational, fish and wildlife, and other nondevelopmental values of the involved waterway are considered equally with its electric power and other developmental values.

Based on our independent review and evaluation of the existing project and its proposed operation, and the project with our additional recommended environmental measures, we have selected the project with our additional recommended environmental measures as the preferred alternative.

We recommend this alternative because: (1) issuance of a license would allow the City to continue to operate the project as a dependable source of electric energy for City residents; (2) the project would continue to contribute to the conservation of nonrenewable energy resources and reduce atmospheric pollution; and (3) the recommended environmental enhancement measures would protect fish and terrestrial resources and any newly discovered cultural resources, and enhance aesthetic resources.

We recommend that any license issued by the Commission for the Moyie River Hydroelectric Project require the City to:

(1) Continue dredging accumulated sediments in front of the intakes and deposit dredge spoil into containment ponds to protect water quality.

(2) Continue to operate the project run-of-river to ensure continuous flow in the river below the project and to minimize lake fluctuation to protect aquatic resources.

(3) Install one or two goose nest boxes in the upper reaches of the project reservoir to enhance waterfowl habitat.

(4) Release minimum flows of 9 cfs during daylight hours (8 am until dusk) during weekends in June, July and August to maintain the aesthetic quality of the Moyie Falls. The timing of the flow releases should be an element in the revised recreation plan.

(5) Prepare a cultural resources management plan to ensure the historical integrity of the project facilities, and other

historical sites are not affected by the continued operation and maintenance and repair of the project.

(6) Consult with the SHPO and use best management practices followed for the preservation of cultural resources, should there be a proposed change to the project or an archeological site discovered during project operation.

(7) File a revised recreation plan that would provide for (a) enhancement of the whitewater boating take-out site by providing portable toilets during April through July, (b) provide an interpretive display, including a map, at the existing scenic overlook on the new Highway 2, (c) construct directional signs to the scenic viewpoint sites along Old Highway 2, (d) evaluate providing an alternative access route leading to the upper end of the reservoir, and (e) evaluate timing of the flow releases.

Explanation of our recommendation to maintain a minimum flow for the aesthetic quality of the Moyie Falls and a comparison of the alternatives are provided below.

Minimum Flows

Currently, the City isn't required to release a minimum flow from the project. In the Aesthetic Resources section, we examine how the City's proposed release of 9 cfs and other instream flow options improve the view of the river and Moyie Falls. We also consider ROW and Idaho Rivers proposed minimum flow of 200 cfs for aesthetics. As we say in the section, to examine various flows the City did a visual resource study in the 0.25 mile bybass reach.

Table 4 summarizes the percent of "acceptability" of various flows viewed by groups in the river and canyon and at Moyie Falls.

Table 4. Viewing enjoyment levels at the River and Canyon and Moyie Falls. (Source: City of Bonners Ferry)

	Percent Acceptability (%) at various flows			
View Location	9 cfs	27 cfs	75 cfs	220 cfs
River and Canyon	82%	77%	89%	93%
Moyie Falls	62%	65%	77%	74%

As you can see 9 cfs provided acceptable river and canyon views for 82 percent of the study participants. For Moyie Falls, 62 percent of study participants rated the 9 cfs flow acceptable. In the Developmental Resources Section, we estimate the cost of providing the 9 cfs flow is about $2,600 annually. To compare the 9 cfs proposal with other flow options we looked at how viewing acceptability changes with flow and the annual cost of releasing various flows.

The largest percent increase in acceptable viewing occurs when the minimum flow increases from 0 to 9 cfs. Increasing the bypassed reach flow from 9 cfs to 27 cfs produces only a 3 percent increase in viewing acceptability at Moyie Falls and reduces river and canyon viewing acceptability by 5 percent. Therefore, we eliminated 27 cfs as a flow option.

From 9 cfs to 75 cfs, the viewing acceptability increases about 7 percent for river and canyon views and 15 percent for Moyie Falls. Increasing flow to 220 cfs would produce about a 11 percent increase in acceptability for the river and canyon and 12 percent for Moyie Falls compared to 9 cfs.

Turning to cost, the table below, shows the costs of raising instream flow in the bypass for flows of 9 cfs, 75 cfs and 200 cfs.

Table 5. Cost of providing different minimum flows. (Source: staff)

Minimum Flow	Annual Cost
9 cfs	$ 2,600
75 cfs	$28,800
200 cfs	$75,000

In Section V.C.6, we note that each year about 1,000 people visit the project site that are interested in canyon scenery, waterfalls, river whitewater, and wildlife. Given the small amount of visits to the site, increases of 10-15 percent in acceptable viewing at 75 cfs and 200 cfs don't justify increasing the project's annual cost by $25,000 to $75,000.

As we said, providing a minimum flow of 9 cfs would cost about $2,600 annually, and, for the river and canyon scenes, be acceptable viewing for 82 percent of the viewers; for Moyie Falls, 9 cfs was acceptable viewing for 62 percent of the viewers.

Combined with the existing flow regime and the proposed access improvements and informational signs (see Recreation and

Land Use, section C.6), the City's proposal would adequately protect the aesthetic resources of the site. Therefore, we recommend the City provide a minimum flow of 9 cfs below the dam, during June, July and August, to enhance the aesthetic qualities of Moyie Falls.

VIII. CONSISTENCY WITH COMPREHENSIVE PLANS

Section 10(a)(2) of the FPA 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 a total of 33 qualifying comprehensive plans of which we identified 5 Idaho and 3 United States comprehensive plans to be applicable. 11/ We conclude that, with the inclusion of our recommended environmental measures, the proposed project would not conflict with any of these plans.

IX. RECOMMENDATIONS OF FISH AND WILDLIFE AGENCIES

Section 10(j) of the FPA requires that each hydroelectric license issued by the Commission include conditions based on recommendations provided by federal and state fish and wildlife agencies to protect, mitigate and enhance fish and wildlife resources affected by a project.

Only Interior submitted a Section 10(j) recommendation for the Moyie Project. Our analysis of the recommendation is summarized in Table 6 and discussed in the Aquatic Resources section.

11/ (1) U.S. Fish and Wildlife Service and Canadian Wildlife Service. May 1986. North American Waterfowl Management Plan. (2) U.S. Fish and Wildlife Service. Undated. Fisheries USA: the recreational fisheries policy of the U.S. Fish and Wildlife Service. (3) National Park Service. January 1982. The Nationwide Rivers Inventory. (4) Idaho Department of Parks and Recreation. May 1997. Idaho Statewide Comprehensive Outdoor Recreation and Tourism Planning: Assessment and Policy Plan. (5) Northwest Power Planning Council. December 1994. 1994 Columbia River Basin Fish and Wildlife Program. (6) Northwest Power Planning Council, September 1988, Protected Areas, Amendments, and Response to Comments. (7) Northwest Power Planning Council. July 1998. Fourth Northwest Conservation and Electric Power Plan. and (8) U.S. Forest Service, September 1987, Forest Plan-Idaho Panhandle National Forests.

Table 6. Resource agency recommendation analysis.

Recommendation	Agency	Within scope of Section 10(j)	Annual Cost ($1998)	Conclusions
Develop a reservoir sediment removal and disposal plan in consultation with appropriate resource agencies.	Interior	Yes	minor	Adopt

X. FINDING OF NO SIGNIFICANT IMPACT

With our recommended enhancement measures, minimum flows would be provided to protect aesthetic resources of Moyie Falls, cultural resources would be protected, and comprehensive recreation plans that benefit all users would be developed. Implementing the enhancement measures described in this EA would ensure that the environmental effects of continued operation would remain insignificant. A few of the smaller game and nongame fish species would continue to be entrained into the project flowline and killed, but the number is insignificant.

Based on this analysis, issuance of a license for the project with our recommended environmental measures would not constitute a major federal action significantly affecting the quality of the human environment.

XI. LITERATURE CITED

City of Bonners Ferry 1996. Application for new license for major project--existing dam 5 megawatts or less: Moyie River Hydroelectric Project FERC NO. 1991. City of Bonners Ferry, Idaho. March 1996.

_____. 1997. Response to FERC request for additional information dated May 12, 1997. Application for new license for major project--existing dam 5 megawatts or less: Moyie River Hydroelectric Project FERC NO. 1991. City of Bonners Ferry, Idaho. September 1997.

_____. 1998. Reply comments to comments and recommendations received by the City in response to the Commission's December 11, 1997, Notice. Application for new license for major project--existing dam 5 megawatts or less: Moyie River Hydroelectric Project FERC NO. 1991. City of Bonners Ferry, Idaho. March 1998.

Federal Energy Regulatory Commission (FERC) 1996. Transcripts of the agency scoping meeting for the Moyie Project held in Bonners Ferry, Idaho on November 20, 1996.

_____. Scoping Document I, Moyie River Hydroelectric Project, FERC Project No. 1991. October 21, 1996.

_____. Scoping Document II, Moyie River Hydroelectric Project, FERC Project No. 1991. August 19, 1997.

Turback, Gary. 1997. The bizarre life of the harlequin duck. National Wildlife Federation at http://www.nwf.org/nwf.natlwild/quinduck.html. December/January 1997.

XII. LIST OF PREPARERS

Tim Looney, EA Coordinator--Need for Power, Developmental Analysis (Civil Engineer; B.S. Engineering)

Gaylord Hoisington--Geology and Soils, Cultural Resources (Soil Conservationist)

Edward R. Meyer -- Aquatic Resources and Threatened and Endangered Species --(Fishery Biologist, A.B. Zoology, M.S. Fishery Biology, Ph.D. Ecology)

David Turner -- Terrestrial Resources, Threatened and Endangered Species --(Wildlife Biologist; M.S., Zoology)

Gordon Warren -- Recreation and Other Land Uses, Aesthetic Resources -- (B.S., Natural Resource Recreation Management; B.S., Natural Resource Conservation)

APPENDIX A.

WATER QUALITY CERTIFICATE

IDAHO DEPARTMENT OF HEALTH AND WELFARE
DIVISION OF
ENVIRONMENTAL QUALITY

RECEIVED
JUL 19 1996
CH2M HILL
BOISE

July 11, 1996

Mr. Mike Woodward
City of Bonners Ferry
102 Main Street
P.O. Box 149
Bonners Ferry, Idaho 83805

REFERENCE TO: Moyie River Hydroelectric Project (FERC No. 1991)

Dear Mr. Woodward:

This letter is in response to your correspondence dated January 9, 1996 regarding the Idaho water quality certification request for the Moyie River Hydroelectric Project. Under the Federal Clean Water Act, Federal agencies issuing discharge permits must be provided a notice of certification from the State that the project will meet State Water Quality Standards. By copy of this letter, the Federal Energy Regulatory Commission (FERC) is being notified of our certification decision.

The Moyie River Hydroelectric Project is located in Idaho on the Moyie River approximately one and one half miles upstream of its confluence with the Kootenai River. The project consists of a 92 foot-high dam that impounds a 450 acre-feet run-of-the-river reservoir, a combination penstock/pressure tunnel system, three powerhouses, a substation, transmission line and appurtenant facilities. Project capacity is approximately 360 cfs.

The Moyie River is designated in Idaho Water Quality Standards and Wastewater Treatment Requirements (IDAPA 16, Title 01, Chapter 02) for the following uses: domestic water supply; agricultural water supply; cold water biota; salmonid spawning; primary contact recreation; secondary contact recreation; and special resource water (IDAPA §16.01.02.110.01.b). Idaho Water Quality Standards prohibit the discharge of pollutants that will or can be expected to injure designated or existing beneficial uses (IDAPA §16.01.02.080.01). We have determined that maintenance dredging associated with the project has the potential to elevate suspended sediment concentrations in the river which could adversely affect down stream beneficial uses. The most restrictive beneficial use designated on the Moyie River is cold water biota. A cold water fishery is present in the lower river as indicated by fisheries studies conducted during this relicensing process.

Idaho Water Quality Standards require that nonpoint sources of pollution, such as maintenance dredging activities associated with this project, be controlled by implementation of reasonable and knowledgeable Best Management Practices (BMPs), monitoring and maintenance of BMPs to determine effectiveness, and actions to improve the BMPs if they are not performing adequately (IDAPA §16.01.02.350). Specific turbidity criteria have been established that indicate levels at which requirements for cold water aquatic life can become inhibited, such as salmonid site feeding. Idaho Water Quality Standards protect cold water biota from activities that result in an increase of turbidity above background levels of 50 NTU instantaneously or 25 NTU for more than 10 consecutive days (IDAPA §16.01.02.250.02.c.iv).

Background water quality is characterized by upstream water quality which is not influenced by a nonpoint source activity. The protection and control of water quality in the lower reach of the Moyie River will be assessed by comparing turbidity levels of the River with applicable water quality criteria.

To insure protection of water quality in the Moyie and Kootenai Rivers, the following conditions shall be included in the Federal Energy Regulatory Commission License for the Moyie Hydroelectric Project:

1) Base flow rates in the Moyie River below the project shall be maintained at approximate normal low flow rates during dredging activities.

2) Maintenance dredging activities shall be conducted during low flow conditions between July 1 and September 15.

3) Turbidity monitoring shall be conducted during maintenance dredging activities at the following sampling stations and monitoring frequencies:

   a. At a background station located a sufficient distance above the dam on the Moyie River to avoid a water quality influence from dredging activities.

   b. At the point of discharge from the dam at a frequency of twice per day during each day of dredging.

   c. At the first access point on the Moyie River below the powerhouse at a frequency of twice per day during each day of dredging. Turbidity sampling at this station will not be required if water quality discharged from the dam does not exceed criteria.

4) If turbidity concentrations in the Moyie River exceed 50 NTU instantaneously or 25 NTU for 10 consecutive days over background, dredging activities shall cease and BMPs shall be installed or initiated before dredging activities can resume. The dredging activity shall be isolated from ambient river water with silt curtains installed in accordance with manufacturers recommendations if turbidity levels exceed criteria at the down stream station and cannot be otherwise controlled.

5) The drain valve located in the dam shall only be exercised when discharge over the dam is 2000 cfs or greater.

6) Turbidity monitoring shall be conducted prior to and during drain valve exercises at a location upstream from the water quality influence of the drain valve and at the station described by item 3)c, at a frequency of once before and twice during drain valve exercises.

7) Closure of the drain valve shall be initiated if turbidity levels exceed criteria for more than 1 hour following initial discharge.

8) Petroleum absorbent and clean-up materials shall be kept on-site during dredging activities to insure quick clean-up of spills or leaks from equipment.

9) DEQ shall be notified prior to valve exercises and dam maintenance activities that involve dredging.

10) A copy of the of the above monitoring data shall be submitted to DEQ following maintenance activities.

11) All other activities associate with the project shall comply with the requirements set forth in Idaho Water Quality Standards and Wastewater Treatment Requirements.

12) This certification does not authorize any surface water discharge of decant water that is generated by dredging.

13) If the project is abandoned or not used as an electricity generating facility for three consecutive years, this Idaho Water Quality Certification shall become null and void.

If the project is operated in accordance with the above conditions, DEQ certifies under Section 401 that this project will comply with applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and will not violate Idaho Water Quality Standards and Wastewater Treatment Requirements.

Any modification or amendment to the project shall require a new 401 water quality certification from DEQ before any construction activities affected by the modification or amendment may proceed.

All activities authorized under the referenced license shall cease for failure of the applicant to comply with the conditions of this certification and shall not resume until the applicant demonstrates to the satisfaction of DEQ compliance with all the conditions of this certification.

The applicant has the right to appeal DEQ's decision as set forth herein by filing a petition with the Administrative Procedures Coordinator, Division of Legal Services, Idaho Department of Health and Welfare, P.O. Box 83720, Boise, ID 83720-0036 for a hearing pursuant to Title 67, Chapter 52, Idaho Code and the Rules Governing Contested Case Proceedings and Declaratory Rulings (IDAPA §§16.05.03.000 to .999)

This certification does not imply approval of the activity by other agencies of the State of Idaho.

Sincerely,

Gwen P. Burr

Gwen P. Burr, Regional Administrator
North Idaho Regional Office

GB:MH

cc: Roger Tinkey, File, DEQ-NIRO
Wally Cory, Mike Allen, DEQ-Boise
John Lincoln, CH2M Hill-Boise
Lois Cashell, FERC-Washington D.C.
Army Corps of Engineers-CdA
IDFG-CdA

APPENDIX B.

Comments on the DEA and Staff Responses

October 6, 1998

David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First St. NE
Washington DC 20426

RE: Project No. 1991-009

Dear Secretary,

Please accept these comments on the Draft Environmental Assessment on the Moyie River Hydroelectric Project, FERC No. 1991-009. Idaho Rivers United is a statewide river and fisheries conservation organization. Our members use and enjoy the Moyie River and have an interest in the outcome of this proceeding.

Aesthetic Resources

The EA says that "Increasing the minimum flow regime from 9 cfs to 200 cfs... would further enhance the aesthetics of the Moyie Falls and the river and canyon," but concludes that the cost of providing this enhancement is too great for the benefit provided. The cost was based on a preliminary choice of a siphoning technology to pass the water over the dam. Idaho Rivers United questions the large disparity in the cost of releasing 200 and 9 cfs through siphoning. Given that FERC's recommendation is based on the cost, further explanation of the way that the cost was arrived at is warranted. IRU-1

The EA failed to examine other ways to provide further enhancement at a lower cost, i.e. providing a minimum flow less than 200 cfs but greater than 9 cfs, or use of an alternate technology to pass the water over the dam. Idaho Rivers United would like to see a wider variety of options evaluated and considered by FERC. IRU-2

On page 26 the EA says, "We conclude that the proposed 9 cfs minimum flow during daylight hours of summer weekends..." but the actual proposal is to provide the minimum from 8 AM to one half hour before sunset. Daylight in June, July and August is much longer than the proposed release hours, on the order of four hours. Idaho Rivers United suggests that releases for real daylight hours on the proposed days be evaluated and that releases from 7 AM until dark be evaluated. IRU-3

Thank you for the opportunity to comment on the draft Environmental Assessment.

Sincerely,

Liz Paul
Conservation Director

IRU-1 We think the City's preliminary cost fo releasing a minimum flow, which is bas on building a pumping plant to pass wat over water over the Moyie River dam, is reasonable. The cost per cfs of flow t be released was prorated from the 9 cfs 200 cfs. The disparity in the cost difference is due to the increase in 19 cfs increase in flow.

IRU-2 Range of flows
The EA was revised to include flows between 9 cfs and 200 cfs.

Flow release methods
Besides pumping, we looked at releasing the flow through the dewatering tube. ruled it out because (1) the slide gate was not designed to operate to regulate flow and (2) the buildup of sediment around the intake could be released downstream and affect downstream resources.

IRU-3 In the Cities' comment letter filed November 19, 1998, they agree with Idah Rivers United that the ending time shou be dusk, but propose to study the start time to see if 7 A.M. or 8 A.M. is more appropriate. We recommend the City monitor use to see what starting and ending times are appropriate. This iss would be addressed in the revised recreation plan we recommend.

ORIGINAL

CH2MHILL

OFFICE OF THE SECRETARY
98 OCT 19 PM 3:10
FEDERAL ENERGY REGULATORY COMMISSION

October 12, 1998

109009.FO.LJ

Mr. David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20246

Dear Mr. Boergers:

Subject: Project No. 1991 - 009 - Idaho
Moyie River Hydroelectric Project
City of Bonners Ferry, Idaho

On behalf of the City of Bonners Ferry (City), we are transmitting 8 copies, plus the original, of the City's comments on the Draft Environmental Assessment (issued by FERC on 9/15/98) for the referenced project.

Sincerely,

CH2M HILL

John G. Lindola, P.E.
Project Manager

Enclosures
BOI/let10-12-98.doc
c Mr. Mike Woodward, P.E., City of Bonners Ferry

9810260586-3

FERC - DOCKETED
OCT 19 1998

ORIGINAL

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Application of City of Bonners Ferry for License

Moyie River Hydroelectric Project No. 1991-009

COMMENTS ON THE DRAFT ENVIRONMENTAL ASSESSMENT

Pursuant to a notice dated September 15, 1998 requesting comments on the Draft Environmental Impact Assessment for the relicensed project, the City of Bonners Ferry submits the following comments:

General Comment

The Commission's staff should be complimented on preparation of an excellent environmental assessment document. The document presents the facts and issues concerning the project in a clear, concise, and very readable manner. The environmental analyses were prepared in a fair and equitable manner, with both sides of the issues given appropriate representation. The economic analyses provide important information concerning the necessary tradeoffs between power generation and protection of the environment. Overall, the City of Bonners Ferry (City) believes that the staff has done an excellent job of meeting the goals of the Electric Consumer's Protection Act in providing the appropriate balance between economics and environmental protection. The City concurs with the general conclusions of the environmental assessment, and looks forward to continuing to operate the project under the jurisdiction of the Commission. The City has minor comments concerning details of some of the proposed mitigation, and comments on some minor inaccuracies within the text of the document. These comments are addressed below.

CBF-1

CBF-1 Comment noted.

Specific Comments

Section V.C.6. Recreational Land Use, page 29, first incomplete paragraph. The text indicates that Old Highway 2, which serves as an access to the project, is unpaved. This statement is partially incorrect. Old Highway 2 is currently paved from the New Highway 2 turnoff through the town of Moyie Springs to the area of the existing employee parking garage (the area proposed for public parking for the viewpoint overlooking Moyie Falls). North of the proposed parking area, the access road is currently unpaved.

CBF-2

CBF-2 The Recreation and Land Use section has been changed to reflect your clarification.

Section V.C.6. Recreational Land Use, page 30, third complete paragraph, and Section VII, page 35, Recommendation (7)(a). The City concurs that the portable toilet should be in place at the reservoir takeout during the primary whitewater boating use period. However, there are many years (especially the drier years) when the flows in the Moyie River are insufficient for whitewater boating during the latter portion of the proposed period (late June and July). Rather than providing the portable toilet for the set period proposed (April through July), the City would prefer to provide the toilet during the periods of significant whitewater boating use. Consultations with whitewater enthusiasts familiar with the Moyie River indicate that the minimum reasonable flow at which the river can be floated correspond with a staff gage reading of 0.5 feet over the dam spillway (ROW,

CBF-3

CBF-3 We recommend this and similar issues be included in a revised recreation plan which would be filed with the Commission after license issuance. The plan should be revised in consultation with the interested agencies and organizations that are listed in the FEA.

1998 and Beasley, 1998). This corresponds to a flow of 105 cfs over the spillway. Assuming that the project is operating at capacity of 360 cfs, this would mean a flow of 465 cfs into the project reservoir. Thus, the City proposes to install and maintain the portable toilet from April 1 until the flows into the project reservoir drop below 465 cfs.

Section V.C.6. Recreational Land Use, page 30, last paragraph and continuing on to page 31, Section VII, Table 3, and Section VII, page 35, Recommendation (10). As noted in the text, the City has discussed with the U.S. Forest Service (USFS) the concept of an additional access road to the upper end of the reservoir. While the City supports this concept, it should be noted that the USFS proposal is to provide an access road entirely across lands that are outside of the project boundary (see the sketch attached to the USFS letter dated March 23, 1998, and Exhibit G). Thus, the City believes that this issue is outside of the purview of this Environmental Assessment. Any evaluations of additional access should therefore be performed under the normal NEPA process required for actions on USFS lands.

CBF-4

CBF-4 We recommend the City evaluate providing access to the upper end of the reservoir. The study would be done in consultation with the Idaho DPR, IDFG, FS, ROW, Idaho Rivers and AHA. If the road uses FS lands, the City would need to get a special use permit from the FS. The FS may require a NEPA analysis as a condition of the special use permit. If the City were required to build the road, the City would need to update the Exhibit G to include the road.

Section VI, Economics of the Project, page 34. The annual cost numbers presented in this section are somewhat confusing and are different from the annual cost numbers presented in the City's license application. In Exhibit H of the City's application, the annual costs for the project are summarized in Table H-1 for a 5-year period beginning in 1990. The average annual cost from this table was $231,630 and the unit cost of production was 8.5 mills per kWh. It is suggested that the historic annual costs from Exhibit H should be used in this section of the environmental assessment. It is also suggested that the economic information presented in this section be presented in tabular form for clarity.

CBF-5

CBF-5 See the revised economic analysis using an annual operation cost of $231,630.

Appendix A, Water Quality Certification. It appears that page 2 of the water quality certification letter from the Idaho DEQ is missing.

CBF-6

CBF-6 Change made. See Appendix A.

References

IRU, 1998. Personal communication with Candy Banning at ROW, Inc., September 24, 1998.

Beasley, 1998. Personal communication with Will Beasley, local kayaking enthusiast, September 30, 1998.

IDAHO DEPARTMENT OF PARKS & RECREATION

PHILIP E. BATT
Governor

YVONNE S. FERRELL
Director

IDAHO PARK AND RECREATION BOARD

Robert M. Hankamer
Region One

Beverly L. Boyd
Region Two

Emma J. Lombard
Region Three

Glenn E. Shoemaker
Region Four

Jean S. McFarlin
Region Five

Monte Q. Lyon
Region Six

P.O. BOX 83720
BOISE, IDAHO 83720-0065
(208) 334-4199
FAX (208) 334-3741
TDD 1-800-377-3529
Street Address
5657 Warm Springs Avenue

Equal Opportunity Employer

October 14, 1998

David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Dear Secretary:

Re: FERC No. 1991-009 Moyie River Hydroelectric Project Draft Environmental Assessment

We appreciate this opportunity to let the FERC staff know that our department continues to be interested in the Moyie Project. We generally support the proposal made by the City with the FERC staff's modification, though we have questions on a few points. Those comments follow.

The costs associated with providing 9 cfs vs. 200 cfs of aesthetic flows do not seem logical. Our assumption is that the same type of device would need to be constructed regardless of the amounts of flow involved. Please revisit your methodology. DPR-1

DPR-1 Our estimate is based on using the same type of device to provide flow. Costs change is due to increased flow releases. For more information on the device see IRU-1.

We are curious about the definition used for daylight hours. In the FERC New License for project 18, page 5, daylight hours are described as: "The FEIS recommended a minimum flow of 300 cubic feet per second (cfs) over the falls from 8 a.m. to dusk everyday from April through August and on weekends and holidays during the rest of the year (peak viewing times)." Is there a standard for determining daylight hours? Dusk seems to be more appropriate. Is there a definition for "daylight hours"? DPR-2

DPR-2 See IRU-3.

We would like to see analysis on decommissioning as projects of an age similar to this project are being considered for decommissioning in other parts of the Pacific Northwest. Planning for decommissioning is prudent and appropriate. When concrete structures reach the end of their life it is appropriate to have a plan in place, complete with a funding source, for decommissioning. Placing the financial burden of decommissioning on the state or federal tax base would be inappropriate. DPR-3

DPR-3 An analysis of decommissioning was presented in Section III, D(3) of the DEA. The financial burden of decommissioning a project is the responsibility of the Licensee.

At the bottom of page 30 there are comments on a Forest Service suggested alternative access route leading to the upper end of the reservoir. There was no discussion as to why this was, or might be necessary, how it would be helpful as an alternative route, or if the Forest Service intended to pursue the access road further. More information would be appreciated as to whether the Forest Service would continue to be responsible for maintenance of this road or would it transfer to the hydro project? DPR-4

DPR-4 Additional access to the upper end of the reservoir is needed to allow the public to enjoy and use the resources of the project. If the City is required to build the road, the City would be required to amend Exhibit G to include the road. Also, the City would be responsible for road maintenance. See response to CBF-4 for more information.

We would also like to comment on the short comment period for this Draft Environmental Assessment. The "date of the letter" is September 15, 1998. We had 30 days in which to comment from the date of the letter. We received the notice on September 27. Comments needed to be received by the Secretary by October 15. That is a very tight time frame. Fortunately this was a relatively short EA, and a project we are very familiar with. DPR-5

DPR-5 The DEA was posted on the Commission's issuance posting system on September 15 1998. Also, if DPR needed additional t they could have requested an extension time to file comments.

Thank you again for the opportunity to comment.

Sincerely,

Mary Griffith
Natural Resource Specialist

cc: Will Reid, IDFG
Harriet Hensley, Deputy Attorney General

American Whitewater Affiliation
Comments FERC No. 1991-009

John T. Gangemi
Conservation Director

October 15, 1998

David Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N. E.
Washington, DC 20426

RE: DEA for the Moyie River Hydroelectric Project

FERC No. 1991-009

Dear Secretary Boergers,

Enclosed for filing with the Commission in the above proceeding are the original and 8 copies of AMERICAN WHITEWATER AFFILIATION'S COMMENTS AND RECOMMENDATIONS ON THE DRAFT ENVIRONMENTAL ASSESSMENT FOR THE MOYIE RIVER HYDROELECTRIC PROJECT, FERC PROJECT NO. 1991. Also enclosed is a ninth copy to be date stamped and returned in the enclosed envelope.

Copies of this document were served on the parties listed on the certificate of service.

Sincerely,

John T. Gangemi (EMG)
John T. Gangemi
Conservation Director

CC: Tim Looney
Mark Robinson
Carol Sampson
Chip Corsi
Attachment: Comments on DEA

Conservation and Access Program: 482 Electric Avenue, Bigfork, MT 59911
Phone 406-837-3155 FAX 406-837-3156 jgangemi@digisys.net

OVERVIEW

American Whitewater Affiliation has reviewed the City of Bonners Ferry's draft environmental assessment for the Moyie River Hydroelectric Project. American Whitewater appreciates FERC staff recommending conditions that will accommodate other beneficial uses of the Moyie River, in particular improved access to project lands and improvements in recreational facilities. American Whitewater has the following comments and recommendations.

COMMENTS AND RECOMMENDATIONS

Section IV Consultation and Compliance

The DEA contains a table on page 8 listing entities that commented on the license application. American Whitewater was omitted from this table. American Whitewater submitted comments on February 9, 1998 on the City of Bonners Ferry License application. On page 9 in the DEA, American Whitewater's motion to intervene is documented in the table. This motion to intervene was submitted simultaneously with comments. The DEA should be corrected and, more importantly, American Whitewater's comments on the license application should be recorded in the record to make it complete.

AWA-1

AWA-1 Section IV has been revised.

Section VII Comprehensive Development and Recommended Alternative

American Whitewater staff inspected the take-out facilities and adjacent project lands in August of 1998. The recommendations below are based in part on that site visit as well as review of the DEA.

FERC staff recommendations:

(7) American Whitewater recommends that recommendation No. 7 be expanded to include annual road maintenance on the City road including the length of the road beyond the Dam and City structures. During the site visit American Whitewater found the access road to the Reservoir unsuitable for two wheel drive vehicles. Annual road maintenance must make this road passable for two wheel drive vehicles.

AWA-2

AWA-2 The recreation plan would be revised consultation with the interested agen and organizations that are listed in DEA. The revised plan would address level of maintenance required for the access road.

(8) American Whitewater recommends the interpretive display on NEW HIGHWAY 2 identify the public access points and facilities on project lands. Text adjoining the map should explain what facilities are located at the corresponding location on the map as well as hours of use and any other pertinent information.

(9) Directional signs must also be included on NEW HIGHWAY 2 to alert passing motorists to the scenic viewpoint sites. Directional signs signifying whitewater access must also be constructed on NEW HIGHWAY 2 and old highway 2. It is not sufficient to place these directional signs on old highway 2 only.

AWA-3

AWA-3 As mentioned in the FEA, the City prop interpretive and directional signs. recommend AWA's specific concerns be addressed during consultation for preparation of the revised recreation plan.

Additional Recommendations by American Whitewater

1. Currently, the City restricts public access to project lands via a gated road. This gate is open during business hours. American Whitewater members do not restrict their recreational activities to business hours. We would speculate that few other citizens can afford the luxury of recreating during business hours, either. American Whitewater recognizes the City's concern for vandalism at the site. With that in mind, American Whitewater recommends the following access compromise: Grant public access and parking on the city-owned road during the following hours - between the hours starting one half hour before sunrise and terminating one half hour after sunset. These time frames are used routinely by state fish and wildlife agencies to structure hunting hours. These are the time frames in which humans recreate and therefore should be applied to recreation on project lands. Sunrise and sunset are published daily in local newspapers.

AWA-4

AWA-4 We are concerned about protecting the project from vandalism. But, we are also interested in expanding the hours of access to project lands and facilities for the public. We recommend AWA's specific concerns be addressed during consultation for preparation of the revised recreation plan.

Again, American Whitewater appreciates FERC staff's recommendations to extend the season for temporary recreational facilities at the reservoir take-out. These small improvements will greatly enhance other beneficial uses on project lands and the surrounding National Forest.

These comments and recommendations are submitted by:

John T. Gangemi (ung) Date: 10-15-98

John T. Gangemi
Conservation Director, American Whitewater
482 Electric Avenue
Bigfork, MT 59911
(406)837-3155

American Whitewater Affiliation
Comments FERC No. 1991-009

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of October, 1998 served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Kate M. Gribskov 10-15-98

Kate M. Gribskov
Executive Assistant
American Whitewater

Service List
John G. Lincoln
CH2M Hill
700 Clearwater Lane
Boise, ID 83707

Harold Sims, Mayor
P.O. Box 149
Bonners Ferry, ID 83805

Mike Woodward, Administrator
P.O. Box 149
Bonners Ferry, ID 83805

Liz Paul
Idaho Rivers United
PO Box 633
Boise, ID 83701

Peter Grubb
R.O.W., Inc.
314 E. Garden
Coeur D'Alene, ID 83814

David J. Barber
State of Idaho
Attorney General
P.O. Box 83720
700 W. Jefferson St., Room 210
Boise, ID 83720-0010

United States Department of Agriculture | Forest Service | Region 1 | 200 East Broadway P.O. Box 7669 Missoula, MT 59807

FILED
OFFICE OF THE SECRETARY
98 OCT 19 AM 11:55
FEDERAL ENERGY REGULATORY COMMISSION

File Code: 2770

Date: October 15, 1998

Mr. David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

RE: Forest Service Comments on Draft Environmental Assessment for Project No. 1991-009

Dear Mr. Boergers:

These comments are in response to your September 15, 1998, Notice of Availability of Draft Environmental Assessment for the Moyie River Hydroelectric Project Number 1991-009.

Our agency previously commented on January 8, 1997, and March 25, 1998. Our comments centered around 1) potential effects of improvements and whitewater rating on harlequin ducks, and 2) the potential to improve access to the reservoir for water-based dispersed recreation.

Your treatment of the discussion of effects on the harlequin duck on pages 22 and 23 implies that the Idaho Fish and Game has concerns over the species and that the Forest Service does not. We believe a more accurate position is that both agencies believe increased whitewater rating above the reservoir could adversely affect the harlequin duck, but that it is unlikely that the limited improvements would increase whitewater use. FS-1

FS-1 See revised text in the FEA, Sec V.C.3.

The discussion of recreational access on page 30 is disappointing in that the City apparently has not embraced the Commission's regulations that the "licenses...ensure public access and recreational use of project lands and waters..."(page 30 paragraph 3). Our position is that public access is best served by summer-long access across City property on the existing road west of the reservoir. This access road would need to be improved, however. Longer-term recreational improvements on both City property and National Forest System lands could be made to enhance summer (July and August) water-based recreation in a manner that does not conflict with harlequin duck management. This access is logical because of the proximity to Highway 2, Bonners Ferry and Moyie Springs, and the potential to develop access to the west side of the reservoir at a number of spots from this road. FS-2

FS-2 The FEA recommends that the recreation plan be revised to consider the issue of appropriate access. The license requires a revised plan. If, in the future, additional facilities are needed, amended recreation plan would hav to be filed for Commission approv

If the Commission determines that it is unreasonable to require the City to develop such access on the west side of the reservoir, then access can be gained to the upper end of the reservoir on the east side of the river across National Forest System lands.

The access to the east side is less desirable than access to the west side because of the significantly longer distance from the highway and towns and the fact that the east side only provides access to the northern-most tip of the reservoir and not the length of the reservoir. There is no significant difference in the risk of forest fires, (in fact there would be a longer response time to the east side in the event of a fire), and the risk of vandalism to recreation improvements would be higher on the east side since the site is more remote and vandals may not be as likely to be detected in the act. RS-2

Because we believe recreational use of the reservoir will increase, facilities will need to be developed and maintained by the licensee during the new license term. The new license should, therefore, establish methods to evaluate changes in recreation use and include provisions for future development of recreation facilities.

In summary, we fully support the staff recommendation that a recreation plan be developed that addresses long-term access to and full development of the recreation potential of the reservoir over the term of the new license.

The final environmental assessment should accurately reflect the comments of this letter and previous letters sent to you regarding this project. Additionally, if the City is to promote recreational developments on National Forest System Lands for the purpose of securing a new license, my staff would be pleased to work with you or the City to prepare a proposal and estimated costs for inclusion in the final assessment.

If you have any questions concerning our comments, do not hesitate to contact Bruce N. Allen, 406-329-3601.

Sincerely,

DALE BOSWORTH
Regional Forester

cc: Service list
IPNF's - B. Fahmi, A. Chrisman
RF Reading File
R-6 - W. Dortch, Darrington RD

CERTIFICATE of SERVICE
Moyie River Hydroelectric Project, FERC No. 1961-009

I hereby certify that I have this day served the foregoing document upon each person designated on the offical service list compiled by the Secretary in this proceeding.

SERVICE LIST

Principal/Party Name/Address	Representative Name/Address
JOHN T. GANGEMI DIRECTOR AMERICAN WHITEWATER AFFILIATION (MT) 482 ELECTRIC AVENUE BIGFORK, MT 59911	
	JOHN G. LINCOLN CH2M HILL (ID) P. O. BOX 8748 700 CLEARWATER LANE BOISE, ID 83707
MAYOR HAROLD SIMS BONNERS FERRY, TOWN OF (ID) POST OFFICE BOX 149 BONNERS FERRY, ID 83805	MIKE WOODWARD ADMIN. BONNERS FERRY, TOWN OF (ID) POST OFFICE BOX 149 BONNERS FERRY, ID 83805
LIZ PAUL ASSOC. DIREC IDAHO RIVERS UNITED, INC. POST OFFICE BOX 633 BOISE, ID 83701	
DAVID J. BARBER ATTY. GEN. IDAHO, STATE OF ATTORNEY GENERAL/P. O. BOX 83720 700 W. JEFFERSON ST., RM. 210 BOISE, ID 83720-0010	
PETER GRUBB PRESIDENT R.O.W., INC. 314 E GARDEN COEUR D'ALENE, ID 83814	

DATED at Missoula, Montana, this 15th day of October, 1998

BRUCE N. ALLEN
United States Department of Agriculture
Region One
200 East Broadway
Missoula, Montana 59807
(406) 329-3601

OFFICE OF THE SECRETARY
98 NOV 19 AM 11:12
FEDERAL ENERGY REGULATORY COMMISSION

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Application of the City of Bonners Ferry For a New Major License	)))	Moyie River Hydroelectric Project No. 1991-009

RESPONSE TO AGENCY COMMENTS ON THE DRAFT ENVIRONMENTAL ASSESSMENT

The City of Bonners Ferry (City) received copies of letters from resource agencies and public interest groups providing comments on the Commission's Draft Environmental Assessment for the referenced project, dated September 15, 1998. Following review of these letters, the City wishes to provide responses to certain of the comments. The City believes that these responses will help to clarify some issues and may help to resolve other issues; therefore the City respectfully requests that the Commission consider these responses. The selected comments are summarized below, followed by the City's responses.

Comment 1 (Idaho Department of Parks and Recreation): We would like to see an analysis on decommissioning, as projects of similar age to this project are being considered for decommissioning in other parts of the Pacific Northwest. Planning for decommissioning is prudent and appropriate. When concrete structures reach the end of their useful life, it is appropriate to have a plan in place for decommissioning, such that the costs for decommissioning do not have to be borne by the taxpayers.

Response 1. Section III.D.3 of the Environmental Assessment provided an analysis of decommissioning the project. While it is true that some of the concrete structures are over 50 years old, there is no reason to believe that the project in anywhere near the end of its useful life, or that there is a need to plan for decommissioning within the foreseeable future. There are several reasons for this conclusion:

- With proper maintenance, there is no practical limit to the useful life of a hydroelectric project. It is true that some items periodically require major repair and/or replacement. For instance major mechanical and electrical equipment (runners, rotors, windings, switchgear, transformers, etc.) must be periodically rebuilt or replaced. The design life of concrete structures is a generally a function of their exposure to weathering, since weathering is the primary limitation on the useful life of concrete structures. The design life of the major concrete structures (powerhouses, power tunnel, and the dam) is likely greater than 100 years, because these structures (except at their outside surfaces) are protected from weathering. With proper periodic maintenance to repair and/or replace the weathered surface concrete, these structures should last indefinitely. The design life of the minor concrete structures (those exposed to weathering, such as sidewalks, retaining walls, etc.) is somewhat less. However, with proper maintenance, the design life of the minor concrete structures is often 50 or more years. In addition, after minor concrete structures have reached the end of their useful life, they can be replaced at comparatively minimal expense.
- The City has an excellent record of operation, maintenance, and repair of the project facilities. It is in the City's best interests to continue to provide this level of operation,

BF-1 BF-1 Comment noted.

maintenance, and repair. This is because the cost of replacement power is considerably higher than the cost of continued operation and maintenance. In fact, replacement power would be about 3 times the cost of continued production from the project (23.9 mills/kWh for replacement power vs. 8.5 mills/kWh for the Moyie Project). In addition, as noted in Volume IV of the relicensing documents, costs for decommissioning are considerable (approximately $2,900,000). Therefore, it is much more cost-effective to continue maintenance and repair than it is to decommission the project.

- The period for the new license for this project, if granted by the FERC, would likely be 30 years. The remaining useful life of the project is considerably more than 30 years.
- The other projects that are being considered for decommissioning in the Pacific Northwest are generally being considered for reasons other than design life of the physical facilities. The primary considerations for decommissioning generally involve environmental concerns of individual facilities, usually associated with migration of threatened or endangered species (e.g. salmon and steelhead) or location within unique ecological areas (e.g. National Parks). The issue of threatened and endangered species (specifically bull trout) was addressed in Volume II of the relicensing documents. The Idaho Department of Fish and Game concurred with the conclusions in Volume II that continued operation of the project would not adversely impact bull trout migration. The Moyie Project is located in an area that, while a valuable resource, hardly qualifies for unique ecological consideration. Therefore, the fact that other projects in the Pacific Northwest are being considered for decommissioning is not really relevant to the considerations for the Moyie Project.

Based upon the above, the City maintains that there is no reason to require the City to plan for decommissioning the Moyie Project within the 30 year planning horizon of the new licensing period.

Comment 2 (Idaho Department of Parks and Recreation and Idaho Rivers United): The term "daylight hours" for the minimum bypass flows should be better defined, since daylight in the summer is much longer than the proposed period of 8 A.M. to 1/2 hour before sunset. Bypass flow releases from 7 A.M. to dusk should be evaluated.

Response 2: The City initially proposed the period of 8 A.M. to 1/2 hour before sunset based on the results of the visitation patterns during the Recreation Survey (see Volume III of the Application for New License). The City agrees that the ending time for bypass flows should be dusk rather than 1/2 hour before sunset, since the enjoyment of the visual resource depends on available light. The City further suggests that the starting time for bypass flows remain at 8 A.M., and that this starting time be evaluated during the initial period of the new license to determine if there is significant visitation prior to that hour. If there is significant visitation prior to 8 A.M. the City would be willing to extend the period of bypass flows to 7 A.M. (Significant visitation should be defined as visitation that is disproportionate, compared to the rest of the day. For example, if dusk is at 8 P.M., then the bypass flow period would be 12 hours. Significant visitation would occur if the visitation between 7 A.M. and 8 A.M. averaged more than 1/12 [8.5 percent] of the total daily visitation).

BF-2 BF-2 This seems reasonable. The revised recreation plan should include provisions for monitoring use, and provide for periodic review to determine if any changes are needed

Comment 3 (American Whitewater Affiliation): Directional signs should be included on New Highway 2 to alert passing motorists of the scenic viewpoint sites. Directional signs signifying whitewater access should also be constructed on New Highway 2.

BF-3

Response 3: There is existing signing already posted on New Highway 2 that directs motorists to the "Moyie River Overlook". These signs have been installed and are maintained by the Idaho Transportation Department. The signs are located prior to the turnoff to the overlook, and are placed to alert both eastbound and westbound traffic concerning the overlook. The City proposed locating the interpretive display (with directions to the scenic viewpoints near the project) at the existing scenic overlook, primarily to serve the needs of the public interested in scenic resources. It can reasonably be assumed that the portion of the public interested in visual resources would stop at the well-signed existing scenic overlook. The interpretive display would be an additional attraction, and would provide information and directions to those members of the public willing to go out of their way to get to the viewpoints near the project. It is important that this information be conveyed at the interpretive display for several reasons:

- The roadway from New Highway 2 to the project viewpoints is steep, winding, and potentially confusing to someone new to the area. It is important that potential visitors be provided with a map and alerted to the conditions of the roadway.
- The roadway to the project viewpoints travels through existing residential areas of the community of Moyie Springs. The viewing public should be alerted to travel slowly and to watch out for the children and pets that often play in or adjacent to the roadway.
- Prior to travelling to the site, the viewing public should be alerted concerning the type of visual resources to expect, and the hours when bypass flows will be available.

BF-3 BF-3 When you revise your recreation plan, you should address this iss

The above information cannot be conveyed through a simple roadsign on New Highway 2. While the information could be conveyed through a series of roadsigns, it is better to provide the information at the interpretive display at a location where the interested viewing public can have the time to review and study the information, directions, and instructions.

The City also disagrees with the suggestion that a sign is needed along New Highway 2 to direct the whitewater enthusiasts to the takeout point. Of the potential users of the recreational resources of the Moyie River, the whitewater enthusiasts are likely to be the best-informed group. Most of the enthusiasts that run the Moyie River are already familiar with the takeout location, are accompanied by others that are familiar with the takeout location, or are part of a guided trip. Those few users in any given year that are not familiar with the takeout location will very likely obtain the necessary information from maps, guidebooks, or word-of-mouth (from other enthusiasts) as part of their planning for the trip. In other words, the whitewater enthusiasts are not "casual users" and therefore do not need a sign to direct them to the takeout location.

Comment 4 (American Whitewater Affiliation): Currently the City restricts public access to project lands via a gated road. The gate is open during business hours. Public access should be allowed to the project lands during the period of 1/2 hour before sunrise to 1/2 hour after sunset.

Response 4: The gate that is the subject of Comment 4 is located near the top of the steep incline along Old Highway 2, approximately 1,400 feet south of the proposed viewpoint overlooking Moyie Falls. The gate is currently posted with a sign that says "NO STAYS AFTER SUNSET." This signing has evolved at the suggestion of the Boundary County Sheriff as a result of problems primarily associated with the hours after dark. The City, based on its experience, supports an approach that would clearly allow public access to the

BF-4 BF-4 See response to AWA-4.

site during daylight hours. The subject gate is normally open virtually every day of the year, including business days, weekends, and holidays during spring, summer, fall and winter. The City proposes to continue this level of accessibility. The only times that the City closes this gate are during construction or maintenance activities that could result in unsafe conditions to the public (and therefore create liabilities for the City), or during the fire season in dry years. Whenever it is necessary to close the gate in the future, the City proposes to temporarily post signs to indicate that the gate is temporarily closed due to construction and/or maintenance activities, or temporarily closed due to fire danger. The City will make every attempt to schedule known construction and major maintenance activities that require gate closure to avoid periods of primary recreational use.

Comment 5 (Idaho Department of Parks and Recreation, American Whitewater Affiliation, and U.S. Forest Service): Public access to the reservoir area north of the whitewater boating takeout location is best served by providing summer-long access across the City property on the west side of the reservoir. The alternative access to the east side of the reservoir across lands managed by the U.S. Forest Service is less desirable, because of the significantly longer distance from the highway and towns, and the fact that access to the east side would be provided only to the northern tip of the reservoir, rather than to the length of the reservoir. The access road on the west side of the reservoir would need to be improved, however, with annual maintenance to make the access road passable for two-wheel drive vehicles.

Response 5: The City agrees that the public is best served by providing access to the reservoir area using the existing access road on the west side of the reservoir. In order to provide access for two-wheel drive vehicles, the City further proposes to improve the existing roadway. Specifically, annual maintenance will be performed on the access road in late spring/early summer to make the road passable to two-wheel drive vehicles. The access road is currently gated just to the north of the whitewater takeout. The City proposes that summer-long access be provided, with the option reserved to close the gate during construction/maintenance activities that could result in unsafe conditions to the public, or during high fire-risk periods. Again, the City will make every attempt to schedule known construction and major maintenance activities that require limiting access to avoid periods of primary recreational use.

BF-5

BF-5

The DEA recommended that the recreation plan be revised to address this issue. Your proposal is responsive to the remarks, but a number of details concerning the level of maintenance, the circumstances under which the road would be closed; and the need for any additional facilities need to be finalized in the revised plan.

Final Environmental Assessment

Moyie River Hydroelectric Project, FERC No. 1991-009



Federal Energy Regulatory Commission
Office of Hydropower Licensing
Washington, D.C.

TABLE OF CONTENTS

Section		Page
SUMMARY		iii
I.	APPLICATION	1
II.	PURPOSE AND NEED FOR ACTION	1
	A. Purpose of Action	1
	B. Need for Power	3
III.	PROPOSED ACTION AND ALTERNATIVES	3
	A. Applicant's Proposal	3
	1. Project Facilities and Operations	3
	2. Proposed Environmental Measures	4
	B. Staff's Modification of the City's Proposal	6
	C. No-Action Alternative	6
	D. Alternatives Considered but Eliminated from Detailed Study	6
	1. Federal Takeover	7
	2. Nonpower License	7
	3. Denial of a License and Decommissioning the Project	7
IV.	CONSULTATION AND COMPLIANCE	8
	A. Agency Consultation	8
	B. Interventions	8
	C. Scoping	9
	D. Comments on the DEA	9
	E. Water Quality Certification	10
	F. Columbia River Basin Fish and Wildlife Program	10
V.	ENVIRONMENTAL ANALYSIS	11
	A. General Description of the Project site and Moyie River Basin	12
	B. Cumulative Impacts	12
	C. Proposed Action and Other Recommended Environmental Measures	12
	1. Aquatic Resources	13
	2. Terrestrial Resources	20
	3. Threatened and Endangered Species	22
	4. Aesthetic Resources	25
	5. Cultural Resources	28
	6. Recreation and Land Use Resources	29
	D. No-Action Alternative	32
VI.	DEVELOPMENTAL ANALYSIS	32
VII.	COMPREHENSIVE DEVELOPMENT AND RECOMMENDED ALTERNATIVE	36
VIII.	CONSISTENCY WITH COMPREHENSIVE PLANS	39
IX.	RECOMMENDATIONS OF FISH AND WILDLIFE AGENCIES	39
X.	FINDING OF NO SIGNIFICANT IMPACT	40
XI.	LITERATURE CITED	40
XII.	LIST OF PREPARERS	41
APPENDIX A.		42
APPENDIX B.		46

LIST OF FIGURES

Figure		Page
1.	Location of the Moyie River Hydroelectric Project.	2
2.	Moyie River Hydroelectric Project Facilities.	5

LIST OF TABLES

Table		Page
1.	Moyie River discharges at Eileen, Idaho; mean daily flows by month.	13
2.	1994 Lower Moyie River fish survey summary.	15
3.	Summary of the costs of the proposed and recommended environmental measures.	34
4.	Viewing enjoyment levels at the River and Canyon and Moyie Falls.	37
5.	Cost of providing different minimum flows.	38
6.	Resource agency recommendation analysis.	40

SUMMARY

In April 1996, the City of Bonners Ferry, Idaho (City) filed a new license application with the Federal Energy Regulatory Commission (Commission) for the Moyie River Hydroelectric Project (FERC No. 1991). The project is located on land owned by the City and lands within the Idaho Panhandle National Forest, near Moyie Springs, in Boundary County, Idaho.

This Environmental Assessment (EA) considers the effects of issuing a new hydropower license for the Moyie River Hydroelectric Project and recommends conditions the Commission staff thinks should be made a part of any license issued.

The Moyie River Hydroelectric Project is located on the Moyie River, a major tributary to the Kootenai River. The project is the only hydroelectric project on the Moyie River and has a generating capacity of about 3,950 kilowatts (kW).

The City isn't proposing to construct any new capacity or to change how the project operates.

Information filed with the Commission by the City, the state and federal resource management agencies, and the public shows the following environmental concerns regarding continued operation of the project: (1) how dredging sediment affects water quality and (2) whether minimum flow releases from the reservoir would enhance the aesthetics of the project site.

In this EA, we describe existing environmental conditions at the project and assess options for enhancing environmental resources related to the above concerns. We assess three alternatives: (1) the project as proposed by the City, (2) modifications to the proposed action based on recommendations from the resource agencies, the public, and other options developed by staff, and (3) no action. We consider, but eliminate from detailed analysis, decommissioning of the project.

The EA recommends the proposed project with staff-recommended enhancement measures, which provide for: minimum flows and new recreation facilities.

In conclusion, we find that issuing a license for the Moyie River Hydroelectric Project would not be a major federal action significantly affecting the quality of the human environment. Furthermore, we reject the no-action alternative because it would forego the opportunity to enhance environmental resources.

FINAL ENVIRONMENTAL ASSESSMENT

FEDERAL ENERGY REGULATORY COMMISSION
OFFICE OF HYDROPOWER LICENSING

Moyie River Hydroelectric Project
FERC Project No. 1991-009 -Idaho

I. APPLICATION

On April 1, 1996, the City of Bonners Ferry (City), Idaho filed an application for a new license with the Federal Energy Regulatory Commission (Commission) for the continued operation and maintenance of the existing 3,950-kilowatt (kW) Moyie River Hydroelectric Project (project). The project occupies 1.55 acres of land that are owned by the United States and located within the Idaho Panhandle National Forest. The forest lands occupied by the project are located in the upper reach of the reservoir. The remainder of the project lands are owned by the City. The project is located near Moyie Springs, in Boundary County, Idaho (figure 1).

The Federal Energy Regulatory Commission issued a Draft Environmental Assessment (DEA) for comment on September 15, 1998. In response, we received 6 comment letters. We list the commenting entities in "Comments on the DEA," section IV.C. All comment letters were considered carefully. Some sections of the DEA have been modified as a result of our reevaluation and are identified in Appendix B, "Comments on the DEA and Staff Responses."

II. PURPOSE AND NEED FOR ACTION

A. Purpose of Action

The Federal Power Act (FPA) provides the Commission with the exclusive authority to license nonfederal water power projects on navigable waterways and federal lands.

For the project, the Commission must decide (1) whether to issue a new license to the City, and, if so, (2) what, if any, conditions should be placed on that license to protect or enhance existing environmental resources or to mitigate for any adverse environmental impacts that would occur due to project operation and maintenance.

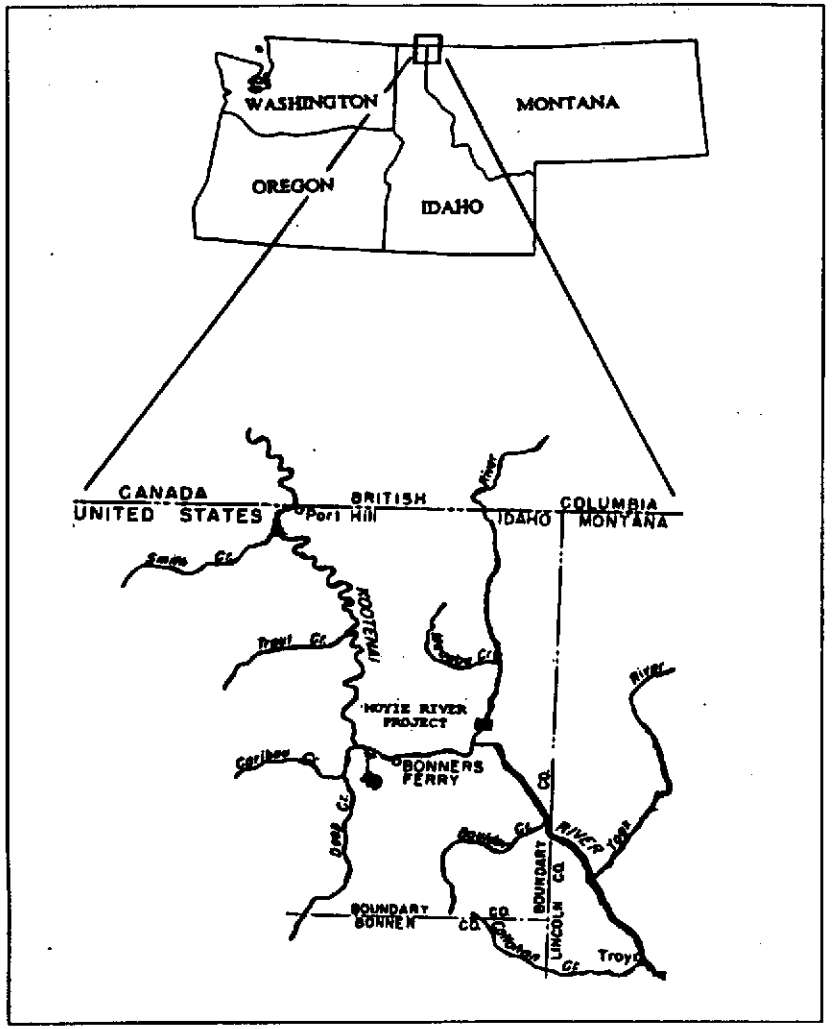


Figure 1. Location of the Moyie River Hydroelectric Project.

In this draft environmental assessment (DEA), we: (1) assess the effects of operating the project as proposed by the City, (2) analyze alternatives to the City's proposal, and (3) recommend whether or not to issue a new license to the City.

B. Need for Power

The existing project is owned by the City. The City's Electric Department is a small municipal utility providing service to about 2,000 customers. The Moyie River Hydroelectric Project provides a small part of the City's power needs and the Bonneville Power Administration supplies the rest.

The proposed project is located in the Northwest Power Pool Area (NWPP) of the Western System Coordinating Council (WSCC) region. In their April 1997 report, WSCC projects a regional energy growth rate of 1.8 percent. For the NWPP area, the report shows 4,119 megawatts (MW) of proposed capacity being added during the forecast period that extends to 2006.

On July 1, 1998, the Northwest Power Planning Council (Council) adopted the Fourth Northwest Conservation and Electric Power Plan. As in their last report, the Council predicts a range of electricity demand from low to high growth. The medium forecast of electricity demand shows that the region could add about 5,920 average MW over the planning period.

The power from the project would be useful in meeting a small part of the regional need for power. The project would continue to displace fossil-fueled electric power generation the regional utilities now use, and thereby conserve nonrenewable resources and reduce the emission of noxious byproducts caused by the combustion of fossil fuels.

III. PROPOSED ACTION AND ALTERNATIVES

A. Applicant's Proposal

1. Project Facilities and Operations

The City proposes to continue to operate and maintain the Moyie River Hydroelectric Project.

The existing project consists of: (1) a 92-foot-high concrete dam, impounding a 450-acre-foot reservoir, (2) a combination penstock/pressure tunnel about 990 feet long, (3) three powerhouses with a total installed capacity of 3,950 kW, (4) a 1.3-mile-long, 13.8-kilovolt transmission line, and (5) appurtenant facilities (figure 2).

The proposed project would generate about 26.2 gigawatthours (GWh) of energy annually.

The existing project is operated as a run-of-river project, with the reservoir water surface elevation kept at 2023 feet. The reservoir isn't used for storage or peaking. The turbines use about 360 cubic feet per second (cfs). Flows up to 360 cfs in the Moyie River are diverted to the powerhouse for generation. When river flows exceed 360 cfs, the excess water is spilled over the dam into the bypassed reach. Flow from the turbines is returned to the Moyie River.

2. Proposed Environmental Measures

The City proposes the following measures:

- Continue dredging accumulated sediments in front of the intakes and deposit dredge spoil into containment ponds to protect water quality.
- Continue to operate the project run-of-river to ensure continuous flow in the river below the project and to minimize lake fluctuation to protect aquatic resources.
- Install one or two goose nest boxes in the upper reaches of the project reservoir to enhance waterfowl habitat.
- Release minimum flows of 9 cfs during daylight hours (8 am until ½ hour before sunset) during weekends in June, July and August to maintain aesthetic quality of the Moyie Falls.
- Document the eligibility of 4 historic sites in the project area for inclusion in the National Register of Historic Places. The Idaho State Historic Preservation Officer (SHPO), the Commission staff, and the City agree the proposed project has no effect on these sites.
- Should there be a change to the project in the future or an archeological site discovered during project operation, consult with the SHPO and use best management practices followed for the preservation of cultural resources.
- Enhance the whitewater boating take-out site (station 1) by:
  - providing portable toilets during May and June,

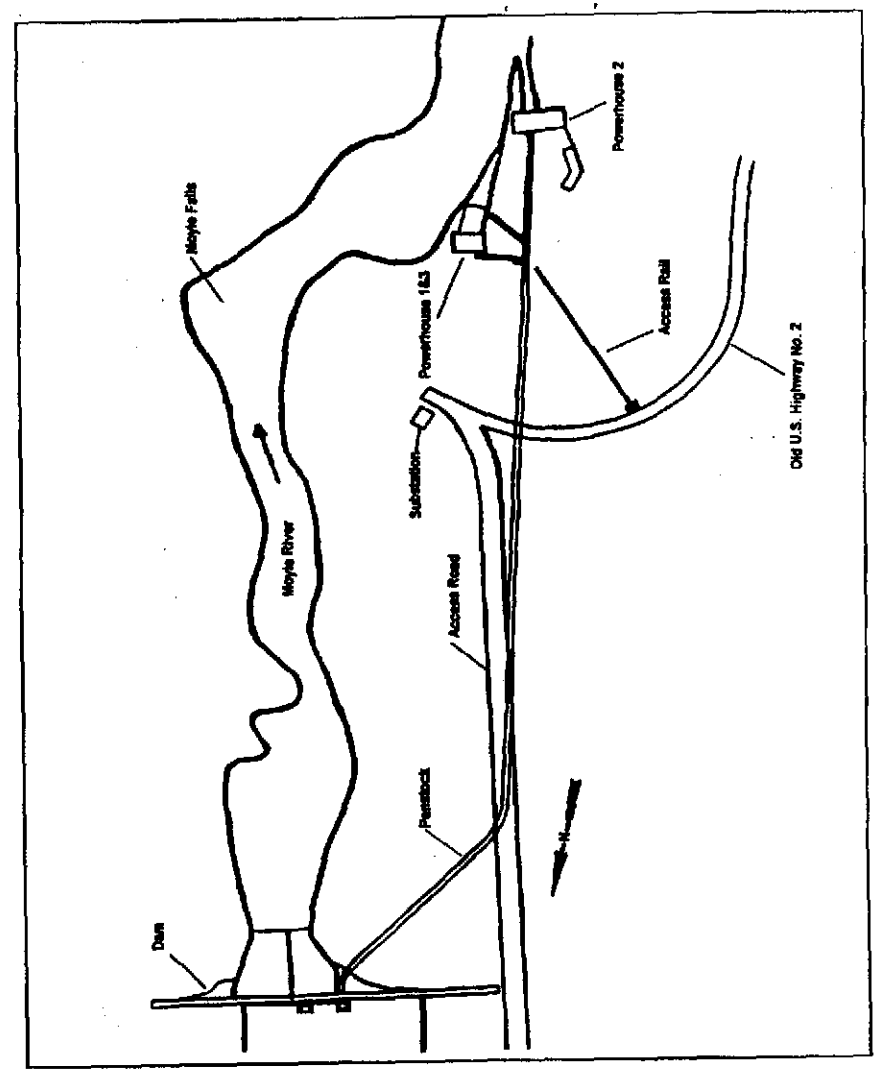


Figure 2. Moyie River Hydroelectric Project Facilities.

- installing a picnic table, a trash can, and signs encouraging visitors to clean up after themselves,
- sponsoring a community cleanup day each spring, and
- maintaining the site.

o Provide an interpretive display, including a map, at the existing scenic overlook on the new Highway 2, subject to the Idaho Transportation Department's and Boundary County's approval.

o Construct directional signs to the scenic viewpoint sites along Old Highway 2, subject to the City of Moyie Springs approval.

B. Staff's Modification of the City's Proposal

The staff considered what, if any, additional protection, mitigation, and enhancement measures would be beneficial to those resources affected by the project and its operation. After considering comments and recommendations of government agencies, non-government organizations, and the public; the staff recommends adopting the City's proposed measures with the following additions: 1) prepare a cultural resources management plan to ensure the historical integrity of the project facilities, and that other historical sites are not affected by the continued operation and maintenance and repair of the project; and 2) prepare a revised recreation plan that would provide: a) portable toilets during April through July, b) interpretive display on the new Highway 2, and c) evaluation of an alternative access route leading to the upper end of the reservoir.

C. No-Action Alternative

The City would continue to operate the Moyie River Hydroelectric Project under the terms and conditions of the existing license, and no new environmental protection, mitigation or enhancement measures would be implemented. We use this alternative as our baseline to compare to other alternatives.

D. Alternatives Considered but Eliminated from Detailed Study

We considered the following alternatives to the City's proposal but eliminated them from detailed study because they are not reasonable in the circumstances of this case.

1. Federal Takeover

We don't consider federal takeover and operation of the project to be a reasonable alternative. Federal takeover and operation of the project would require Congressional approval. While this fact alone does not eliminate this alternative from further analysis, there is no evidence to indicate that federal takeover should be recommended to Congress. No party has suggested that federal takeover would be appropriate, and no federal agency has expressed an interest in operating the project.

2. Nonpower License

Issuing a nonpower license would not provide a long-term resolution of the issues. A nonpower license is a temporary license that the Commission would terminate whenever it determines that another governmental agency would assume regulatory authority and supervision over the lands and facilities covered by the nonpower license. In this case, no government agency has suggested its willingness or ability to do so. No party has sought a nonpower license, and we have no basis for concluding that the project should no longer be used to produce power. Issuing a nonpower license, therefore, is not a realistic alternative in these circumstances.

3. Denial of a License and Decommissioning the Project

Project decommissioning could be accomplished with or without removing the diversion structure. Either alternative would involve denial of the license application and surrender or termination of the existing license with appropriate conditions. Because the power supplied by the project is needed by the City, a source of replacement power would have to be identified.

No participant has suggested decommissioning of the project without removing the diversion structure and we have no basis for recommending it.

a. Decommissioning With Removal of All Project Structures

We considered the benefits and costs of project retirement and removing the project structures and found it unreasonable.

In summary the effects of removal would be:

- The energy the project generates would be lost. The project currently produces about 26.2 GWh of electricity annually. The power is valuable because it reduces the amount of power the City has to buy.

- Removing project structures wouldn't change that Moyie Falls is an impassable upstream migratory barrier to bull trout and white sturgeon.

- Retiring and removing project structures, and controlling the sediments behind the dam would cost about $2,900,000.

- No participant has suggested that removal of all project structures (dam, penstock inlet, penstock, powerhouse, transmission line, and tailrace) would be appropriate, and we have no basis for recommending it.

IV. CONSULTATION AND COMPLIANCE

A. Agency Consultation

Commission regulations require applicants to consult with appropriate resource agencies before filing a license application. This consultation is the first step in complying with the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, and other federal statutes. Pre-filing consultation must be completed and documented. For the Moyie Project, the applicant completed all appropriate agency consultations.

After the Commission issued a public notice on December 11, 1997, stating the application was ready for environmental analysis, the following entities commented.

COMMENTING ENTITIES	DATE OF LETTER
Idaho Rivers United	February 6, 1998
Rivers Odysseys West, Inc.	February 7, 1998
United States Department of the Interior	February 9, 1998
American Whitewater Affiliation	February 9, 1998
U.S. Forest Service	March 25,1998

On March 10, 1998, the City filed a response to Idaho Rivers United, Rivers Odysseys West, Inc. and United States Department of the Interior comments.

B. Interventions

In addition to filing comments, organizations and individuals may petition to intervene and become a party to the licensing proceedings. The following entities filed for intervenor status.

INTERVENOR	FILING DATE OF MOTION TO INTERVENE
Idaho Rivers United	January 3, 1997
State of Idaho	January 3, 1997
Rivers Odysseys West, Inc.	January 8, 1997
American Whitewater Affiliation	February 10, 1998

C. Scoping

Before preparing this EA, we scoped the environmental issues for the Moyie River Hydroelectric Project to determine what issues and alternatives should be addressed. Scoping Document I, which asked for written comments on issues to be addressed in the EA, was issued on October 21, 1996. In addition to comments provided at the scoping meetings on November 19 and 20, 1996, written comments were received from the following entities.

COMMENTING ENTITIES	DATE OF LETTER
Idaho Rivers United	January 4, 1997
United States Department of Agriculture	January 6, 1997
The Greater Bonners Ferry Chamber of Commerce	January 9, 1997
Idaho Department of Parks and Recreation	January 10, 1997

A Scoping Document II was issued on August 19, 1997.

D. Comments on the DEA

The following agencies and non-governmental organizations submitted comments on the DEA.

NAME	DATE OF LETTER
Idaho Rivers United	October 6, 1998
City of Bonners Ferry	October 19, 1998
Idaho Department of Parks & Recreation	October 14, 1998
American Whitewater Affiliation	October 15, 1998
United States Forest Service	October 15, 1998
City of Bonners Ferry	November 19, 1998

E. Water Quality Certification

The City applied to the Idaho Division of Environmental Quality (IDEQ) on January 9, 1996, for a water quality certificate for the project, as required by Section 401 of the Clean Water Act. The IDEQ granted certification on July 11, 1996 (letter from Gwen P. Burr, IDEQ Regional Administrator, North Idaho Office), specifying 13 conditions to be included in a new license for the Moyie Project. The letter listing these conditions is included in Appendix A.

F. Columbia River Basin Fish and Wildlife Program

Columbia Basin Fish and Wildlife

Under section 4(h) of the Northwest Power Planning and Conservation Act, the Northwest Power Planning Council (Council) developed the Columbia River Basin Fish and Wildlife Program (Program) to protect, mitigate, and enhance the fish and wildlife resources associated with development and operation of hydroelectric projects within the Columbia River basin. Section 4(h) states that responsible federal and state agencies should provide equitable treatment for fish and wildlife resources, in addition to other purposes for which hydropower is developed, and that these agencies should take into account to the fullest extent practicable, the program adopted under the Pacific Northwest Power Planning and Conservation Act.

The Program directs agencies to consult with federal and state fish and wildlife agencies, appropriate Indian tribes, and the Council during the study, design, construction, and operation of any hydroelectric development in the basin [Section 12.1A.1 and 12.1A.2]. The Commission's regulations require applicants to initiate prefiling consultation with the appropriate federal and state fish and wildlife agencies, and the Tribes and provide these groups with post-filing opportunities to review and to comment on the application. Consultation as required by the Program and the Commission's regulations has occurred.

The Program also states that authorization for new hydroelectric projects should include conditions to mitigate the impacts of the project on fish and wildlife resources (sections 12.1A.1 and 12.1A.2). The specific provisions of section 12.1A.1 and 12.1A.2 that apply to the proposed project call for: (1) consultation with the fish and wildlife managers and the Council throughout the study, design, and operation of the project; (2) flows and reservoir levels of specific quantity and quality to protect spawning, incubation, rearing, and migration; (3) assurance that the project will not degrade water quality beyond the point necessary to sustain sensitive fish species (as

designated in consultation with fish managers); and (4) providing artificial nest structures when appropriate.

Our recommendations, including a run-of-river operation, a plan for removal and treatment of sediment accumulated behind the dam, and installation of goose nest boxes are discussed in sections V.C.1 and 2 of this EA. Our recommendations are consistent with applicable provisions of the Program listed above. Further, a condition of any license issued would reserve to the Commission the authority to require future alterations in project structures and operations to take into account, to the fullest extent practicable, the applicable provisions of the program.

As part of the Program, the Council designated over 40,000 miles of river in the Pacific Northwest region as not being suitable for hydroelectric development ("protected areas"). The project is located within a protected area designated for resident fish. However, because this is a relicensing proceeding for an existing project, it is not affected by "protected areas".1/ Even so, the Commission is expected to take protected area designations into account to the fullest extent practicable and to take the Council's judgement into account and implement that judgement in licensing decisions, unless the Commission's legal responsibilities require otherwise. 2/ The Council provided no recommendations and we have considered protection of fish and wildlife resources in protected areas through the recommendations identified above and discussed in sections V.C.1 and 2 of this EA.

V. ENVIRONMENTAL ANALYSIS

In this section, we first describe the general environmental setting of the project area. We then discuss the site-specific and cumulative effects of the resources affected by the project, including the effects of the proposed action, action alternatives, and no action.

1/ The language of section 12.2A of the Program says "The following are not affected by protected areas:

- any hydroelectric facility or its existing impoundment that as of August 10, 1988, had been licensed or exempted from licensing by the Federal Energy Regulatory Commission;
- the relicensing of such hydroelectric facility or its existing impoundment; ...

2/ See section 12.2A.2 of the Program.

A. General Description of the Project site and Moyie River Basin

The Moyie River originates in Canada, and flows southerly into Idaho. The Moyie River is a major tributary to the Kootenai River. The Moyie River has a drainage area of about 760 square miles and is about 79 miles long. The Moyie River Hydroelectric Project is located on Moyie River about 1.5 miles upstream from its confluence with the Kootenai River in Boundary County, Idaho. Average annual flow in the vicinity of the project is 885 cubic feet per second. The flow extremes range from 40 cfs to 11,000 cfs.

The climate of the basin is subject to both oceanic and continental influences. Recorded average daily temperatures vary from about 14 degrees Fahrenheit (°F) in January to mid 60°F in July and August. The annual precipitation in the basin is about 28 inches.

The Moyie River Hydroelectric Project develops the hydroelectric potential of Moyie Falls. Moyie River above the project is used for white water rafting.

B. Cumulative Impacts

According to the Council on Environmental Quality's regulations for implementing NEPA, 40 CFR §1508.7, an action may cause cumulative environmental impacts if its impacts overlap in space and/or time with impacts of past, present and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time, including hydropower and other land and water development activities.

We reviewed all resource areas to determine which could be cumulatively affected in the project area by both hydroelectric and non-hydroelectric activities.

There are no other hydroelectric facilities on the Moyie River, and no federal or state agency or other commenter has raised the issue of cumulative impacts. Also, we identified no non-hydroelectric activities in the area which, if combined with impacts of the Moyie Project, would have a cumulative impact. We therefore identified no resources that could be cumulatively affected.

C. Proposed Action and Other Recommended Environmental Measures

Only the resources that would be affected, or about which comments have been made by interested parties, are included in detail in this DEA and discussed in this section. After scoping we determined that geology and soils resources by itself, was not

an issue. However, land-disturbing activities associated with the removal of accumulated sediments from behind the project dam could have an affect on water quality and therefore could adversely affect fish and wildlife. Therefore, the removal of accumulated sediments from behind the dam is discussed in the Aquatic Resources Section, water quality, section 1.

1. Aquatic Resources

Affected Environment

a. Water Quantity

Monthly maximum, minimum and average flows for the Moyie River at the Eileen gauge, located about 3 miles (mi) above the project dam, are summarized in table 1. Flow records are available for that station from 1928 to 1978, when the gage was decommissioned; flows ranged from 40-11,000 cubic feet per second (cfs) during this period, with an annual average of 885 cfs. Because there are no major tributaries between the gauge and the project, the gauged flows approximate flows into the project.

Table 1. Moyie River discharges at Eileen, Idaho; mean daily flows by month. Data from Idaho Department of Water Resources (IDWR).

Month	Maximum cfs	Minimum cfs	Average cfs
October	3,280	70	241
November	1,630	56	298
December	3,670	63	321
January	2,400	50	246
February	3,700	75	264
March	2,890	70	396
April	8,380	132	1,675
May	9,860	550	3,852
June	7,800	240	2,375
July	3,230	110	592
August	554	68	185
September	1,190	64	163

Water enters the project through a small, elongated (1.1 mi long, 30.5 acre, 450 acre-foot), steep-sided reservoir.

Reservoir width does not exceed 300 feet (ft). Water turnover rate in the reservoir is rapid, ranging from 1.5 hours (hr) during May to 35 hrs during September, the driest month; reservoir water residence time is sufficiently short that seasonal thermal stratification does not develop. Because this is a run-of-river project, the reservoir is normally full (surface elevation about 2,030 ft), but surface elevation does vary with natural flows. During high flow periods, when water spills over the dam, surface elevation may be as much as 5 ft above normal pool elevation.

Project water use is regulated by the Idaho Department of Water Resources (IDWR). Water for generation is diverted from the reservoir at the dam through a tunnel and penstock to three powerhouses about 0.25 mi downstream, then returned to the river. Maximum diversion is 360 cfs. River flows above that level are spilled over the dam into a 0.25 mi bypassed reach between the dam and the powerhouses. Under current operation, this occurs about 42 percent of the time. When flows into the reservoir do not exceed 360 cfs, usually during June-February, the bypassed reach is dry for prolonged periods.

The City does not plan to expand capacity of the project or alter the existing flow regime in any way other than releasing 9 cfs minimum flow into the bypassed reach from 8:00 am until a half hour before sunset on weekends during June-August to provide scenic flows through the bypassed reach and over Moyie Falls.

b. Water Quality

The Moyie River is designated as special resources waters by the Idaho Department of Health and Welfare, a designation applied to waters of unique ecological significance, outstanding recreational quality, or high water quality exceeding the criteria for primary contact recreation and coldwater biota. Moyie River water quality is also given a rating of High by the Idaho Department of Health and Welfare, Division of Environmental Quality. Water quality data for the river are limited, however, and there are no known studies for the river in the United States, presumably because pollution sources in the watershed are limited and no significant ongoing water quality problems have emerged. No National Pollution Discharge Elimination System permits have been issued for point source discharges upstream from the project. Although some water quality degradation may have occurred in the past resulting from mining, timber harvesting, and road and railroad maintenance, there is no evidence of continuing abuse and persistent impacts.

c. Fisheries Resources

Fish habitats important to evaluating relicensing impacts are the Moyie reservoir, which lies within project boundaries, and the Moyie River between the powerhouses and falls at the lower end of the bypassed reach and the river's confluence with the Kootenai River, roughly 1.5 mi downstream. Although the latter area is outside the project boundary, both areas are important because they could potentially serve as downstream migratory routes and habitat for bull trout (*Salvelinus confluentus*). The river below the project is also important because it could possibly provide habitat for the white sturgeon (*Acipenser transmontanus*), although the falls are an impassible upstream migratory barrier to both fish. On June 10, 1998, bull trout in the Columbia Basin, including the Kootenai River, was federally listed as a threatened species.3/ White sturgeon in the Kootenai River are also listed as an endangered species (FWS, 1998). During 1994, the City evaluated fishery conditions in the project area downstream to the Kootenai, focusing on the Moyie below the bypassed reach.

No data are available on the exact composition of the Moyie reservoir fish fauna, but the reservoir's physical characteristics are not favorable to a good fishery. The impoundment is small and narrow, with steep banks that support little shoreline vegetation. Water passes through the reservoir very rapidly; water residence time averages 17 hrs during the warm season. The rapid exchange rate prevents development of a lake-dwelling plankton community which, in turn, probably severely limits fish productivity. Fish species representative of the watershed (table 2) may occupy the reservoir, but angler usage is low and trout are not likely to be abundant because the reservoir is an inferior trout habitat. Hatchery fish are not released there.

Table 2. 1994 Lower Moyie River fish survey summary.

Common name	Scientific name	Observed during applicant 1994 survey	Expected in watershed
Rainbow trout	*Oncorhynchus mykiss*	X	X
Kokanee salmon	*O. nerka*	X	
Cutthroat trout	*O. clarki*		X
Bull trout	*Salvelinus confluentus*		X
Brook trout	*S. Fontinalis*		X

3/ 63 Fed. Reg. 31647 (June 10, 1998).

Common name	Scientific name	Observed during applicant 1994 survey	Expected in watershed
Northern squawfish	*Ptychocheilus oregonensis*	X	X
Mountain whitefish	*Prosopium williamsoni*	X	X
Longnose dace	*Rhinichthys cataractae*	X	X
Largescale sucker	*Catostomus macrocheilus*		X
Longnose sucker	*C. catostomus*	X	X
Torrent sculpin	*Cottus rhotheus*	X	X
Slimy sculpin	*C. cognatos*	X	X
Redside shiner	*Richardsonius balteatus*	X	X
Largemouth bass	*Micropterus salmoides*	X	X
Black crappie	*Pomoxis nigromaculatus*		X
Peamouth	*Mylocheilus caurium*		X
Black bullhead	*Ictalurus melas*		X
Pumpkinseed	*Lepomis gibbosus*	X	X
Yellow perch	*Perca flavescens*		X

The Moyie River below the powerhouses and falls has two fish habitat components; an upstream area extending from the base of the bypassed reach to the mouth of Moyie Canyon, and a downstream area reaching from the canyon mouth to confluence with the Kootenai.

The upstream area is a high-gradient, riffle-pool environment bordered by steep-sided canyon walls descending into the channel in many places, and bearing little woodland or riparian vegetation. Upland canopy vegetation here is limited by the rocky, precipitous nature of the terrain.

The canyon mouth is about 0.8 mi above the river mouth, and the river bed between the canyon mouth and the Kootenai is low gradient and dominated by rocky glides. Topographic relief below

the canyon is considerably lower and the channel is more exposed; shorelines there are occupied by low-density stands of young willows and conifers set well back from the river.

The entire channel below the falls features many small rapids, cascades and a variety of pools, some up to 8 ft deep. Little to no large woody debris collects in the area to provide cover and augment fish habitats, probably because of high water velocity during runoff periods and shorelines not appropriate for lodging floating trees. Shading downstream is minimal, while shading in the canyon is considerably greater. Riparian vegetation is sparse throughout the location because of high seasonal flows, expansive cobble bars and bedrock substrates. Substrates throughout both areas are dominated by cobbles (greater than 70 percent) and gravel (about 20 percent), with very little finer sediments.

The overall quality of the fish habitat in the Moyie below the project can be characterized as good, and habitat types as diverse. Use of the area by coldwater species is probably limited, however, by lack of spawning areas in the highly cobbled river bed, lack of cover and high summer temperatures. For example, water temperatures rose to 73°F during July 1995.

The lower Moyie fish fauna was sampled during July and October 1994, using electroshocking and snorkeling to survey general summer and fall population conditions. Table 2 lists species encountered during the survey, as well as those the Idaho Department of Fish and Game reported to the applicant as Moyie watershed occupants.

Many resident watershed species appeared in the lower Moyie. The survey showed a clear pattern of seasonal use of the entire area sampled by different species, but no meaningful differences between canyon and downstream habitats.

Suckers comprised 61 percent of the population sampled during July, when the fish fauna was dominated by suckers, whitefish, squawfish and rainbow trout. During October, suckers, whitefish and squawfish were not found in the area examined, presumably having moved downstream into the warmer (55 °F vs 48 °F) Kootenai. The Lower Moyie fauna was dominated by kokanee (about 90 percent of large fish observed) and rainbow trout. Kokanee were observed spawning. Total population density in the area appeared to be much higher during summer than fall; 347 large fish primarily representing 4 species appeared to snorkelers during July, whereas only 69 fish representing two species appeared during October. A variety of forage species were present in the study area at both times, and in particular abundance during July. Centrarchid and percid game species also appeared during sampling.

White sturgeon and bull trout did not appear during the survey.

Environmental Impacts and Recommendations

a. Water Quantity

The City proposes to continue operating the project in a run-of-river mode. Run-of-river flow would benefit fisheries resources by limiting reservoir level fluctuations above the dam and providing a near-natural flow pattern downstream from the project. Therefore, we recommend the project be operated run-of-river.

b. Water Quality

Because the City proposes to continue operating the project as at present, we anticipate a new license would result in no long-term change in prevailing high water quality conditions in the project area. Operation and maintenance of a gated drain at the base of the dam, however, produces occasional short-term, artificial increases in turbidity immediately behind and below the dam that could have detrimental effects on environmental conditions in those areas. Elevated turbidity can inhibit light penetration hence photosynthesis and productivity in the water column, and can result in sedimentation that modifies the river bottom as a habitat for fish and invertebrates.

The City periodically opens and closes a 72-inch slidegate covering the drain to test proper gate function, which is essential to dam safety. The exercise lasts 1.5-2 hr, and can result in limited disturbance of the reservoir bottom and downstream release of sediments from behind the dam. The valve is typically operated during spring runoff to minimize turbidity impacts.

Moreover, in 1992, the City initiated limited hydraulic dredging behind the dam with a portable pump to remove sediments from near the valve and penstock openings to minimize downstream impacts of opening the slidegate. Slurry is pumped into two evaporation and settling ponds on City property about 3,000 ft upstream from the dam on the west side of the reservoir. Liquid does not discharge from these retention ponds. Dredging takes about one week, and the City intends to dredge sediments as required in the future. Dredging may only be necessary at intervals of many years. Dredging would occur during spring runoff when water is abundant, and would remove only small amounts of water from the river.

On May 31 and June 25-26, 1991, the City monitored water quality in the project vicinity during drain valve operations, and turbidity was a measured variable. Conditions above the

project served as background control to be compared to those below the project in the Moyie and Kootenai rivers during sediment releases. Results indicate measurable but small increases in turbidity below the project as compared to the upstream control value during gate operation, with background values in the Kootenai exceeding all turbidity values measured in the Moyie. The highest turbidity level detected during monitoring was 3.5 Nephelometric Turbidity Units (NTU), considerably lower than the 25-50 NTU upper limits imposed during dredging and drain valve operation in the Water Quality Certificate for the project. Temperature and dissolved oxygen(DO) were also monitored, but exhibited no obvious trends related to gate operations or water quality degradation.

Based on this analysis we expect that water quality in the project area is generally high, and the only important impact of continued operations would be minor downstream turbidity increases during dredging and drain valve operations. Moreover, the turbidity monitoring requirements and standards for these activities specified in the state Water Quality Certificate for the project should provide ample protection to water quality during these activities. However, because dredging could affect water quality, we recommend that the City develop a dredging plan in consultation with the resource agencies.

Pursuant to Section 10(j) of the FPA, Interior recommended that the applicant be required to develop a plan in consultation with appropriate resource agencies covering all important aspects of removing and treating sediments from behind the dam. Consistent with the above analyses, we adopt and endorse this recommendation.

During consultation and scoping no resource agency specifically requested water quality studies or monitoring, but the Kootenai Tribe recommended different investigations of baseline water quality in the river, nutrients and contaminants in the reservoir, and atmospheric gas supersaturation below the dam. The tribal requests, however, were not supported by evidence demonstrating a need for such studies. Given the apparent high water quality throughout the project area, and absence of evidence for degrading conditions associated with continuing project operations that merit study or monitoring (other than turbidity), we see no need to require such investigations.

In Scoping Documents I and II we propose to study the impacts of project operations upon nutrient availability and aquatic productivity, and upon temperature and DO relationships in the Moyie and Kootenai rivers, as aquatic resource issues that could be considered in this assessment. We find no evidence showing that current or proposed project operations would have detrimental impacts upon these resources parameters.

c. Fisheries Resources

The fish survey described above demonstrated that the lower Moyie supports a diverse ichthyofauna representative of the watershed including salmonid game species, namely rainbow trout and kokanee, and may provide a reproductive habitat for kokanee. Although less information is available for the reservoir, it also appears to be a suitable habitat for many watershed inhabitants including at least one game species, rainbow trout. Because this situation persists under existing operating conditions for the Moyie Project, and the City proposes no operational changes other than occasional 9 cfs minimum flows below the dam, we conclude that licensing the project as proposed would impose no burdens additional to those of the present on a seemingly healthy fishery resource.

In Scoping Documents we identified effects of project operations on turbine-related fish mortality as an issue that could be evaluated during this assessment.

Resource agencies did not recommend a field entrainment mortality study, but during consultation IDFG identified bull trout as an endangered species that could, potentially, pass through the project from areas further upstream. Although bull trout do not occupy the project area and probably never have used the lower Moyie for rearing, the applicant evaluated hypothetical impacts of bull trout moving through the project, including through turbine entrainment, from upstream areas.

The results indicate that almost all bull trout passing through the project would be fry, and more than 90 percent of those would pass over the spillway. For the small number of fry experiencing turbine entrainment, mortality estimates are less than 5 percent. Overall population impacts of entrainment would be negligible, assuming the species could move through the project.

Based on this evaluation, and absence of evidence that turbine mortality is a problem here for bull trout or resident species, we conclude that under existing and proposed operating conditions turbine entrainment would not have a measurable negative impact upon fish in the project area.

Unavoidable Adverse Impacts: None.

2. Terrestrial Resources

Affected Environment

The project is located in a deeply incised canyon in the panhandle of northern Idaho. The canyon walls are densely forested and composed mostly of mature mixed-conifer forest

habitat types, including Douglas fir/ninebark, Douglas fir/pinegrass, grand fir, western red cedar/pachistima, and western hemlock/pachistima. The riparian community consists of narrow bands of vegetation along the reservoir and the banks of the river. The riparian community is dominated by willow, red-osier dogwood, and occasionally alder, with a grass/forb understory.

The project area, particularly the reservoir, is occasionally used by white-tailed deer, elk, black bear, mountain lion, and migratory waterfowl. Waterfowl observed in the project vicinity include harlequin duck, mallard, Canada geese, and merganser (letter from Cal Groen, Chief, Natural Resources Policy Bureau, Idaho Fish and Game, Boise, Idaho, June 30, 1993).

Environmental Impacts and Recommendations

a. Waterfowl Enhancements

The project reservoir provides some waterfowl nesting and foraging habitat. In their March 6, 1996, comments on the draft license application, the FWS encouraged the City to consider enhancements for migratory waterfowl and shorebirds in the project area, including the possibility of using the settlement/evaporation ponds as possible enhancement sites. The City believes that the settling ponds don't offer any waterfowl habitat because they hold water for only a few days when they are used for disposal of dredged material from behind the dam, which is infrequent. The City proposes to install one or two goose nest boxes in the upper part of the project reservoir to enhance waterfowl habitat.

The FWS didn't include any waterfowl enhancement measures in their recommendations filed in response to the December 11, 1997, Ready for Environmental Analysis (REA) Notice. We agree with the City that the settling ponds would not provide suitable waterfowl habitat. Because the City proposes no change to project operation, we conclude that continued project operation would not impact migratory waterfowl and that the proposed nest boxes would enhance waterfowl habitat. We recommend that the City install and maintain two goose nest boxes. The City should also consult with the Idaho Department of Fish and Game (IDFG) in deciding the location of the nest boxes.

b. Transmission Line Impacts

Transmission lines can represent electrocution and collision hazards to large raptors. Electrocution results when a bird simultaneously touches the phase and ground wires with their wings or other parts of the body while perched on the transmission line. In their comments on the draft application, the IDFG requested information on the status of raptor proofing

of the project transmission line (letter from Cal Groen, Chief, Natural Resources Policy Bureau, IDFG, Boise, Idaho, June 30, 1993). The 1.3 mile-long, 13.8-kV transmission line is not raptor-proofed. We know of no problems of raptor electrocution or collision occurring along the project transmission line. Surrounding forest trees appear to provide suitable alternative perch sites, reducing the potential of selecting the power poles as perch sites. Intervening topography and vegetation reduce the potential for collisions. No agency has recommended raptor protection measures. Because of the short distance and apparent lack of problems, we do not recommend any protective measures at this time.

Unavoidable Adverse Impacts: None.

3. Threatened and Endangered Species

Affected Environment

Federally listed species that may occur in the project area include the endangered gray wolf (Canis lupus) and white sturgeon (Acipenser transmontanus), and the threatened bull trout (*Salvelinus confluentus*)and bald eagle (*Haliaeetus leucocephalus*) (letter from Philip Laumeyer, Field Supervisor, FWS, Spokane, Washington, February 4, 1998).4/ The harlequin duck (*Histrionicus histrionicus*), a species of concern to the State of Idaho and a Forest Service (FS) sensitive species, also uses fast flowing reaches of the Moyie River in the project area.

No bald eagle nesting or communal roosts sites were reported by the City. However, bald eagles winter along the Kootenai River and may occasionally move through the project area (City of Bonners Ferry 1996). Gray wolves are known to occur in Boundary County, but not the project area (City of Bonners Ferry 1996). Chip Korsi, IDFG biologist, says that the harlequin duck successfully breeds and rears its young in the Moyie River from just above the project reservoir up to about Meadow Creek, over a mile above the project reservoir (FERC 1996).

There is no record that bull trout, a listed threatened species, ever occupied the lower Moyie River below the falls, the project reservoir, or the 25 mi of the river within the United States, and no specimens were taken during the 1994 collections.

4/ The City reported that woodland caribou and grizzly bear occur in Boundary County, but not in the project area. The FWS didn't identify these species as being present in the area. Therefore, we don't believe the project would affect these species and further analysis of potential impacts is not required.

White sturgeon, a listed endangered species, also has not been demonstrated to inhabit the lower Moyie, has not been observed in the project area and did not appear in the 1994 survey.

The FWS also indicated the westslope cutthroat trout to be a species of concern that may occur within the project area. We found no evidence of presence of the species in or near the project vicinity. We therefore conclude that evaluating potential project impacts upon this resource is not necessary.

Environmental Impacts and Recommendations

Bald eagle: No changes in project operation are proposed that would result in the loss or alteration of suitable nesting or foraging habitat. Bald eagles occur in the project area only infrequently, such that maintenance operations would not likely disturb any foraging or roosting bald eagles that may visit the area. For these reasons we conclude that continued operation of the project as proposed would not affect the bald eagle.

Gray wolf: Because gray wolves are not known to use the project area and no changes in the project operation are proposed that would alter the surrounding habitats that might be used by gray wolves, we conclude that continued project operation would not affect the gray wolf.

Harlequin duck: In their February 12, 1996, comments on the draft application, IDFG suggested that, for the inundation of about 1 mile of harlequin duck habitat by the project reservoir, consideration be given to conservation easements and/or habitat improvement along the Moyie River or its tributary, Deer Creek, in areas with recently documented harlequin duck use. Deer Creek is a tributary that enters the Moyie above the project reservoir, but outside the project boundary. Chip Korsi (IDFG biologist) also expressed concern that the proposed boating facility enhancements may increase whitewater rafting upstream of the project to a point that it would begin to impact harlequin duck nesting and rearing (FERC 1996). The IDFG did not file any recommendations in response to December 11, 1997, REA Notice.

The City believes that given the sparse distribution of breeding harlequin ducks in north Idaho and the lack of historical evidence that the 1-mile-long project reservoir was used for nesting, the probability that the project resulted in impacts is low. The City sees no reason to mitigate for harlequin ducks and sees no opportunities to enhance their breeding habitat within the project boundaries.

The harlequin duck migrates inland from marine environments to nest and forage along fast flowing streams, preferring areas of low human disturbance. The slack water of the project

reservoir offers limited habitat to harlequin ducks, except as possible loafing sites during migratory movements. Harlequin ducks are not known to use the project reservoir or the Moyie River below the project (FERC 1996). No changes in operation are proposed that would affect harlequin duck habitat. For these reasons, we don't recommend any enhancement measures for harlequin ducks.

Both the FS and IDFG believe that harlequin duck populations seem to be doing fine under the present level of boating use, but increases in river recreation could preclude future reproduction (FERC 1996; letter from Dale Bosworth, Regional Forester, FS, Missoula, MT, October 15, 1998). The peak of the boating season (April through June) coincides with the ducks courtship and nesting periods (FERC 1996). Unintentional disturbance from the recreating public has been shown to drive harlequin ducks from their nest sites. In 1989 in Alberta's Jasper National Park, increased rafting and kayaking eliminated nesting in a prime section of the Maligne River until 1993 when human activity was banned from that stretch of the river (Turback 1997). The FS also believes that increased whitewater rafting above the canyon could adversely affect the harlequin duck, but that it is unlikely that such limited improvements would increase use (letter from Hal Salwasser, Regional Forester, FS, Missoula, MT, January 6, 1997; letter from Dale N. Bosworth, Regional Forester, FS, Missoula, MT, March, 25, 1998). We conclude that our recommended measures (including providing porta-toilets, picnic table, cleanup day, installing a trash can, and minor improvements to the take-out) would not increase use or impact the harlequin duck.

Bull Trout: Temperatures in the lower Moyie at different times are probably too high to permit occupation or use by the species, and the falls is a barrier to potential upstream movements. Bull trout appear in the river and its tributaries well upstream from the project, but possible impacts of downstream movements of adults and fry from those areas upon populations in the Kootenai drainage below the project are minimal to non-existent. For these reasons, we conclude that licensing the project under the conditions proposed would not further jeopardize the species.

White Sturgeon: During Stage I consultation IDFG indicated that the species is not a concern to them for the Moyie River Hydroelectric Project. Use of the river by white sturgeon for spawning is highly unlikely because of its small size, and the falls are a barrier to potential upstream movements. Because of this, we conclude that licensing the project under the conditions proposed would not affect the species.

Conclusion: We find that construction and operation of the project would not affect any threatened and endangered species.

Moreover, continued operation would not jeopardize the continued existence of harlequin ducks in northern Idaho.

Unavoidable Adverse Impacts: None.

4. Aesthetic Resources

Affected Environment

The Moyie River Hydroelectric Project is located in a scenic canyon setting. Directly downstream of the project dam is Moyie Falls. Moyie Falls is a series of falls, located mostly within the 0.25-mile-long bypassed reach, with a total drop in elevation of about 40 feet. The falls are visible primarily from Old Highway 2 and are cited in a few regional travel guidebooks as an area attraction. 5/

All incoming flows greater than 360 cfs are spilled over the dam and into the bypassed reach. As table 1 shows, the flow in the bypassed reach is the greatest during spring run-off, typically during April, May, and June. When flows are less than 360 cfs, no water is spilled over the dam. Thus, the bypassed reach is typically dry during the late summer and fall months.

Environmental Impacts

Releasing minimum flows at the dam into the bypassed reach can enhance the aesthetics of the project site. The City studied this issue and proposes to release a 9-cfs minimum flow into the bypassed reach from 8:00 am until a half hour before sunset on all weekends during June, July, and August.

The River Odysseys West, Inc. (ROW) and Idaho Rivers United (Idaho Rivers) recommend that the City guarantee that 200 cfs will flow over the Moyie Falls during the same summer weekends as proposed by the City (letters from Peter Grubb, President, ROW, Inc., Coeur d'Alene, Idaho, February 7, 1998, and Liz Paul, Idaho Rivers United, Boise, Idaho, February 9, 1998). ROW and Idaho Rivers state that their recommended flows are needed to meet viewing needs. No other entity, governmental organization, or member of the public has recommended or requested specific

---

5/ In the Scoping Document II, we said we would assess the effects of the project facilities as viewed from Highway 2 and the overlook adjacent to highway 2. We have received no comments or recommendations on this issue. Since the project facilities are not readily visible from the Highway 2 overlook and the City proposes no physical changes to the project facilities, we have eliminated this issue from further analysis.

bypassed reach flows greater than 9 cfs (reply comments from the City of Bonners Ferry, Idaho, March 10, 1998).

The City's proposal is based upon, among other things, a visual resource study conducted by CH2M Hill which examined the visual impacts of various flows in the river and over Moyie Falls (City of Bonners Ferry 1996). The study methodology involved participants viewing and rating videotapes and still photographs of seven various flow scenes (0 cfs, 9 cfs, 27 cfs, 75 cfs, 220 cfs, 577 cfs, and 1,193 cfs) from two vantage points normally available to the public for viewing the Moyie River canyon and Moyie Falls. The participants, made up of three groups, represented a broad cross section of the population. Two of the groups, senior citizens and a chamber of commerce, were located in northern Idaho, and the third group, a college class, was from southern Idaho. Data obtained from the ratings were used to establish a minimum acceptable flow rate and an optimum, or most pleasing, flow rate from a visual standpoint. 6/

The study concluded that:

- For the river and canyon scenes, flows as low as 9 cfs were acceptable viewing for 82 percent of viewers; and for Moyie Falls, flows as low as 9 cfs were acceptable viewing for 62 percent of the viewers,
- For the river and canyon scenes, 27 cfs was acceptable viewing for 77 percent of viewers and 75 cfs was acceptable viewing for 89 percent of viewers.

  For Moyie Falls, 27 cfs was acceptable viewing for 65 percent of viewers and 75 cfs was acceptable viewing for 77 percent of viewers,
- The optimum flow from a visual resource standpoint in the river and canyon was 220 cfs,
- From a visual standpoint, there is no optimum flow of water over the Moyie Falls; the visual resource was perceived to improve with increasing flows up to 1,193 cfs, and
- The Moyie Falls are more dependent upon higher flow levels for visual acceptability than the river and canyon.

6/ Analysis of the study suggested a positive correlation between scenic beauty and the independent variables of water (percent of scene in water) and water sound. Thus, the more that water was in view and greater the sound of running water, the more the scene was judged to have positive visual values.

The spillage of flows greater than or equal to 9 cfs into the bypassed reach provides acceptable viewing experiences of the Moyie Falls and the river and canyon. High quality viewing opportunities typically occur during the spring run-off months of April, May, and June. Presently, when river flows are less than 360 cfs (into the reservoir), all the flow is diverted to the powerhouse for generation. Typically this occurs during the summer and fall months. When this occurs the viewing quality of the Moyie Falls and the river and canyon is not acceptable for viewing enjoyment to most people.

Adding the proposed minimum flow regime to existing conditions would ensure that acceptable flows from a visual standpoint would exist during all late spring and summer weekends (May through August) during daylight hours, times when sightseeing and visits are most likely to occur. Providing minimum flows during daylight hours of summer weekends probably would produce additional aesthetic value because this is a time of year when additional visitors can be easily attracted to the site. 7/

Increasing the minimum flow regime from 9 cfs to 200 cfs, as recommended by ROW and Idaho Rivers, would further enhance the aesthetics of the Moyie Falls and the river and canyon.

We conclude that the proposed 9 cfs minimum flow during daylight hours of summer weekends would significantly enhance the scenic beauty of the Moyie River canyon and Moyie Falls over baseline conditions. We considered the flow recommendations of ROW and Idaho Rivers and conclude additional benefits would result. However, based on the results of the visual resource study, the greatest incremental increase in aesthetic benefits per cfs released occurs between 0 cfs and 9 cfs. As a result of comments on the DEA, there appears to be agreement that daily flow releases should end at dusk, but the City also now proposes a variation in the initiation of the daily flow releases. The timing of the daily flow releases should be an element of the revised recreation plan.

Because releasing minimum flows into the bypassed reach also affects generation, we make our recommendation in section VII.

The City has not yet selected a mechanism to release minimum flows into the bypassed reach. If we require a minimum flow in Section VII, we recommend that the City design the release mechanism in consultation with IDWR.

7/ The issue of safe access for viewing is assessed in Recreation and Land Use, section C.6.

Unavoidable Adverse Impacts: None.

5. Cultural Resources

Affected Environment

The City conducted a cultural resources report of the project area, 8/ which identified six archeological and historic sites. The report concluded that four of the six sites should be considered eligible for the National Register of Historic Places and two sites are not eligible. Of the four eligible sites, three represent mining and transportation during the early 20th Century, while the fourth, the Moyie River Hydroelectric Project itself, represents the development of hydroelectric power in northern Idaho during the same time period.

The Idaho State Historical Preservation Officer (SHPO) concurred with the findings of the archaeological report (letter from Robert M. Yohe II, State Archaeologist and Deputy SHPO, Idaho State Historical Society, Boise, Idaho, October 2, 1995). The SHPO concluded that the continued operation and maintenance of the project facilities will not impact the four eligible sites. Further, the SHPO recommends if in the future it is anticipated that project operation and maintenance will affect the known sites, or if unknown sites are discovered, additional research will be necessary.

Environmental Impacts and Recommendations

Future land-disturbing activities or maintenance activities could affect identified or unknown cultural resources.

The Department of the Interior (Interior), Bureau of Indian Affairs is concerned that the project has the potential to affect the off-reservation treaty-reserved rights and resources or interests retained by tribes because the project is located within the area ceded to the United States Government by the Confederated Tribes of the Flathead Indian Reservation. Therefore, Interior recommends the applicant be required to coordinate and document further planning activities with the Tribal Councils and the Superintendents of the Bureau of Indian Affairs, Flathead Agency, and the Northern Idaho Agency.

The City proposes to prepare documentation of the four eligible historic sites in the project area for inclusion in the National Register of Historic Places.

8/ The Northwest Archaeological Associates, Inc. did the survey for the City, July 14, 1995.

We agree with the findings of the archaeological report and the SHPO and fully support the City's efforts to have the four eligible sites listed in the National Register of Historic Places. We also agree that the continued operation of the Moyie River Hydroelectric Project would not affect the historical integrity of the eligible sites. But if land-disturbing activities become necessary in the future, additional studies will be required. Also, routine repair and maintenance work could alter the historical integrity of the project facilities, other known sites, and sites not previously identified.

Therefore, to ensure the historical integrity of the project facilities, and other historical sites are not affected by the continued operation and maintenance and repair of the project, we recommend that the City prepare a cultural resource management plan. The plan needs to be prepared in consultation with the SHPO, the Tribal Councils, the Superintendents of the Bureau of Indian Affairs, Flathead Agency, and the Northern Idaho Agency and should be based on the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The plan shall include but not be limited to: (1) the steps that would be followed to protect known sites, or unknown sites if discovered, from impacts caused by land-disturbing activities or project operation and maintenance; and (2) a schedule to evaluate the significance of the sites and to avoid or mitigate any impacts to National Register eligible sites. The plan should be filed for Commission approval, together with the written comments from the consulted parties. Steps should be taken to protect eligible sites from further impact until notified by the Commission that all these requirements have been satisfied.

Unavoidable Adverse Impacts: None.

6. Recreation and Land Use Resources

Affected Environment

The primary recreational uses at the project are whitewater boating and sight-seeing, although no developed recreational facilities exist at the project site. An undeveloped river access site exists on the west side of the reservoir, which is used mostly by whitewater boaters as a take-out location after boating the Moyie River upstream of the reservoir. Boating on the Moyie River typically occurs April through June, when flows are high due to spring run-off. An undeveloped overview located adjacent to Old Highway 2 is occasionally used by the public to view Moyie Falls, with most visits occurring from May through August. The partially paved Old Highway 2 serves as the access road to the project. The road cuts across a steep section of the canyon at the location of the overview.

Estimates of the number of people who float the Moyie River and use the access site on the reservoir for a take-out range from around 500 to 4,000 per year. This use includes private boaters and trips provided by commercial outfitters. Approximately 1,000 additional people visit the project site per year, most of whom are interested in canyon scenery, waterfalls, river whitewater, and wildlife.

The City owns all of the project area land, except for a small parcel near the upstream end of the reservoir owned by the Forest Service. The City's management of the land focuses on the use of hydroelectric facilities to produce power. However, public access to and across the site is generally permitted in order to enable the public to use the reservoir for recreational purposes.

Environmental Impacts and Recommendations

The City proposes a recreation plan to enhance recreational opportunities at the project site (City of Bonners Ferry 1996, 1997, and 1998). Specifically, the City would:

- continue to provide public access to the reservoir take-out area by allowing: (1) vehicular access to the take-out site during the boating season, and at all other times when vehicular access can be safely maintained; and (2) pedestrian access year-round.

- enhance the whitewater boating take-out site by: (1) grading the take-out area and seeding the area with appropriate native grass species; (2) providing portable toilets during May and June; (3)installing a picnic table, a trash can, and signs encouraging visitors to clean up after themselves and designating the loading/unloading area; (4) sponsoring a community cleanup day each spring; and (5) maintaining the site.

- enhance viewing opportunities of Moyie Falls and adjacent scenes by: (1) providing an interpretive display, including a map, at the existing scenic overlook on the new Highway 2, subject to the Idaho Transportation Department's and Boundary County's approval; (2) constructing directional signs to the scenic viewpoint sites along Old Highway 2, subject to the City of Moyie Springs approval; and (3) developing a small, unpaved parking area adjoining Old Highway 2, which will include a trash can and an interpretive sign that directs people to a nearby viewpoint to see the waterfalls. 9/

9/ The City also proposes to providing minimum flows over the (continued...)

The ROW, Idaho Rivers United, and American Whitewater Affiliation (collectively the NGO's) 10/ generally agree with these proposed improvements and recommend the City provide the following two modified measures: provide portable toilets during April through July, and allow vehicular access to the reservoir year-round.

The Commission's regulations concerning recreational development at licensed project states that the Commission expects the licensee to ensure public access and recreational use of project lands and waters, including toilet accommodations if needed, based on the needs of the area and to the extent that such development is not inconsistent with the primary purposes of the project (see 18 CFR, part 2, section 7).

In this case, we conclude toilets should be available at the take-out site during the entire whitewater boating season. The NGO's recommendation for portable toilets during April through July, which is intended to completely capture the entire boating season, seems reasonable.

Public access to the project is more complex. Due to the project's remoteness and steep topography, the City is concerned about public safety, increased risk of forest fires, and the potential for increased vandalism. Both the NGO's and the City make valid points: the licensee has a responsibility to ensure the public can use and enjoy the resources of the project site, yet doing so should not jeopardize the public, the natural resources of the area, or the project. Primarily based on these concerns, the Forest Service has suggested an alternative access route leading to the upper end of the reservoir. The City council considered this alternative route, and supports the idea, however nothing has been done to develop the idea beyond a concept (letter from Dale Bosworth, Regional Forester, United States Forest Service, Region 1, Missoula, Montana, March 25, 1998).

The City's commitment to maintaining vehicular access to the take-out site during the boating season, and all other times when

9/ (...continued)
dam and Moyie Falls during daylight hours of summer weekends. We assess this proposal in Aesthetic Resources, section C.4.

10/ Letters from: Peter Grubb, President, ROW Inc., Coeur d'Alene, Idaho, February 7, 1998; Liz Paul, Idaho Rivers United, Boise, Idaho, February 9, 1998; and John Gangemi, Conservation Director, American Whitewater Affiliation, Bigfork, Montana, February 9, 1998.

vehicular access can be safely maintained, appears to include the primary recreation season--spring, summer, and fall. However, to evaluate this issue, more details are needed concerning those conditions or situations whereby the City may opt to limit vehicular access to the reservoir take-out area.

In summary, the City's proposed improvements at the take-out site and measures to enhance viewing opportunities seem justified and appropriate; final details should be prepared for Commission approval. In addition, the City should evaluate the alternative access route leading to the upper end of the reservoir and provide more information on when and why vehicular access may be limited to the project's present take-out site. This should be done in consultation with the Idaho Department of Parks and Recreation (IDPR), IDFG, FS, ROW, Idaho Rivers, and American Whitewater Affiliation (AWA), at a minimum, and in the form of a revised recreation plan. The revised plan should be filed with the Commission within 6 months from the date of any new license.

Unavoidable Adverse Impacts: None.

D. No-Action Alternative

Under the no-action alternative, the City would continue to operate the project under the terms of the original license. The environmental enhancements proposed by the City or that we recommend would not occur.

VI. DEVELOPMENTAL ANALYSIS

In this section, we analyze the project's use of the available water resources to generate hydropower, estimate the economic benefits of the project, and estimate the cost of various environmental protection, mitigation, and enhancement measures.

Through consultation with the appropriate resource agencies, the City has been made aware of the agencies' concerns with the current operation of the project. The City's proposed environmental measures are listed in Section III(A)2.

To calculate the economic benefits of continuing to operate the project, we compare the project costs for each alternative--the project as proposed and the project with staff-recommended enhancements--to the power "benefits", as represented by the cost of obtaining the same amount of capacity and energy using other resources. Consistent with the Commission's approach to economic analysis, we equate the power benefits of the project to the current (1998) cost the City would have to pay for the same amount of power using alternative resources; we don't consider any future inflation effects in our analysis.

For any alternative, a positive net annual power benefit shows how much less it would cost the City to use the project's power instead of an alternative power source; a negative net annual benefit shows how much more it would cost the City to use the project's power rather than an alternative power source.

The City uses the power from the Moyie River Project to reduce the power it buys from the Bonneville Power Administration (BPA). Since the City uses the project to reduce the amount of energy it purchases from the BPA, we base our estimate of project benefits on BPA's wholesale power rate to utilities.

Our economic studies are based on a 30-year period of analysis and presented as annual values. We estimated the City's cost of money would be 9% for our analysis.

Environmental Measures

In the EA, we looked at the following environmental measures proposed by the applicant: (a) providing goose nesting boxes, (b) preparing documentation of eligibility of historic sites, (c) providing and maintaining a picnic table, trash can and signs, (d) sponsoring a community cleanup day, (e) maintaining the white water boating takeout, and (f) providing and installing an interpretive display and directional signs to Moyie site. The economics of these measures is presented in Table 3.

The City proposed providing public toilets during the months of May and June. The NGO's generally agreed with this measure, but requested that portable toilets be provided April through July. The economics of the NGO's proposal is presented in Table 3.

Staff proposes to add the following measures to what the City proposes: (a) prepare a cultural resources management plan, and (b) evaluate providing an alternative access route leading to the upper reservoir. The economics of our measures is presented in Table 3.

We also looked at the following environmental measures that could affect the economic benefits of the Moyie River Project: (a) plan for dredging and disposing reservoir sediment, and (b) minimum flow release mechanism.

Table 3. Summary of the costs of the proposed and recommended environmental measures.

Enhancement Measure	Capital Cost	O&M Cost	Annual Cost
applicant proposed measures:			
plan for reservoir sediment dredging and disposal		$5,400	$5,400
goose nest boxes	$ 1,500		$ 150
prepare documentation of eligibility of historic sites	$15,000		$1,500
provide public toilets May and June		$ 200	$ 200
provide and maintain picnic table, trash can and signs	$ 200	$ 400	$ 420
sponsor a community cleanup day		$ 100	$ 100
maintain the white water boating takeout		$ 300	$ 300
provide and install an interpretive display	$ 500		$ 50
directional signs to the Moyie site	$ 1,000		$ 100
minimum flow release mechanism to release 9 cfs	$25,000		$2,400
staff proposed measures:			
prepare a cultural resources management plan	$5,000		$ 490
provide portable toilets during April through July		$ 400	$ 400
evaluate providing an alternative access route leading to the upper reservoir			minor cost
other measure:			
minimum flow release mechanism to release 27 cfs	$ 96,000		$ 9,600
minimum flow release mechanism to release 75 cfs	$267,000		$26,700
minimum flow release mechanism to release 200 cfs	$711,000		$69,200

Plan for Dredging and Disposing Reservoir Sediment

The City proposes to develop a plan for the dredging and disposing of reservoir sediment. *Dredging is needed to keep* sediments from accumulating in front of the intake structures for the penstock and the dewatering tube. Assuming a recurrence interval of 4 years it would cost the City $5,400 annually to dredge and dispose the sediment.

Minimum Flow Release Mechanism

In the Aesthetic Resources section of this EA, we decided that releasing minimum flows at the dam into the *bypassed reach* can enhance the aesthetics of the project site. The City studied this issue and proposes to release a 9-cfs minimum flow into the bypassed reach.

We estimate the City would spend about $25,000 to install a flow release mechanism to provide the 9-cfs flow. Also, since the release would reduce the project's generation, we estimate the annual cost of the lost generation ($200/year) and cost of the mechanism *($2,400/year) would be about $2,600*.

ROW and Idaho Rivers recommended the City provide a flow of 200 cfs. We estimate the City would spend about $711,000 to install a flow release mechanism to provide the 200-cfs flow. The annualized cost of the lost generation ($5,800/year) and cost of the mechanism ($69,200/year) would be about $75,000.

Flows between 9 cfs and 200 cfs, such as 27 cfs and 75 cfs, *which we studied in the Recreation Section, would have a total* annualized cost of $10,300 for 27 cfs and $28,800 for 75 cfs.

Economics of the Project

Based on the current economic conditions, the proposed project's annual cost under the City's proposal would be about $347,000 or 13.2 mills per kilowatt-hour (mills/kWh). The current annual value of the project's power would be about *$629,000 (23.9 mills/kWh)*.

To determine whether the proposed project is currently economically beneficial, we subtract the project's cost from the value of the project's power. Thus, based on current costs, the proposed project would cost $281,000 (10.7 mills/kWh) annually less than the current cost of alternative power.

With staff's proposed measures, the project would cost $280,000 (10.7 mills/kWh) annually less than the current cost of alternative power.

With releasing 200 cfs for aesthetics and with staff's proposed measures, the project would cost $212,000 (8.1 mills/kWh) annually less than the current cost of alternative power.

VII. COMPREHENSIVE DEVELOPMENT AND RECOMMENDED ALTERNATIVE

Sections 4(e) and 10(a)(1) of the FPA require the Commission to give equal consideration to all uses of the waterway on which the project is located. When the Commission reviews a hydropower project, the recreational, fish and wildlife, and other nondevelopmental values of the involved waterway are considered equally with its electric power and other developmental values.

Based on our independent review and evaluation of the existing project and its proposed operation, and the project with our additional recommended environmental measures, we have selected the project with our additional recommended environmental measures as the preferred alternative.

We recommend this alternative because: (1) issuance of a license would allow the City to continue to operate the project as a dependable source of electric energy for City residents; (2) the project would continue to contribute to the conservation of nonrenewable energy resources and reduce atmospheric pollution; and (3) the recommended environmental enhancement measures would protect fish and terrestrial resources and any newly discovered cultural resources, and enhance aesthetic resources.

We recommend that any license issued by the Commission for the Moyie River Hydroelectric Project require the City to:

(1) Continue dredging accumulated sediments in front of the intakes and deposit dredge spoil into containment ponds to protect water quality.

(2) Continue to operate the project run-of-river to ensure continuous flow in the river below the project and to minimize lake fluctuation to protect aquatic resources.

(3) Install one or two goose nest boxes in the upper reaches of the project reservoir to enhance waterfowl habitat.

(4) Release minimum flows of 9 cfs during daylight hours (8 am until dusk) during weekends in June, July and August to maintain the aesthetic quality of the Moyie Falls. The timing of the flow releases should be an element in the revised recreation plan.

(5) Prepare a cultural resources management plan to ensure the historical integrity of the project facilities, and other

historical sites are not affected by the continued operation and maintenance and repair of the project.

(6) Consult with the SHPO and use best management practices followed for the preservation of cultural resources, should there be a proposed change to the project or an archeological site discovered during project operation.

(7) File a revised recreation plan that would provide for (a) enhancement of the whitewater boating take-out site by providing portable toilets during April through July, (b) provide an interpretive display, including a map, at the existing scenic overlook on the new Highway 2, (c) construct directional signs to the scenic viewpoint sites along Old Highway 2, (d) evaluate providing an alternative access route leading to the upper end of the reservoir, and (e) evaluate timing of the flow releases.

Explanation of our recommendation to maintain a minimum flow for the aesthetic quality of the Moyie Falls and a comparison of the alternatives are provided below.

Minimum Flows

Currently, the City isn't required to release a minimum flow from the project. In the Aesthetic Resources section, we examine how the City's proposed release of 9 cfs and other instream flow options improve the view of the river and Moyie Falls. We also consider ROW and Idaho Rivers proposed minimum flow of 200 cfs for aesthetics. As we say in the section, to examine various flows the City did a visual resource study in the 0.25 mile bybass reach.

Table 4 summarizes the percent of "acceptability" of various flows viewed by groups in the river and canyon and at Moyie Falls.

Table 4. Viewing enjoyment levels at the River and Canyon and Moyie Falls. (Source: City of Bonners Ferry)

	Percent Acceptability (%) at various flows			
View Location	9 cfs	27 cfs	75 cfs	220 cfs
River and Canyon	82%	77%	89%	93%
Moyie Falls	62%	65%	77%	74%

As you can see 9 cfs provided acceptable river and canyon views for 82 percent of the study participants. For Moyie Falls, 62 percent of study participants rated the 9 cfs flow acceptable. In the Developmental Resources Section, we estimate the cost of providing the 9 cfs flow is about $2,600 annually. To compare the 9 cfs proposal with other flow options we looked at how viewing acceptability changes with flow and the annual cost of releasing various flows.

The largest percent increase in acceptable viewing occurs when the minimum flow increases from 0 to 9 cfs. Increasing the bypassed reach flow from 9 cfs to 27 cfs produces only a 3 percent increase in viewing acceptability at Moyie Falls and reduces river and canyon viewing acceptability by 5 percent. Therefore, we eliminated 27 cfs as a flow option.

From 9 cfs to 75 cfs, the viewing acceptability increases about 7 percent for river and canyon views and 15 percent for Moyie Falls. Increasing flow to 220 cfs would produce about a 11 percent increase in acceptability for the river and canyon and 12 percent for Moyie Falls compared to 9 cfs.

Turning to cost, the table below, shows the costs of raising instream flow in the bypass for flows of 9 cfs, 75 cfs and 200 cfs.

Table 5. Cost of providing different minimum flows. (Source: staff)

Minimum Flow	Annual Cost
9 cfs	$ 2,600
75 cfs	$28,800
200 cfs	$75,000

In Section V.C.6, we note that each year about 1,000 people visit the project site that are interested in canyon scenery, waterfalls, river whitewater, and wildlife. Given the small amount of visits to the site, increases of 10-15 percent in acceptable viewing at 75 cfs and 200 cfs don't justify increasing the project's annual cost by $25,000 to $75,000.

As we said, providing a minimum flow of 9 cfs would cost about $2,600 annually, and, for the river and canyon scenes, be acceptable viewing for 82 percent of the viewers; for Moyie Falls, 9 cfs was acceptable viewing for 62 percent of the viewers.

Combined with the existing flow regime and the proposed access improvements and informational signs (see Recreation and

Land Use, section C.6), the City's proposal would adequately protect the aesthetic resources of the site. Therefore, we recommend the City provide a minimum flow of 9 cfs below the dam, during June, July and August, to enhance the aesthetic qualities of Moyie Falls.

VIII. CONSISTENCY WITH COMPREHENSIVE PLANS

Section 10(a)(2) of the FPA 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 a total of 33 qualifying comprehensive plans of which we identified 5 Idaho and 3 United States comprehensive plans to be applicable. 11/ We conclude that, with the inclusion of our recommended environmental measures, the proposed project would not conflict with any of these plans.

IX. RECOMMENDATIONS OF FISH AND WILDLIFE AGENCIES

Section 10(j) of the FPA requires that each hydroelectric license issued by the Commission include conditions based on recommendations provided by federal and state fish and wildlife agencies to protect, mitigate and enhance fish and wildlife resources affected by a project.

Only Interior submitted a Section 10(j) recommendation for the Moyie Project. Our analysis of the recommendation is summarized in Table 6 and discussed in the Aquatic Resources section.

11/ (1) U.S. Fish and Wildlife Service and Canadian Wildlife Service. May 1986. North American Waterfowl Management Plan. (2) U.S. Fish and Wildlife Service. Undated. Fisheries USA: the recreational fisheries policy of the U.S. Fish and Wildlife Service. (3) National Park Service. January 1982. The Nationwide Rivers Inventory. (4) Idaho Department of Parks and Recreation. May 1997. Idaho Statewide Comprehensive Outdoor Recreation and Tourism Planning: Assessment and Policy Plan. (5) Northwest Power Planning Council. December 1994. 1994 Columbia River Basin Fish and Wildlife Program. (6) Northwest Power Planning Council, September 1988, Protected Areas, Amendments, and Response to Comments. (7) Northwest Power Planning Council. July 1998. Fourth Northwest Conservation and Electric Power Plan. and (8) U.S. Forest Service, September 1987, Forest Plan-Idaho Panhandle National Forests.

Table 6. Resource agency recommendation analysis.

Recommendation	Agency	Within scope of Section 10(j)	Annual Cost ($1998)	Conclusions
Develop a reservoir sediment removal and disposal plan in consultation with appropriate resource agencies.	Interior	Yes	minor	Adopt

X. FINDING OF NO SIGNIFICANT IMPACT

With our recommended enhancement measures, minimum flows would be provided to protect aesthetic resources of Moyie Falls; cultural resources would be protected, and comprehensive recreation plans that benefit all users would be developed. Implementing the enhancement measures described in this EA would ensure that the environmental effects of continued operation would remain insignificant. A few of the smaller game and nongame fish species would continue to be entrained into the project flowline and killed, but the number is insignificant.

Based on this analysis, issuance of a license for the project with our recommended environmental measures would not constitute a major federal action significantly affecting the quality of the human environment.

XI. LITERATURE CITED

City of Bonners Ferry 1996. Application for new license for major project--existing dam 5 megawatts or less: Moyie River Hydroelectric Project FERC NO. 1991. City of Bonners Ferry, Idaho. March 1996.

_____. 1997. Response to FERC request for additional information dated May 12, 1997. Application for new license for major project--existing dam 5 megawatts or less: Moyie River Hydroelectric Project FERC NO. 1991. City of Bonners Ferry, Idaho. September 1997.

_____. 1998. Reply comments to comments and recommendations received by the City in response to the Commission's December 11, 1997, Notice. Application for new license for major project--existing dam 5 megawatts or less: Moyie River Hydroelectric Project FERC NO. 1991. City of Bonners Ferry, Idaho. March 1998.

Federal Energy Regulatory Commission (FERC) 1996. Transcripts of the agency scoping meeting for the Moyie Project held in Bonners Ferry, Idaho on November 20, 1996.

_____. Scoping Document I, Moyie River Hydroelectric Project, FERC Project No. 1991. October 21, 1996.

_____. Scoping Document II, Moyie River Hydroelectric Project, FERC Project No. 1991. August 19, 1997.

Turback, Gary. 1997. The bizarre life of the harlequin duck. National Wildlife Federation at http://www.nwf.org/nwf.natlwild/quinduck.html. December/January 1997.

XII. LIST OF PREPARERS

Tim Looney, EA Coordinator--Need for Power, Developmental Analysis (Civil Engineer; B.S. Engineering)

Gaylord Hoisington--Geology and Soils, Cultural Resources (Soil Conservationist)

Edward R. Meyer -- Aquatic Resources and Threatened and Endangered Species --(Fishery Biologist, A.B. Zoology, M.S. Fishery Biology, Ph.D. Ecology)

David Turner -- Terrestrial Resources, Threatened and Endangered Species --(Wildlife Biologist; M.S., Zoology)

Gordon Warren -- Recreation and Other Land Uses, Aesthetic Resources -- (B.S., Natural Resource Recreation Management; B.S., Natural Resource Conservation)

APPENDIX A.

WATER QUALITY CERTIFICATE

DIVISION OF
ENVIRONMENTAL QUALITY

RECEIVED
JUL 19 1996
CH2M HILL
BOISE

July 11, 1996

Mr. Mike Woodward
City of Bonners Ferry
102 Main Street
P.O. Box 149
Bonners Ferry, Idaho 83805

REFERENCE TO: Moyie River Hydroelectric Project (FERC No. 1991)

Dear Mr. Woodward:

This letter is in response to your correspondence dated January 9, 1996 regarding the Idaho water quality certification request for the Moyie River Hydroelectric Project. Under the Federal Clean Water Act, Federal agencies issuing discharge permits must be provided a notice of certification from the State that the project will meet State Water Quality Standards. By copy of this letter, the Federal Energy Regulatory Commission (FERC) is being notified of our certification decision.

The Moyie River Hydroelectric Project is located in Idaho on the Moyie River approximately one and one half miles upstream of its confluence with the Kootenai River. The project consists of a 92 foot-high dam that impounds a 450 acre-feet run-of-the-river reservoir, a combination penstock/pressure tunnel system, three powerhouses, a substation, transmission line and appurtenant facilities. Project capacity is approximately 360 cfs.

The Moyie River is designated in Idaho Water Quality Standards and Wastewater Treatment Requirements (IDAPA 16, Title 01, Chapter 02) for the following uses: domestic water supply; agricultural water supply; cold water biota; salmonid spawning; primary contact recreation; secondary contact recreation; and special resource water (IDAPA §16.01.02.110.01.b). Idaho Water Quality Standards prohibit the discharge of pollutants that will or can be expected to injure designated or existing beneficial uses (IDAPA §16.01.02.080.01). We have determined that maintenance dredging associated with the project has the potential to elevate suspended sediment concentrations in the river which could adversely affect down stream beneficial uses. The most restrictive beneficial use designated on the Moyie River is cold water biota. A cold water fishery is present in the lower river as indicated by fisheries studies conducted during this relicensing process.

Idaho Water Quality Standards require that nonpoint sources of pollution, such as maintenance dredging activities associated with this project, be controlled by implementation of reasonable and knowledgeable Best Management Practices (BMPs), monitoring and maintenance of BMPs to determine effectiveness, and actions to improve the BMPs if they are not performing adequately (IDAPA §16.01.02.350). Specific turbidity criteria have been established that indicate levels at which requirements for cold water aquatic life can become inhibited, such as salmonid site feeding. Idaho Water Quality Standards protect cold water biota from activities that result in an increase of turbidity above background levels of 50 NTU instantaneously or 25 NTU for more than 10 consecutive days (IDAPA §16.01.02.250.02.c.iv).

Background water quality is characterized by upstream water quality which is not influenced by a nonpoint source activity. The protection and control of water quality in the lower reach of the Moyie River will be assessed by comparing turbidity levels of the River with applicable water quality criteria.

To insure protection of water quality in the Moyie and Kootenai Rivers, the following conditions shall be included in the Federal Energy Regulatory Commission License for the Moyie Hydroelectric Project:

1) Base flow rates in the *Moyie River below the project* shall be maintained at approximate normal low flow rates during dredging activities.

2) Maintenance dredging activities shall be conducted during low flow conditions between July 1 and September 15.

3) Turbidity monitoring shall be conducted during maintenance dredging activities at the following sampling stations and monitoring frequencies:

   a. At a background station located *a sufficient distance above the dam on the Moyie River* to avoid a water quality influence from dredging activities.

   b. At the point of discharge from the dam at a frequency of twice per day during each day of dredging.

   c. At the first access point on the Moyie River below the powerhouse at a frequency of twice per day during each day of dredging. Turbidity sampling at this station will not be required if water quality discharged from the dam does not exceed criteria.

4) If turbidity concentrations in the Moyie River exceed 50 NTU instantaneously or 25 NTU for 10 consecutive days over background, dredging activities shall cease and BMPs shall be installed or initiated before dredging activities can resume. The dredging activity shall be isolated from ambient river water with silt curtains installed in accordance with manufacturers recommendations if turbidity levels exceed criteria at the down stream station and cannot be otherwise controlled.

5) The drain valve located in the dam shall only be exercised when discharge over the dam is 2000 cfs or greater.

6) Turbidity monitoring shall be conducted prior to and during drain valve exercises at a location upstream from the water quality influence of the drain valve and at the station described by item 3)c, at a frequency of once before and twice during drain valve exercises.

7) Closure of the drain valve shall be initiated if turbidity levels exceed criteria for more than 1 hour following initial discharge.

8) Petroleum absorbent and clean-up materials shall be kept on-site during dredging activities to insure quick clean-up of spills or leaks from equipment.

9) DEQ shall be notified prior to valve exercises and dam maintenance activities that involve dredging.

10) A copy of the of the above monitoring data *shall be submitted to DEQ following maintenance* activities.

11) All other activities associate with the project shall comply with the requirements set forth in Idaho Water Quality Standards and Wastewater Treatment Requirements.

12) This certification does not authorize any surface water discharge of decant water that is generated by dredging.

13) If the project is abandoned or not used as an electricity generating facility for three consecutive years, this Idaho Water Quality Certification shall become null and void.

If the project is operated in accordance with the above conditions, DEQ certifies under Section 401 that this project will comply with applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and will not violate Idaho Water Quality Standards and Wastewater Treatment Requirements.

Any modification or amendment to the project shall require a new 401 water quality certification from DEQ before any construction activities affected by the modification or amendment may proceed.

All activities authorized under the referenced license shall cease for failure of the applicant to comply with the conditions of this certification and shall not resume until the applicant demonstrates to the satisfaction of DEQ compliance with all the conditions of this certification.

The applicant has the right to appeal DEQ's decision as set forth herein by filing a petition with the Administrative Procedures Coordinator, Division of Legal Services, Idaho Department of Health and Welfare, P.O. Box 83720, Boise, ID 83720-0036 for a hearing pursuant to Title 67, Chapter 52, Idaho Code and the Rules Governing Contested Case Proceedings and Declaratory Rulings (IDAPA §§16.05.03.000 to .999)

This certification does not imply approval of the activity by other agencies of the State of Idaho.

Sincerely,

Gwen P. Burr

Gwen P. Burr, Regional Administrator
North Idaho Regional Office

GB:MH

cc: Roger Tinkey, File, DEQ-NIRO
Wally Cory, Mike Allen, DEQ-Boise
John Lincoln, *CH2M Hill-Boise*
Lois Cashell, FERC-Washington D.C.
Army Corps of Engineers-CdA
IDFG-CdA

October 6, 1998

David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First St. NE
Washington DC 20426

RE: Project No. 1991-009

Dear Secretary,

Please accept these comments on the Draft Environmental Assessment on the Moyie River Hydroelectric Project, FERC No. 1991-009. Idaho Rivers United is a statewide river and fisheries conservation organization. Our members use and enjoy the Moyie River and have an interest in the outcome of this proceeding.

Aesthetic Resources

The EA says that "increasing the minimum flow regime from 9 cfs to 200 cfs...would further enhance the aesthetics of the Moyie Falls and the river and canyon," but concludes that the cost of providing this enhancement is too great for the benefit provided. The cost was based on a preliminary choice of a siphoning technology to pass the water over the dam. Idaho Rivers United questions the huge disparity in the cost of releasing 200 and 9 cfs through siphoning. Given that FERC's recommendation is based on the cost, further explanation of the way that the cost was arrived at is warranted. IRU-1

The EA failed to examine other ways to provide further enhancement at a lower cost, i.e. providing a minimum flow less than 200 cfs but greater than 9 cfs, or use of an alternate technology to pass the water over the dam. Idaho Rivers United would like to see a wider variety of options evaluated and considered by FERC. IRU-2

On page 26 the EA says, "We conclude that the proposed 9 cfs minimum flow during daylight hours of summer weekends..." but the actual proposal is to provide the minimum from 8 AM to one half hour before sunset. Daylight in June, July and August is much longer than the proposed release hours, on the order of four hours. Idaho Rivers United suggests that releases for real daylight hours on the proposed days be evaluated, and that releases from 7 AM until dark be evaluated. IRU-3

Thank you for the opportunity to comment on the draft Environmental Assessment.

Sincerely,

Liz Paul
Conservation Director

IRU-1 We think the City's preliminary cost for releasing a minimum flow, which is based on building a pumping plant to pass water over water over the Moyie River dam, is reasonable. The cost per cfs of flow to be released was prorated from the 9 cfs to 200 cfs. The disparity in the cost difference is due to the increase in 191 cfs increase in flow.

IRU-2 Range of flows
The EA was revised to include flows between 9 cfs and 200 cfs.

Flow release methods
Besides pumping, we looked at releasing the flow through the dewatering tube. We ruled it out because (1) the slide gate was not designed to operate to regulate flow and (2) the buildup of sediment around the intake could be released downstream and effect downstream resources.

IRU-3 In the Cities' comment letter filed November 19, 1998, they agree with Idaho Rivers United that the ending time should be dusk, but propose to study, the starting time to see if 7 A.M. or 8 A.M. is more appropriate. We recommend the City monitor use to see what starting and ending times are appropriate. This issue would be addressed in the revised recreation plan we recommend.

ORIGINAL

CH2MHILL

FILED
OFFICE OF THE SECRETARY
98 OCT 19 PM 3:18
FEDERAL ENERGY
REGULATORY
COMMISSION

[redacted]

October 12, 1998

108009.F0.L1

Mr. David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Mr. Boergers:

Subject: Project No. 1991 - 009 - Idaho
Moyie River Hydroelectric Project
City of Bonners Ferry, Idaho

On behalf of the City of Bonners Ferry (City), we are transmitting 8 copies, plus the original, of the City's comments on the Draft Environmental Assessment (issued by FERC on 9/15/98) for the referenced project.

Sincerely,

CH2M HILL

John G. Lincoln, P.E.
Project Manager

Enclosures
BOI/let10-12-98.doc
c Mr. Mike Woodward, P.E., City of Bonners Ferry

9810260586-3

[redacted] - DOCKETED
OCT 19 1998

ORIGINAL

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

FILED
OFFICE OF THE SECRETARY
98 OCT 19 PM 3:18
FEDERAL ENERGY
REGULATORY
COMMISSION

[redacted]) Moyie River Hydroelectric Project No. 1991-009

COMMENTS ON THE DRAFT ENVIRONMENTAL ASSESSMENT

Pursuant to a notice dated September 15, 1998 requesting comments on the Draft Environmental Impact Assessment for the referenced project, the City of Bonners Ferry submits the following comments:

General Comment

The Commission's staff should be complimented on preparation of an excellent environmental assessment document. The document presents the facts and issues concerning the project in a clear, concise, and very readable manner. The environmental analyses were prepared in a fair and equitable manner, with both sides of the issues given appropriate representation. The economic analyses provide important information concerning the necessary tradeoffs between power generation and protection of the environment. Overall, the City of Bonners Ferry (City) believes that the staff has done an excellent job of meeting the goals of the Electric Consumer's Protection Act in providing the appropriate balance between economics and environmental protection. The City concurs with the general conclusions of the environmental assessment, and looks forward to continuing to operate the project under the jurisdiction of the Commission. The City has minor comments concerning details of some of the proposed mitigation, and comments on some minor inaccuracies within the text of the document. These comments are addressed below.

CBF-1

CBF-1 Comment noted.

Specific Comments

Section V.C.6. Recreational Land Use, page 29, first incomplete paragraph. The text indicates that Old Highway 2, which serves as an access to the project, is unpaved. This statement is partially incorrect. Old Highway 2 is currently paved from the New Highway 2 turnoff through the town of Moyie Springs to the area of the existing employee parking garage (the area proposed for public parking for the viewpoint overlooking Moyie Falls). North of the proposed parking area, the access road is currently unpaved.

CBF-2

CBF-2 The Recreation and Land Use section has been changed to reflect your clarification.

Section V.C.6. Recreational Land Use, page 30, third complete paragraph, and Section VII, page 38, Recommendation (7)(a). The City concurs that the portable toilet should be in place at the reservoir takeout during the primary whitewater boating use period. However, there are many years (especially the drier years) when the flows in the Moyie River are insufficient for whitewater boating during the latter portion of the proposed period (late June and July). Rather than providing the portable toilet for the set period proposed (April through July), the City would prefer to provide the toilet during the periods of significant whitewater boating use. Consultations with whitewater enthusiasts familiar with the Moyie River indicate that the minimum reasonable flow at which the river can be floated correspond with a staff gage reading of 8.5 feet over the dam spillway (ROW,

CBF-3

CBF-3 We recommend this and similar issues be included in a revised recreation plan which would be filed with the Commissio after license issuance. The plan should revised in consultation with the interested agencies and organizations t are listed in the FEA.

[redacted]

IDAHO DEPARTMENT OF PARKS & RECREATION

PHILIP E. BATT
Governor

YVONNE S. FERRELL
Director

IDAHO PARK AND RECREATION BOARD
Robert M. Hunkapiller
Beverly L. Boyd
Ernest J. Lombard
Glenn E. Shewmaker
Jean S. McDevitt
Monte Q. Later

P.O. BOX 83720
BOISE, IDAHO 83720-0065
(208) 334-4199
FAX (208) 334-3741
TDD 1-800-377-3529
Street Address
5657 Warm Springs Avenue

Post Employment Employer

October 14, 1998

David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Dear Secretary:

Re: FERC No. 1991-009 Moyie River Hydroelectric Project Draft Environmental Assessment

We appreciate this opportunity to let the FERC staff know that our department continues to be interested in the Moyie Project. We generally support the proposal made by the City with the FERC staff's modification, though we have questions on a few points. Those comments follow.

The costs associated with providing 9 cfs vs. 200 cfs of aesthetic flows do not seem logical. Our assumption is that the same type of device would need to be constructed regardless of the amounts of flow involved. Please revisit your methodology. — DPR-1

DPR-1 Our estimate is based on using the same type of device to provide flow. Costs change is due to increased flow releases. For more information on the device see IRU-1.

We are curious about the definition used for daylight hours. In the FERC New License for project 11, page 5, daylight hours are described as: "The FEIS recommended a minimum flow of 300 cubic feet per second (cfs) over the falls from 8 a.m. to dusk everyday from April through August and on weekends and holidays during the rest of the year (peak viewing times)." Is there a standard for determining daylight hours? Dusk seems to be more appropriate. Is there a definition for "daylight hours"? — DPR-2

DPR-2 See IRU-3.

We would like to see analysis on decommissioning as projects of an age similar to this project are being considered for decommissioning in other parts of the Pacific Northwest. Planning for decommissioning is prudent and appropriate. When concrete structures reach the end of their life it is appropriate to have a plan in place, complete with a funding source, for decommissioning. Placing the financial burden of decommissioning on the state or federal tax base would be inappropriate. — DPR-3

DPR-3 An analysis of decommissioning was presented in Section III, D(J) of the DEA. The financial burden of decommissioning a project is the responsibility of the Licensee.

At the bottom of page 30 there are comments on a Forest Service suggested alternative access route leading to the upper end of the reservoir. There was no discussion as to why this was, or might be necessary, how it would be helpful as an alternative route, or if the Forest Service intended to pursue the access road further. More information would be appreciated as to whether the Forest Service would continue to be responsible for maintenance of this road or would it transfer to the hydro project? — DPR-4

DPR-4 Additional access to the upper end of the reservoir is needed to allow the public to enjoy and use the resources of the project. If the City is required to build the road, the City would be required to amend Exhibit G to include the road. Also, the City would be responsible for road maintenance. See response to CBF-4 for more information.

1998 and Beasley, 1998). This corresponds to a flow of 105 cfs over the spillway. Assuming that the project is operating at capacity of 360 cfs, this would mean a flow of 465 cfs into the project reservoir. Thus, the City proposes to install and maintain the portable toilet from April 1 until the flows into the project reservoir drop below 465 cfs.

Section V.C.4. Recreational Land Use, page 30, last paragraph and continuing on to page 31, Section VII, Table 3, and Section VII, page 38, Recommendation IIIB. As noted in the text, the City has discussed with the U.S. Forest Service (USFS) the concept of an additional access road to the upper end of the reservoir. While the City supports this concept, it should be noted that the USFS proposal is to provide an access road entirely across lands that are outside of the project boundary (see the sketch attached to the USFS letter dated March 23, 1998, and Exhibit G). Thus, the City believes that this issue is outside of the purview of this Environmental Assessment. Any evaluations of additional access should therefore be performed under the normal NEPA process required for actions on USFS lands. — CBF-4

CBF-4 We recommend the City evaluate providing access to the upper end of the reservoir. The study would be done in consultation with the Idaho DPR, IDFG, FS, ROW, Idaho Rivers and AHA. If the road uses FS lands, the City would need to get a special use permit from the FS. The FS may require a NEPA analysis as a condition of the special use permit. If the City were required to build the road, the City would need to update the Exhibit G to include the road.

Section VI, Economics of the Project, page 34. The annual cost numbers presented in this section are somewhat confusing and are different from the annual cost numbers presented in the City's license application. In Exhibit H of the City's application, the annual costs for the project are summarized in Table H-1 for a 5-year period beginning in 1998. The average annual cost from this table was $231,630 and the unit cost of production was 8.5 mills per kWh. It is suggested that the historic annual costs from Exhibit H should be used in this section of the environmental assessment. It is also suggested that the economic information presented in this section be presented in tabular form for clarity. — CBF-5

CBF-5 See the revised economic analysis using an annual operation cost of $231,630.

Appendix A, Water Quality Certification. It appears that page 2 of the water quality certification letter from the Idaho DEQ is missing. — CBF-6

CBF-6 Change made. See Appendix A.

References

IRU, 1998. Personal communication with Candy Benning at ROW, Inc., September 24, 1998.

Beasley, 1998. Personal communication with Will Beasley, local kayaking enthusiast, September 30, 1998.

We would also like to comment on the short comment period for this Draft Environmental Assessment. The "date of the letter" is September 15, 1998. We had 30 days in which to comment from the date of the letter. We received the notice on September 27. Comments needed to be received by the Secretary by October 15. That is a very tight time frame. Fortunately this was a relatively short EA, and a project we are very familiar with. DPR-5

Thank you again for the opportunity to comment.

Sincerely,

Mary Grochick
Natural Resource Specialist

cc: Will Reid, IDFG
Harriet Hensley, Deputy Attorney General

DPR-5 The DEA was posted on the Commission's issuance posting system on September 15, 1998. Also, if DPR needed additional tin they could have requested an extension of time to file comments.

American Whitewater Affiliation
Comments FERC No. 1991-009

John T. Gangemi
Conservation Director

October 15, 1998

David Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N. E.
Washington, DC 20426

RE: DEA for the Moyie River Hydroelectric Project

FERC No, 1991-009

Dear Secretary Boergers,

Enclosed for filing with the Commission in the above proceeding are the original and 8 copies of AMERICAN WHITEWATER AFFILIATION'S COMMENTS AND RECOMMENDATIONS ON THE DRAFT ENVIRONMENTAL ASSESSMENT FOR THE MOYIE RIVER HYDROELECTRIC PROJECT, FERC PROJECT NO. 1991. Also enclosed is a ninth copy to be date stamped and returned in the enclosed envelope.

Copies of this document were served on the parties listed on the certificate of service.

Sincerely,

John T. Gangemi (Emg)
John T. Gangemi
Conservation Director

CC: Tim Looney
Mark Robinson
Carol Sampson
Chip Corsi
Attachment: Comments on DEA

Conservation and Access Program: 482 Electric Avenue, Bigfork, MT 59911
Phone 406 837-1155

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Bonners Ferry Draft Environmental Assessment	)	Moyie River Hydroelectric Project No. 1991-009

COMMENTS AND RECOMMENDATIONS ON THE DRAFT ENVIRONMENTAL ASSESSMENT FOR THE MOYIE RIVER HYDROELECTRIC PROJECT ON BEHALF OF THE AMERICAN WHITEWATER AFFILIATION

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214, the American Whitewater Affiliation hereby request leave to comment on the draft environmental assessment for the Moyie River Hydroelectric Project No. 1991-009.

American Whitewater

American Whitewater Affiliation (hereinafter known as American Whitewater) is a national non-profit 501(c)3 river conservation and recreation organization founded in 1957. We have over 7,700 members and 150 club affiliates, representing approximately 45,000 whitewater paddlers across the nation. American Whitewater's mission is the conservation and restoration of whitewater resources and enhancing opportunities to enjoy them safely. As a conservation oriented paddling organization, American Whitewater has a strong interest in the future of the Moyie River and, therefore, the relicensing of the Moyie hydroelectric project. A percentage of our membership travels to the Moyie River annually. Federal actions that affect access to the river and recreational facilities on project lands may potentially adversely impact opportunities for American Whitewater members to utilize the river resource. Therefore, American Whitewater has a direct interest in the relicensing of the Moyie hydroelectric project.

The mailing address for American Whitewater is 482 Electric Ave., Bigfork, MT 59911, c/o John T. Gangemi, Conservation Director.

American Whitewater Affiliation
Comments FERC No. 1991-009

OVERVIEW

American Whitewater Affiliation has reviewed the City of Bonners Ferry's draft environmental assessment for the Moyie River Hydroelectric Project. American Whitewater appreciates FERC staff recommending conditions that will accommodate other beneficial uses of the Moyie River, in particular improved access to project lands and improvements in recreational facilities. American Whitewater has the following comments and recommendations.

COMMENTS AND RECOMMENDATIONS

Section IV Consultation and Compliance

The DEA contains a table on page 8 listing entities that commented on the license application. American Whitewater was omitted from this table. American Whitewater submitted comments on February 9, 1998 on the City of Bonners Ferry License application. On page 9 in the DEA, American Whitewater's motion to intervene is documented in the table. This motion to intervene was submitted simultaneously with comments. The DEA should be corrected and, more importantly, American Whitewater's comments on the license application should be recorded in the record to make it complete.

AMA-1

AMA-1 Section IV has been revised.

Section VII Comprehensive Development and Recommended Alternative

American Whitewater staff inspected the take-out facilities and adjacent project lands in August of 1998. The recommendations below are based in part on that site visit as well as review of the DEA.

FERC staff recommendations:

(7) American Whitewater recommends that recommendation No. 7 be expanded to include annual road maintenance on the City road including the length of the road beyond the Dam and City structures. During the site visit American Whitewater found the access road to the Reservoir unsuitable for two wheel drive vehicles. Annual road maintenance must make this road passable for two wheel drive vehicles.

AMA-2

AMA-2 The recreation plan would be revised in consultation with the interested agencies and organizations that are listed in the DEA. The revised plan would address the level of maintenance required for the access road.

(8) American Whitewater recommends the interpretive display on NEW HIGHWAY 2 identify the public access points and facilities on project lands. Text adjoining the map should explain what facilities are located at the corresponding location on the map as well as hours of use and any other pertinent information.

(9) Directional signs must also be included on NEW HIGHWAY 2 to alert passing motorists to the scenic viewpoint sites. Directional signs signifying whitewater access must also be constructed on NEW HIGHWAY 2 and old highway 2. It is not sufficient to place these directional signs on old highway 2 only.

AMA-3

AMA-3 As mentioned in the DEA, the City propose interpretive and directional signs. We recommend AMA's specific concerns be addressed during consultation for preparation of the revised recreation plan.

Additional Recommendation by American Whitewater

1. Currently, the City restricts public access to project lands via a gated road. This gate is open during business hours. American Whitewater members do not restrict their recreational activities to business hours. We would speculate that few other citizens can afford the luxury of recreating during business hours, either. American Whitewater recognizes the City's concern for vandalism at the site. With that in mind, American Whitewater recommends the following access compromise: Grant public access and parking on the city-owned road during the following hours - between the hours starting one half hour before sunrise and terminating one half hour after sunset. These time frames are used routinely by state fish and wildlife agencies to structure hunting hours. These are the time frames in which humans recreate and therefore should be applied to recreation on project lands. Sunrise and sunset are published daily in local newspapers.

AWA-4

Again, American Whitewater appreciates FERC staff's recommendations to extend the season for temporary recreational facilities at the reservoir take-out. These small improvements will greatly enhance other beneficial uses on project lands and the surrounding National Forest.

These comments and recommendations are submitted by:

John T. Gangemi (cmg) Date: 10.15.98

John T. Gangemi
Conservation Director, American Whitewater
482 Electric Avenue
Bigfork, MT 59911
(406)837-3155

AWA-4 We are concerned about protecting the project from vandalism. But, we are also interested in expanding the hours of access to project lands and facilities for the public. We recommend AWA's specific concerns be addressed during consultation for preparation of the revised recreation plan.

American Whitewater Affiliation
Comments FERC No. 1991-009

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of October, 1998 served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Kate M. Gribskov 10.15.98

Kate M. Gribskov
Executive Assistant
American Whitewater

Service List
John G. Lincoln
CH2M Hill
700 Clearwater Lane
Boise, ID 83707

Harold Sims, Mayor
P.O. Box 149
Bonners Ferry, ID 83805

Mike Woodward, Administrator
P.O. Box 149
Bonners Ferry, ID 83805

Liz Paul
Idaho Rivers United
PO Box 633
Boise, ID 83701

Peter Grubb
R.O.W., Inc.
314 E. Garden
Coeur D'Alene, ID 83814

David J. Barber
State of Idaho
Attorney General
P.O. Box 83720
700 W. Jefferson St., Room 210
Boise, ID 83720-0010

United States Department of Agriculture | Forest Service | Region 1 | 200 East Broadway P.O. Box 7669 Missoula, MT 59807

FILED
OFFICE OF THE SECRETARY
98 OCT 19 AM 11:55
FEDERAL ENERGY REGULATORY COMMISSION

File Code: 2770

Date: October 15, 1998

Mr. David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

RE: Forest Service Comments on Draft Environmental Assessment for Project No. 1991-009

Dear Mr. Boergers:

These comments are in response to your September 15, 1998, Notice of Availability of Draft Environmental Assessment for the Moyie River Hydroelectric Project Number 1991-009.

Our agency previously commented on January 8, 1997, and March 25, 1998. Our comments centered around 1) potential effects of improvements and whitewater rafting on harlequin ducks, and 2) the potential to improve access to the reservoir for water-based dispersed recreation.

Your treatment of the discussion of effects on the harlequin duck on pages 22 and 23 implies that the Idaho Fish and Game has concerns over the species and that the Forest Service does not. We believe a more accurate position is that both agencies believe increased whitewater rafting above the reservoir could adversely affect the harlequin duck, but that it is unlikely that the limited improvements would increase whitewater use. FS-1

FS-1 See revised text in the FEA, Section V.C.3.

The discussion of recreational access on page 30 is disappointing in that the City apparently has not embraced the Commission's regulations that the "licensee...ensure public access and recreational use of project lands and waters..."(page 30 paragraph 3). Our position is that public access is best served by summer-long access across City property on the existing road west of the reservoir. This access road would need to be improved, however. Longer-term recreational improvements on both City property and National Forest System lands could be made to enhance summer (July and August) water-based recreation in a manner that does not conflict with harlequin duck management. This access is logical because of the proximity to Highway 2, Bonners Ferry and Moyie Springs, and the potential to develop access to the west side of the reservoir at a number of spots from this road. FS-2

FS-2 The FEA recommends that the recreation plan be revised to consider the issue of appropriate access. The license requires a revised plan. If, in the future, additional facilities are needed, an amended recreation plan would have to be filed for Commission approval.

If the Commission determines that it is unreasonable to require the City to develop such access on the west side of the reservoir, then access can be gained to the upper end of the reservoir on the east side of the river across National Forest System lands.

The access to the east side is less desirable than access to the west side because of the significantly longer distance from the highway and towns and the fact that the east side only provides access to the northern-most tip of the reservoir and not the length of the reservoir. There is no significant difference in the risk of forest fires, (in fact there would be a longer response time to the east side in the event of a fire), and the risk of vandalism to recreation improvements would be higher on the east side since the site is more remote and vandals may not be as likely to be detected in the act.

FS-2

Because we believe recreational use of the reservoir will increase, facilities will need to be developed and maintained by the licensee during the new license term. The new license should, therefore, establish methods to evaluate changes in recreation use and include provisions for future development of recreation facilities.

In summary, we fully support the staff recommendation that a recreation plan be developed that addresses long-term access to and full development of the recreation potential of the reservoir over the term of the new license.

The final environmental assessment should accurately reflect the comments of this letter and previous letters sent to you regarding this project. Additionally, if the City is to promote recreational developments on National Forest System Lands for the purpose of securing a new license, my staff would be pleased to work with you or the City to prepare a proposal and estimated costs for inclusion in the final assessment.

If you have any questions concerning our comments, do not hesitate to contact Bruce N. Allen, 406-329-3601.

Sincerely,

DALE BOSWORTH
Regional Forester

cc: Service list
IPNF's - B. Fahmi, A. Chrisman
RF Reading File
R-6 - W. Dortch, Darrington RD

CERTIFICATE of SERVICE
Moyie River Hydroelectric Project, FERC No. 1991-009

I hereby certify that I have this day served the foregoing document upon each person designated on the offical service list compiled by the Secretary in this proceeding.

SERVICE LIST

Principal/Party Name/Address	Representative Name/Address
JOHN T. GANGEMI DIRECTOR AMERICAN WHITEWATER AFFILIATION (MT) 482 ELECTRIC AVENUE BIGFORK, MT 59911	
	JOHN G. LINCOLN CH2M HILL (ID) P. O. BOX 8748 700 CLEARWATER LANE BOISE, ID 83707
MAYOR HAROLD SIMS BONNERS FERRY, TOWN OF (ID) POST OFFICE BOX 149 BONNERS FERRY, ID 83805	MIKE WOODWARD ADMIN. BONNERS FERRY, TOWN OF (ID) POST OFFICE BOX 149 BONNERS FERRY, ID 83805
LIZ PAUL ASSOC. DIREC IDAHO RIVERS UNITED, INC. POST OFFICE BOX 633 BOISE, ID 83701	
DAVID J. BARBER ATTY. GEN. IDAHO, STATE OF ATTORNEY GENERAL/P. O. BOX 83720 700 W. JEFFERSON ST., RM. 210 BOISE, ID 83720-0010	
PETER GRUBB PRESIDENT R.O.W., INC. 314 E GARDEN COEUR D'ALENE, ID 83814	

DATED at Missoula, Montana, this 15th day of October, 1998

BRUCE N. ALLEN
United States Department of Agriculture
Region One
200 East Broadway
Missoula, Montana 59807
(406) 329-3601

FILED
OFFICE OF THE SECRETARY
98 NOV 19 AM 11:12
FEDERAL ENERGY REGULATORY COMMISSION

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Application of the City of Bonners Ferry For a New Major License	)))	Moyie River Hydroelectric Project No. 1991-009

RESPONSE TO AGENCY COMMENTS ON THE DRAFT ENVIRONMENTAL ASSESSMENT

The City of Bonners Ferry (City) received copies of letters from resource agencies and public interest groups providing comments on the Commission's Draft Environmental Assessment for the referenced project, dated September 15, 1998. Following review of these letters, the City wishes to provide responses to certain of the comments. The City believes that these responses will help to clarify some issues and may help to resolve other issues; therefore the City respectfully requests that the Commission consider these responses. The selected comments are summarized below, followed by the City's responses.

Comment 1 (Idaho Department of Parks and Recreation): We would like to see an analysis on decommissioning, as projects of similar age to this project are being considered for decommissioning in other parts of the Pacific Northwest. Planning for decommissioning is prudent and appropriate. When concrete structures reach the end of their useful life, it is appropriate to have a plan in place for decommissioning, such that the costs for decommissioning do not have to be borne by the taxpayers.

Response 1. Section III.D.3 of the Environmental Assessment provided an analysis of decommissioning the project. While it is true that some of the concrete structures are over 50 years old, there is no reason to believe that the project in anywhere near the end of its useful life, or that there is a need to plan for decommissioning within the foreseeable future. There are several reasons for this conclusion:

- With proper maintenance, there is no practical limit to the useful life of a hydroelectric project. It is true that some items periodically require major repair and/or replacement. For instance major mechanical and electrical equipment (runners, rotors, windings, switchgear, transformers, etc.) must be periodically rebuilt or replaced. The design life of concrete structures is a generally a function of their exposure to weathering, since weathering is the primary limitation on the useful life of concrete structures. The design life of the major concrete structures (powerhouses, power tunnel, and the dam) is likely greater than 100 years, because these structures (except at their outside surfaces) are protected from weathering. With proper periodic maintenance to repair and/or replace the weathered surface concrete, these structures should last indefinitely. The design life of the minor concrete structures (those exposed to weathering, such as sidewalks, retaining walls, etc.) is somewhat less. However, with proper maintenance, the design life of the minor concrete structures is often 50 or more years. In addition, after minor concrete structures have reached the end of their useful life, they can be replaced at comparatively minimal expense.
- The City has an excellent record of operation, maintenance, and repair of the project facilities. It is in the City's best interests to continue to provide this level of operation,

BF-1 BF-1 Comment noted.

maintenance, and repair. This is because the cost of replacement power is considerably higher than the cost of continued operation and maintenance. In fact, replacement power would be about 3 times the cost of continued production from the project (23.9 mills/kWh for replacement power vs. 8.5 mills/kWh for the Moyie Project). In addition, as noted in Volume IV of the relicensing documents, costs for decommissioning are considerable (approximately $2,900,000). Therefore, it is much more cost-effective to continue maintenance and repair than it is to decommission the project.

- The period for the new license for this project, if granted by the FERC, would likely be 30 years. The remaining useful life of the project is considerably more than 30 years.
- The other projects that are being considered for decommissioning in the Pacific Northwest are generally being considered for reasons other than design life of the physical facilities. The primary considerations for decommissioning generally involve environmental concerns of individual facilities, usually associated with migration of threatened or endangered species (e.g. salmon and steelhead) or location within unique ecological areas (e.g. National Parks). The issue of threatened and endangered species (specifically bull trout) was addressed in Volume II of the relicensing documents. The Idaho Department of Fish and Game concurred with the conclusions in Volume II that continued operation of the project would not adversely impact bull trout migration. The Moyie Project is located in an area that, while a valuable resource, hardly qualifies for unique ecological consideration. Therefore, the fact that other projects in the Pacific Northwest are being considered for decommissioning is not really relevant to the considerations for the Moyie Project.

Based upon the above, the City maintains that there is no reason to require the City to plan for decommissioning the Moyie Project within the 30 year planning horizon of the new licensing period.

Comment 2 (Idaho Department of Parks and Recreation and Idaho Rivers United): The term "daylight hours" for the minimum bypass flows should be better defined, since daylight in the summer is much longer than the proposed period of 8 A.M. to 1/2 hour before sunset. Bypass flows releases from 7 A.M. to dusk should be evaluated.

Response 2: The City initially proposed the period of 8 A.M. to 1/2 hour before sunset based on the results of the visitation patterns during the Recreation Survey (see Volume III of the Application for New License). The City agrees that the ending time for bypass flows should be dusk rather than 1/2 hour before sunset, since the enjoyment of the visual resource depends on available light. The City further suggests that the starting time for bypass flows remain at 8 A.M., and that this starting time be evaluated during the initial period of the new license to determine if there is significant visitation prior to that hour. If there is significant visitation prior to 8 A.M. the City would be willing to extend the period of bypass flows to 7 A.M. (Significant visitation should be defined as visitation that is disproportionate, compared to the rest of the day. For example, if dusk is at 8 P.M., then the bypass flow period would be 12 hours. Significant visitation would occur if the visitation between 7 A.M. and 8 A.M. averaged more than 1/12 [8.5 percent] of the total daily visitation).

Comment 3 (American Whitewater Affiliation): Directional signs should be included on New Highway 2 to alert passing motorists of the scenic viewpoint sites. Directional signs signifying whitewater access should also be constructed on New Highway 2.

BF-2 BF-2 This seems reasonable. The revised recreation plan should include provisions for monitoring use, and provide for periodic review to determine if any changes are needed.

BF-3

Response 3: There is existing signing already posted on New Highway 2 that directs motorists to the "Moyie River Overlook". These signs have been installed and are maintained by the Idaho Transportation Department. The signs are located prior to the turnoff to the overlook, and are placed to alert both eastbound and westbound traffic concerning the overlook. The City proposed locating the interpretive display (with directions to the scenic viewpoints near the project) at the existing scenic overlook, primarily to serve the needs of the public interested in scenic resources. It can reasonably be assumed that the portion of the public interested in visual resources would stop at the well-signed existing scenic overlook. The interpretive display would be an additional attraction, and would provide information and directions to those members of the public willing to go out of their way to get to the viewpoints near the project. It is important that this information be conveyed at the interpretive display for several reasons:

- The roadway from New Highway 2 to the project viewpoints is steep, winding, and potentially confusing to someone new to the area. It is important that potential visitors be provided with a map and alerted to the conditions of the roadway.
- The roadway to the project viewpoints travels through existing residential areas of the community of Moyie Springs. The viewing public should be alerted to travel slowly and to watch out for the children and pets that often play in or adjacent to the roadway.
- Prior to travelling to the site, the viewing public should be alerted concerning the type of visual resources to expect, and the hours when bypass flows will be available.

The above information cannot be conveyed through a simple roadsign on New Highway 2. While the information could be conveyed through a series of roadsigns, it is better to provide the information at the interpretive display at a location where the interested viewing public can have the time to review and study the information, directions, and instructions.

The City also disagrees with the suggestion that a sign is needed along New Highway 2 to direct the whitewater enthusiasts to the takeout point. Of the potential users of the recreational resources of the Moyie River, the whitewater enthusiasts are likely to be the best-informed group. Most of the enthusiasts that run the Moyie River are already familiar with the takeout location, are accompanied by others that are familiar with the takeout location, or are part of a guided trip. Those few users in any given year that are not familiar with the takeout location will very likely obtain the necessary information from maps, guidebooks, or word-of-mouth (from other enthusiasts) as part of their planning for the trip. In other words, the whitewater enthusiasts are not "casual users" and therefore do not need a sign to direct them to the takeout location.

Comment 4 (American Whitewater Affiliation): Currently the City restricts public access to project lands via a gated road. The gate is open during business hours. Public access should be allowed to the project lands during the period of 1/2 hour before sunrise to 1/2 hour after sunset.

Response 4: The gate that is the subject of Comment 4 is located near the top of the steep incline along Old Highway 2, approximately 1,400 feet south of the proposed viewpoint overlooking Moyie Falls. The gate is currently posted with a sign that says "NO STAYS AFTER SUNSET." This signing has evolved at the suggestion of the Boundary County Sheriff as a result of problems primarily associated with the hours after dark. The City, based on its experience, supports an approach that would clearly allow public access to the

BF-3 BF-3 When you revise your recreation plan, you should address this issue.

BF-4 BF-4 See response to AWA-4.

site during daylight hours. The subject gate is normally open virtually every day of the year, including business days, weekends, and holidays during spring, summer, fall and winter. The City proposes to continue this level of accessibility. The only times that the City closes this gate are during construction or maintenance activities that could result in unsafe conditions to the public (and therefore create liabilities for the City), or during the fire season in dry years. Whenever it is necessary to close the gate in the future, the City proposes to temporarily post signs to indicate that the gate is temporarily closed due to construction and/or maintenance activities, or temporarily closed due to fire danger. The City will make every attempt to schedule known construction and major maintenance activities that require gate closure to avoid periods of primary recreational use.

Comment 5 (Idaho Department of Parks and Recreation, American Whitewater Affiliation, and U.S. Forest Service): Public access to the reservoir area north of the whitewater boating takeout location is best served by providing summer-long access across the City property on the west side of the reservoir. The alternative access to the east side of the reservoir across lands managed by the U.S. Forest Service is less desirable, because of the significantly longer distance from the highway and towns, and the fact that access to the east side would be provided only to the northern tip of the reservoir, rather than to the length of the reservoir. The access road on the west side of the reservoir would need to be improved, however, with annual maintenance to make the access road passable for two-wheel drive vehicles.

Response 5: The City agrees that the public is best served by providing access to the reservoir area using the existing access road on the west side of the reservoir. In order to provide access for two-wheel drive vehicles, the City further proposes to improve the existing roadway. Specifically, annual maintenance will be performed on the access road in late spring/early summer to make the road passable to two-wheel drive vehicles. The access road is currently gated just to the north of the whitewater takeout. The City proposes that summer-long access be provided, with the option reserved to close the gate during construction/maintenance activities that could result in unsafe conditions to the public, or during high fire-risk periods. Again, the City will make every attempt to schedule known construction and major maintenance activities that require limiting access to avoid periods of primary recreational use.

BF-5

BF-5

The DEA recommended that the recreation plan be revised to address this issue. Your proposal is responsive to the remarks, but number of details concerning the level of maintenance, the circumstances under which the road would be closed; and the need for any additional facilities need to finalized in the revised plan.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NORTHERN REGION

John V. Evans
Governor
A. Kenneth Dunn
Director

Suite No. 1
4055 Government Way
Coeur d'Alene, Idaho 83814
(208) 667-6484

January 12, 1983

Mr. Mike Woodward, P.E.
City Engineer
City of Bonners Ferry
P. O. Box 149
Bonners Ferry, Id. 83805

Dear Mike:

As per your request, I am writing to explain why the portions of the City's early water rights that were not being used cannot be applied to the City's new generating facility.

The explanation may be found in Section 42-222 of the Idaho Code which defines forfeiture of a water right. Forfeiture is failure to apply water to the beneficial use for which it was appropriated for a term of five years. All forfeited rights revert back to the State.

As no major changes have taken place in the generating facilities since 1958, any appropriated water in excess of that being utilized after 1958 would have been lost to forfeiture sometime in 1963.

Consequently, in order to obtain a valid water right for the water utilized in the new turbine, an additional filing for 90 cfs will be necessary.

If you have any questions, please contact me at this office.

Sincerely,

LAWRENCE D. BEARD
E.I.T.

LDB/pms
cc: IDWR - State Office - File 98-7320 ~ 98-2036 - 18713

98-2060

City of
BONNERS FERRY

TELEPHONE (208) 267-3105
102 MAIN STREET
POST OFFICE BOX 149
BONNERS FERRY, IDAHO 83805



Moyie Dam Constructed 1948

January 4, 1983

RECEIVED
JAN 6 1983
Department of Water Resources
Northern District Office

State of Idaho
Department of Water Resources
Suite No. 1
4055 Government Way
Coeur d' Alene, Idaho 83814

Attn: Lawrence D. Beard, E.I.T.

Re: Bonners Ferry Hydroelectric Plant Water Rights

Dear Larry;

Please refer to your letter to me of November 22, 1982 concerning the above subject.

I have done some checking of records here and have some new information that indicates our two earlier water rights were actually used. The factor that influences this is the use of an earlier low head dam where more water was consumed in producing power.

To be more specific consider first the City's Water License No. 17098 (98-2036). This water was used in the first plant turbine. The turbine operated off the original low dam and consumed a relatively large amount of water for the power produced, thus a water license for 150 cfs.

Next consider the City's Water Permit No. 18713, in the amount of 160 cfs. This water is used by our two 1000 KW units.

On the basis of the previous water rights totaling 310 cfs, it was realized at the time of filing for additional water rights in 1979, that less than the anticipated consumption of the new unit was needed to bring the aggregate of our water rights to the proper total. Water Right application No. 98-7320 was filed accordingly.

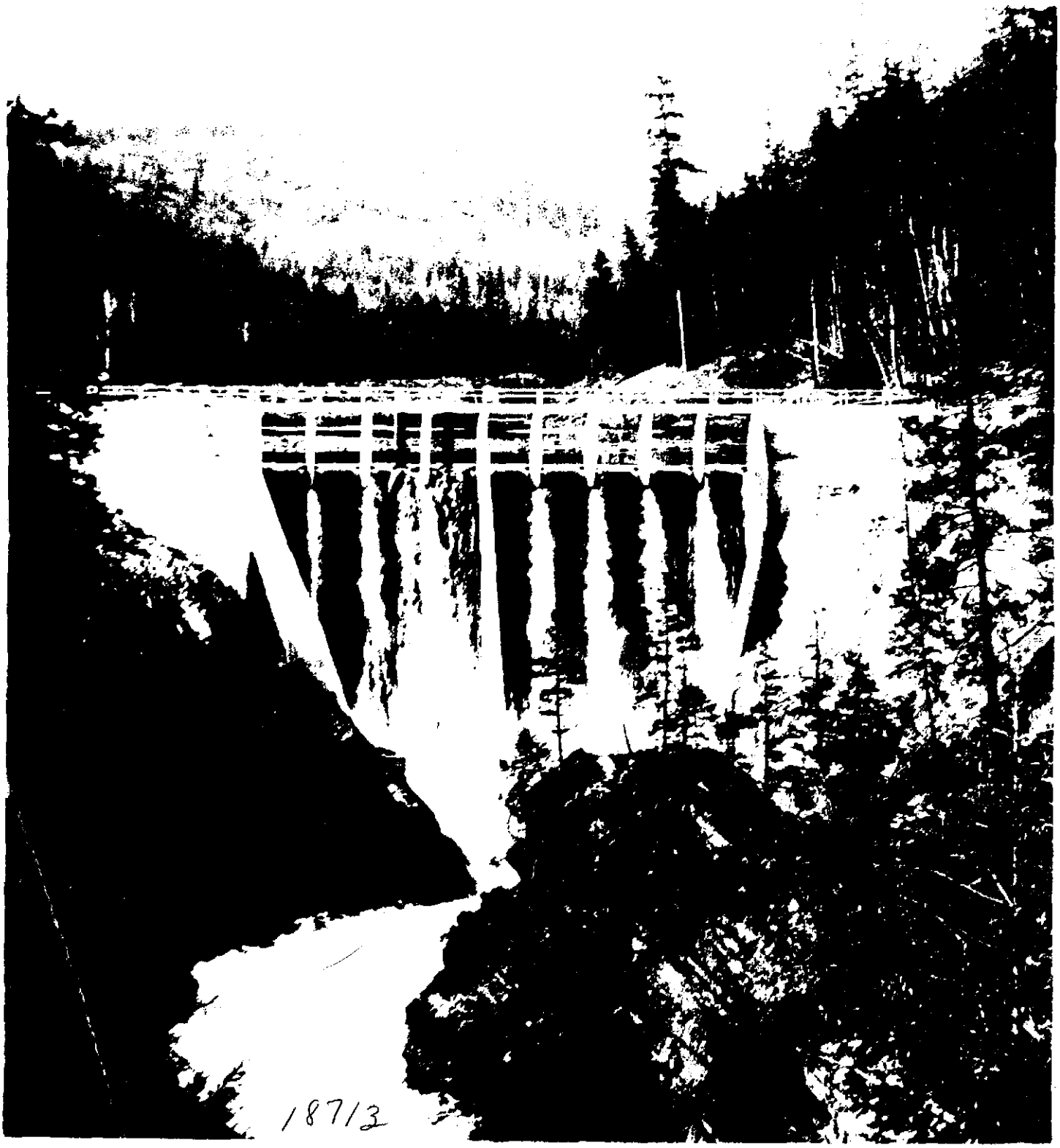
Since the City's earlier water rights were put to beneficial use I trust they are valid and this matter is in order.

Very truly yours,

Mike Woodward

Mike Woodward, P.E.
City Engineer

MJW/ld
cc: file (2)


1873

Form 23

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

REPORT OF ENGINEER

Permit No. 18713

This proof is for Beneficial use In Water District No.

1. Name of applicant Village of Bonners Ferry, Bonners Ferry, Idaho
2. Source of water supply: Moyie River
3. Location of point of diversion: Is in the SW¼ SW¼ of Section 11
   T. 62 N. R. 2 E. County of Boundary
4. Describe works as they exist, giving dimensions and capacities of same:
   See Completion of Works report.
5. Water is used for: Production of power
6. State whether or not water has been turned into works of diversion: Yes
7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):
   Place of use: NW¼ NW¼ Section 14,
   Twp. 62 North, Range 2 East, B. M.

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach?

Remarks: This is an entirely different plant than the one licensed for 150 cfs.
The P.D. on this one is 745 feet upstream from the P.D. of the old plant and the Power House is 150 feet down stream from the old power house. Incidentally the license was too high as 83 cfs is the amt of water used in the old plant.
There is a desire to tie the old plant into present high diversion and use only 45 cfs.

This examination was made on the 18 day of April, 1956

(Signed) E. M. Humphreys, Examiner.

The old plant (licensed) has not been used for two years.

18713

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

RECEIVED
APR 25 1956
Department of Reclamation

Village of Bonners Ferry
Bonners Ferry, Idaho
Permit No. 18713

Examination for Beneficial use

County Boundary

11-62N.-2E.

Q = 160 c.f.s.

S = Moyie River

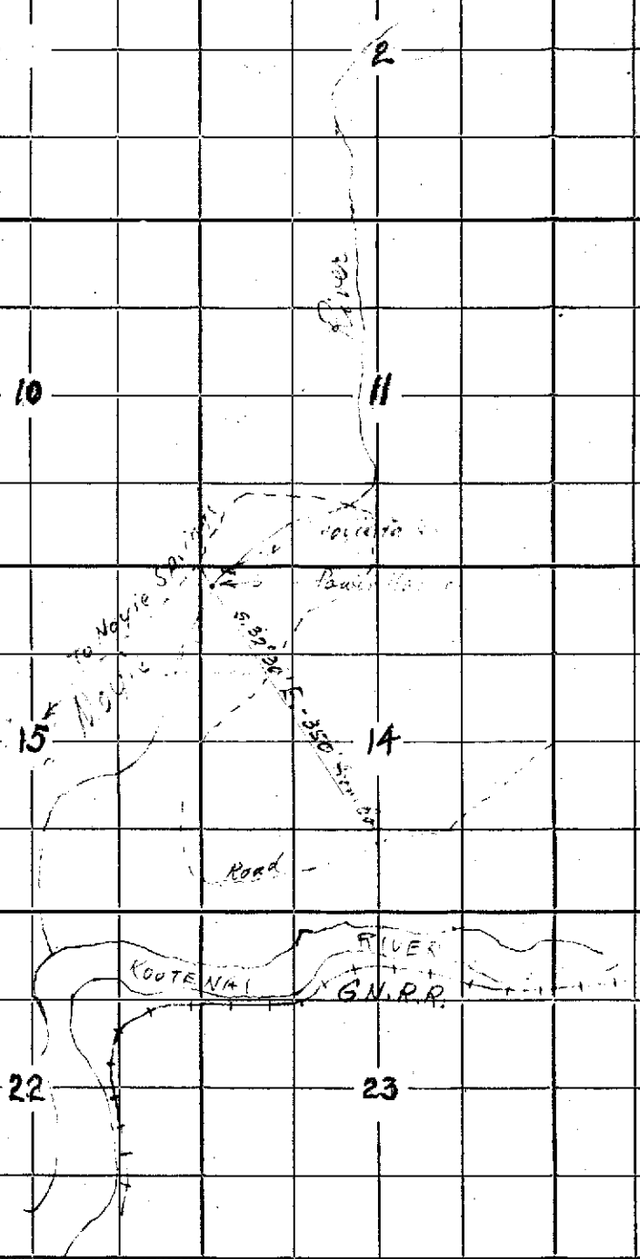
P.D. = SW, SW, Sec. 11, T. 62N. - R. 2E.

Use = Power

Priority = Sept. 2, 1938
Due = Dec. 31, 1948
(Cl'n. & Ext. to 12-31-50)

C/W = 10-31-51

R-2 E.



Q = 160 cfs

Scale: 2 Inches Equals 1 Mile. Draw Map In Ink.

18713

Form 23

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

REPORT OF ENGINEER

PERMIT NO. 18713

REPORT ON PROOF OF Beneficial use

VILLAGE OF BONNER'S FERRY, Bonners Ferry, Idahi

app. 160 cfs
Power purposes

160 cfs mex

May 8, 1956

RE: Permit No. 18713

Village of Bonners Ferry
Bonners Ferry
Idaho

Gentlemen:

We enclose License and Certificate of Water Right issued on Permit No. 18713 confirming your right to the use of 160 second feet of water from Moyie River with point of diversion in the SW¼SW¼ Section 11, Township 62 North, Range 2 East, B.M. for power purposes at the Village of Bonners Ferry, Idaho, with priority of September 2, 1938.

We also enclose departmental receipt No. 27948 for the statutory $5.00 license fee.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

R:hll
Enc.

18713

April 25, 1956

RE: Permit No. 18713

Village of Bonners Ferry
Bonners Ferry
Idaho

ATTENTION: Mr. H. M. Buroker, Village Clerk

Dear Mr. Buroker:

We now have on file the report of our field engineer on examination for Beneficial Use proof on Permit No. 18713 in the name of the Village of Bonners Ferry, which shows that 160 cubic feet per second of water from Moyie River has been used for power purposes.

Therefore, upon receipt of the statutory License fee of $5.00, a License and Certificate of Water Right can be issued.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Office Manager

T:hll

18713

April 10, 1956

RE: Permit No. 18713

Village of Bonners Ferry
Bonners Ferry
Idaho

ATTENTION: Village Clerk, Mr. H. M. Buroker

Dear Mr. Buroker:

I will call on you on Wednesday, April 18th in connection with the required inspection for Beneficial Use proof on your power permit No. 18713.

Yours truly,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

H:hll

18713

December 19, 1955

RE: Permit No. 18713

Mr. H. M. Buroker, Clerk
Village of Bonners Ferry
Bonners Ferry, Idaho

Dear Mr. Buroker:

We have your letter of December 15 enclosing affidavit of publication in the Bonners Ferry Herald which completes the proof of beneficial use on Permit No. 18713.

Before final action is taken the law requires that a field examination be made by an engineer from this Department.

We cannot tell just when this examination will be made but our field engineer will try and contact you at the time he makes the examination so that arrangements may be made to show him over the grounds.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:hll

18713

VILLAGE OF BONNERS FERRY

OFFICE OF CITY CLERK

BONNERS FERRY, IDAHO

December 15, 1955

RECEIVED
DEC 19 1955
Department of Reclamation

Mr. Mark R. Kulp,
State Reclamation Engineer,
Boise, Idaho.

Dear Sir:

We are enclosing Affidavit of Publication, from the Bonners Ferry Herald for Notice of Proof Application of Water To Beneficial Use.

Yours very truly

Village of Bonners Ferry

H M Bunker

Clerk

18713

NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 A. M. on the 6th day of December, 1955, at Bonners Ferry, County of Boundary, State of Idaho, before Geo. Unternahrer, Probate Judge, proof will be submitted of the application to beneficial use of 160 cubic feet per second of the waters of Moyie River in accordance with the terms and conditions of Permit No. 18713 heretofore issued by the Department of Reclamation of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Village of Bonners Ferry, a Municipal Corporation.

The use to which said water has been applied is Production of power.

The amount applied to beneficial use is 160 cfs.

The place where said water is used NW¼ NW¼ Section 14, Township 62 North, Range 2 East, Boise Meridian.

The name of the canal or ditch or other works by which said water is conducted to such place of use is, rock tunnel and steel uenstock.

The right to take water from such works is based upon Permit No. 18713.

The source of supply from which such water is diverted is Moyie River, a tributary of the Kootenai River.

The date of priority which said user is prepared to establish is September 2, 1938.

MARK R. KULP
State Reclamation Engineer

1st Pub. Nov. 10, 1955
Last Pub. Dec. 1, 1955

18713

Affidavit of Publication

STATE OF IDAHO }
County of Boundary } **ss.**

W.A. Chubb

being first duly sworn upon his oath, deposes and says: That he is the Publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of Village of Bonners Ferry

a Notice of Proof Application of "ater To "eneficial Use

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for Four consecutive issues, commencing with the issue dated Nov. 10 195 5, and ending with the issue dated Dec. 1, 195 5.

W. A. Chubb
Co-Publisher
Foreman

Subscribed and sworn to before me this ..... day of ....., 195....

Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

18713

December 12, 1955

RE: Permit No. 18713

Mr. H. M. Buroker, Clerk
Village of Bonners Ferry
Bonners Ferry, Idaho

Dear Mr. Buroker:

We acknowledge receipt of your letter of December 6 enclosing depositions of yourself and two witnesses in proof of beneficial use on Permit No. 18713.

The Bonners Ferry Herald was instructed to send you the affidavit of publication which is a necessary part of the proof and if you have not received it, we suggest you take the matter up with them at once.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

A;hll

Chief Clerk

18713

VILLAGE OF BONNERS FERRY

OFFICE OF CITY CLERK

BONNERS FERRY, IDAHO

RECEIVED
DEC 12 1955
Department of Reclamation

December 6, 1955

Mr. Mark R. Kulp,
State Reclamation Engineer,
Boise, Idaho.

Dear Sir:

We enclose herewith Deposition of Holder and Deposition of two witnesses for proof of Application of Water to Beneficial Use, under permit No. 18713.

Yours very truly

Village of Bonners Ferry

H. M. Brooker

Clerk

18713

Form 16.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

Permit No. 18713

Proof of Application of Water to Beneficial Use 1955

Deposition of Holder

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. Village of Bonners Ferry a Municipal Corporation
Bonners Ferry,Idaho H.M.Buroker,Clerk

Ques. 2. If acting in behalf of corporation, state its name, principal place of business (if a foreign corporation, give name of postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. Village of Bonners Ferry,Idaho

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. 18713 dated December,31,1938 -- date of priority September,2,1938

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Moyie River. Point of diversion is in the SW¼ of the SW¼ of Section 11,Township 62N. Range 2 East,B.M.

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use. If a well, state depth of well, depth and size of casing and depth to water. If pump is used, state discharge of pump and tell how it was measured or determined. If sprinkler irrigation, give number and size of nozzles and operating pressure.

Ans. Concrete dam 300' long and 90' high,1000' of rock tunnel 7' x 7' and 300' of 5' dia. steel penstock. Capable of conveying 160 cfs to point of use.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Water is used for production of electric power. Place of use is in the NW¼ of the NW¼ of Section 14,Township 62 North,Range 2 East,B.M.

18713

Ques. 7. If for other than irrigation purposes; state how applied, amount of horse power generated, etc.

Ans. Power generated is 3000 H.P. and is used to drive electric generators

Ques. 8. What is the minimum amount of water required for the purpose specified above?

Ans. 160 cfs.

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans.

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.

Ans. 160 cfs of water has been used for power production since work was completed in March of 1950

Ques. 11. State when, how, in what amount and to what extent waters other than those diverted under the above mentioned permit have been diverted and applied to beneficial use upon the lands herein described. Give full particulars regarding such other appropriations and rights claimed thereunder.

Ans. none

(Sign) St M Bunaber

I hereby certify that the foregoing testimony was read to the above subscribed before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Bonners Ferry, County of Boundary, State of Idaho, on this 6th day of December, A. D. 19 55.

Geo. H. Unternahrer

PROBATE JUDGE
BOUNDARY COUNTY, IDAHO

My commission expires

Form 17

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

PERMIT NO. 18713

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. J.H.Cave,age 75,residing at Bonners Ferry,Idaho occupation engineer

Ques. 2. Are you acquainted with H. M. Buroker, the holder of Permit No. 18713? How long have you known him and where does he reside?

Ans. 25 years, Bonners Ferry, Idaho

Ques. 3. Have you read or heard read said Permit No. 18713, and are you familiar with its provisions and conditions?

Ans. Yes.

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Moyie River--Point of diversion is in the SW¼ of SW¼ of Section 11, Township 62N. Range 2 East, B. M.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 160 second feet being used.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Power production. Place of use is in the NW¼ of NW¼ of Section 14 Township 62 N. Range 2 East B. M.

18713

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. Complete use of power generated since project was completed.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. _____

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. None

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. Visited the Power Plant when it was producing 3000 Horsepower

(Signed) J. H. Carr

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Bonners Ferry, County of Boundary, State of Idaho, on this 6th day of December, A. D. 19 55.

Geo. H. Untermahrer
Probate Judge. ~~Notary Public~~.

My commission expires ~~My Commission Expires~~ 2nd Monday January 1957.

Form 17

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

PERMIT NO. 18713

Proof of Application of Water to Beneficial Use

Deposition of Witness

The deposition of two witnesses, on this form, taken separately, required in each case.

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Myrl A. Felch ,age 57, Commercial Hotel, Bonners Ferry, Idaho.

Ques. 2. Are you acquainted with H. M. Buroker, the holder of Permit No. 18713? How long have you known him and where does he reside?

Ans. 25 years, Bonners Ferry, Idaho

Ques. 3. Have you read or heard read said Permit No. 18713, and are you familiar with its provisions and conditions?

Ans. Yes.

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Moyie River-- Point of diversion is in the SW¼ of SW¼ of Section 11, Township 62N. Range 2 East, B.M.

Ques. 5. How many second feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. 160 second feet being used.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Power production. Place of use is in the NW¼ of NW¼ of Section 14, Township 62 N., Range 2 East, B.M.

18713

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. Complete use of power generated since project was completed.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans. _____

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. none

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. Visited the Power Plant when it was producing 3000 Horsepower

(Signed) Orville Fitch

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Bonners Ferry, County of Boundary, State of Idaho, on this 6th day of December, A. D. 19 55.

Geo. H. Untermahrer
Probate Judge Notary Public.

My commission expires _____.

November 21, 1955

RE: Permit No. 18713

Bonners Ferry Herald
Bonners Ferry
Idaho

Gentlemen:

We have checked the notice on the above numbered Permit appearing in your issue of November 10 and find one typographical error as follows:

The word penstock, the last word in the sixth paragraph, is misspelled.

Please make this correction in your subsequent issues.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:hll

18713

November 15, 1955

RE: Permit No. 18713

Bonners Ferry Herald
Bonners Ferry
Idaho

Gentlemen:

On November 4 you acknowledged receipt of notice on the above numbered Permit in the name of the Village of Bonners Ferry but to date we have not received a copy of your issue containing this notice.

Please send us same in order that we may check.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:hll

18713

Bonners Ferry Herald • Printers and Publishers

COMPLETE NEWSPAPER COVERAGE OF BOUNDARY COUNTY

IN SCENIC NORTHERN IDAHO• IN THE FERTILE KOOTENAI RIVER VALLEY

BONNERS FERRY, IDAHO

November 4, 1955

RECEIVED
NOV 7 1955
Department of Reclamation

Department of Reclamation
Boise, Idaho

Dear Sir:

We have received your letter and notice to be published four consecutive weeks prior to December 6, 1955, in the Bonners Ferry Herald.

The Bonners Ferry Herald

Barbara Carey

MEMBER IDAHO PRESS ASSOCIATION

18713

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

Re: Permit No. 18713 Date: November 3, 1955

Bonners Ferry Herald

Bonners Ferry, Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to December 6, 1955 the date set for proof, the expense of the publication to be paid by the applicant, Village of Bonners Ferry of Bonners Ferry, Idaho, to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication, in order that we may check same.

Very truly yours,

MARK R. KULP

State Reclamation Engineer
By

Chief Clerk

18713

Form No. 11

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) October,7th,1955

(P. O.) Bonners Ferry,Idaho

TO THE STATE RECLAMATION ENGINEER:

Boise, Idaho

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Bonners Ferry Herald of Bonners Ferry,Idaho published in the county in which the works are situated.

Village of Bonners Ferry
E M Bunoker
Clerk

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer.)

I hereby certify that the facts set forth in the attached notice are true.

J H Carey
Engineer.

18713

Form 10

NOTICE FOR PUBLICATION

NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10:00 A. M. on the 6th day of December, 19 55, at Bonners Ferry, County of Boundary, State of Idaho, before Geo. Unternaher, Probate Judge, proof will be submitted of the application to beneficial use of 160 cubic feet per second of the waters of Moyie River in accordance with the terms and conditions of Permit No. 18713 heretofore issued by the Department of Reclamation of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Village of Bonners Ferry, a Municipal Corporation,

The use to which said water has been applied is Production of power

The amount applied to beneficial use is 160 cfs

The place where said water is used ~~for irrigation, give full and accurate description of the lands irrigated~~

NW¼ NW¼ Section 14, Township 62 North, Range 2 East, Boise Meridian.

The name of the canal or ditch or other works by which said water is conducted to such place of use is rock tunnel and steel penstock

The right to take water from such works is based upon Permit No. 18713

The source of supply from which such water is diverted is Moyie River a tributary of the Kootenai River.

The date of priority which said user is prepared to establish is September, 2, 1938

IRA R. KULP
State Reclamation Engineer.

18713

October 25, 1955

RE: Permit No. 18713

Mr. H. M. Buroker, Clerk
Village of Bonners Ferry
Bonners Ferry, Idaho

Dear Mr. Buroker:

We shall send to the Bonners Ferry Herald, notice for beneficial use proof to be made on Permit No. 18713 December 6, 1955, with instructions to publish it once a week for four weeks prior to that date and to send you the affidavit of publication together with statement of costs.

At the time set, you or someother representative of the Village, should appear before Judge Unternaher together with two disinterested witnesses who are familir with the terms of the permit and the work done thereunder for the purpose of executing the enclosed depositions.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:hll
Enc.

18713

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

Boise, Idaho

October 1, 1955

Village of Bonners Ferry
Bonners Ferry, Idaho

Dear Sir:

We enclose herewith blank notice for proof of application of water to beneficial use under your Permit No. 18713. This notice should be filled out in duplicate and returned to this office at least 40 days before the date upon which you wish to make this proof, in order to allow time for the four weeks' publication required by law.

This proof must be submitted before a Notary Public or other officer authorized by law to administer oaths.

The date for proof, as set out in your permit, is not later than December 31, 1955, and if proof is submitted later than said date, your priority will be brought down a length of time equal to the time elapsing between the date the proof is due and the date proof is actually made.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

18713

November 1, 1951

RE: Permit No. 18713

Village of Bonners Ferry
Bonners Ferry
Idaho

ATT: Village Clerk

Dear Sir:

We enclose certificate of completion of works issued under Permit No. 18713 for the diversion of 160 second feet of water from Moyie River, with point of diversion in the SW¼ SW¼ Section 11, Township 62 North, Range 2 East, B.M., for power purposes.

We also enclose departmental receipt No. 23897 for the $50.00 fee paid in connection therewith.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:fg
Enc.

18713

October 5, 1951

RE: Permit No. 18713

Village of Bonners Ferry
Bonners Ferry
Idaho

ATT: Village Clerk

Dear Sir:

We now have on file the report of our field engineer on examination for completion of works under Permit No. 18713, for 160 second feet of water from Moyie River.

The statutory fee in connection with this proof is $50.00, which is at the rate of $5.00 for the first 10 second feet, and 30 cents for each additional second foot.

Therefore, upon receipt of this amount, a certificate of completion of works will be issued.

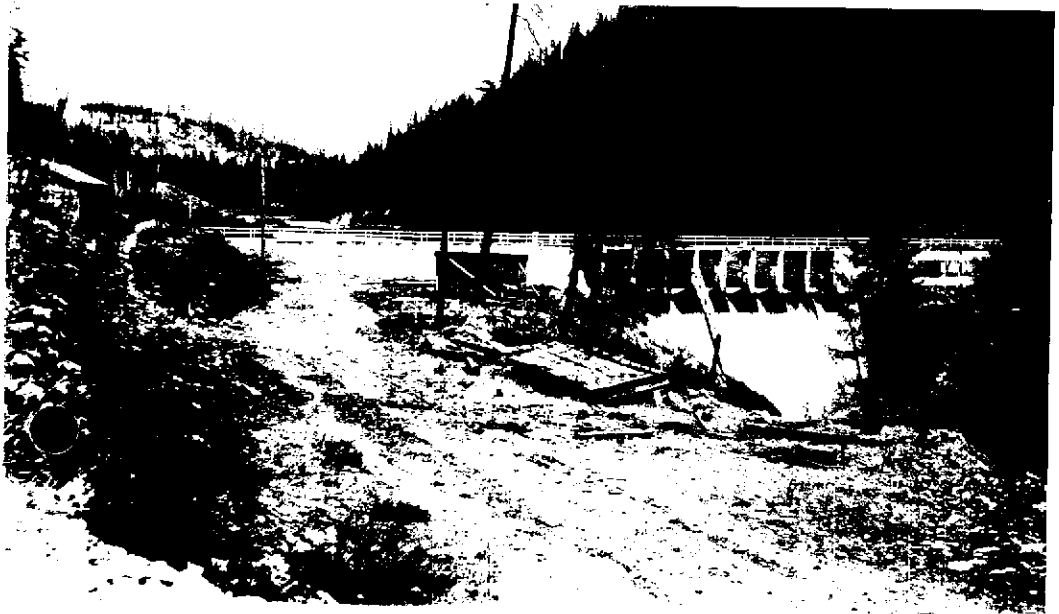
Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:fg

18713



18713

Permit # 18763
Aug 28.57
Dam on Moyie
looking upstream.

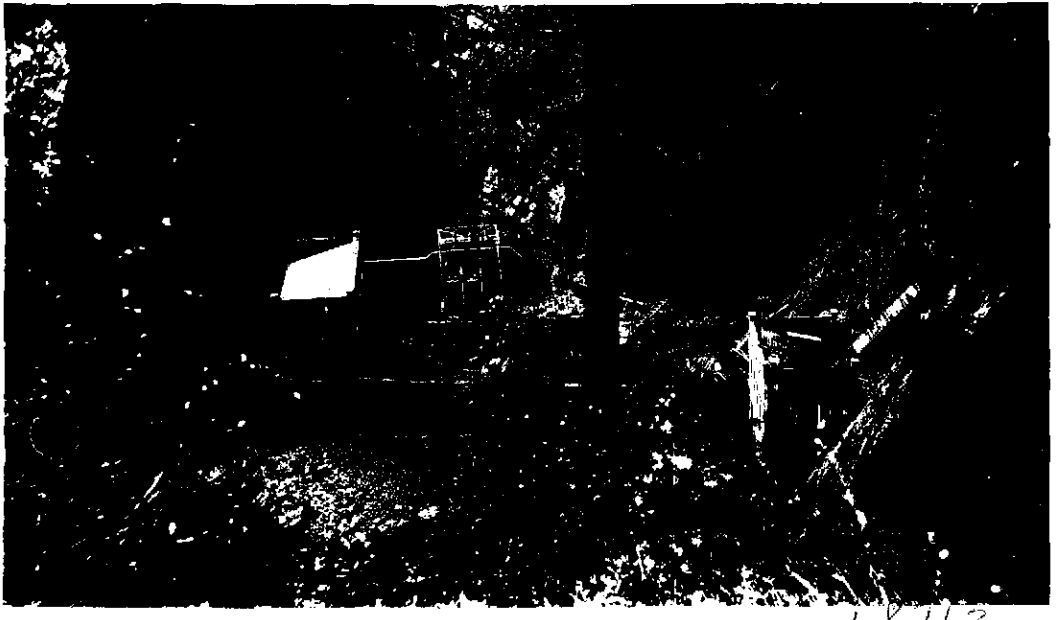


1811-3

Permit 18713

Aug 28-57

Idaho Maryie to
furnish power & light
for Bonners Ferry



Permit # 18713

Aug 28-57

Looking down on

the power house from

the East bank of

Mojave

Form 23

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

REPORT OF ENGINEER

Permit No. 18713

This proof is for Completion of works In Water District No.

1. Name of applicant Village of Bonners Ferry, Bonners Ferry, Idaho

2. Source of water supply: Moyie River

3. Location of point of diversion: Is in the SW¼ SW¼ of Section 11

T. 62 N. R. 2 E. County of Boundary

4. Describe works as they exist, giving dimensions and capacities of same: These works consist of a concrete dam with spillway in the middle across the Moyie River a short distance above the bridge on Highway #2 and a large tunnel through the rock on the West bank leading to the turbine and power plant which ~~rises~~ down-stream below the bridge on the West bank of the river. Power house is 57 feet long by 25 feet with a total height of 84½ feet. There is a 5 feet diameter gate to the tunnel. With 3 ft. freeboard, tunnel is 8 ft. in diameter. Spillway has 2 12.00 cfs. Gates. In the power house, there are ~~two~~ generating plants, each with 1,000 KW capacity. One is operated ~~by~~ by a Leffel Hydraulic turbine, Head 200 feet. B.H.P. 1500, r.p.m. 720. Driving a generator, by Electric Machinery Company, 1000 KW. 1250 K.V.A. Power factor 80%. 2500 Volts 289 amps. 720 r.p.m. Serial No. 81131. The second is a generator by Electric Machinery Co. 1000 KW capacity, K.V.A. 1250, 2500 volts, 289 amps. 720 r.p.m. Power factor 80%. Both
5. Water is used for: Power purposes. generators are 60 cycle.

6. State whether or not water has been turned into works of diversion: Yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

Place of use: NW¼ NW¼ Section 14, Twp. 62 N., Range 2 E., B.M.

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach? Kootenai

Remarks:

This is a municipal power plant for Bonners Ferry.

This examination was made on the 20 Th day of August, 19 57

(Signed) E. M. Humphrey Examiner.

18713

2 - 1500 hp units

Pelton ... [illegible]

[illegible] BHP 1500

1941 RPM 720

Electric Machinery Co [illegible]

1000 KW 1250 KVA

Power factor 80%

2500 V. amps 289 720 rpm

Serial # 81131

Electric Machinery Co [illegible]

E M Synchronous [illegible]

KVA 1250 KW 1000

volts 2500 amps 289

KVM 720 Power factor 80%

cy 60

2 - 30" in Tube

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

380 KW. at 80% PF

550 hp. use 85' head

under 72' head in old plant.

not used for 2 yrs.

but can be.

Village of Bonners Ferry
Bonners Ferry, Idaho

Permit No. **18713**

Examination for **Completion of works**

County **Boundary** 740' between P.D. & 150' " power house

62 N - 2 E

Q = 160 cfs (37500 cfs Spillway Capy)

S. = Moyie River

P.D. = N 43°35' E 1070 feet fr SW cor. S. 11 T62N. R2E and in SW¼ SW¼ S 11 T62N R2E

Concrete Dam & Rock tunnel.

Date [illegible] 21 - 1920

Purpose = Power.

Place Use = S 30°15' E. 575 feet fr NW cor S 14 T62N. R2E. in NW¼ NW¼ S.14 T62N. R2E

Return to River Same

RECEIVED
OCT 4 1951
Department of Reclamation

5' d. gate to tunnel

Iron screen over tunnel

[illegible] approx. 1¾" & [illegible] 1½"

9' wide [illegible]

Spillway Capy - 21000 cfs with 3' freeboard.

[illegible]

[illegible]

[illegible] plant

3000 hp.

Surge pipe 8' d. concrete

[illegible] highway approx 55'

[illegible] steel tunnel [illegible]

cliff to power house.

Approx 100 feet

Generating 1000 Kw today

2500 volts

Form 23

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

REPORT OF ENGINEER

PERMIT NO. 18713

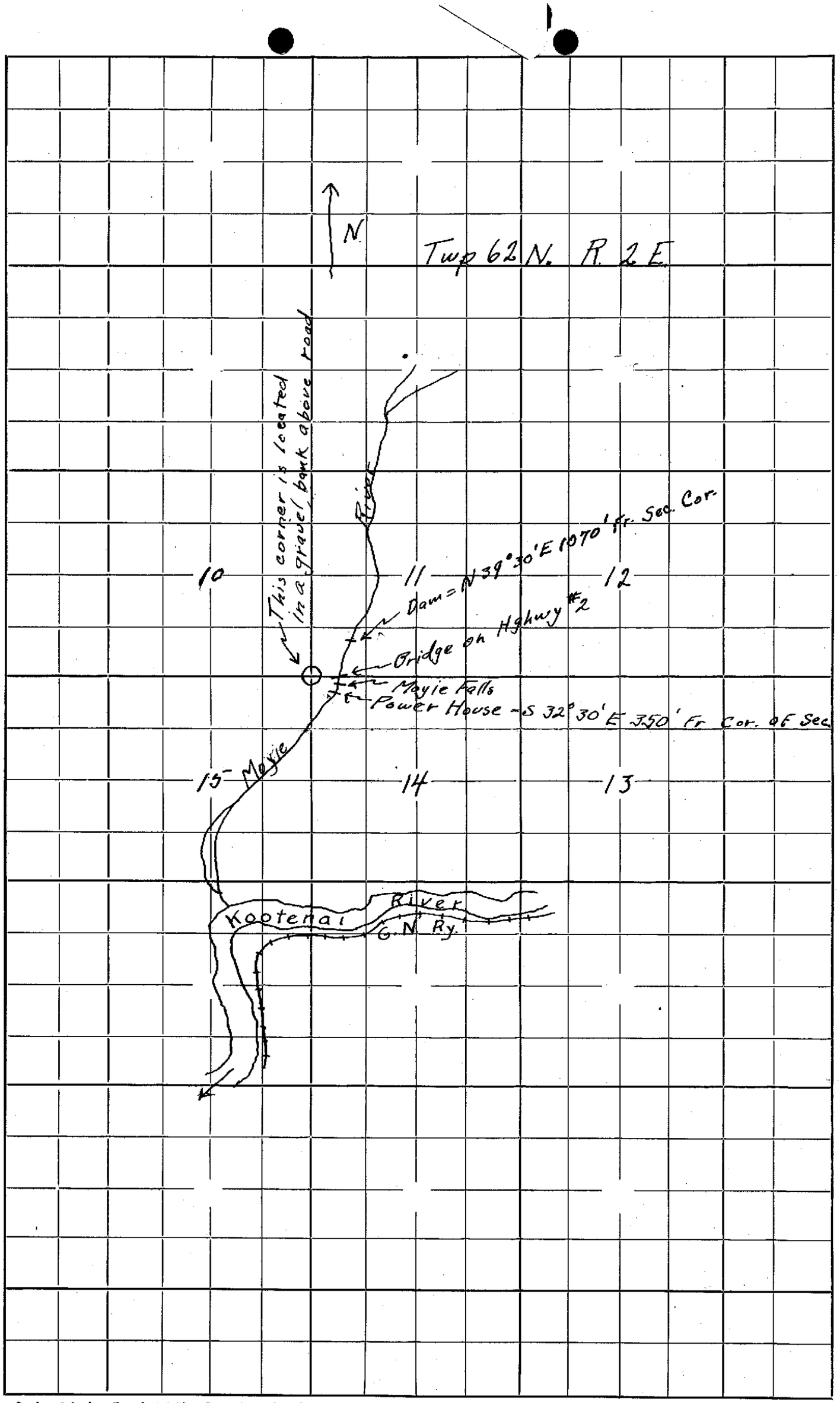
REPORT ON PROOF OF Completion of works

160 cfs
SMRK

App. 160 c.f.s.

Power House
Total Elevation 84½'
(From bot of foundation)
Length = 57'
Width = 25'

30' drop, consist of vertical
in the 5'ø pipe line
from reservoir
pipe is ½"



Scale: 2 Inches Equals 1 Mile. Draw Map In Ink.

18713

August 15, 1951

Re: Permit No. 18713

Village of Bonners Ferry
Bonners Ferry, Idaho

Gentlemen:

I intend to be in North Idaho on regular inspections in connection with Permits being brought to License, during the week of August 27, and intend to make inspection in connection with your Permit No. 18713 either Tuesday afternoon, August 28, or on Wednesday morning, August 29.

Please be prepared to have someone acquainted with the situation accompany me on this inspection.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

E. N. Humphrey
Deputy State Reclamation Engineer

ENH:bh

18713

18713

May 18, 1951

Mr. M. D. Pace
C/o Pace Insurance Agency
First National Bank Building
Bonners Ferry, Idaho

Dear Mr. Pace:

In reply to your letter of May 9, 1951, forwarded to this office by the Boise City Clerk:

Since Proof of Completion of Works has been made by the Village of Bonners Ferry on Permit No. 18713, Bond No. N-1700600 of the Hartford Accident & Indemnity Company for $1,000.00, made in connection with this Permit, may be released from any obligations from and after such completion.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:bh

18713

HARTFORD FIRE INSURANCE COMPANY

HARTFORD ACCIDENT AND INDEMNITY COMPANY



PACE INSURANCE AGENCY

M. D. PACE AND R. M. PACE, AGENTS

First National Bank Building Telephone 192

BONNERS FERRY, IDAHO

May 9th, 1951

RECEIVED
MAY 18 1951
Department of Reclamation

Commissioner of
Department of Water Permits,
Boise, Idaho.

Dear Sir:-

Re Hartford Accident & Indemnity Co. Bond No. N-1700500 issued in sum of $1000.00 covering Village of Bonners Ferry, Idaho

Re: Indemnity Bond No. 1700500 - Village of Bonners Ferry, Idaho - $1000.00.

State has issued to the Village of Bonners Ferry, Water Permit No. 18713 dated December 31st, 1938 as a condition of above obligation.

Mr. Buroker, Clerk of said Village, has informed us that the works of diversion have been completed and this bond is no longer required.

The bond has a renewal date of February 23rd, 1951 and in order to have it cancelled, we need a letter from your department stating that the obligation has been fulfilled.

Will you kindly issue such a letter at an early date.

Thanking you, we are

Very truly yours,

M. D. Pace, Agent.

sb.

18713

December 6, 1950

Re: Permit No. 18713

Mr. H. M. Buroker
City Clerk
Bonners Ferry, Idaho

Dear Mr. Buroker:

We acknowledge receipt of the depositions of yourself and two witnesses, also Affidavit of Publication in the Bonners Ferry Herald, all submitted in Proof of Completion of Works under Permit No. 18713.

Before final action is taken in the matter, the law requires that a field examination be made by an Engineer from this Department.

We cannot say just when this examination will be made as this Department has but one Field Engineer who makes examinations all over the State.

However, he will try to contact you at the time the examination is made so that arrangements may be made to show him over the grounds.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A:bh

18713

NOTICE FOR PUBLICATION

Notice is hereby given that at 10:00 A. M., on the 4th day of December, 1950, at Bonners Ferry, County of Boundary, State of Idaho, before M. D. Pace, a notary public, proof will be submitted of the completion of works for the diversion of 160 cubic feet per second of the waters of Moyie River in accordance with the terms and conditions of a certain permit heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name of the person or corporation holding said permit is Village of Bonners Ferry.

2. The postoffice address of such person or principal place of business of such corporation is Bonners Ferry, County of Boundary, State of Idaho.

3. The number of such permit is 18713, and the date set for the completion of such work is December 31, 1950.

4. Said water is to be used for power purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 160 cubic feet per second.

The place where said water is diverted is in the SW¼SW¼ Section 11, Twp. 62.N.R. 2. E. and the place of use of said water is in the NW¼NW¼ Section 14, Twp. 62.N. R. 2. E. B. M. 18713

MARK R. KULP,
State Reclamation Engineer.

First publication Nov. 2, 1950.
Last publication Nov. 23, 1950.

Affidavit of Publication

STATE OF IDAHO }
County of Boundary } ss.

R. L. Myers

being first duly sworn upon his oath, deposes and says: That he is the co-publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of State Reclamation Engineer

a Notice for Publication

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for four consecutive issues, commencing with the issue dated Nov. 2 1950, and ending with the issue dated Nov. 23, 1950.

R. L. Myers
Co-Publisher
~~Foreman~~

Subscribed and sworn to before me this 24 day of Nov., 1950

Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

Notary Public for the State of Idaho
residing at Bonners Ferry, Idaho
My Commission Expires May 3, 1954.

18713

Form 15

PERMIT NO. 18713

Proof of Completion of Works

RECEIVED
DEC 6 1950
Department of Reclamation

DEPOSITION OF HOLDER

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. H. M. Buroker, Bonners Ferry, Idaho - City Clerk & Mgr., Light & Water Dept. P.O. Address - Bonners Ferry, Idaho

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business, your position with reference to same, and your authority for appearing in its behalf.

Ans. Village of Bonners Ferry, Bonners Ferry, Idaho. City Clerk - Appointed by Board of Trustees

Ques. 3. State number and date of permit, amount of water you are authorized to divert, source, and point of diversion.

Ans. 18713 dated Dec. 31 1938 - 160 c.f.s. from Moyie River - N 43°-35' E 1070' from SW Corner Sec 11, T 62 N, R 2 E B.M.

Ques 4. State purpose for which water is to be used, and, if for irrigation, state the number of acres and give description of the land you intend to reclaim.

Ans. Power purposes

Ques. 5. State whether or not the water has been turned into your works of diversion, and, if so, when and to what extent.

Ans. Full use of water started March 24 1950

Ques. 6. State whether or not the works of diversion are fully completed, and whether or not they comply in all respects with the terms of the permit.

Ans. Completed in compliance with permit except:-

Ques. 7. If the works of diversion do not comply with all the terms of your permit, state fully those particulars in which there is any variance.

Ans. Dam constructed higher and consequently longer to comply with requirements of Federal Power Comm. Dam of Gravity section.

Ques. 8. Give description of works, state dimensions and capacity of each part, and give cost of same.

Ans. Concrete gravity dam 90' high 300' long - 1200' 7x7 rock tunnel - Total cost $441,909.85

(Sign here.) H. M. Buroker

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, in Bonners Ferry, County of Boundary, State of Idaho, on this 4th day of December A. D. 1950

W. S. Dow
Notary Public.

My Commission expires .....

Notary Public for the State of Idaho
residing at Bonners Ferry, Idaho
My Commission Expires May 8, 1954.

18713

Form 14

The Depositions of two Witnesses, in this form, taken separately, required in each case.

Permit No. 18713

Proof of Completion of Works

DEPOSITION OF WITNESS

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. J. H. Cave, Bonners Ferry, Civil Engineer

Ques. 2. Are you acquainted with Village of Bonners Ferry H. M. Bunoken, Clerk, the holder of Permit No. 18713, authorizing the diversion of 160 second-feet of the waters of Moyie River, at Bonners Ferry for Power purposes? How long have you known him, and where does he reside?

Ans. Twenty-five years - Resides at Bonners Ferry

Ques. 3. Have you read or heard read said Permit No. 18713, and are you familiar with its terms and conditions?

Ans. Yes

Ques. 4. (If for irrigation purposes). Are you acquainted with the land proposed to be irrigated under said permit? If so, describe same, state its character, and give your estimate of the amount of water required for its profitable cultivation.

Ans. ——

Ques. 5. Are the works of diversion fully completed and of sufficient capacity to convey the entire amount of water set out in the permit from point of diversion to place of use?

Ans. Completed - Capable of using 160 c.f.s.

Ques. 6. Describe the works of diversion as they now exist, and give your estimate of their capacity.

Ans. Concrete Gravity Dam - 90' High about 320' crest. Length - 1200' of 7'x7' Rock Tunnel partly Lined about 200' - 5' dia. steel penstock to power house containing 2 - 1500 H.P. Turbines requiring 80 c.f.s. each.

(Sign here.) J. H. Cave

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Bonners Ferry County of Boundary, State of Idaho, on this 4th day of December, A. D. 1950

W. S. Dow 18713

Notary Public for the State of Idaho
residing at Bonners Ferry, Idaho
My Commission Expires May 8, 1954.

Form 14

The Depositions of two Witnesses, in this form, taken separately, required in each case.

Permit No. 18713

Proof of Completion of Works

DEPOSITION OF WITNESS

Ques. 1. State your name, residence, occupation and postoffice address.

Ans. Joe C. Vernon, Bonners Ferry, Idaho, Professional Civil Engineer - P.O. Address Bonners Ferry, Idaho

Ques. 2. Are you acquainted with Village of Bonners Ferry H.M. Buroker, Clerk, the holder of Permit No. 18713, authorizing the diversion of 160 second-feet of the waters of Moyie River, at Bonners Ferry for Power purposes? How long have you known him, and where does he reside?

Ans. Yes, Twenty-five years - Bonners Ferry, Idaho.

Ques. 3. Have you read or heard read said Permit No. 18713, and are you familiar with its terms and conditions?

Ans. Yes - I am familiar with it's Terms

Ques. 4. (If for irrigation purposes). Are you acquainted with the land proposed to be irrigated under said permit? If so, describe same, state its character, and give your estimate of the amount of water required for its profitable cultivation.

Ans. —

Ques. 5. Are the works of diversion fully completed and of sufficient capacity to convey the entire amount of water set out in the permit from point of diversion to place of use?

Ans. Yes

Ques. 6. Describe the works of diversion as they now exist, and give your estimate of their capacity.

Ans. Concrete Gravity dam about 90' high and 300' long about 1200' 7'x7' rock Tunnel to steel penstock - Capable of diverting 160 c.f.s. To point of use. Two turbines installed capable of using 160 c.f.s.

(Sign here.) Joe C. Vernon

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Bonners Ferry County of Boundary, State of Idaho, on this 4th day of December, A. D. 19 50.

W.D. Doan 18713

Notary Public for the State of Idaho
residing at Bonners Ferry, Idaho
My Commission Expires May 8, 1954

Form No. 22-A

State of Idaho

ENGINEERING DEPARTMENT

BOISE

INSTRUCTIONS

PROOF OF COMPLETION OF WORKS

Re: Permit No. 18713
Village of Bonners Ferry

Mr. M. D. Pace
Notary Public
Bonners Ferry, Idaho

Boise, Idaho, November 24, 1950

Dear Sir:

I enclose herewith the following forms to be used in connection with proof of completion of works under Permit No. 18713

Deposition of Permit Holder,
Depositions of Two Witnesses.

In submitting this proof the following instructions should be CAREFULLY followed out, since failure to do so may result in the loss of the permit holder's rights:

1. On December 4, 1950, the date set for proof of completion of works, the enclosed deposition forms (one for permit holder and one each for two witnesses) should be filled out and sworn to, at Bonners Ferry, Idaho, before M. D. Pace, Notary Public,

2. When the depositions have been taken they should be mailed to this office, together with affidavit of publication of notice.

When these have been received, together with report of the examining engineer, if everything is properly executed, you will be further advised as to fees due, etc., before certificate is issued.

Yours truly,

MARK R. KULP

State Reclamation Engineer

18713

The Bonners Ferry Herald
PUBLISHERS AND COMMERCIAL PRINTERS
Bonners Ferry, Idaho

18719

RECEIVED
NOV 4 1950
Department of Reclamation

Nov. 1, 1950

State Reclamation Engineer
Boise, Idaho

Dear Sir:

This will acknowledge receipt of your letter of Oct. 26 enclosing notice for publication on the application of the Village of Bonners Ferry. The first publication of this notice will be on Thursday, Nov. 2, and a copy of this ~~Ad~~ paper will be mailed you.

Yours very truly,

BONNERS FERRY HERALD

R. L. Payne

Co-Publisher

18713

18713

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

Date: October 26, 1950

Bonners Ferry Herald,
Bonners Ferry, Idaho.

Gentlemen:

Enclosed you will find notice for publication once a week for four consecutive weeks prior to December 4, 1950 the date set for proof, the expense of the publication to be paid by the applicant, Village of Bonners Ferry, Bonners Ferry, Idaho., to whom you should furnish proof of publication on or prior to the date set for proof.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication.

Very truly yours,
MARK. R.KULP.
State Reclamation Engineer

By, Roy.W.Thompson,
Supervisor of Water Distribution.

18713

Form No. 11

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) October,20,1950

(P. O.) Bonners Ferry,Idaho

TO THE STATE RECLAMATION ENGINEER:

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Bonners Ferry Herald of Bonners Ferry,Idaho published in the county in which the works are situated.

Village of Bonners Ferry

By J. M. Bunker

Clerk

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer.)

I hereby certify that the facts set forth in the attached notice are true.

J. H. Cave

Engineer.

18713

FORM 8

Notice for Publication

Notice is hereby given that at 10:00 A. M., on the 4th day of December 19 50, at Bonners Ferry, County of Boundary, State of Idaho, before M.D.Pace,a notary public proof will be submitted of the completion of works for the diversion of 160 cubic feet per second of the waters of Moyie River in accordance with the terms and conditions of a certain permit heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name of the perrson or corporation holding said permit is Village of Bonners Ferry

2. The postoffice address of such person or principal place of business of such corporation is Bonners Ferry, County of Boundary, State of Idaho.

3. The number of such permit is 18713, and the date set for the completion of such work is December 31,1950

4. Said water is to be used for Power purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 160 cubic feet per second.

6. The amount of lands for which said water is available is ------- acres, particularly described as follows: The place where said water is diverted is in the SW¼SW¼ Section 11, Twp. 62.N.R. 2.E. and the place of use of said water is in the NW¼NW¼ Section 14, Twp. 62.N. R. 2.E. B.M.

MARK. R. KULP.
Commissioner of Reclamation.
State Reclamation Engineer.

18713

Form No. 7

State of Idaho

DEPARTMENT OF RECLAMATION

BOISE

INSTRUCTIONS

PROOF OF COMPLETION OF WORKS

Village of Bonners Ferry

Bonners Ferry, Idaho

Boise, Idaho, October 2, 1950

~~Dear Sir:~~ Gentlemen:

I enclose herewith blank form upon which to give notice that you are prepared and desire to submit proof of completion of works under your permit No. 18713.

This form should be filled out and mailed to the Department of Reclamation, at least 60 days before the date upon which proof is to be submitted, which proof MUST be on or before December 31, 1950 Upon receipt of the blank properly filled out, notice for publication will be sent to the paper direct from this office, which notice must be published a period of four weeks prior to the date of proof.

The proof may be submitted at any place convenient to you and two witnesses, where there is a notary public or other officer authorized to administer oaths.

The certificate that shall be issued under this proof does not give you a perpetual right to the use of the water for which application is made, as it only confirms the completion of the works of a capacity to divert and convey to the place of intended use a certain amount of water. The law requires that another proof be submitted when the water has been fully applied to a beneficial use, at which time license is issued for the amount of water actually in use. Information in regard to this last proof will be furnished on request.

Very truly yours,

MARK R. KULP

~~Commissioner of Reclamation~~

State Reclamation Engineer

18713

18713

FEDERAL POWER COMMISSION
WASHINGTON 25

RECEIVED
APR 13 1950
Department of Reclamation

Project No. 1991-Idaho

APR 10 1950

Department of Reclamation
State House
Boise, Idaho

Gentlemen:

Enclosed for your information is a copy of the license issued by this Commission to the Village of Bonners Ferry for Project No. 1991 located on the Moyie River in Boundary County, Idaho.

Very truly yours,

Leon M. Fuquay

Secretary

Enclosure No. 66122:
Copy of license

18659-
18046
17098

18713

FEDERAL POWER COMMISSION

LICENSE FOR MAJOR PROJECT ON LANDS OF THE UNITED STATES

PROJECT NO. 1991-IDAHO

VILLAGE OF BONNERS FERRY

Pursuant to the provisions of the Federal Power Act (hereinafter referred to as the Act), the FEDERAL POWER COMMISSION (hereinafter referred to as the Commission) HEREBY ISSUES to VILLAGE OF BONNERS FERRY, Idaho (hereinafter referred to as the Licensee), THIS LICENSE for the construction, operation, and maintenance of certain project works as hereinafter described, necessary or convenient for the development, transmission, and utilization of power upon lands of the United States within Kaniksu National Forest, subject to the provisions, terms, and conditions set forth hereinafter and in the Act, which is hereby incorporated by reference as a part of this license, and subject to such orders, rules, and regulations as the Commission has issued or may issue or prescribe under the provisions of the Act.

Article 1. This license is issued for a period of 50 years effective as of April 1, 1948; and in consideration of this license and the benefits and advantages accruing hereunder to the Licensee, it is expressly agreed by the Licensee that the entire project, project area, and project works, as hereinafter designated and described, whether or not upon lands of the United States, shall be subject to all the provisions, terms, and conditions of this license.

Article 2. The project covered by and subject to this license is located on the Moyie River, a tributary of the Kootenai River, in Boundary County, Idaho, and consists of:

1873

A. All lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit "J-K": (FPC No. 1991-1), entitled "Moyie River Dam - Project Boundary Map," signed Village of Bonners Ferry by C. F. Griggs, Civil Engineer, on February 9, 1948.

Exhibit "K": (FPC No. 1991-3), entitled "Moyie River Dam - Power House Sections - Location of Transmission Lines," signed Village of Bonners Ferry by C. F. Griggs, Civil Engineer, on February 9, 1948.

B. All project works consisting of a concrete gravity dam about 300 feet long and about 90 feet high; a tunnel and a penstock; a powerhouse, already constructed, containing a new high-head turbine connected to the present generator and an additional turbine and generator, making a total installation of about 3,000 horsepower; a step-up substation; an existing transmission line about 9 miles long from the powerhouse to but not including a sub-station in the Village of Bonners Ferry; and appurtenant facilities; the location, nature, and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

18713

Exhibit "L": (FPC No. 1991-2), entitled "Moyie River Dam - Plan of Dam - Up Stream Elevation - Typical Sections - Tunnel Plan & Profile," signed Village of Bonners Ferry by C. F. Griggs, Civil Engineer, on February 9, 1948, and revised on January 11, 1949.

Exhibit M: (Revised) A statement in four sheets insofar as it describes the actual project facilities and lands within the project boundary received in the office of the Commission on December 20, 1948.

C. All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used and useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

Article 3. The maps, plans, specifications, and statement designated and described as exhibits in Article 2 hereof, and approved by the Commission, are hereby made a part of this license, and no substantial change shall hereafter be made in said exhibits, or in any of them, until such change shall have been approved by the Commission: Provided, however, that if the Licensee deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of this license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of this license as may be specified by the Commission.

18713

Article 4. Said project works shall be constructed in substantial conformity with the approved exhibits described in Article 2 hereof or as changed in accordance with the provisions of Article 3. Except when emergency shall require for the protection of life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under this license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall make such alterations or additions in the project area and project works as the Commission may direct for the protection of life, health, or property.

Article 5. Subject to the provisions of Section 13 of the Act, the Licensee shall complete and place the project in operation not later than June 30, 1950.

Article 6. The construction of the project, including its operation and maintenance and any work incident to additions or alterations, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, San Francisco, California, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the

Commission for such purposes. The Licensee shall furnish to said representative such information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 7. For the purpose of determining the stage and flow of the stream or streams from which water is to be diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such stream gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the

18713

determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 8. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads.

Article 9. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project work constructed, operated, or maintained under this license, and any radio installation, telephone line, or other communication facility installed or constructed before construction of such project transmission line or other project work and owned, operated, or used by the Forest Service in administering the national forests and land

18713

under its jurisdiction. The foregoing provisions of this article shall also relate to any radio installation, telephone line, or other communication facility installed or constructed by the United States after construction of such project transmission line or other project work. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 10. The Licensee shall clear all lands in the bottoms and margins of reservoirs up to high water level, shall clear and keep clear to an adequate width lands of the United States along open conduits, and shall dispose of all temporary structures, unused timber, brush, refuse or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. The clearing of the lands and the disposal of the material shall be done to the satisfaction of the authorized representative of the Commission.

Article 11. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works or in the clearing of said lands shall be paid for in accordance with the requirements of and at the current stumpage rates applicable to the sale of similar timber by the agency of the United States having jurisdiction over said lands; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as the officer of such agency may direct.

Article 12. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the Forest Service or other agency of the United States, to prevent and suppress fires on or near lands occupied under this license.

Article 13. At such time as the Commission may direct and to the extent it is economically sound and in the public interest to do so, after notice and opportunity for hearing, the Licensee shall, in the event of development of headwater storage on the Moyie River, construct an additional tunnel and install appropriate additional generating capacity.

Article 14. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in this license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the Commission, be made a part of this license under the provisions of Article 3 hereof.

Article 15. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under this license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 16. The Licensee shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of

the project works, or of the works appurtenant or accessory thereto, and in no event shall the United States be liable therefor.

Article 17. The Licensee shall interpose no objections to, and shall in no way prevent, the use of water for fire protection and for sanitary and domestic purposes by the Forest Service or by persons or corporations occupying lands of the United States under permit along or near any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by this license.

Article 18. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed in, through, and across the project lands, conduits, chutes, ditches, railroads, roads, trails, telephone lines, and other means of transportation and communication not inconsistent with the enjoyment of said lands by the Licensee for the purposes herein stated. This article shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as herein stated.

Article 19. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of such reservoir or other improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by the Licensee shall be determined by the Commission, and the licensee or permittees affected shall pay to the United States the cost of making such determination. Whenever such reservoir or other improvement is constructed by the United States, the Licensee shall pay similar charges into the Treasury of the United States upon bills rendered by the Commissio

18713

Article 20. Subject to the provisions of Section 10(e) of the Act and the rules and regulations of the Commission thereunder, the Licensee shall pay to the United States the following annual charges starting April 1, 1948:

A. For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the authorized installed capacity (3,000 horsepower), plus two and one-half ($2\frac{1}{2}$) cents per 1,000 kilowatt-hours of gross energy generated by the project during the calendar year for which the charge is made;

B. For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $3.10.

Article 21. A. The actual legitimate original cost, estimated where not known, and the accrued depreciation of the parts of the project already constructed shall be determined by the Commission as of the effective date of this license, namely, April 1, 1948, in accordance with the Act and the rules and regulations of the Commission, and such cost less such accrued depreciation, so determined, shall be the net investment in the constructed parts of the project as of such effective date.

B. The actual legitimate original cost of the parts of the project to be constructed after the effective date of this license, and of any addition to or betterment of the project, shall be determined by the Commission in accordance with the Act and the Commission's rules and regulations thereunder.

Article 22. After the first twenty (20) years of operation of the project under this license, six (6) per cent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings and for the establishment and maintenance of amortization reserves pursuant to Section 10(d) of the Act; one-half of all earnings in excess of six (6) per cent per annum shall be paid into such amortization reserves; and such amortization reserves shall be established, maintained, and disposed

18713

of in accordance with the terms of the Act and such rules, regulations, and orders of the Commission as may be adopted pursuant thereto.

Article 23. No lease of the project or part thereof whereby the lessee is granted the exclusive occupancy, possession, or use of project works for purposes of generating, transmitting, or distributing power shall be made without the prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of this license, of the Act, and of the rules and regulations of the Commission shall be applicable to such lease and to such property so leased to the same extent as if the lessee were the Licensee hereunder: Provided, that the provisions of this article shall not apply to parts of the project or project works which may be used by another jointly with the Licensee under a contract or agreement whereby the Licensee retains the occupancy, possession, and control of the property so used and receives adequate consideration for such joint use, or to leases of land while not required for purposes of generating, transmitting, or distributing power, or to buildings or other property not built or used for said purposes, or to minor parts of the project or project works, the leasing of which will not interfere with the usefulness or efficient operation of the project by the Licensee for such purposes.

Article 24. It is hereby understood and agreed that the Licensee, its successors and assigns will, during the period of this license, retain the possession of all project property covered by this license as issued or as hereafter amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and that none of such properties necessary or useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or

judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. The Licensee further agrees, on behalf of itself, its successors and assigns that, in the event the project is taken over by the United States upon the termination of this license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, it will be responsible for and will make good any defect of title to or right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by said Licensee or created or incurred after the issuance of this license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 25. The Licensee shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged; and in case of the development, transmission, distribution, sale, or use of power in public service by the Licensee or by its

customers engaged in public service within a State which has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by the Licensee or by its customers engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of this license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control: Provided, that the jurisdiction of the Commission shall cease and determine as to each specific matter of regulation and control prescribed in this article as soon as the State shall have provided a commission or other authority for the regulation and control of that specific matter.

Article 26. Combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

Article 27. Except as otherwise provided in the Act, this license may be altered or surrendered only upon mutual agreement between the Licensee and the Commission after thirty days' public notice.

Article 28. The enumeration herein of any rights reserved, or of any requirements of the Act, or of any rules and regulations of the Commission, shall not be construed in any degree as impairing any other rights reserved by the Act, or as limiting the force of any other requirements of the Act or of any rules and regulations of the Commission.

IN WITNESS WHEREOF, the Commission has caused its name to be signed hereto by Nelson Lee Smith, its _____ Chairman, and its seal to be affixed hereto and attested by Leon M. Fuquay, its _____ Secretary, this 5th day of April, 19 50, pursuant to its order dated September 21, 1949, attached hereto.

FEDERAL POWER COMMISSION

By Nelson Lee Smith
Chairman.

Attest:

Leon M. Fuquay
Secretary.

JTT:ea
10-25-49

18713

IN TESTIMONY OF ACCEPTANCE of all the provisions, terms, and conditions of this license, the Licensee, this 7th day of March, 19 50, has caused its corporate name to be signed hereto by Cyril A. Welch, its _____ Chairman, Board of Trustees, and its corporate seal to be affixed hereto and attested by A. W. Buroker, its _____ Clerk, pursuant to a resolution of its Board of Trustees duly adopted on the 7th day of March, 1950, a certified copy of the record of which is attached hereto.

VILLAGE OF BONNERS FERRY

By Cyril A. Welch
Chairman, Board of Trustees

Attest:

A. W. Buroker
Clerk.

(Executed in triplicate)

18713

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Claude L. Draper, Acting Chairman; Thomas C. Buchanan and Harrington Wimberly.

September 21, 1949

In the Matter of)
) Project No. 1991
Village of Bonners Ferry)

ORDER AUTHORIZING ISSUANCE OF LICENSE (MAJOR)

Application was filed March 4, 1948, and supplemented on December 20, 1948, by the Village of Bonners Ferry, Idaho, for license under the Federal Power Act to authorize the construction, operation, and maintenance of a proposed water-power project (Project No. 1991) located on the Moyie River, a tributary of the Kootenai River, in Boundary County, Idaho, affecting lands of the United States within Kaniksu National Forest.

The proposed project, parts of which are constructed, would consist of a concrete gravity dam about 300 feet long and about 90 feet high; a tunnel and a penstock, which would connect with an existing penstock; a powerhouse already constructed, which would contain an additional turbine and generator and a new highhead turbine to be connected to the present generator, making a total installation of about 3,000 horsepower; a step-up substation; an existing transmission line about 9 miles long from the powerhouse to but not including a substation in the Village of Bonners Ferry; and appurtenant facilities.

The Applicant was advised by the Commission in letter dated April 2, 1948, that preliminary construction work on the project, at its own risk, would not prejudice Commission consideration of its application for license. Construction of the project commenced in March 1948, and indications are that the project will be completed by September 1949.

The Secretary of the Interior, the Secretary of Agriculture, the Chief of Engineers of the Department of the Army, the Governor of the State of Idaho, and the State Reclamation Engineer of the State of Idaho, have reported favorably on the application as hereinafter provided. The Public Utilities Commission of the State of Idaho was notified of the filing of the application, but to date no comments have been received.

The Commission finds:

(1) The applicant is a municipal corporation organized under the laws of the State of Idaho and has submitted satisfactory

18713

evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) The project does not affect any Government dam, and no application for a similar project or in conflict therewith is before the Commission. Public notice has been given of the filing of the application.

(3) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with the purposes for which the Kaniksu National Forest was created or acquired.

(4) Under present circumstances and conditions and upon the terms hereinafter imposed, the project is best adapted to a comprehensive plan for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes.

(5) The horespower capacity hereinafter authorized to be installed in the project is 3,000 horsepower.

(6) In accordance with Section 10(d) of the Act, the rate of return upon the net investment in the project and the proportion of surplus earnings to be paid into and held in amortization reserves are reasonable as hereinafter specified.

(7) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy, and enjoyment of its lands is reasonable as hereinafter fixed and specified.

(8) The maps, plans, specifications and statements filed as part of the application designated as Exhibit "J-K" (FPC No. 1991-1), Exhibit "K" (FPC No. 1991-3), Exhibit "L" Revised January 11, 1949 (FPC No. 1991-2), and Revised Exhibit M, insofar as such exhibits describe the actual project facilities and lands within the project boundary, conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) A license, effective as of April 1, 1948, be issued to the applicant for a period of 50 years for the construction, operation, and maintenance of major Project No. 1991 subject to the provisions of the Federal Power Act, and the rules and regulations thereunder.

18713

(B) The license contain the usual conditions and provisions for licenses issued under Section 4(e) of the Act for such projects and the following special condition:

> At such time as the Commission may direct and to the extent it is economically sound and in the public interest to do so, after notice and opportunity for hearing, the licensee shall, in the event of development of headwater storage on the Moyie River, construct an additional tunnel and install appropriate additional generating capacity.

(C) The license provide that after the first 20 years of operation of the project under the license, six (6) per cent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings and for the establishment and maintenance of amortization reserves pursuant to Section 10(d) of the Act; one-half of all earnings in excess of six (6) per cent per annum shall be paid into such amortization reserves, and such amortization reserves shall be established, maintained, and disposed of in accordance with the terms of the Act and such rules, regulations, and orders of the Commission as may be adopted pursuant thereto.

(D) Subject to the provisions of Section 10(e) of the Act and the rules and regulations of the Commission thereunder, the licensee shall, effective as of the effective date of the license, pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the capacity authorized to be installed by the license (3,000 horsepower), plus two and one-half ($2\frac{1}{2}$) cents per 1,000 kilowatt-hours of gross energy generated by the project during the calendar year for which the charge is made;

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $3.10.

(E) The licensee shall complete and place the project in operation not later than June 30, 1950.

18713

(F) The exhibits specified in paragraph (8) above, be approved as part of the license.

By the Commission.

Leon M. Fuquay,
Secretary.

Date of Issuance: September 21, 1949

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Claude L. Draper, Acting Chairman; Thomas C. Buchanan and Harrington Wimberly.

September 21, 1949

In the Matter of)
) Project No. 1991
Village of Bonners Ferry)

ORDER AUTHORIZING ISSUANCE OF LICENSE (MAJOR)

Application was filed March 4, 1948, and supplemented on December 20, 1948, by the Village of Bonners Ferry, Idaho, for license under the Federal Power Act to authorize the construction, operation, and maintenance of a proposed water-power project (Project No. 1991) located on the Moyie River, a tributary of the Kootenai River, in Boundary County, Idaho, affecting lands of the United States within Kaniksu National Forest.

The proposed project, parts of which are constructed, would consist of a concrete gravity dam about 300 feet long and about 90 feet high; a tunnel and a penstock, which would connect with an existing penstock; a powerhouse already constructed, which would contain an additional turbine and generator and a new highhead turbine to be connected to the present generator, making a total installation of about 3,000 horsepower; a step-up substation; an existing transmission line about 9 miles long from the powerhouse to but not including a substation in the Village of Bonners Ferry; and appurtenant facilities.

The Applicant was advised by the Commission in letter dated April 2, 1948, that preliminary construction work on the project, at its own risk, would not prejudice Commission consideration of its application for license. Construction of the project commenced in March 1948, and indications are that the project will be completed by September 1949.

The Secretary of the Interior, the Secretary of Agriculture, the Chief of Engineers of the Department of the Army, the Governor of the State of Idaho, and the State Reclamation Engineer of the State of Idaho, have reported favorably on the application as hereinafter provided. The Public Utilities Commission of the State of Idaho was notified of the filing of the application, but to date no comments have been received.

The Commission finds:

(1) The applicant is a municipal corporation organized under the laws of the State of Idaho and has submitted satisfactory

evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) The project does not affect any Government dam, and no application for a similar project or in conflict therewith is before the Commission. Public notice has been given of the filing of the application.

(3) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with the purposes for which the Kaniksu National Forest was created or acquired.

(4) Under present circumstances and conditions and upon the terms hereinafter imposed, the project is best adapted to a comprehensive plan for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes.

(5) The horespower capacity hereinafter authorized to be installed in the project is 3,000 horsepower.

(6) In accordance with Section 10(d) of the Act, the rate of return upon the net investment in the project and the proportion of surplus earnings to be paid into and held in amortization reserves are reasonable as hereinafter specified.

(7) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy, and enjoyment of its lands is reasonable as hereinafter fixed and specified.

(8) The maps, plans, specifications and statements filed as part of the application designated as Exhibit "J-K" (FPC No. 1991-1), Exhibit "K" (FPC No. 1991-3), Exhibit "L" Revised January 11, 1949 (FPC No. 1991-2), and Revised Exhibit M, insofar as such exhibits describe the actual project facilities and lands within the project boundary, conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) A license, effective as of April 1, 1948, be issued to the applicant for a period of 50 years for the construction, operation, and maintenance of major Project No. 1991 subject to the provisions of the Federal Power Act, and the rules and regulations thereunder.

18713

(B) The license contain the usual conditions and provisions for licenses issued under Section 4(e) of the Act for such projects and the following special condition:

> At such time as the Commission may direct and to the extent it is economically sound and in the public interest to do so, after notice and opportunity for hearing, the licensee shall, in the event of development of headwater storage on the Moyie River, construct an additional tunnel and install appropriate additional generating capacity.

(C) The license provide that after the first 20 years of operation of the project under the license, six (6) per cent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings and for the establishment and maintenance of amortization reserves pursuant to Section 10(d) of the Act; one-half of all earnings in excess of six (6) per cent per annum shall be paid into such amortization reserves, and such amortization reserves shall be established, maintained, and disposed of in accordance with the terms of the Act and such rules, regulations, and orders of the Commission as may be adopted pursuant thereto.

(D) Subject to the provisions of Section 10(e) of the Act and the rules and regulations of the Commission thereunder, the licensee shall, effective as of the effective date of the license, pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the capacity authorized to be installed by the license (3,000 horsepower), plus two and one-half ($2\frac{1}{2}$) cents per 1,000 kilowatt-hours of gross energy generated by the project during the calendar year for which the charge is made;

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $3.10.

(E) The licensee shall complete and place the project in operation not later than June 30, 1950.

18713

(F) The exhibits specified in paragraph (8) above, be approved as part of the license.

By the Commission.

Leon M. Fuquay,
Secretary.

Date of Issuance: September 21, 1949

18713

CLASS OF SERVICE DESIRED			
DOMESTIC		CABLE	
TELEGRAM	X	ORDINARY	
DAY LETTER		URGENT RATE	
SERIAL		DEFERRED	
OVERNIGHT TELEGRAM		NIGHT LETTER	
SPECIAL SERVICE		SHIP RADIOGRAM	

Patrons should check class of service desired; otherwise the message will be transmitted as a telegram or ordinary cablegram.

COPY OF WESTERN UNION TELEGRAM

May 24, 1948

Regional Forester
Missoula, Montana

Retel Beaman STOP Plans Permit 18713 Bonners Ferry approved December 31, 1938 by R. W. Faris, Commissioner STOP Spillway capacity ten thousand second feet.

MARK R. KULP

State Reclamation Engineer

Prepay
Charge Dept. Reclamation

18713

CLASS OF SERVICE

This is a Full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

1201

JOSEPH L. EGAN
PRESIDENT

SYMBOLS

DL = Day Letter
NL = Night Letter
LC = Deferred Cable
NLT = Cable Night Letter
Ship Radiogram

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

SLA5 NL PD= GOVT=MISSOULA MONT 20

MAY 21 AM 12 59

IDAHO STATE DEPARTMENT OF RECLAMATION=

BOISE=

REFERENCE YOUR WATER APPROPRIATION PERMIT TO VILLAGE BONNERS FERRY NUMBER 18713 VILLAGE HAS FILED APPLICATION FOR FEDERAL POWER COMMISSION LICENSE TO CONSTRUCT DAM DESIGNED TO PASS MAXIMUM FLOOD FLOW OF 8,000 SECOND FEET WE ESTIMATE 25,000 SECOND FEET FLOOD POSSIBLE HAVE YOU APPROVED DAM DESIGNED FOR ONLY 8,000 SECOND FEET? PLEASE WIRE=

BEAMAN.

RECEIVED
MAY 21 1948
Department of Reclamation

18713

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

18713

April 20, 1948

Project No. 1991- Idaho

Mr. Leon M. Fuquay, Secretary,
Federal Power Commission,
Washington, 25, D. C.

Dear Sir:

The Village of Bonners Ferry has a valid State Permit, No. 18713, for the appropriation of public water for power purposes, on the Moyie River, and we are pleased to approve the application for Federal Power Commission license.

Very truly yours,

MARK R. KULP

K:A

State Reclamation Engineer

18713

INTER-DEPARTMENT MEMO--1

DATE April 20, 1948

FROM State Reclamation Engineer

TO Governor C. A. Robins

SUBJECT Letter from Federal Power Commission

The Village of Bonners Ferry has a valid State permit for the appropriation of public water for power purposes on the Moyie River, and we are pleased to approve the application for Federal Power Commission license.

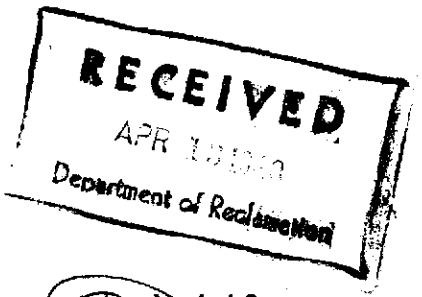
18713

SIGNATURE

MEMORANDUM

OFFICE OF THE GOVERNOR

DATE April 12, 1948



FROM: Governor

TO: Mr. Mark Kulp, State Reclamation Engineer

SUBJECT: Letter from Federal Power Commission

What is the score? This is O.K. isn't it, from your standpoint?

C. A. ROBINS

18713

FEDERAL POWER COMMISSION
WASHINGTON 25

RECEIVED
APR 2[illegible]
Department of Reclamation

Project No. 1991-Idaho

APR -8 1948

Department of Reclamation
State of Idaho
State House
Boise, Idaho

Gentlemen:

The Village of Bonners Ferry, Idaho, has filed with this Commission an application for a license for a proposed water-power project (No. 1991) on Moyie River in Boundary County, Idaho, affecting lands of the United States within Kaniksu National Forest.

The proposed project, parts of which are already constructed, would consist of a concrete gravity dam, which would be about 300 feet long and about 90 feet high, in the SW¼ sec. 11, T. 62 N., R. 2 E., Boise meridian; a tunnel and penstock, which would connect with an existing penstock; a powerhouse already constructed, which would contain an additional turbine and generator and a new high-head turbine to be connected to the present generator, making a total installation of about 3,000 horsepower; an existing transmission line from the powerhouse to the village of Bonners Ferry, a distance of about 9 miles; and appurtenant facilities. The power generated would be used for public-utility purposes.

The Commission will be pleased to have the benefit of any comments or suggestions you may care to make with regard to this application. It is requested, however, that any such communications be transmitted to the Commission not later than May 21, 1948.

Very truly yours,

Leon M. Fuquay

Leon M. Fuquay

Secretary

18713

Copy for Department of Reclamation

FEDERAL POWER COMMISSION
WASHINGTON 25

Project No. 1991-Idaho

Department of Reclamation
State of Idaho
State House
Boise, Idaho

APR -8 1948

Gentlemen:

The Village of Bonners Ferry, Idaho, has filed with this Commission an application for a license for a proposed water-power project (No. 1991) on Moyie River in Boundary County, Idaho, affecting lands of the United States within Kaniksu National Forest.

The proposed project, parts of which are already constructed, would consist of a concrete gravity dam, which would be about 300 feet long and about 90 feet high, in the SW¼ sec. 11, T. 62 N., R. 2 E., Boise meridian; a tunnel and penstock, which would connect with an existing penstock; a powerhouse already constructed, which would contain an additional turbine and generator and a new high-head turbine to be connected to the present generator, making a total installation of about 3,000 horsepower; an existing transmission line from the powerhouse to the village of Bonners Ferry, a distance of about 9 miles; and appurtenant facilities. The power generated would be used for public-utility purposes.

The Commission will be pleased to have the benefit of any comments or suggestions you may care to make with regard to this application. It is requested, however, that any such communications be transmitted to the Commission not later than May 21, 1948.

Very truly yours,

Leon M. Fuquay

Secretary

18713

February 11, 1948

Re: Permit No. ~~18731~~ 18713

Mr. H. M. Buroker, Clerk
Village of Bonners Ferry
Bonners Ferry, Idaho

Dear Mr. Buroker:

We have received from Mr. Griggs the affidavit of publication of notice of your application for extension of time for completion of works under Permit No. 18731 and also the affidavit of publication of the call for bids on this project.

We enclose the approval of the State Reclamation Engineer for extension of time for completion of works under this permit to December 31, 1950.

This should be attached to the original permit of which it forms a part.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A/dm
Enc.

cc: Mr. C. F. Griggs
819 Paulsen Bldg.
Spokane, Wash.

18713

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

APPROVAL OF STATE RECLAMATION ENGINEER

WHEREAS, Application for extension of time for Completion of Works under Permit to Appropriate the Public Waters of the State of Idaho, No.18731/3 has been made by the owner thereof, Village of Bonners Ferry, which application was duly advertised in the Bonners Ferry Herald for a period of two consecutive weeks, stating that on the 30th day of January, 1948, a hearing would be held for the purpose of receiving any protests, testimony, or evidence regarding such application; and,

WHEREAS, At the time set for the hearing no protest, testimony or evidence had been presented, either orally or by affidavit; and,

WHEREAS, It appears that the owner of said permit is entitled to a further extension of time within which to complete work:

NOW, THEREFORE, I, Mark R. Kulp, State Reclamation Engineer of the State of Idaho, by virtue of authority vested in me under Chapter 28 of the Session Laws of 1947, hereby extend the time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18731, to December 31, 1950. /3

WITNESS MY HAND, this 11th day of February, 1948.

Mark R Kulp

MARK R. KULP

State Reclamation Engineer

18713

CIVIL ENGINEERING
LAND SURVEYING

CONSULTING
CONTRACTING

C. F. GRIGGS
REGISTERED PROFESSIONAL ENGINEER
819 PAULSEN BUILDING
SPOKANE 8, WASHINGTON
MAIN 5477

February 6, 1948

Mr. Mark R. Kulp
State Reclamation Engineer
Department of Reclamation
Boise, Idaho

Re: Permit No. 18731

Dear Sir:

Enclosed herewith affidavit of publication in reference to application for extension of time for completion of work on the Village of Bonners Ferry Moyie Dam, Permit No. 18731.

I am also enclosing an affidavit of publication for invitation to bidders for the construction of the above numbered project.

Thanking you very much for your cooperation, I am,

Yours very truly,

C. F. Griggs

C. F. Griggs
Engineer

CFG:ml
Encls.

RECEIVED
FEB 9
Department of Reclamation

18713

NOTICE FOR PUBLICATION

NOTICE OF APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER CHAPTER 28, SESSION LAWS OF 1947.

Notice is hereby given that on the 30th day of January 1948, at 10:00 o'clock A. M., a hearing will be held by the State Reclamation Engineer, or his duly authorized representative, at Bonners Ferry, Idaho, County of Boundary, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18731. The said protests and evidence may be submitted either orally or by affidavit by any person or persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension.

1. The number of said Permit is 18731.
2. The name and post office address of the person or persons or corporation holding this permit are Village of Bonners Ferry, Bonners Ferry, Idaho.
3. The amount of water claimed by the said permit or permits is 150 cubic feet per second from Moyie River which is tributary to Kootenai River.

18713

MARK R. KULP,
State Reclamation Engineer
First publication Jan. 15, 1948.
Second publication Jan. 22, 1948.

Affidavit of Publication

STATE OF IDAHO } ss.
County of Boundary }

R. L. Myers

being first duly sworn upon his oath, deposes and says: That he is the co-publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of State Reclamation Engineer

a Application for Extension of Time for Completion of Works

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for two consecutive issues, commencing with the issue dated Jan. 15, 1948, and ending with the issue dated Jan. 22, 1948.

R. L. Myers
Co-Publisher Proprietor or Manager

Subscribed and sworn to before me this 4 day of Feb., 1948.

Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

18713

INVITATION TO BIDDERS
Construction of Moyie Power Dam

Contractors are invited to submit a written formal bid for the construction of a concrete gravity dam and appurtenant works, as a part of the municipal hydro-electric power system for the Village of Bonners Ferry, Boundary County, Idaho.

The proposed project is located on the Moyie river, approximately 10 miles northeast of the Village of Bonners Ferry, near the Bonners Ferry-Troy Highway (U. S. No. 2). Bids will be received at the office of the Village Clerk, Power and Light Office, Bonners Ferry, up to 8:00 P. M., February 3rd, 1948.

The work involves the following approximate quantities: 45 acres clearing; diversion and care of river; 5670 cubic yards solid rock excavation; 1080 cubic yards unclassified excavation; 900 lineal feet tunnel excavation; 60 feet shaft excavation; excavating, screening and hauling 13,500 cubic yards gravel; excavating, screening, and hauling 6,400 cubic yards sand; mixing and placing 15,000 cubic yards concrete; placing 230,000 lbs. of reinforcement steel; installing gates, structural steel, trash racks, penstock tubes, and other miscellaneous work. The Village will supply cement, steel, gates, pipe, and other materials, and a limited amount of electric power will be made available to the contractor.

Plans and specifications may be obtained upon payment of $25.00, at the office of H. M. Buroker, Superintendent of Power and Light, Bonners Ferry, Idaho, or at the office of:

C. F. Griggs, Consulting Engineer
819 Paulsen Bldg.,
Spokane, Washington.

Checks offered as payment for plans and specifications must be made payable to the Village of Bonners Ferry.

The Board of Trustees reserves the right to reject any and all bids.

BOARD OF TRUSTEES,
Village of Bonners Ferry,
Boundary County, Idaho
H. M. BUROKER, Clerk.

1873

First publication Jan. 8, 1948.
Last publication Jan. 22, 1948.

Affidavit of Publication

STATE OF IDAHO } ss.
County of Boundary }

R. L. Myers

being first duly sworn upon his oath, deposes and says: That he is the co-publisher of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of

Village of Bonners Ferry

a Invitation to Bidders

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for three consecutive issues, commencing with the issue dated Jan. 8 1948, and ending with the issue dated Jan. 22, 1948

R. L. Myers
Co-Publisher Proprietor/Foreman

Subscribed and sworn to before me this 24 day of Jan., 1948

Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

1873

February 2, 1948

Re: Permit No. 18731 | 3

Mr. H. M. Buroker, Clerk
Village of Bonners Ferry
Bonners Ferry, Idaho

Dear Mr. Buroker:

There have been no protests filed in connection with the application of the Village of Bonners Ferry for extension of time for completion of works under Permit No. 18731.

Therefore, upon receipt of the affidavit of publication from the Bonners Ferry Herald, this extension will be approved by the State Reclamation Engineer.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

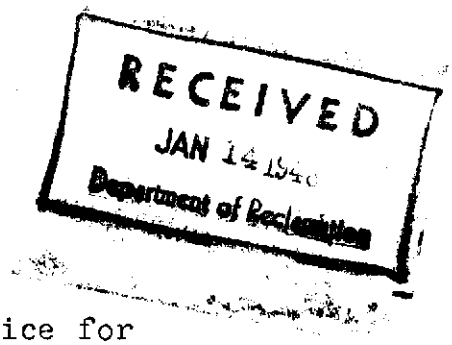
A/dm

cc: Mr. C. F. Griggs
819 Paulsen Bldg.
Spokane, Wash.

18713

The Bonners Ferry Herald
PUBLISHERS AND COMMERCIAL PRINTERS
Bonners Ferry, Idaho

January 13, 1948



State Reclamation Engineer
Boise, Idaho

Gentlemen:

This will acknowledge receipt of your notice for publication on Permit No. 18731 for the Village of Bonners Ferry, for publication in our issues of Jan. 15 and 22, 1948.

Yours very truly,

BONNERS FERRY HERALD

R. L. Myers

18713

January 12, 1948

Re: Permit No. 18731

Mr. C. F. Griggs
No. 819 Paulsen Building
Spokane, 8, Washington

Dear Mr. Griggs:

We acknowledge receipt of your letter of January 9th, enclosing application of the Village of Bonners Ferry for extension of time for completion of works under Permit No. 18731.

Notice of such application and setting date for hearing on thereon at 10:00 A. M., January 30, 1948, at the Department of Reclamation, has been sent to the Bonners Ferry Herald, with instructions to publish it once a week, for two consecutive weeks, commencing with their next issue; and to send the affidavit of publication, together with statement of costs to the Village of Bonners Ferry, C/o H. M. Buroker.

It will not be necessary for the Village of Bonners Ferry to be represented at this hearing, as their statement is already contained in the application. If no protests are filed, the extension will be approved, upon receipt of the affidavit of publication. Should there be any protests, you will be duly notified before final action is taken in the matter.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

A

Chief Clerk

18713

Form No. 11-A

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Boise

Date January 10, 1948

Re: Permit No. 18731

Bonners Ferry Herald

Bonners Ferry, Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for two consecutive weeks prior to January 30, 1948 beginning with your next issue the date set for the hearing, the expense of the publication to be paid by the applicant, Village of Bonners Ferry/ C/o H. M. Buroker, Clerk, Bonners Ferry, Idaho to whom you should furnish proof of publication on or prior to the date set for the hearing.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication, in order that we may check same.

Very truly yours,

MARK R. KULP
State Reclamation Engineer

By
Chief Clerk

18713

NOTICE FOR PUBLICATION

NOTICE OF APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER CHAPTER 28, SESSION LAWS OF 1947

Notice is hereby given that on the 30th day of January 1948, at 10:00 o'clock A. M., a hearing will be held by the State Reclamation Engineer, or his deputy, at 107 State House, Boise, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18731. The said protests and evidence may be submitted either orally or by affidavit by any person or persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension.

1. The number of said Permit is 18731

2. The name and postoffice address of the person or persons or corporation holding this permit are Village of Bonners Ferry, Bonners Ferry, Idaho

3. The amount of water claimed by the said permit or permits is 450 cubic feet per second from Moyie River which is tributary to Kootenai River.

MARK R. KULP

State Reclamation Engineer

18713

Form No. 11

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) Jan.,8,1948

(P. O.) Bonners Ferry,Idaho

STATE RECLAMATION ENGINEER:

TO THE COMMISSIONER OF RECLAMATION:

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Bonners Ferry Herald of Bonners Ferry,Idaho, published in the county in which the works are situated.

Village Bay & St. M. Bonners Ferry Club

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer)

I hereby certify that the facts set forth in the attached notice are true.

C. F. Griggs

Engineer.

18713

Form No. 11

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) Jan.,8,1948

(P. O.) Bonners Ferry,Idaho

STATE RECLAMATION ENGINEER:

TO THE COMMISSIONER OF RECLAMATION

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Bonners Ferry Herald of Bonners Ferry,Idaho, published in the county in which the works are situated.

Village of Bonners Ferry
By H. M. Brooks, Clerk.

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer)

I hereby certify that the facts set forth in the attached notice are true.

C. F. Suggs
Engineer.

18713

VIL ENGINEERING
AND SURVEYING

CONSULTING
CONTRACTING

C. F. GRIGGS
REGISTERED PROFESSIONAL ENGINEER
619 PAULSEN BUILDING
SPOKANE 8, WASHINGTON
MAIN 5477

January 9, 1948

Mark R. Kulp
State Reclamation Engineer
Boise, Idaho

Re: Permit No. 18731
Village of Bonners Ferry

Dear Sir:

Enclosed herewith is completed application for extension of works for the Bonners Ferry power dam in accordance with my letter of December 31, 1947.

I am also enclosing authorization for publication of notice, both documents being in duplicate.

Hoping that this is found in order and thanking you for your co-operation, I am

Very truly yours,

C. F. Griggs
Civil Engineer

CFG:mb
Enc. 4

1-20

RECEIVED
JAN 1
Department of Reclamation

18713

PERMIT NO. 18713

APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS
UNDER CHAPTER 28, SESSION LAWS OF 1947

H.M.Buroker, of Bonners Ferry, State of Idaho, being first duly sworn, upon his oath deposes and says:
agent of the Village of Bonners Ferry, Idaho.

That he is the ~~owner~~ holder of Permit to Appropriate the Public Waters of the State of Idaho, No. 18713

That under the terms and conditions of said Permit, completion of works thereunder is required by December,31, 19 47

That he has heretofore in good faith performed the following work and taken the following steps to bring about the completion of the said works described under the said Permit, to-wit:

Performed all preliminary work,prepared plans and specs. and have at the present time placed orders for all materials, and have issues a call for bids for the completion of the work.

That he is unable to complete the remainder of said works and submit proof of completion of works within the required time, for the following reasons, to-wit:

Work was held up during the war years,and subsequently, due to the lack of material and labor.

Wherefore, he makes application to the State Reclamation Engineer to extend the time for Completion of Works under the said permit to December,31, 19 50, pursuant to the provisions of Chapter 28, Session Laws of 1947.

H.M.Buroker

Subscribed and sworn to before me this 8th day of Jan. 19 48

Notary Public for Idaho
Residing at Bonners Ferry Idaho

My commission expires Feb 9, 1949

Date of receipt at office of Department of Reclamation 1-10-1948

18713

PERMIT NO. 18713

APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS
UNDER CHAPTER 28, SESSION LAWS OF 1947

H.M.Buroker, of Bonners Ferry, State of Idaho, being first duly sworn, upon his oath deposes and says:

That he is the ~~owner and~~ agent of the Village of Bonners Ferry, Idaho. holder of Permit to Appropriate the Public Waters of the State of Idaho, No. 18713

That under the terms and conditions of said Permit, completion of works thereunder is required by December,31, 1947

That he has heretofore in good faith performed the following work and taken the following steps to bring about the completion of the said works described under the said Permit, to-wit:

Performed all preliminary work,prepared plans and specs. and have at the present time placed orders for all materials, and have issues a call for bids for the completion of the work.

That he is unable to complete the remainder of said works and submit proof of completion of works within the required time, for the following reasons, to-wit:

Work was held up during the war years,and subsequently, due to the lack of material and labor.

Wherefore, he makes application to the State Reclamation Engineer to extend the time for Completion of Works under the said permit to December,31, 1950, pursuant to the provisions of Chapter 28, Session Laws of 1947.

H.M.Buroker

Subscribed and sworn to before me this 8th day of Jan. 1948

Notary Public for Idaho
Residing at Bonners Ferry Idaho

My commission expires Feb.9,1949

Date of receipt at office of Department of Reclamation 1-10-1948

18713

January 2, 1948

Re: Permit No. 18713

Mr. G. F. Griggs
No. 819 Paulsen Building
Spokane, 8, Washington

Dear Mr. Griggs:

We are this morning in receipt of your special delivery letter dated December 31, 1947, in which you request an extension of time for completion of works under Permit No. 18713, Village of Bonners Ferry, for power project on Moyie River.

In reply we enclose a form of application for such extension, under the provisions of Chapter 28, of the 1947 Legislature, a summary of which act is also enclosed.

As you will observe, this calls for publication once a week for two consecutive weeks, in a county newspaper, at applicant's expense. So in returning the application, please also return Form 11, also enclosed, which is your authorization for us to have the notice published at applicant's expense, in the designated newspaper.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A
Encls.

18713

CIVIL ENGINEERING
LAND SURVEYING

CONSULTING
CONTRACTING

C. F. GRIGGS
REGISTERED PROFESSIONAL ENGINEER
819 PAULSEN BUILDING
SPOKANE 8, WASHINGTON
MAIN 5477

December 31, 1947

Mr. Mark R. Kulp
State Reclamation Engineer
Boise, Idaho

Re: Permit No. ~~18,731~~ 18713
Village of Bonners Ferry

Dear Sir:

On behalf of the Village of Bonners Ferry, I respectfully request an extension of time for the completion of work under the above numbered permit (Power Dam on Moyie River).

Detailed plans and specifications will be completed within the next two weeks and a call for bids will be made immediately thereafter. A bond issue has been made and contracted for, some of the construction materials have been ordered, and it is expected, with no unforseen difficulties, to have the project completed on or before December 31, 1948.

Will you please forward me any necessary forms and instructions for extension of time for completion.

Thanking you in advance for your consideration, I am

Yours very truly,

C. F. Griggs

CFG:mb

C. F. Griggs
Engr

due 12-31-43
ey. 12-31-47

RECEIVED
JAN 2 1948
Department of Reclamation

18713

Form No. 7

State of Idaho

DEPARTMENT OF RECLAMATION

BOISE

INSTRUCTIONS

PROOF OF COMPLETION OF WORKS

Village of Bonners Ferry

Bonners Ferry, Idaho

Boise, Idaho, October 1, 1947

Dear Sir:—

I enclose herewith blank form upon which to give notice that you are prepared and desire to submit proof of completion of works under your permit No. 18713.

This form should be filled out and mailed to the Department of Reclamation, at least 60 days before the date upon which proof is to be submitted, which proof MUST be on or before Dec. 31, 1947. Upon receipt of the blank properly filled out, notice for publication will be sent to the paper direct from this office, which notice must be published a period of four weeks prior to the date of proof.

The proof may be submitted at any place convenient to you and two witnesses, where there is a notary public or other officer authorized to administer oaths.

The certificate that shall be issued under this proof does not give you a perpetual right to the use of the water for which application is made, as it only confirms the completion of the works of a capacity to divert and convey to the place of intended use a certain amount of water. The law requires that another proof be submitted when the water has been fully applied to a beneficial use, at which time license is issued for the amount of water actually in use. Information in regard to this last proof will be furnished on request.

Very truly yours,

MARK F. KULP

Commissioner of Reclamation
State Reclamation Engineer

18713

January 11, 1944

Re: Permit No. 18713

Mr. H. M. Buroker, Clerk,
Village of Bonners Ferry
Bonners Ferry, Idaho

Dear Mr. Buroker:

We enclose herewith approval of the State Reclamation Engineer of the application of the Village of Bonners Ferry for extension of time for completion of works under the above numbered permit until December 31, 1947.

Very truly yours,

JAMES SPOFFORD
State Reclamation Engineer
By

Chief Clerk

A
Encl.

18713

APPROVAL OF STATE RECLAMATION ENGINEER

WHEREAS, Application for Extension of Time for Completion of Works, under Permit to Appropriate the Public Waters of the State of Idaho, No. 18713, has been made by the owner thereof, Village of Bonners Ferry, Idaho, which application was duly advertised for a period of two consecutive weeks in the Bonners Ferry Herald, stating that on the 4th day of December, 1943, a hearing would be held for the purpose of receiving any protests, testimony or evidence regarding such application; and,

WHEREAS, At the time set for the hearing no protest, testimony or evidence had been presented, either orally or by affidavit; and,

WHEREAS, It appears that the owner of said permit is entitled to a further extension of time within which to complete work:

NOW, THEREFORE, I, James Spofford, State Reclamation Engineer of the State of Idaho, by virtue of authority vested in me under Chapter 79 (Senate Bill No. 93), of the 1943 Session Laws, hereby extend the time for Completion of Works, under Permit to Appropriate the Public Waters of the State of Idaho, No. 18713, to December 31, 1947.

WITNESS MY HAND, this 8th day of January, A. D. 1944.

James Spofford

JAMES SPOFFORD
State Reclamation Engineer

18713

VILLAGE OF BONNERS FERRY

OFFICE OF MANAGER
ELECTRIC LIGHT AND WATER DEPARTMENT
BONNERS FERRY, IDAHO

Jan.,3,1944

RECEIVED
JAN 5 1944
Department of Reclamation

Mr. James Spofford
State Reclamation Engineer,
Boise,Idaho

Ref: Permit No. 18713

Dear Sir:

We are enclosing herewith the "Affidavit of Publication" covering the publication of notice of application for extension of time on the above numbered permit.

Yours truly,

Village of Bonners Ferry
Light and Water Department

H M Bmoker

HMB/b

Mgr.

18713

Affidavit of Publication

Notice of Application for Extension of Time for Completion of Works Under Senate Bill No. 93, Session Laws of 1943

Notice is hereby given, that on the 4th day of December 1943, at 10:00 o'clock A. M., a hearing will be held by the State Reclamation Engineer, or his deputy, at State House, Boise, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18713. The said protests and evidence may be submitted either orally or by affidavits by any person or persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension.

1. The number of said Permit is 18713.

2. The name and post-office address of the person or persons or corporation holding said permit or permits are: Village of Bonners Ferry, Idaho.

3. The amount of water claimed by the said permit or permits is 160 cubic feet per second from Moyie River which is tributary to Kootenai River.

JAMES SPOFFORD,
State Reclamation Engineer.

Nov. 18-25Dec. 2—3t. 18713

STATE OF IDAHO }
County of Boundary } ss.

C W King

being first duly sworn upon his oath, deposes and says: That he is the Proprietor of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the hereto attached notice; that the advertisement of James Spofford, State Reclamation Engineer a application for Extension of Time

Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for 3 consecutive issues, commencing with the issue dated Nov. 18 194 3, and ending with the issue dated 2 Dec 2, 194 3.

C W King
Proprietor
Foreman

Subscribed and sworn to before me this 3 day of January 1944

J. C. Wilson
Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho.

18713

December 18, 1943

Re: Permit No. 18713

Mr. H. M. Buroker, Clerk,
Village of Bonners Ferry,
Bonners Ferry, Idaho

Dear Mr. Buroker:

Reference is made to the application of the Village of Bonners Ferry for extension of time for completion of works under the above numbered permit, notice of which was sent to the Bonners Ferry Herald for publication.

No protests to the application have been filed in this Department; and therefore upon receipt from you of the affidavit of publication, which the newspaper was instructed to furnish you, approval of the application will be granted by the State Reclamation Engineer.

Very truly yours,

JAMES SPOFFORD
State Reclamation Engineer
By

A Chief Clerk

18713

November 12, 1943

Re: Permit No. 18713

Bonners Ferry Herald
Bonners Ferry, Idaho

Gentlemen:

Reference is made to a letter written you this morning, enclosing notice for publication in connection with the application of the Village of Bonners Ferry for extension of time under the above numbered permit:

Through error the time set for the hearing was given in the copy as 10:00 P.M., instead of 10:00 A. M.

Please see that the notice when printed gives the time as 10:00 o'clock A. M.

Very truly yours,

JAMES SPOFFORD
State Reclamation Engineer
By

Chief Clerk

A

18713

November 12, 1943

Bonners Ferry Herald
Bonners Ferry, Idaho

Gentlemen:

Enclosed you will find notice for publication once a week for two consecutive weeks prior to December 4, 1943, the date set for hearing.

The expense of the publication is to be paid by the applicant, Village of Bonners Ferry, to whom you should furnish affidavit of publication on or prior to December 4th.

Please acknowledge receipt of this notice, and furnish this office with a copy of the first publication.

Very truly yours,

JAMES SPOFFORD
State Reclamation Engineer
By

Chief Clerk

Encl.

18713

NOTICE FOR PUBLICATION

NOTICE OF APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER SENATE BILL NO. 93, SESSION LAWS OF 1943

Notice is hereby given, that on the 4th day of December 19 43, at 10:00 o'clock, A. M., a hearing will be held by the State Reclamation Engineer, or his deputy, at State House, Boise, Idaho, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18713. The said protests and evidence may be submitted either orally or by affidavits by any person or persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension.

1. The number of said Permit is 18713

2. The name and post-office address of the person or persons or corporation holding said permit or permits are:

Village of Bonners Ferry, Bonners Ferry, Idaho

3. The amount of water claimed by the said permit or permits is 160 cubic feet per second from Moyie River which is tributary to Kootenai River

JAMES SPOFFORD

State Reclamation Engineer

18713

Form No. 11

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) November 8, 1943

(P. O.) Bonners Ferry, Idaho

STATE RECLAMATION ENGINEER

TO THE ~~COMMISSIONER OF RECLAMATION~~:

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Bonners Ferry Herald of Bonners Ferry, published in the county in which the works are situated.

Village of Bonners Ferry, Idaho

By [signature]
Clerk

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer)

I hereby certify that the facts set forth in the attached notice are true.

[signature]
Engineer.

18713

November 18, 1943

Re: Permit No. 18713

Mr. H. M. Buroker, Clerk,
Village of Bonners Ferry
Bonners Ferry, Idaho

Dear Mr. Buroker:

We acknowledge receipt of your letter of November 8th, enclosing application for extension of time for completion of works under the above numbered permit, as provided by Senate Bill 93 of the 1943 legislature; and also your authorization to have the notice in connection therewith published in the Bonners Ferry Herald.

The notice has been sent to the newspaper, with instructions to publish it once a week for two consecutive weeks prior to December 4th, the date set for hearing; and to furnish you with the affidavit of publication on or before that date.

This affidavit is to be forwarded to this Department, and if there are no protests to the application, the extension will be allowed accordingly.

Very truly yours,

JAMES SPOFFORD
State Reclamation Engineer
By

Chief Clerk

18713

VILLAGE OF BONNERS FERRY

OFFICE OF MANAGER

ELECTRIC LIGHT AND WATER DEPARTMENT

BONNERS FERRY, IDAHO

Nov.,8,1943

RECEIVED
NOV 10 1943
Department of Reclamation

State Reclamation Engineer
Boise,Idaho

Gentlemen:

We are enclosing herewith completed application for an extension of time on Permit # 18713.

Yours very truly,

Village of Bonners Ferry

H W Bunker

Clerk

18713

PERMIT NO 18713

EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER SENATE BILL NO. 95
SESSION LAWS OF 1943

STATE OF IDAHO)
County of Boundary) ss.

H. M. Buroker of Bonners Ferry State of Idaho, being first duly sworn, upon his oath, deposes and says:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho, No. 18713.

That under the terms and conditions of said Permit, Completion of Works thereunder is required by December 31, 1943, 19____.

That he has heretofore in good faith performed the following work and taken the following steps to bring about the completion of the said works described under the said Permit, to-wit:

Power plant building has been completed, part of the machinery installed and works completed to a point approximately 277 feet above the point of return. Investigations have been made of foundation material at the dam site.

That he is unable to complete the remainder of the said works and submit proof of Completion of Works within the required time for the following reasons, to-wit:

Owing to the present war the applicant is unable to obtain the labor and materials required to complete the work

Wherefore, he makes application to the State Reclamation Engineer to extend the time for Completion of Works under the said Permit to December 31, 1947, 19____. pursuant to the provisions of Senate Bill No. 95, Session Laws of 1943.

H M Buroker

Subscribed and sworn to before me this 8th day of November 1943

My commission expires:

Nov. 13, 1943

Notary Public for Idaho,
Residing at Bonners Ferry Idaho

Date of receipt at office of Department of Reclamation _____ 19____

APPROVAL OF STATE RECLAMATION ENGINEER

WHEREAS, Application for an extension of time for Completion of Works under Permit No._____ has been made by the owner thereof, which application was duly advertised in the _____ of _____ Idaho, for a period of two consecutive weeks; and

WHEREAS, A hearing in regard to the said application was then duly held at _____ Idaho, on _____, 19____ as specified in the said advertisement above referred to; and

WHEREAS, After taking into consideration all evidence and testimony introduced at the said hearing, it appears that the owner of said Permit is entitled to a further extension of time within which to complete work;

NOW, THEREFORE, I _____, State Reclamation Engineer of the State of Idaho, by virtue of the authority vested in me under Senate Bill No. 93, Session Laws of 1943, hereby extend the time for Completion of Works under Permit to Appropriate the Public Waters of the State of Idaho, No._____ to _____, 19____.

WITNESS my hand this _____ day of _____ 19____.

State Reclamation Engineer

18713

October 13, 1943

Mr. H. M. Buroker, Manager
Village of Bonners Ferry
Bonners Ferry, Idaho.

Dear Mr. Buroker:

Re: Permit 18713

We wish to acknowledge receipt of your letter of October 11th enclosing an affidavit requesting an extension of time on the above captioned permit.

In order to comply with the Legislative Act extending the time for completion of works on water permits, it would be necessary to fill out the enclosed application. We are also enclosing a summary of Senate Bill No. 93 for your information.

Your affidavit requesting an extension of time which was received with your letter is in good form, however, it will be necessary to complete the application on the form provided to comply with the Legislative Act.

Very truly yours,

JAMES SPOFFORD
By

Roy W. Thompson
Supervisor of Water Distribution

RWT:fld
enclosures

18713

VILLAGE OF BONNERS FERRY

OFFICE OF MANAGER
ELECTRIC LIGHT AND WATER DEPARTMENT
BONNERS FERRY, IDAHO

October,8,1943

RECEIVED
OCT 11 1943
Department of Reclamation

Mr. James Spofford
State Reclamation Engineer
Boise,Idaho.

Dear Sir:

We are enclosing herewith an affidavit stating our reasons for not having completed the works authorized under permit # 18713,for diversion of 160 c.f.s. from the Moyie River.

In the event that additional application should be made for an extension of time please send the necessary application blanks to this office.

Yours very truly,

Village of Bonners Ferry
Light and Water Department

H M Bruoker
Manager

HMB/b

18713

A F F I D A V I T

STATE OF IDAHO,)
(ss.
County of Boundary)

H. M. Buroker, being first duly sworn upon oath, deposes and says that he is the manager of the Water and Light Department of the Village of Bonners Ferry, Idaho, a municipal corporation and has full charge of all operations of said department;

That the Village of Bonners Ferry is the holder of Permit No. 18713 to appropriate the public waters of the State of Idaho and that under said permit all of the work necessary in order to make said appropriation was to be completed before December 31st, 1943;

That due to the present war, the Village of Bonners Ferry, Idaho, has been unable to obtain the materials necessary to complete the work required;

That the Village of Bonners Ferry, Idaho, a municipal corporation, hereby applies for such additional time as may be required to obtain the materials necessary to complete the required works.

H M Buroker

Subscribed and sworn to before me this 8th day of October, 1943.

(Seal)

O. C. Wilson, Notary Public for the State of Idaho, residing at Bonners Ferry, Idaho.

18713

Form No. 7

State of Idaho

DEPARTMENT OF RECLAMATION

BOISE

INSTRUCTIONS

PROOF OF COMPLETION OF WORKS

Village of Bonners Ferry
Bonners Ferry, Idaho

Boise, Idaho, October 1, 1943

Dear Sir:-

I enclose herewith blank form upon which to give notice that you are prepared and desire to submit proof of completion of works under your permit No. 18713.

This form should be filled out and mailed to the Department of Reclamation, at least 60 days before the date upon which proof is to be submitted, which proof MUST be on or before December 31, 1943. Upon receipt of the blank properly filled out, notice for publication will be sent to the paper direct from this office, which notice must be published a period of four weeks prior to the date of proof.

The proof may be submitted at any place convenient to you and two witnesses, where there is a notary public or other officer authorized to administer oaths.

The certificate that shall be issued under this proof does not give you a perpetual right to the use of the water for which application is made, as it only confirms the completion of the works of a capacity to divert and convey to the place of intended use a certain amount of water. The law requires that another proof be submitted when the water has been fully applied to a beneficial use, at which time license is issued for the amount of water actually in use. Information in regard to this last proof will be furnished on request.

Very truly yours,

JAMES SPOFFORD

Commissioner of Reclamation

State Reclamation Engineer

18713

July 8, 1941.

Re: 18713-18859

Mr. Oliver C. Wilson
Bonners Ferry, Idaho

Dear Mr. Wilson:

We wish to acknowledge receipt of your letter of June 6th in which you enclosed certified copies of stipulation and orders of dismissal in connection with applications for permits numbers 26042, 26043, 26052, and 26077.

In answer to your inquiry as to what further procedure is now required under applications of the Village of Bonners Ferry, numbered 26042 and 26052, the status of the above permits is as follows:

Application No. 26042, permit granted under number 18713; one-fifth of work to be finished under terms of the permit on June 30, 1941; Completion of Works proof due December 31, 1943; Beneficial Use proof due December 31, 1948.

Application No. 26052, permit granted under number 18859; one-fifth of work to be completed March 11, 1942; completion of works proof due Sept. 11, 1944; Beneficial Use proof due Sept. 11, 1949.

You will be notified by letter and forms will be mailed at the time that the proofs are due.

Very truly yours,
E. V. BERG.
Commissioner of Reclamation.

BY: ROY W. THOMPSON
Deputy Commissioner.

RWT:ml.

18713

OLIVER C. WILSON
ATTORNEY
OFFICES: FIRST NATIONAL BANK BUILDING
BONNERS FERRY, IDAHO

June 6, 1941

RECEIVED
JUN 10 1941
Department of Reclamation

E. V. Berg
Commissioner of Reclamation
Boise, Idaho

Re: Applications numbered
26042; 26043; 26052;
and 26077

Dear Sir:

Enclosed herewith please find certified copies of Stipulation and Orders of Dismissal in connection with the above numbered applications for permits.

Would you kindly advise what further proceedure is now required under applications of the Village of Bonners Ferry numbered 26042 and 26052.

Very truly yours,

O. C. Wilson, Attorney
for Bonners Ferry, Idaho

ocw pg

26042 - 18713 - good C.W. 1/5- B.E.
26043 - Rejected 12-31-43 6-30-41 12-31-48
26052 - 18839 Good 9-11-1944 - 1/5 3-11-42 - 18713 - 9-11-49
26044 - R-6 5-1
26077 Canceled
18713

IN THE DISTRICT COURT OF THE EIGETH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

IN THE MATTER OF THE APPLICATION OF THE VILLAGE OF BONNERS FERRY, A MUNICIPAL CORPORATION, NO. 26042, IN THE OFFICE OF THE COMMISSIONER OF RECLAMATION OF THE STATE OF IDAHO, FOR A PERMIT TO APPROPRIATE CERTAIN WATERS OF MOYIE RIVER, IDAHO.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED as follows:

1. That the above entitled matter has been fully settled;

2. That the appeal filed herein by C. O. Graue may be dismissed;

3. That the appeal filed herein by the Bonners Ferry Lumber Company may be dismissed, and

4. That no costs shall be awarded in said cause.

Dated this 3rd day of April, 1941.

COPY

ELDER & ELDER
Attorneys for C. O. Graue, Protestant and Appellant, Res. & P.O. Add: Coeur d'Alene, Idaho

ELDER & ELDER
Attorneys for Bonners Ferry Lumber Co., Protestant and Appellant, Res. & P.O. Add: Coeur d'Alene, Idaho.

O. C. WILSON
Attorney for Village of Bonners Ferry, Applicant, Res. & P.O. Add: Bonners Ferry, Idaho.

O R D E R

The foregoing Stipulation having been presented to the Court, and the Court being fully advised,

IT IS HEREBY ORDERED that the appeal of C. O. Graue and the appeal of the Bonners Ferry Lumber Company in the above entitled matter be and the same are hereby dismissed, without costs to the parties hereto.

Dated this 3rd day of April, 1941.

BERT A. REED
District Judge.

18713

STATE OF IDAHO,
County of Boundary } ss.

I Dollie Bruce, Clerk Dist. Court *County Recorder in and for the County and State aforesaid, do hereby certify the within and foregoing to be a full, true and correct copy of the whole thereof, of*

Stipulation and Order

as the same appears of record in my office in ~~Book~~ In Case ~~Page~~ No. 1090

In testimony whereof I have hereunto set my hand and affixed my official seal this 5th *day of* May 19 41

DOLLIE BRUCE
County Recorder, Boundary County, Idaho.

By Margaret A. Wilson *Deputy*

18713

Fidelity and Surety Department

Hartford Accident and Indemnity Company

HARTFORD, CONNECTICUT

- B O N D -

KNOW ALL MEN BY THESE PRESENTS:

That we, the VILLAGE OF BONNERS FERRY, IDAHO, as principal, and the HARTFORD ACCIDENT & INDEMNITY COMPANY, a corporation, organized under the laws of the State of Connecticut, and authorized to transact the business of surety in the State of Idaho, as surety, are held and firmly bound unto the State of Idaho in the full sum of - - - - - - - - - - -ONE THOUSAND DOLLARS ($1000.00) - - - - - - - - - - -

for the payment of which, well and truly to be made, we bind ourselves and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 23rd day of February, 1939.

The condition of this obligation are such that whereas, the State of Idaho has issued to the Village of Bonners Ferry, Idaho, water permit number 18713 dated December 31, 1938, as provided by Section 41-204, Idaho Code Annotated as amended;

NOW THEREFORE, if the said Village of Bonners Ferry shall faithfully carry to completion the works of diversion as specified in said permit number 18713 dated December 31, 1938, then this obligation shall be null and void; otherwise to remain in full force and virtue.

VILLAGE OF BONNERS FERRY

By Frank E. Fackert

Chairman of Board of Trustees

Attest:

A M Brooks

Clerk of Board of Trustees

HARTFORD ACCIDENT & INDEMNITY COMPANY

By: O C Wilson

O. C. WILSON, Attorney-in-Fact

COUNTERSIGNED:
WILSON INSURANCE AGENCY

By O C Wilson

Resident Agent,
Bonners Ferry, Idaho

18713

February 15, 1939

Application No. 26042

Mr. Robert H. Elder,
C/o Elder & Elder,
Coeur d'Alene, Idaho.

Dear Sir:-

We are in receipt of your letter of February 13th, enclosing copy of Petition on Appeal in the matter of the Application of Village of Bonners Ferry, a municipal corporation, No. 26042, ao appropriate certain waters,-Bonners Ferry Lumber Company.

Service of the foregoing, by copy, is hereby acknowledged, this 15th day of February, 1939.

Very truly yours,

JLA

Commissioner of Reclamation

18713

February 15, 1939

Application No. 26042

Mr. Robert H. Elder,
C/o Elder & Elder,
Coeur d'Alene, Idaho.

Dear Sir:-

We are in receipt of your letter of February 13th, enclosing copy of Petition on Appeal in the matter of the Application of Village of Bonners Ferry, a municipal corporation, No. 26042, for Permit to appropriate certain waters- C. C. Graue.

Service of the foregoing, by copy, is hereby acknowledged, this 15th day of February, 1939.

Very truly yours,

JLA

Commissioner of Reclamation

18713

ELDER & ELDER
ATTORNEYS AND COUNSELORS AT LAW
COEUR D'ALENE, IDAHO

ROBT. H. ELDER

ROBT. N. ELDER

February 13, 1939

Honorable James Spofford
Commissioner of Reclamation
Boise, Idaho

Dear Sir: Re: In the Matter of the Application of Village of Bonners Ferry, a Municipal Corporation, No. 26042, in the office of the Commissioner of Reclamation of the State of Idaho, for Permit to Appriate certain waters at Moyie River, Idaho.--Bonners Ferry Lumber Company

I am enclosing herewith a copy of the Petition on Appeal in the above entitled matter.

Please acknowledge service of same.

Yours very truly

ELDER & ELDER

By Robt. H. Elder

RHE:HM
Encls/

RECEIVED
FEB
Department of Reclamation

18713

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

IN THE MATTER OF THE APPLICATION OF VILLAGE OF BONNERS FERRY, A MUNICIPAL CORPORATION NO. 26042, IN THE OFFICE OF THE COMMISSIONER OF RECLAMATION OF THE STATE OF IDAHO, FOR PERMIT TO APPROPRIATE CERTAIN WATERS AT MOYIE RIVER, IDAHO.

PETITION ON APPEAL

Comes now the Bonners Ferry Lumber Company, a corporation and does hereby appeal from the judgment of the Commissioner and the Department of Reclamation of the State of Idaho, approving that certain application known and numbered as "Application No. 26042" in the office of the Department of Reclamation of the State of Idaho, and granting to the Village of Bonners Ferry, a municipal corporation of the State of Idaho, a permit No. 18173 to appropriate certain waters of Moyie River in Boundary County, Idaho, which decision, order and judgment was made and entered on or about the 31st day of December, 1938;

Said judgment being in the form of the approval actually made and entered upon said Application No. 26042, a true and certified copy of which said application and approval thereof is submitted and filedherewith, and said judgment consisting also of an order by the Commissioner of Reclamation, a true copy of which is hereunto attached, and made a part hereof, and marked Exhibit "A";

Said decision, order and judgment was made by the Commissioner of Reclamation of the State of Idaho, after a hearing on a protest filed by the Bonners Ferry Lumber Company, a corporation, that a copy of said protest is hereunto attached, marked Exhibit "B", and made a part of this petition; that the Bonners Ferry Lumber Company, a corporation, petitioner herein, formally appeared at said hearing upon which said decision, order and judgment was based;

The point or points of diversion attempted to be

18713

described in said Application No. 26042 are situated in Boundary County, State of Idaho;

This appeal is taken from said decision, order and judgment and the whole thereof, upon questions of both law and of fact, and said appeal is based upon the following reasons:

I

That on or about the 2nd day of September, 1938, the Village of Bonners Ferry filed in and with the Department of Reclamation of the State of Idaho, an application to appropriate certain waters of the Moyie River, and petitioner alleges that said application was insufficient under the statutes of the State of Idaho to constitute an application for the appropriation of any waters whatsoever, or to give jurisdiction to the said Commissioner and Department in the premises, in that said application did not set forth the location of the points of diversion or return of the waters referred to therein and was unaccompanied by any plan or maps of the proposed works for the diversion and application of waters of said Moyie River to a beneficial use, or showing the character, location or dimensions of any proposed reservoir, dam, canal, ditch, pipe line or any other works to be used in the diversion of said waters, and did not state the horse power proposed to be developed, or the nature, location, character, capacity and estimated cost of said works, and said application did not state where the water it was proposed to use in said development would be returned to the stream, or at what point thereon, or the financial resources of the applicant, or the means by which the funds necessary to construct any works would be provided, all as required by the laws of the State of Idaho;

II

That said application was thereafter by said Commissioner of Reclamation returned to said applicant. That upon return of said purported application, the same consisted of a new, separate and different application from the one theretofore filed by said applicant, the Village

1872

of Bonners Ferry, and petitioner alleges that no filing fee was paid by the Village of Bonners Ferry as required by the laws of the State of Idaho;

III

That the application as filed with the Department of Reclamation shows that it was returned to the applicant on October 1, 1938, but it does not show when said application was returned or filed in the Department of Reclamation; that the maps accompanying said application contained the certificate of Guy C. McGee which states that the maps were made from an actual survey made by said engineer on October 27, 1938; that said application and maps failed to conform to and comply with the requirements of the laws, and to contain information and facts sufficient to constitute the same a valid and sufficient application to appropriate any waters whatsoever in that said purported application failed to include or disclose the facts, data and information and the maps required to be included therein by the laws of the State of Idaho. That the purported maps or plats filed with the application are indefinite and vague, and are not based upon any accurate or sufficient survey made of the various points of location or the proposed works of diversion, use and return, and that said application did not contain sufficient and required information with respect to the location, kind, size or character of the proposed dam and diversion works and power plant proposed to be constructed, and that for said reason said purported application was and is insufficient to support the issuance of any permit thereon, or to support the order and judgment of the said Commissioner of Reclamation or to support any action by said Commissioner or Department of Reclamation in connection with said purported application except the rejection and denial thereof.

IV

That the petitioner, Bonners Ferry Lumber Company, a corporation, was at the time of the filing of said purported application above referred to, the owner of the fee to the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, the lands involved in said

application, over and upon which said applicants sought the right to divert the waters of Moyie River and to construct proposed works of diversion, use and return under said application. That your petitioner executed and delivered to C. C. Graue on or about the 7th day of September, 1938, an option to purchase said property and authorized C. C. Graue to survey said land for water power development and to develop water power thereon.

That said applicant determined the location and description of the points of diversion and return of said water covered by said purported application No. 26042 by entering upon the said property of petitioner without the knowledge, permission or consent and without any legal proceedings having theretofore been maintained to acquire such right. That the making of the entry upon said property and the securing of the data and information for the purpose of making said purported application No. 26042, was in trespass against the rights and upon the property of your petitioner, and constituted an attempt to initiated a claim or right on the petitioner's lands by means of said unlawful acts and conduct in trespass thereon. That said application No. 26042 was and is founded upon and instituted in trespass and is void.

V

That no contour maps showing the area of the reservoir was filed or submitted with said application.

VI

That application No. 26042 was not properly advertised as required by the laws of the State of Idaho.

18713

VIII

That your petitioner, Bonners Ferry Lumber Company, is now and was at the time of filing Application No. 26042 upon which Permit No. 18173 was issued, the owner of the fee of the land involved in said application and over and upon which said Village of Bonners Ferry sought the right to divert the waters of the Moyie River and to construct the proposed works of diversion, use and return under said application No. 26042 and Permit No. 18173, and that the Village of Bonners Ferry never acquired any right from this petitioner to go upon said land to survey said land or to locate any power site thereon or to develop said property in any manner or at all.

IX

That the approval of said Application No. 26042 was erroneous and in error for the reasons herein set forth, and the same has cast a cloud upon petitioner's title to its lands, works and water rights and property;

X

That no permission of any type or kind was obtained by the Village of Bonners Ferry to enter upon said lands, or to appropriate the waters of Moyie River, and that said purported application No. 26042 failed to state that said applicant had obtained the written permission from the owner or owners to appropriate the waters of Moyie River as required by the laws of the State of Idaho;

XI

That your petitioner, feeling aggrieved by the ruling, action and judgment of the Commissioner of Reclamation in granting said purported Application No. 26042 and issuing permit No. 18173 based thereon, hereby appeals therefrom to the above entitled District Court of the Eighth Judicial District of the State of Idaho, in and for the County of Boundary, the county in which the point of diversion of the proposed appropriation is situated, and petitioner files herewith a copy of said application, certified by the Commissioner as a true copy. That

18713

the Commissioner and the Department of Reclamation erred in its ruling, action and judgment in approving said purported application No. 26042, and issuing and granting Permit No. 18173 based thereon, and erred in not fiding and deciding that said purported application No. 26042 should be rejected or disallowed and denied, and that permit be not issued thereon, for each and all of the following reasons:

1. That the original application for permit made by the said Village of Bonners Ferry was insufficient and incomplete, and that the same did not comply with the requirements of the laws of the State of Idaho as hereinbefore set forth.

2. That the said original application was changed and returned as an application, and that the same constitutes a new, separate and different application for permit, and that it is not shown when said application was filed, and that no filing fee was paid thereon as required by the laws of the State of Idaho;

3. That said purported application No. 26042 was initiated in trespass upon the lands, property and rights of this petitioner.

4. That said purported application was unaccompanied by any written permission of the owner of the lands upon which the said Moyie River is situated and through which said stream flows, as required by the laws of the State of Idaho.

5. That themaps filed with said purported application No. 26042 are vague, insufficient and incomplete, and not based upon any accurate or sufficient survey as hereinabove set forth.

6. That the approval of said purported application No. 26042 and the granting of said permit No. 18173 constitutes a flaw and cloud in and upon the title of this petitioner and upon the lands and property of this petitioner.

7. That the approval of said application and the granting of said permit is a violation of the right of your petitioner under the Constitution of the United States, in that the same takes the

18713

property of this petitioner and deprives petitioner thereof without due process of law and without compensation in violation of rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

8. That the approval of said application and the granting of said permit is a violation of the right of your petitioner under the Consitution of the State of Idaho, in that the same takes the property of this petitioner and deprives petitioner thereof without due process of law and without compensation in violation of rights guaranteed by the Sections 1, 13 and 14 of Article I, and Section 3 of Article XV of the Constitution of the State of Idaho.

That true and certified copy of the application for Permit No. 26042 to appropriate the public waters of the State of Idaho, as the same appears in the Department of Reclamation of the State of Idaho, together with the maps which accompanied the same is filed herein and hereby referred to.

WHEREFORE, PETITIONER PRAYS: That this court take jurisdiction of this cause and appeal in accordance with the laws and the Constitution of the State of Idaho and hear the same. That the decision, order and judgment entered by the Commissioner of Reclamation allowing and approving said Application No. 26042 be reversed, and that your petitioner have and recover its costs herein expended.

BONNERS FERRY LUMBER COMPANY

By E. J. Jewett, President

Elder & Elder

Robt. H. Elder

Attorneys for Petitioner
Res. and P. O. Address:
Coeur d'Alene, Idaho

18713

EXHIBIT "A"

IN THE DEPARTMENT OF RECLAMATION OF THE

STATE OF IDAHO

In the Matter of Protests Against
Issuance of Permit Under Application
No. 26042

O R D E R

Under date of September 2, 1938 the Village of Bonners Ferry, a municipal corporation of Bonners Ferry, Boundary County, Idaho, made application for permit to appropriate and divert 160 cubic feet of water per second from Moyie River in Boundary County, Idaho. The point of diversion being designated as North 43° 30' East, 1070 feet distant from the Southwest Corner of Section 11, Township 62 North, Range 2, East, B. M., and is in the Southwest Quarter of Southwest Quarter (SW¼SW¼) of the above named section, the water to be appropriated and used for power purposes.

Notice of the pending application was published as required by law, whereupon, C. C. Graue on December 16, 1938 filed protest against issuance of permit on the following grounds:

"Comes now, C. C. Graue, whose residence and post office address is Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company or from C. C. Graue to enter upon the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; for the purpose of making a survey;

"That the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said lands; that any and all information with reference to said survey which is contained in said application and in said maps was secured by trespass upon the lands belonging to this protestant.

18713

II

That no maps or plats accompanied the application and no maps were filed with said application as required by Section 41-202 of the Idaho Code Annotated, as amended by Chapter 145 of the 1935 Session Laws of Idaho, and that no maps or plats whatever were filed with said application as provided by said section; that the maps and plats certified to by Guy C. McGee were filed on or about the 7th day of November, 1938; that said Guy C. McGee, engineer, certified that the survey upon which said application, maps and plats were based was made on the 27th day of October, 1938.

III

That the point of diversion was not stated in said application at the time the same was filed; that the survey determining the point of diversion was not made until the 27th day of October, 1938; that the certificate of the engineer, Guy C. McGee endorsed upon the plats states that the map was made from notes taken during an actual survey made on the 27th day of October, 1938.

IV

That the application did not state the point of return of the water appropriated to the stream from which it was taken at the time the application was filed; that it was not possible for the application to show the point of return until after the 27th day of October, 1938, for the reason that the application and map submitted therewith as certified to by Guy C. McGee was made from information secured by an actual survey made on October 27, 1938;

V

That the maps submitted and filed on or about the 7th day of November, 1938 were not prepared or filed in accordance with the laws of the State of Idaho or the Manual of Instruction for Filing Water Rights, and do not comply with the regulation of the Commissioner of Reclamation, and do not comply with Section 41-202, of the Idaho Code Annotated; that said maps do not show the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines and other works proposed to be used in the diversion of water.

18713

VI

"That no contourmaps showing the area of the reservoir was filed or submitted with said application;

VII

"That the application was not properly advertised as required by the laws of Idaho.

VIII

"That Application No. 26042 conflicts with Permit R-651 issued to C. C. Graue, September 30, 1936.

IX

"That Application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. C. Graue. "

X

On the same day Bonners Ferry Lumber Company filed protest against issuance of permit as follows:

"Comes Now the Bonners Ferry Lumber Company, Limited, a corporation, organized under the laws of the State of Wisconsin and authorized to transact business in the State of Idaho, with its principal place of business at Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Bonners Ferry Lumber Company, Limited, a corporation, is the owner of the West Half of Section 11, Township 62, North, Range 2 East Boise Meridian, Boundary County, Idaho; that the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees acquired no right from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey; that the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said land; that any and all information contained in said Application No. 26042 and said maps was secured by trespass upon said lands belonging to this protestant.

II

1873

"That Application No. 26042 does not comply with the laws of

the State of Idaho in that it does not contain the information required by the statutes and rules of the Department of Reclamation.

III

"That this protestant states on information and belief that Application No. 26042 was left with the Commissioner's office on or about the 2nd day of September, 1938; that at said time no plats were submitted with said application; that said application did not describe the works to be constructed in the event the permit was granted; that the said application did not describe the diversion point, and did not described the point of use;

"This protestant further states that the maps and information now contained in said application were not submitted to the Department of Reclamation until on or about the 7th day of November, 1938; that said application did not contained sufficient facts to permit the Commissioner of Reclamation to receive the same as an application for permit under the laws of Idaho, when the same was submitted with the Commissioner of Reclamation on the 2nd day of September, 1938; and that all material facts now stated in said application for permit No. 26042 were not filed with the Commissioner of Reclamation until on or about the 7th day of November, 1938."

Whereupon, a hearing on protest was called and heard in the office of the State Commissioner of Reclamation in the State House at Boise, Idaho, at 10 o'clock A.M. on the 30th day of December, 1938; Robert M. Elder Esq. of Coeur d'Alene, Idaho appeared as attorney for the protestant and C. C. Wilson, Esq., of Bonners Ferry, Idaho appeared as attorney for the applicant.

With reference to the protest of the Bonners Ferry Lumber Company, Limited, the undisputed evidence is that the lumber company had, prior to the filing of application for permit number 26042, executed an option to C. C. Grene to purchase the land upon which it is alleged that trespass was committed; so it would appear that protestant Bonners Ferry Lumber Company has no further interest in the land and its protest must

be disregarded.

With reference to protest of C. O. Graue, paragraph one which goes to the question of trespass in securing the information necessary to make the application, the State of Idaho has no statute defining trespass in such a situation as here exists. It is the view of the Commissioner that the question of trespass is in the same relationship as a question with reference to right of way, ownership of land, damage to property, etc. It must be conceded as a question over which the Department of Reclamation has no authority of jurisdiction, but is one for the Courts to adjudicate and determine rather than for the administrative officer.

In any event trespass does not seem to be sufficiently proved. The only evidence with reference to trespass introduced is that of engineer Sewell in which he testified that he made a survey of the site of the proposed development and found that brush had been cut over a considerable area; young growth of timber had been destroyed and there had been a bench mark cut in the root of one of the large trees, and also stakes on the ground.

Page 7 transcript: In answer to the question "could you tell whether or not that survey was made in connection with the proposed development here by the Village of Bonners Ferry"; the witness Sewell answered, "It was made from the County Road to the approximate point of diversion named in the application.", which obviously is not conclusive evidence that the survey was made by engineers or agents of the Village of Bonners Ferry.

Paragraph 2 involves the question as to whether or not sufficient information was furnished with the application for permit. Section 41-202 Idaho Code Annotated provides "That the application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and appropriation of water to a beneficial use, showing the character, location and dimensions of the proposed reservoir, dam, canals, diversion pipe line, and other works proposed to be used by them in the diversion of water." ***

18713

It is admitted that full and complete information was not contained in the application as first submitted, but it is provided in Section

41-204 "It should be the duty of the department to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of proposed use. If upon such examination the application is found defective, it shall be the duty of the department of reclamation to return the same for correction within thirty days from the receipt of such application; and the date of such return, with the reason therefor, shall be endorsed on the application and a record made thereof in a book kep for recording receipt of such application. A like record shall be kept of the date of the return of the corrected application, then such corrected application shall be returned to the department of reclamation within a period of sixty days from the date indorsed thereon by the department."

The record herein shows that the application was first received in the Department of Reclamation at 9 o'clock A. M., September 2, 1938, and returned for correction October 1, 1938. The corrected application was received with all necessary information November 7, 1938. The filing fee of forty-four dollars and seventy-five cents ($44.75) was paid September 28, 1938.

The objections contained in paragraph 3, 4, 5 and 6 are disposed of under paragraph 2 above.

Paragraph 7 alleges that this application was not properly advertised by the laws of Idaho, but does not set forth in what respect.

Paragraph 8 alleges that application number 26042 conflicts with Permit R-651, issued to C. C. Graue, September 30, 1938. There can be no merit to this contention for the reason that the stuatute providing that "first in time is first in right" shall govern, and the same rules shall apply to objection number 9.

In view of the foregoing, and of all the facts and circumstances developed, with reference to the above mentioned protest, it would seem that such protest must be rejected and dismissed, and that a permit be issued to protestee, the Village of Bonners Ferry.

18713

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of December, 1938, and attached the seal of my office.

R. W. FARIS
Commissioner of Reclamation

SEAL

18713

ELDER & ELDER
ATTORNEYS AND COUNSELORS AT LAW
COEUR D'ALENE, IDAHO

ROBT. H. ELDER

ROBT. N. ELDER

February 13, 1939

Honorable James Spofford
Commissioner of Reclamation
Boise, Idaho

Dear Sir: Re: In the Matter of the Application of Village of Bonners Ferry, a municipal corporation No. 26042, in the office of the Commissioner of Reclamation of the State of Idaho, for Permit to Appriate Certain waters at Moyie River, Idaho--C. O. Graue

I am enclosing herewith a copy of the Petition on Appeal in the above entitled matter.

Please acknowledge service of same.

Yours very truly

ELDER & ELDER

By

RNE:HM
Encls/

FEB 14 1939
Department of Reclamation

18713

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

- - -

IN THE MATTER OF THE APPLICATION OF VILLAGE OF BONNERS FERRY, A MUNICIPAL CORPORATION NO. 26042, IN THE OFFICE OF THE COMMISSIONER OF RECLAMATION OF THE STATE OF IDAHO, FOR PERMIT TO APPROPRIATE CERTAIN WATERS AT MOYIE RIVER, IDAHO.

PETITION ON APPEAL

- - -

Comes now C. O. Graue, a resident and citizen of the State of Idaho, residing at Coeur d'Alene, Idaho, and does hereby appeal from the judgment of the Commissioner and the Department of Reclamation of the State of Idaho, approving that certain application known and numbered as "Application No. 26042" in the office of the Department of Reclamation of the State of Idaho, and granting to the Village of Bonners Ferry, a municipal corporation of the State of Idaho, a permit No. 18173 to appropriate certain waters of Moyie River in Boundary County, Idaho, which order and judgment was made and entered on or about the 31st day of December, 1938;

Said judgment being in the form of the approval actually made and entered upon said Application No. 26042, a true and certified copy of which said application and approval thereof is submitted and filed herewith, and said judgment consisting also of an order by the Commissioner of Reclamation, a true copy of which is hereunto attached, made a part hereof, and marked Exhibit "A";

Said decision, order and judgment was made by the Commissioner of Reclamation of the State of Idaho, after a hearing on a protest filed by C. O. Graue, that a copy of said protest is hereunto attached, marked Exhibit "B", and made a part of this petition; that said C. O. Graue, petitioner herein, formally appeared at said hearing upon which said decision, order and judgment was based;

The point or points of diversion attempted to be described in said Application No. 26042 are situated in Boundary County, State

18713

of Idaho;

This appeal is taken from said decision, order and judgment and the whole thereof upon questions of both law and of fact, and said appeal is based upon the following reasons:

I

That on or about the 2nd day of September, 1938, the Village of Bonners Ferry filed in and with the Department of Reclamation of the State of Idaho, an application to appropriate certain waters of the Moyie River, and petitioner alleges that said application was insufficient under the statutes of the State of Idaho to constitute an application for the appropriation of any waters whatsoever, or to give jurisdiction to the said Commissioner and Department in the premises, in that said application did not set forth the location of the points of diversion or return of the waters referred to therein and was unaccompanied by any plan or maps of the proposed works for the diversion and application of waters of said Moyie River to a beneficial use, or showing the character, location or dimensions of any proposed reservoir, dam, canal, ditch, pipe line or any other works to be used in the diversion of said waters, and did not state the horse power proposed to be developed, or the nature, location, character, capacity and estimated cost of said works, and said application did not state where the water it was proposed to use in said development would be returned to the stream or at what point thereon, or the financial resources of the applicant, or the means by which the funds necessary to construct any works would be provided, all as required by the laws of the State of Idaho;

II

That said application was thereafter by said Commissioner of Reclamation returned to said applicant. That upon return of said purported application, the same consisted of a new, separate and different application from the one theretofore filed by said applicant, the Village of Bonners Ferry, and petitioner alleges that no filing fee was paid

1871³

by the Village of Bonners Ferry as required by the laws of the State of Idaho;

III

That the application as filed with the Department of Reclamation shows that it was returned to the applicant on October 1, 1938, but it does not show when said application was returned or filed in the Department of Reclamation; that the maps accompanying said application contained the certificate of Guy C. McGee which states that the maps were made from an actual survey made by said engineer on October 27, 1938; and that said application and maps failed to conform to and comply with the requirments of the laaws, and to contain information and facts sufficient to constitute the same a valid and sufficient application to appropriate any waters whatsoever in that said purported application failed to include or disclose the facts, data and information and the maps required to be included therein by the laws of the State of Idaho. That the purported maps or plats filed with the application are indefinite and vague, and are not based upon any accurate or sufficient survey made of the various points of location of the proposed works of diversion, use and return, and that said application did not contain sufficient and required information with respect to the location, kind, size or character of the proposed dam and diversion works and power plant proposed to be constructed, and that for said reason said purported application was and is insufficient to support the issuance of any permit thereon, or to support the order and judgment of the said Commissioner of Reclamation or to support any action by said Commissioner or Department of Reclamation in connection with said purported application except the rejection and denial thereof.

IV

That the Bonners Ferry Lumber Company was at the time of the filing of said purported application above referred to, the owner of the fee to the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, the lands involved in said application, over and

18713

upon which said applicants sought the right to divert the waters of Moyie River and to construct proposed works of diversion, use and return under said application. That your petitioner herein holds an option to purchase said property and under said option holds the possession of said property and is authorized to survey and develop water power thereon; that said applicant determined the location and description of the points of diversion and return of the said water covered by said purported application No. 26042 by entering upon the said property of petitioner without the knowledge, permission or consent and without the legal proceedings having theretofore been maintained to acquire such right. That the making of the entry upon said property and the securing of the data and information for the purpose of making said purported application No. 26042 was in trespass against the rights and upon the property of your petitioner, and constituted an attempt to initiate a claim or right on the petitioner's lands by means of said unlawful acts and conduct in trespass thereon. That said application No. 26042 was and is founded upon and instituted in trespass and is void.

V

That no contour maps showing the area of the reservoir was filed or submitted with said application.

VI

That the application was not properly advertised as required by the laws of the State of Idaho.

VII

That application No. 26042 conflicts with Permit R-651 issued to C. O. Graue, September 30, 1938, and that application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. O. Graue.

VIII

That the Bonners Ferry Lumber Company is the owner of the fee to the West half of Section 11, Township 62, North, Range 2, East of

18713

Boise Meridian, and that your petitioner, C. O. Graue, holds an option to purchase said land, and under said option holds the possession of said land, and is authorized to survey and develop water power thereon; that the Moyie River runs through said land and that said River is not a meandered stream; that your petitioners and his predecessors in interest is now and was at the time of filing application No. 26042 upon which permit No. 18173 was issued, the owner in fee of the lands involved in said application and over and upon which said Village of Bonners Ferry sought the right to divert the waters of the Moyie River and to construct the proposed works of diversion, use and return under said application No. 26042 and Permit No. 18173, and that the Village of Bonners Ferry never acquired any right from this petitioner or from the Bonners Ferry Lumber Company to go upon said land to survey said land or to locate any power site thereon or to develop said property in any manner or at all;

IX

That the approval of said Application No. 26042 was erroneous and in error for the reasons herein set forth, and the same has cast a cloud upon petitioner's title to his lands, works and water rights and property;

X

That no permission of any type or kind was obtained by the Village of Bonners Ferry to enter upon said lands, or to appropriate the waters of Moyie River, and that said purported application No. 26042 failed to state that said applicant had obtained the written permission from the owner or owners to appropriate the waters of Moyie River as required by the laws of the State of Idaho;

XI

That your petitioner, feeling aggrieved by the ruling, action and judgment of the Commissioner of Reclamation in granting said purported Application No. 26042 and issuing permit No. 18173 based thereon, hereby appeals therefrom to the above entitled District Court of the Eighth Judicial District of the State of Idaho, in and for the

18713

County of Boundary, the county in which the point of diversion of the proposed appropriation is situated, and petitioner files herewith a copy of said application, certified by the Commissioner as a true copy. That the Commissioner and the Department of Reclamation erred in its ruling, action and judgment in approving said purported application No. 26042, and issuing and granting Permit No. 18173 based thereon, and erred in not finding and deciding that said purported application No. 26042 should be rejected or disallowed and denied, and that permit be not issued thereon, for each and all of the following reasons:

1. That the original application for permit made by the said Village of Bonners Ferry was insufficient and incomplete, and that the same did not comply with the requirements of the laws of the State of Idaho as hereinbefore set forth.

2. That the said original application was changed and returned as an application, and that the same constitutes a new, separate and different application for permit, and that it is not shown when said application was filed, and that no filing fee was paid thereon as required by the laws of the State of Idaho;

3. That said purported application No. 26042 was initiated in trespass upon the lands, property and rights of this petitioner.

4. That said purported application was unaccompanied by any written permission of the owner of the lands upon which the said Moyie River is situated and through which said stream flows, as required by the laws of the State of Idaho;

5. That the maps filed with said purported application No. 26042 are vague, insufficient and incomplete, and not based upon any accurate or sufficient survey as hereinabove set forth.

6. That the approval of said purported application No. 26042 and the granting of said permit No. 18173 constitutes a flaw and cloud in and upon the title of this petitioner and upon the lands and property of this petitioner.

18713

7. That Application No. 26042 conflicts with Permit No. 2-651 issued to C. O. Graue September 30, 1938, and Application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. O. Graue and now pending.

8. That the approval of said application and the granting of said permit is a violation of the right of your petitioner under the Constitution of the United States, in that the same takes the property of this petitioner and deprives petitioner thereof without due process of law and without compensation in violation of rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. That the approval of said application and the granting of said permit is a violation of the right of your petitioner under the Constitution of the State of Idaho, in that the same takes the property of this petitioner and deprives petitioner thereof without due process of law and without compensation in violation of rights guaranteed by the Sections 1, 13 and 14 of Article I, and Section 3 of Article XV of the Constitution of the State of Idaho.

That true and certified copy of the application for Permit No. 26042 to appropriate the public waters of the State of Idaho, as the same appears in the Department of Reclamation of the State of Idaho, together with the maps which accompanied the same is filed herein and hereby referred to.

WHEREFORE, PETITIONER PRAYS: That this court take jurisdiction of this cause and appeal in accordance with the laws and the Constitution of the State of Idaho and hear the same. That the decision, order and judgment entered by the Commissioner of Reclamation allowing and approving said Application No. 26042 be reversed, and that your petitioner have and recover his costs herein expended.

C. O. GRAUE
Petitioner
Res. and P. O. Address:
Coeur d'Alene, Idaho

ELDER & ELDER
Attorneys for Petitioner
Res. and P. O. Address:
Coeur d'Alene, Idaho

18713

EXHIBIT "A"

IN THE DEPARTMENT OF RECLAMATION OF THE

STATE OF IDAHO

IN the Matter of Protests Against
Issuance of Permit Under Application
No. 36042

O R D E R

Under date of September 2, 1938 the Village of Bonners Ferry, a municipal corporation of Bonners Ferry, Boundary County, Idaho, made application for permit to appropriate and divert 160 cubic feet of water per second from Moyie River in Boundary County, Idaho. The point of diversion being designated as North 45° 30' East, 1070 feet distant from the Southwest Corner of Section 11, Township 62 North, Range 2, East, B. M., and is in the Southwest Quarter of Southwest Quarter (SW¼SW¼) of the above named section, the water to be appropriated and used for power purposes.

Notice of the pending application was published as required by law, whereupon, C. C. Graue on December 15, 1938 filed protest against issuance of permit on the following grounds:

"Comes now, C. C. Graue, whose residence and post office address is Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 36042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company or from C. C. Graue to enter upon the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; for the purpose of making a survey;

"That the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said lands; that any and all information with reference to said survey which is contained in said application and in said maps was secured by trespass upon the lands belonging to this protestant.

18713

II

That no maps or plats accompanied the application and no maps were filed with said application as required by Section 41-202 of the Idaho Code Annotated, as amended by Chapter 145 of the 1935 Session Laws of Idaho, and that no maps or plats whatever were filed with said application as provided by said section; that the maps and plats certified to by Guy C. McGee were filed on or about the 7th day of November, 1938; that said Guy C. McGee, engineer, certified that the survey upon which said application, maps and plats were based was made on the 27th day of October, 1938.

III

That the point of diversion was not stated in said application at the time the same was filed; that the survey determining the point of diversion was not made until the 27th day of October, 1938; that the certificate of the engineer, Guy C. McGee endorsed upon the plats states that the map was made from notes taken during an actual survey made on the 27th day of October, 1938.

IV

That the application did not state the point of return of the water appropriated to the stream from which it was taken at the time the application was filed; that it was not possible for the application to show the point of return until after the 27th day of October, 1938, for the reason that the application and map submitted therewith as certified to by Guy C. McGee was made from information secured by an actual survey made on October 27, 1938;

V

That the maps submitted and filed on or about the 7th day of November, 1938 were not prepared or filed in accordance with the laws of the State of Idaho or the Manual of Instruction for Filing Water Rights, and do not comply with the regulation of the Commissioner of Reclamation, and do not comply with Section 41-202, of the Idaho Code Annotated; that said maps do not show the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines and other works proposed to be used in the diversion of water.

18713

VI

"That no contourmaps showing the area of the reservoir was filed or submitted with said application;

VII

"That the application was not properly advertised as required by the laws of Idaho.

VIII

"That Application No. 26042 conflicts with Permit R-651 issued to C. C. Graue, September 30, 1936.

IX

"That Application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. C. Graue. "

X

On the same day Bonners Ferry Lumber Company filed protest against issuance of permit as follows:

"Comes Now the Bonners Ferry Lumber Company, Limited, a corporation, organized under the laws of the State of Wisconsin and authorized to transact business in the State of Idaho, with its principal place of business at Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Bonners Ferry Lumber Company, Limited, a corporation, is the owner of the West half of Section 11, Township 62, North, Range 2 East Boise Meridian, Boundary County, Idaho; that the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees acquired no right from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey; that the survey made by Guy C. McCee on the 27th day of October, 1936 was made by trespass upon said land; that any and all information contained in said Application No. 26042 and said maps was secured by trespass upon said lands belonging to this protestant.

18713

II

"That Application No. 26042 does not comply with the laws of

the State of Idaho in that it does not contain the information required by the statutes and rules of the Department of Reclamation.

III

"That this protestant states on information and belief that Application No. 26042 was left with the Commissioner's office on or about the 2nd day of September, 1938; that at said time no plats were submitted with said application; that said application did not describe the works to be constructed in the event the permit was granted; that the said application did not describe the diversion point, and did not described the point of use;

"This protestant further states that the maps and information now contained in said application were not submitted to the Department of Reclamation until on or about the 7th day of November, 1938; that said application did not contained sufficient facts to permit the Commissioner of Reclamation to receive the same as an application for permit under the laws of Idaho, when the same was submitted with the Commissioner of Reclamation on the 2nd day of September, 1938; and that all material facts now stated in said application for permit No. 26042 were not filed with the Commissioner of Reclamation until on or about the 7th day of November, 1938."

Whereupon, a hearing on protest was called and heard in the office of the State Commissioner of Reclamation in the State House at Boise, Idaho, at 10 o'clock A.M. on the 30th day of December, 1938; Robert H. Elder Esq. of Coeur d'Alene, Idaho appeared as attorney for the protestant and C. C. Wilson, Esq., of Bonners Ferry, Idaho appeared as attorney for the applicant.

With reference to the protest of the Bonners Ferry Lumber Company, Limited, the undisputed evidence is that the lumber company had, prior to the filing of application for permit number 26042, executed an option to C. O. Grame to purchase the land upon which it is alleged that trespass was committed; so it would appear that protestant Bonners Ferry Lumber Company has no further interest in the land and its protest must

be disregarded.

With reference to protest of C. O. Grove, paragraph one which goes to the question of trespass in securing the information necessary to make the application, the State of Idaho has no statute defining trespass in such a situation as here exists. It is the view of the Commissioner that the question of trespass is in the same relationship as a question with reference to right of way, ownership of land, damage to property, etc. It must be conceded as a question over which the Department of Reclamation has no authority of jurisdiction, but is one for the Courts to adjudicate and determine rather than for the administrative officer.

In any event trespass does not seem to be sufficiently proved. The only evidence with reference to trespass introduced is that of engineer Sewell in which he testified that he made a survey of the site of the proposed development and found that brush had been cut over a considerable area; young growth of timber had been destroyed and there had been a bench mark cut in the root of one of the large trees, and also stakes on the ground.

Page 7 transcript: In answer to the question "would you tell whether or not that survey was made in connection with the proposed development here by the Village of Bonners Ferry"; the witness Sewell answered, "It was made from the County Road to the approximate point of diversion named in the application.", which obviously is not conclusive evidence that the survey was made by engineers or agents of the Village of Bonners Ferry.

Paragraph 2 involves the question as to whether or not sufficient information was furnished with the application for permit. Section 41-302 Idaho Code Annotated provides "That the application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and appropriation of water to a beneficial use, showing the character, location and dimensions of the proposed reservoir, dam, canals, diversion pipe line, and other works proposed to be used by them in the diversion of water." ***

1875

It is admitted that full and complete information was not contained in the application as first submitted, but it is provided in Section

41-204 "It should be the duty of the department to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of proposed use. If upon such examination the application is found defective, it shall be the duty of the department of reclamation to return the same for correction within thirty days from the receipt of such application; and the date of such return, with the reason therefor, shall be endorsed on the application and a record made thereof in a book kep for recording receipt of such application. A like record shall be kept of the date of the return of the corrected application, then such corrected application shall be returned to the department of reclamation within a period of sixty days from the date indorsed thereon by the department."

The record herein shows that the application was first received in the Department of Reclamation at [illegible] o'clock A. M., September 2, 1938, and returned for correction October 1, 1938. The corrected application was received with all necessary information November 7, 1938. The filing fee of forty-four dollars and seventy-five cents ($44.75) was paid September 26, 1938.

The objections contained in paragraph 3, 4, 5 and 6 are disposed of under paragraph 2 above.

Paragraph 7 alleges that this application was not properly advertised by the laws of Idaho, but does not set forth in what respect.

Paragraph 8 alleges that application number 26042 conflicts with Permit R-651, issued to C. C. Greue, September 30, 1938. There can be no merit to this contention for the reason that the stautute providing that "first in time is first in right" shall govern, and the same rules shall apply to objection number 9.

In view of the foregoing, and of all the facts and circumstances developed, with reference to the above mentioned protest, it would seem that such protest must be rejected and dismissed, and that a permit be issued to protestee, the Village of Bonners Ferry.

1873

8

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of December, 1936, and attached the seal of my office.

H. W. PARIS
Commissioner of Reclamation

SEAL

18713

Form No 18-B

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

Boise

Permit No. 18713

December 31, 1938

NOTICE

You are advised that in order to keep this permit in force a bond in the sum of $ 1000.00 must be filed in the office of the Commissioner of Reclamation on or before March 1 19 39 conditioned upon faithfully carrying to completion the works of diversion as specified in said permit and in the application therefor.

R. W. FARIS
Commissioner of Reclamation

H. M. Burcker, Clerk
Village of Bonners Ferry
Bonners Ferry, Idaho

18713

State of Idaho
DEPARTMENT OF RECLAMATION
BOISE

Permit No. 18713

Boise, Idaho, December 31, 1938

Dear Sir:

I enclose herewith above numbered permit. BE SURE AND NOTE LIMITATIONS AND CONDITIONS OF SAME as given under approval of the Commissioner of Reclamation on the third page.

H. M. Buroker, Clerk
Village of Bonners Ferry
Bonners Ferry, Idaho

R. W. FAIS
Commissioner of Reclamation.

18713

State of Idaho
Department of Reclamation

NOTICE OF APPLICATION TO APPROPRIATE WATER IN ACCORDANCE WITH THE PROVISIONS OF HOUSE BILL 208, 1935 SESSION LAWS

NOTICE IS HEREBY GIVEN That on the 2nd day of September, 1938, the VILLAGE OF BONNERS FERRY, a municipal corporation, County of Boundary, State of Idaho, made Application No. 26042 to appropriate 160 cubic feet of water per second from the Moyie River for power purposes.

That the point of diversion of the water is located N. 43° 35' E. 1070 feet distant from the SW corner of Section 11, T. 62 N., R. 2 E., B. M., and is in the SW¼ SW¼ of Section 11, T. 62 N., R. 2 E., B. M., County of Boundary.

That the point of use of the water is located S. 33° 15' E. 575 feet distant from the NW corner of Section 14, T. 62 N., R. 2 E., B. M., in the NW¼ NW¼ of Section 14, T. 62 N., R. 2 E., B. M.

That the water is to be returned to the Moyie River at a point S. 33° 15' E. 575 feet distant from the NW corner of Section 14, T. 62 N., R. 2 E., B. M., in the NW¼ NW¼ of Section 14, T. 62 N., R. 2 E., B. M.

That any protests against the approval of this application must be filed in the Department of Reclamation within forty (40) days of the date of this notice; such protest shall state the name and address of the protestant and shall clearly set forth his objections to the approval of the said application.

DATED This 9th dav of November, 1938.

R. W. FARIS,
Commissioner of Reclamation.

Date of first publication: Nov. 24, 1938.

Date of last publication: Dec. 8, 1938.

Last date for protest: December 19, 1938.

SERVICE of the foregoing, by copy, is hereby admitted this 12th day of November, 1938.

VILLAGE OF BONNERS FERRY
18713 Applicant.
By H. M. Buroker, Clerk.

Affidavit of Publication

RECEIVED
DEC 31 1938
Department of Reclamation

STATE OF IDAHO } ss.
County of Boundary }

W. B. Scott

being first duly sworn upon his oath, deposes and says: That he is the

Foreman of the Bonners Ferry Herald, a newspaper of general circulation, published weekly at Bonners Ferry, Boundary County, State of Idaho; that the said Bonners Ferry Herald has been continuously and uninterruptedly published in said Boundary County during a period of 18 months or 78 weeks prior to the first publication of the

hereto attached notice; that the advertisement of

R. W. Faris, Commissioner of Reclamation and H. M. Buroker, Clerk, Village of Bonners Ferry

a Notice of Application

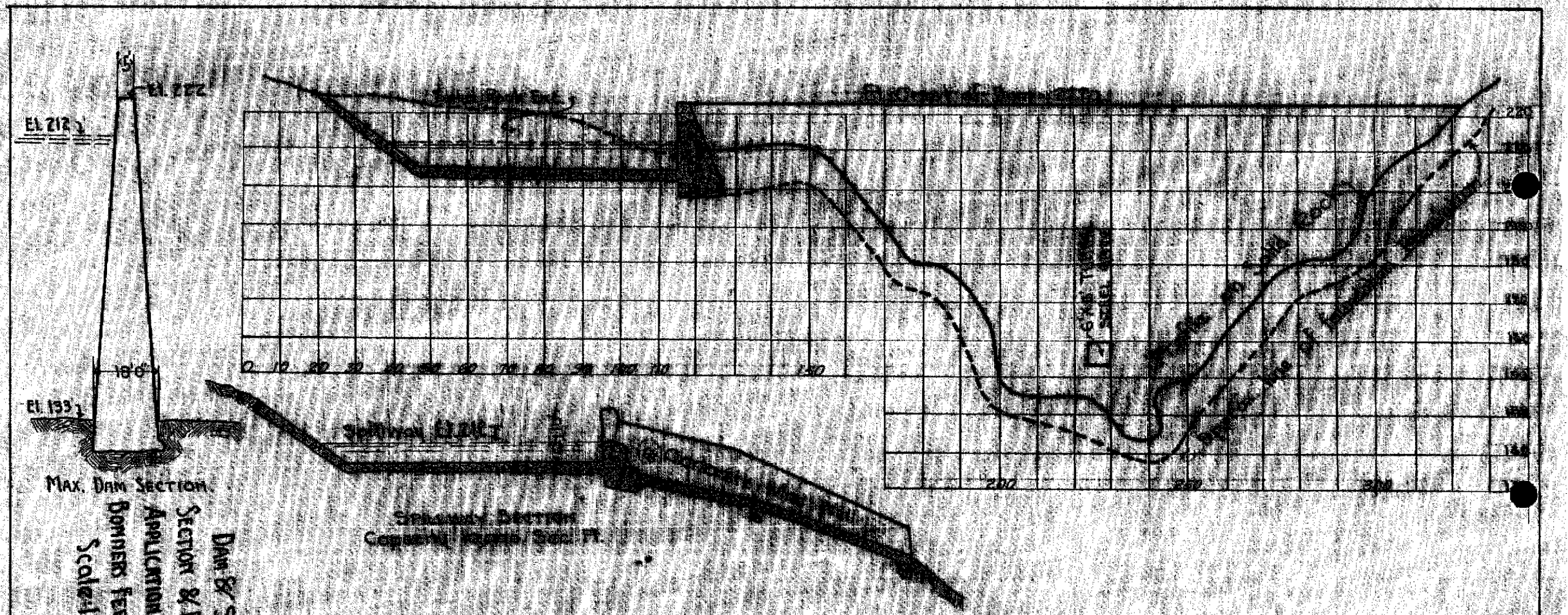
Notice for Publication, a printed copy of which is attached hereto was published in said newspaper and not in a supplement thereof for three consecutive issues, commencing with the issue dated November 24 1938, and ending with the issued dated ~~December 8th~~ December 8, 1938.

W. B. Scott
~~Proprietor~~
Foreman

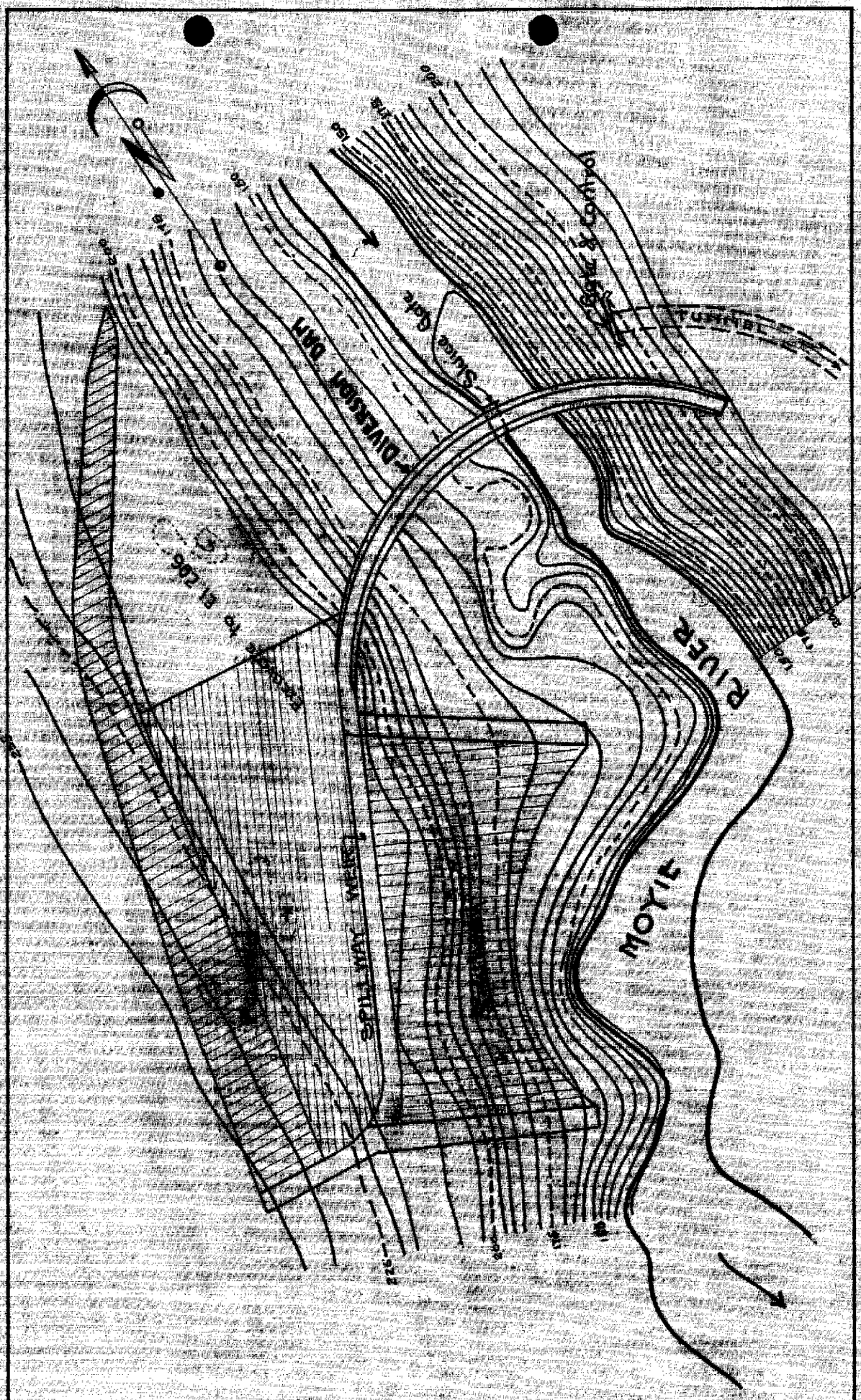
Subscribed and sworn to before me this 9th day of December, 1938.

Notary Public in and for the County of Boundary, State of Idaho, residing at Bonners Ferry, Idaho

18713



Permit Map No. 18713
As Approved
DEC 3 1 1938
R. W. FARIS
Commissioner of Reclamation

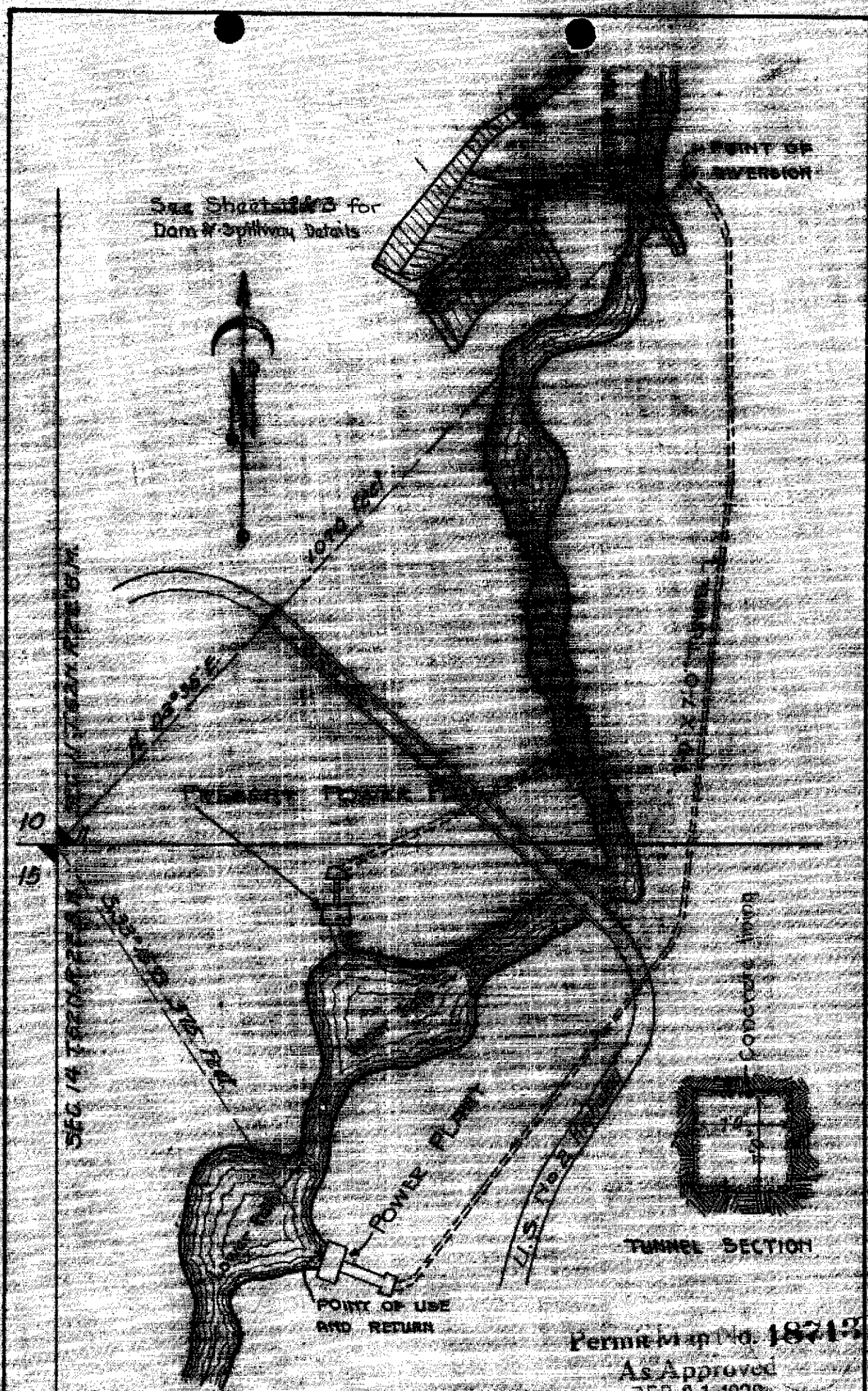


Permit No. 18713
As Approved
DEC 31 1938
R. W. PARIS
Commissioner of Reclamation

TOPOGRAPHIC MAP OF DAM SITE

TO ACCOMPANY APPLICATION No. 26098
BY THE VILLAGE OF BONNERS FERRY
BOUNDARY CO. IDAHO
OCT. 29, 1938 SCALE 1 in. = 50 ft.

18713 2



Permit Map No. 18713
As Approved
DEC 8 1 1938
R. W. FARIS
Commissioner of Reclamation

Power Site
Permit No. 18713
Boundary Co. Idaho.
Scale 1 in. = 500 ft.

18713 1

COPY

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

December 31, 1938.

C. O. Graue,
Couer d'Alene, Idaho.

Dear Sir:

Enclosed herewith is a copy of an order made and entered this date in re protest against approval of application 26042, to appropriate the public waters of the state, which is self-explanatory.

Very truly yours,

Commissioner of Reclamation.

18713

COPY

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

December 31, 1928.

Hon. Robert H. Elder, Att'y,
Couer d'Alene, Idaho.

Dear Sir:

Enclosed herewith is a copy of an order made and entered this date in re protest against approval of application 26048, to appropriate the public waters of the state, which is self-explanatory.

Very truly yours,

Commissioner of Reclamation.

18713

COPY

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

December 31, 1938.

H. W. Buroker,
Bonners Ferry, Idaho.

Dear Sir:

Enclosed herewith is a copy of an order made and entered this date in re protest against approval of application 26042, to appropriate the public waters of the state, which is self-explanatory.

Very truly yours,

Commissioner of Reclamation.

18713

COPY

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

December 31, 1938.

O.C. Wilson, Att'y,
Bonners Ferry, Idaho.

Dear Sir:

Enclosed herewith is a copy of an order made and entered this date in re protest against approval of application 26042, to appropriate the public waters of the state, which is self-explanatory.

Very truly yours,

Commissioner of Reclamation.

18713

IN THE DEPARTMENT OF RECLAMATION OF THE

STATE OF IDAHO

In the Matter of Protests Against)
Issuance of Permit Under Application) O R D E R
No. 26042)

Under date of September 2, 1938 the Village of Bonners Ferry, a municipal corporation of Bonners Ferry, Boundary County, Idaho, made application for permit to appropriate and divert 160 cubic feet of water per second from Moyie River in Boundary County, Idaho. The point of diversion being designated as North 43° 30' East, 1070 feet distant from the Southwest Corner of Section 11, Township 62 North, Range 2 East, B. M., and is in the Southwest Quarter of Southwest Quarter ($SW\frac{1}{4}SW\frac{1}{4}$) of the above named section, the water to be appropriated and used for power purposes.

Notice of the pending application was published as required by law, whereupon, C. O. Graue on December 15, 1938 filed protest against issuance of permit on the following grounds:

"Comes now C. O. Graue, whose residence and post office address is Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

1

"That the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company or from C. O. Graue to enter upon the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; for the purpose of making a survey;

"That the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said lands; that any and all information with reference to said survey which is contained in said application and in said maps was secured by trespass upon the lands belonging to this protestant.

18713

II

"That no maps or plats accompanied the application and no maps were filed with said application as required by Section 41-202 of the Idaho Code Annotated, as amended by Chapter 145 of the 1935 Session Laws of Idaho, and that no maps or plats whatever were filed with said application as provided by said section; that the maps and plats certified to by Guy C. McGee were filed on or about the 7th day of November, 1938; that said Guy C. McGee, engineer, certifies that the survey upon which said application, maps and plats were based was made on the 27th day of October, 1938.

III

"That the point of diversion was not stated in said application at the time the same was filed; that the survey determining the point of diversion was not made until the 27th day of October, 1938; that the certificate of the engineer, Guy C. McGee endorsed upon the plats states that the map was made from notes taken during an actual survey made on the 27th day of October, 1938.

IV

"That the application did not state the point of return of the water appropriated to the stream from which it was taken at the time the application was filed; that it was not possible for the application to show the point of return until after the 27th day of October, 1938, for the reason that the application and map submitted therewith as certified to by Guy C. McGee was made from information secured by an actual survey made on October 27, 1938;

V

"That the maps submitted and filed on or about the 7th day of November, 1938 were not prepared or filed in accordance with the laws of the State of Idaho or the Manual of Instructions for Filing Water Rights, and do not comply with the regulation of the Commissioner of Reclamation, and do not comply with Section 41-202, of the Idaho Code Annotated; that said maps do not show the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines and other works proposed to be used in the diversion of water.

18713

VI

"That no conture maps showing the area of the reservoir was filed or submitted with said application.

VII

"That the application was not properly advertised as required by the laws of Idaho.

VIII

"That Application No. 26042 conflicts with Permit R-651 issued to C. O. Graue, September 30, 1938.

IX

"That A pplication No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. O. Graue. "

On the same day Bonners Ferry Lumber Company filed protest against issuance of permit as follows:

"Comes Now the Bonners Ferry Lumber Company, Limited, a corporation, organized under the laws of the State of Wisconsin and authorized to transact business in the State of Idaho, with its principal place of business at Coeur d' Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

"That the Bonners Ferry Lumber Company, Limited, a corporation, is the owner of the West half of Section 11, Township 62, North, Range 2 East Boise Meridian, Boundary County, Idaho; that the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey; that the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said land; that any and all information contained in said Application No. 26042 and said maps was secured by trespass upon said lands belonging to this protestant.

II

"That Application No. 26042 does not comply with the laws of the State of Idaho in that it does not contain the information required by the statutes and rules of the Department of Reclamation.

111

"That this protestant states on information and belief that Application No. 26042 was left with the Commissioner's office on or about the 2nd day of September, 1938; that at said time no plats were submitted with said application; that said application did not describe the works to be constructed in the event the permit was granted; that the said application did not describe the diversion point, and did not describe the point of use;

"This protestant further states that the maps and information now contained in said application were not submitted to the Department of Reclamation until on or about the 7th day of November, 1938; that said application did not contain sufficient facts to permit the Commissioner of Reclamation to receive the same as an application for permit under the laws of Idaho, when the same was submitted with the Commissioner of Reclamation on the 2nd day of September, 1938; and that all material facts now stated in said application for permit No. 26042 were not filed with the Commissioner of Reclamation until on or about the 7th day of November, 1938."

Whereupon, a hearing on protest was called and heard in the office of the State Commissioner of Reclamation in the State House at Boise, Idaho, at 10 o'clock A. M. on the 30th day of December 1938; Robert H. Elder Esq. of Coeur d'Alene, Idaho appeared as attorney for the protestant and O. C. Wilson Esq., of Bonners Ferry, Idaho appeared as attorney for the applicant.

With reference to the protest of the Bonners Ferry Lumber Company Limited, the undisputed evidence is that the lumber company had, prior to the filing of application for permit number 26042, executed an option to C. O. Graue to purchase the land upon which it is alleged that trespass was committed; so it would appear that protestant Bonners Ferry Lumber Company has no further interest in the land and its protest must be disregarded.

With reference to protest of C. O. Graue, paragraph one which goes to the question of trespass in securing the information necessary to make the application, the State of Idaho has no statute defining trespass in such a situation as here exists. It is the view of the Commissioner that the

question of trespass is in the same relationship as a question with reference to right of way, ownership of land, damage to property, etc. It must be conceded as a question over which the Department of Reclamation has no authority or jurisdiction, but is one for the Courts to adjudicate and determine rather than for the administrative officer.

In any event trespass does not seem to be sufficiently proved. The only evidence with reference to trespass introduced is that of engineer Sewell in which he testified that he made a survey of the site of the proposed development and found that brush had been cut over a considerable area; young growth of timber had been destroyed and there had been a bench mark cut in the root of one of the large trees, and also stakes on the ground.

Page 7 transcript: In answer to the question "Could you tell whether or not that survey was made in connection with the proposed development here by the Village of Bonners Ferry"; the witness Sewell answered, "It was made from the County Road to the approximate point of diversion named in the application." , which obviously is not conclusive evidence that the survey was made by engineers or agents of the Village of Bonners Ferry.

Paragraph 2 involves the question as to whether or not sufficient information was furnished with the application for permit. Section 41-202 Idaho Code Annotated provides "That the application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and appropriation of water to a beneficial use, showing the character, location and dimensions of the proposed reservoir, dams, canals, diversion pipe line, and other works proposed to be used by them in the diversion of water."* * *

It is admitted that full and complete information was not contained in the application as first submitted, but it is provided in Section 41-204 "It should be the duty of the department to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of proposed use. If upon such examination the application is found defective, it shall be the duty of the department of reclamation to return the same for correction within thirty days from the receipt of such application, and the date of such return, with the reason therefore, shall be endorsed on the application and a record made thereof in a book kept for recording receipt of such application. A like record shall be kept of the date of the return of

the corrected application, then such corrected apolication shall be returned to the department of reclamation within a period of sixty days from the date indorsed thereon by the department."

The record herein shows that the application was first received in the Department of Reclamation at 9 o'clock A. M., September 2, 1938, and returned for correction October 1, 1938. The corrected application was received with all necessary information November 7, 1938. The filing fee of forty-four dollars and seventy-five cents ($44.75) was paid September 26, 1938.

The objections contained in paragraph 3, 4, 5 and 6 are disposed of under paragraph 2 above.

Paragraph 7 alleges that this application was not properly advertised by the laws of Idaho, but does not set forth in what respect.

Paragraph 8 alleges that application number 26042 conflicts with Permit R-651, issued to C. O. Graue, September 30, 1938. There can be no merit to this contention for the reason that the statute providing that "first in time is first in right" shall govern, and the same rule shall apply to objection number 9.

In view of the foregoing, and of all the facts and circumstances developed, with reference to the above mentioned protest, it would seem that such protest must be rejected and dismissed, and that a permit be issued to protestee, the Village of Bonners Ferry.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of December, 1938, and attached the seal of my office.

R. W. FARIS
Commissioner of Reclamation

18713

ENGINEER'S CERTIFICATE

If appropriation exceeds 25 cubic feet per second or 6250 acre feet the further requirement must be met:

1. The map must bear the certificate of a licensed engineer substantially in the following form:

CERTIFICATE OF ENGINEER

I,....., of....., an engineer licensed by the State of Idaho, do hereby certify that this map was made from notes taken during an actual survey made by me (or under my immediate supervision) on....., 19....., and that it correctly represents the works described in the accompanying application, and has written thereon the area in each smallest legal subdivision which it is proposed to irrigate.

.....
Engineer.

2. The tie to point of diversion, (and in case of mining and power filings, to point of return) must be shown on the map.

3. Maps must show cross sections or table of elements of the various canals to be constructed to permit of a determination of capacities to be provided.

PLANS OF DAMS

If a dam exceeding 10 feet in height is to be constructed, separate plans and specifications of same must be filed in duplicate. These plans and specifications are not a requirement in connection with the granting of a permit and can be filed subsequent to making the application. They must, however, be filed and approval secured from the Commissioner of Reclamation prior to the beginning of actual construction work. Such plans should contain the following information:

1. Profile of the dam site taken on axis of dam, scale.

2. Cross section of the dam at maximum section showing complete details and dimensions.

3. Plan of dam showing location of stream bed, outlet canal or tunnel, controlling works and spillway.

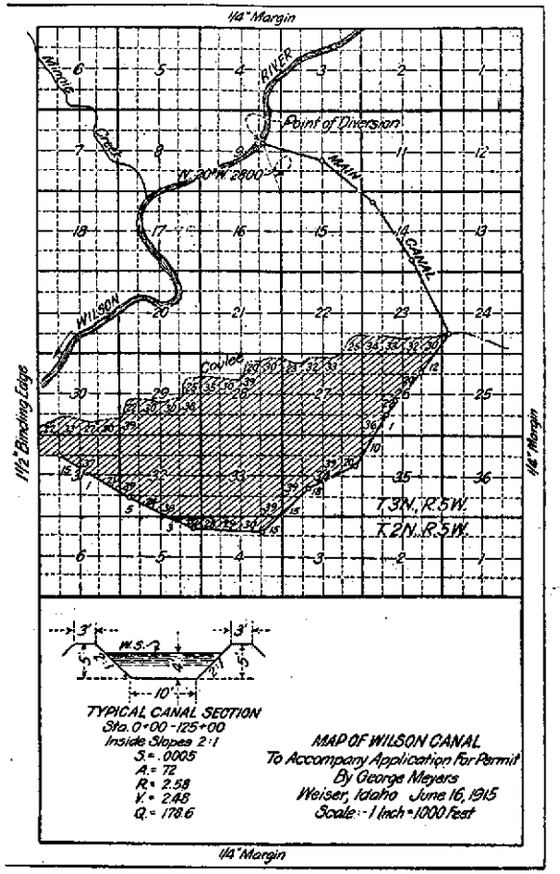
4. Plans showing in detail sections of controlling works, outlet tunnel or canal and spillway. These sections to be shown in sufficient number to make absolutely definite all features of the structure.

5. Contour map of dam site at not to exceed 5 foot contour interval.

6. Where suitable foundation is not evident from surface indications a geological section beneath the axis of the dam should be submitted. This section should show the nature of the material below the surface, thickness of strata and means of determining same.

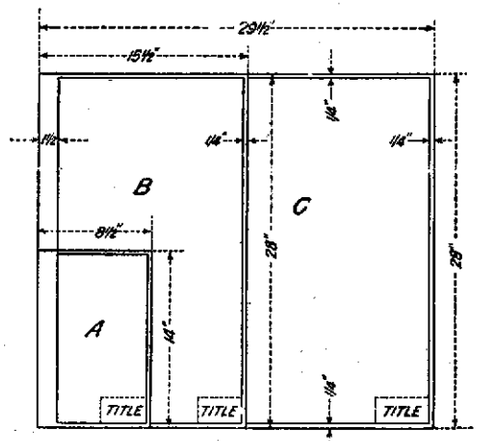
7. Specifications must be submitted which shall be as complete as to detail as would be submitted to contractors bidding on the work.

8. Name of stream, number of permit and name of permit holder must be given on all plans and specifications.



EXAMPLE OF MAP REQUIREMENTS

STANDARD SIZES OF MAPS



	Length	Width	Binding Edge	Margin
Size "A"	14 In.	8 1/2 In.	1 1/2 In.	1/4 In.
Size "B"	28 In.	15 1/2 In.	1 1/2 In.	1/4 In.
Size "C"	29 1/2 In.	28 In.	1 1/2 In.	1/4 In.

Protestants Exh. 6
1/30/38

STATE OF IDAHO
Department of Reclamation
BOISE

REGULATIONS AND INSTRUCTIONS

PROCEDURE FOR SECURING WATER RIGHT

I. File application, maps and fee with Department of Reclamation.
II. Approval of application by the Commissioner of Reclamation.
(Approved application constitutes only a permit to construct the diversion works, and is not evidence of a matured water right).
III. File bond on or before date set in permit.
IV. Commencement of construction work and completion in accordance with provisions of permit.
V. Proof of such completion offered to Commissioner of Reclamation on or before the date set for same in permit and payment of fees for certificate of completion of works.
VI. Issuance by Commissioner of Reclamation of certificate of completion of works.
VII. Application of water to beneficial use and proof of such beneficial use made to Commissioner of Reclamation on or before the date set for same in permit; also payment of fees for license.
VIII. Issuance by Commissioner of Reclamation of water license which constitutes a perpetual water right.

FEES

Filing fees for application for permit:

$5.00 if the quantity of water claimed is one cubic foot per second (50 miners' inches), or less, and 25 cents for each additional cubic foot per second, or fraction thereof.

For storage rights:

$5.00 if the quantity of water is 250 acre feet, or less, and 25 cents for each additional 250 acre feet, or fraction thereof.

All fees must be paid in cash or postal money order when the application is filed.

Make all remittances payable to Commissioner of Reclamation.

Instructions for Preparing Applications

A. APPLICATION FOR PERMIT TO APPROPRIATE WATER

Note—This form of permit is referred to as a "Use Permit."

1. Subdivisions I and II are to be filled in only in case the applicant is a corporation.

2. State the quantity of water claimed in cubic feet per second. The maximum amount of water allowable per acre for irrigation is one miners' inch or one-fiftieth of one cubic foot per second.

3. Give name of stream, spring or lake constituting the source of supply. If the stream or other

18713

source has no name, describe as unnamed stream, spring, etc. If two or more sources are claimed, describe each separately, and specify the amount in second feet claimed from each source. If source is a spring, give the legal description of forty-acre tract in which the spring is situated. State the name of the stream to which the source of supply is tributary.

4. When amount claimed is less than 25 second feet, describe the point of diversion by giving the legal description of the forty-acre subdivision upon which same is located. If the point of diversion is on unsurveyed land, give the approximate distance from the mouth of some stream or from some other permanent and well defined landmark.

If the amount claimed exceeds 25 second feet give bearing and distance of point of diversion from some government survey corner. If the point of diversion is on unsurveyed land, give bearing and distance from mouth of stream or some other permanent and well defined landmark.

5. State the purpose for which water is to be used, viz., irrigation and domestic purposes, or mining, milling or power, etc.

6. Fill out blanks in paragraph six of the application in the same manner as paragraph four only when appropriation is for other than irrigation and domestic purposes.

7. State the time necessary to fully complete the works as described by permit, ready to conduct the water to place of use. This time can not exceed five years and may be limited to less if in the judgment of the Commissioner of Reclamation less time is required by the exercise of due diligence in construction.

8. State the time required for putting the water to beneficial use, this time to be in addition to the time allowed for completion of construction work, but not to exceed six years from the time set for such completion of works. If the irrigation system includes more than 25,000 acres, proof of beneficial use may be made at any time within a period of ten years from date set for completion of works. Such time must, however, be stated in the permit.

In view of the fact that proof of completion of works or application to beneficial use may be made at any time prior to the limit fixed by the permit, it is advised that the maximum time be requested in the application for permit, to avoid the necessity of an application for extension of time.

9. Give the irrigable acreage in each legal forty-acre subdivision. If the space provided in the application is insufficient for the tabulation of the lands, such tabulation may be made on a separate sheet, but must be in the same form as that in the application blank.

10. If the source of supply is a spring or springs which are located on land owned by another than the applicant, the owner of such land must execute the affidavit of permission to file on springs, on page 3 of the application. If the spring is on land in state or government ownership this affidavit is unnecessary, except in the case of state land under lease, in which event, the affidavit must be executed by the lessee. If the spring is on government land or unleased state land, so state under "Remarks."

PROCEDURE FOR SECURING WATER FOR POWER PURPOSES

If the application is for water for power purposes, publication of notice of such application is necescary, at the applicant's expense, all as provided by Section 41-203, Idaho Code Annotated. This Section, among other things, provides procedure to be followed in such cases and for filing protests, hearing before the Commissioner of Reclamation, and appeal from the decision of the Commissioner. Forms for publication to be prescribed by this Department. Application for water for power purposes is made on the same form as other applications and the same requirements, as to maps for other applications, apply.

B. APPLICATION FOR PERMIT TO CONSTRUCT RESERVOIR AND STORE WATER

Note: This form of permit is referred to as a "Storage Permit."

1. State the quantity of water claimed in acre feet. The maximum amount of water allowable for storage for irrigation purposes is five acre feet per acre.

2. If the amount claimed does not exceed 6250 acre feet describe location of reservoir outlet in the same manner as required for point of diversion in use permit (A. Par. 4), in case of appropriations of 25 cubic feet per second or less.

If amount claimed is in excess of 6250 acre feet tie in the outlet to a government corner in the same manner as provided for point of diversion in use permit where the appropriation is more than 25 cubic feet per second. (See A. Par. 4 of instructions for use permit).

3. If reservoir is located in the channel of a stream state the name of that stream. If the reservoir is not located in the channel of the stream which constitutes the source of supply, give full information regarding the feeder canal.

4. Give dimensions of dam as indicated and state in general the kind of material used in construction.

5. Other instructions governing applications for use permit apply likewise to storage permit.

MAPS TO ACCOMPANY APPLICATIONS

A.

Maps must be furnished in duplicate, accompanying the application.

If amount claimed is not more than ten cubic feet per second, blank forms furnished by the Department of Reclamation may be used for the maps, showing the following details:

I. If for irrigation and domestic purposes:
- (a) Name of applicant.
- (b) Section, township and range numbers.
- (c) Source or sources of water supply.
- (d) Point or points of diversion.
- (e) Reservoirs, if any.
- (f) Route of all canals, ditches or other conduits, including all laterals from point of diversion to the land to be irrigated.
- (g) Land to be irrigated, indicating same by cross-hatching or some other convenient method. Show acreage to be irrigated in each forty-acre legal subdivision.

II. If for other than irrigation or domestic purposes:
- (a) Name of applicant.
- (b) Section, township and range numbers.
- (c) Source or sources of supply.
- (d) Point or points of diversion.
- (e) Route of all canals, ditches or other conduits.
- (f) Point or points of use.
- (g) Point or points of return to stream after use.

B.

If amount claimed exceeds 10 cubic feet per second, maps must be drawn by an engineer or draftsman and conform to the following requirements in addition to requirements under A.

1. Maps must be filed in duplicate at least one of which must be on tracing cloth to be retained in the Department of Reclamation office; the second map which will be returned to the applicant with the permit when approved, must be a blue print.

2. All maps must be of one of the sizes given below and must be transmitted rolled or flat.

	Length	Width	Binding Edge	Margin
Size A	14 in.	8½ in.	1½ in.	¼ in.
Size B	28 in.	15½ in.	1½ in.	¼ in.
Size C	29½ in.	28 in.	1½ in.	¼ in.

Measurements given above are outside dimensions.

3. Draw maps so that top and bottom will be as indicated on sketch shown herein.

4. Maps must be plotted to the true meridian and all bearings shown must be true courses. All distances to be shown in feet.

5. The course of the stream which constitutes source of supply must be shown, the direction of flow indicated by arrow. All other streams and lakes which come within the limits of the map should be shown.

STORAGE PERMITS

C.

If amount claimed is less than 2500 acre feet, blank forms furnished by the Department of Reclamation may be used for the maps showing the following details:
- (a) Name of applicant.
- (b) Section, township and range numbers.
- (c) Source or sources of supply.
- (d) High water line of reservoir.
- (e) Location of feeder canals, if any.
- (f) Location of outlet through reservoir.
- (g) Method of conveying water from reservoir to land to be irrigated.

D.

If the amount claimed is in excess of 2500 acre feet maps must conform to the following requirements:

1. Comply with first five paragraphs under B. of map instructions.

2. In addition to requirements a to g inclusive under C. show:
Reservoir contours at not to exceed ten foot intervals.
Capacity table of reservoir.
Profile on axis and maximum section of the dam.

18713

STATE OF IDAHO * DEPARTMENT OF RECLAMATION

R. W. FARIS - COMMISSIONER.

VILLAGE OF BONNERS FERRY, IDAHO, APPLICANT, VS. C. O. CRAUE, Coeur d'Alene, Idaho, and BONNERS FERRY LUMBER COMPANY, LTD., a corporation, Coeur d'Alene, Idaho, PROTESTANTS.	)	APPLICATION #26042

BE IT REMEMBERED, That on this 30th day of December, 1938, the above entitled matter came on for hearing before the Honorable R. W. Faris, Commissioner of Reclamation, of the State of Idaho, in the office of the Commissioner at Boise, Idaho, and the following proceedings were had and entered of record, to-wit:

APPEARANEES:

O. C. Wilson, Bonners Ferry, Idaho,
Attorney for applicant

Robert H. Elder, Coeur d'Alene, Idaho,
Attorney for C. O. Craue, and
Bonners Ferry Lumber Co. Ltd.,
Protestants.

18713

COMMISSIONER FARIS: Are you ready, gentlemen.

MR. ELDER: We are ready.

MR. WILSON: Yes, we are ready.

COMMISSIONER FARIS: This, gentlemen is a hearing of the protest of the Bonners Ferry Lumber Company, and C. O. Graue, against the approval of application No. 26042, by the Village of Bonners Ferry to appropriate and divert 160 cubic feet per second of the waters of Moyie river for power purposes. You may enter your appearances.

MR. ELDER: I desire to enter the appearance of Robert H. Elder for Mr. Graue, who is here in person, and for H. A. Sewell, engineer, and for the Bonners Ferry Lumber Company, I represent them as attorney.

MR. WILSON: I appear as attorney for the Village of Bonners Ferry, the applicant.

COMMISSIONER FARIS: Under the rules and regulations of the department, the procedure is that the protestants be considered in the relationship of plaintiff and the burden is on them to show cause why the application for a permit should not be approved.

MR: ELDER: We will ask that Mr. Graue and Mr. Sewell both be sworn.

(Mr. Graue and Mr. Sewell duly sworn)

MR. ELDER: Call Mr. Graue first.

Mr. C. O. Graue, called as a witness on behalf of protestants, being duly sworn, testified as follows:

D I R E C T E X A M I N A T I O N

18713

Q (By Mr. Elder) You may state your name.

A C. O. Graue.

Q Where do you reside, Mr. Graue.

A Coeur d'Alene, Idaho.

MR. ELDER: Mr. Wilson, I would like to stipulate with you that the abstract which we submitted in the other protest may be considered in this hearing.

MR. WILSON: No objection.

MR. ELDER: Will you admit, for the purpose of the record, that the Bonners Ferry Lumber Company, Ltd., is the owner of the West Half of Section 11, Township 62 North, Range 2, East Boise Meridian, Boundary County, Idaho?

MR. WILSON: Yes.

MR. ELDER: And that Mr. Graue holds an option on that property.

MR. WILSON: I admit that there is an option of record in his name.

COMMISSIONER FARIS: I am satisfied on that.

MR. ELDER: Now, Mr. Graue, did you give the Village of Bonners Ferry any right or authority to go upon the West half of Section 11, Township 62 North, Range 2 East, Boise Meridian, for the purpose of making a survey for a water right, or for any other purpose.

A No.

Q Did you give Mr. Guy C. McGee, engineer, any permission, or license, or authority, to go upon said property and make the survey which he made on the 27th day of October

1938.

A No.

Q (By Mr. Elder) You did not.

A No, sir, I did not.

MR. ELDER: (Handing Reporter paper to be marked for identification and said paper marked Protestants' Exhibit "A")

Q Do you know G. F. Jewett.

A Yes.

Q Is that his signature.

A Yes.

MR. ELDER: I offer in evidence the affidavit of Mr. Jewett, who is the President of the Bonners Ferry Lumber Company, and which has been marked as Protestant's Exhibit "A", for identification.

MR. WILSON: I object to the introduction of Protestants" Exhibit "A" for the reason that it purports to state facts and is an offer of evidence in a hearing in which there has been no opportunity offered, as required under the rules and regulations covering hearings and proceedings of this kind, for cross-examination of the affiant.

MR. ELDER: The notice of hearing suggests that we may submit affidavits.

COMMISSIONER FARIS: The exhibit may be admitted, in order to save time, for what it is worth.

Q (By Mr. Elder) Mr. Graue, are you an officer of the Bonners Ferry Lumber Company also.

A Yes, sir.

Q What is your position.

A Assistant secretary and treasurer.

Q Do you have as such officer charge of its lands in Boundary County with Mr. Jewett.

A I have to have approval -- we have to have approval.

Q Who handles those lands up there; who looks after them.

A I do, and Mr. Jewett does.

Q If there was a permit or license granted by this company to anyone to go upon said lands for the purpose of making a survey for the purpose of determining a water right, whether or not the conditions there were adaptable to power development, would that come through your office or to your notice.

A Yes.

Q Has the Bonners Ferry Lumber Company at any time granted to the Village of Bonners Ferry the right or authority to go upon these lands mentioned and described as the West Half of Section 11, Township 62 North, Range 2 East of Boise Meridian for the purpose of amking any survey.

A No.

Q Was Mr. Guy C. McGee granted any right or authority to go upon these lands.

A No.

MR. ELDER: That is all.

MR. WILSON: No cross-examination.

MR. ELDER: Mr. Sewell.

Mr. H. A. Sewell, called as a witness on behalf of protestants, having been duly sworn, testified as follows:

D I R E C T E X A M I N A T I O N

By Mr. Elder.

Q You may state your name.

A H. A. Sewell.

Q What is your occupation or business.

A Civil engineer.

MR. ELDER: You admit his qualifications or do you want me to prove them.

MR. WILSON: I will admit his is entitled to testify as an engineer -- no, no question.

Q (By Mr. Elder) Mr. Sewell did you make a survey of Section 11 during the last summer for the purpose of determining aw water power development on the Moyie river on the west half of Section 11.

A Yes, I made a survey from August 25th to September 2, 1938.

Q At the time you were making that survey, did you find any evidence on the ground that a recent survey had been made there.

A I did.

Q What was that.

A Well, the brush had been cut over a considerable

area; the young growth of timber had been destroyed and there had been a large bench mark cut in the root of one of the large trees. There was also stakes on the ground.

Q Did the evidence show that it had been recently done.

A Well, it had been quite recently done because the pine trees were still green and the weather was extremely hot so they would not stay green very long -- that is the pine trees that were cut were still green.

Q Could you tell whether or not that survey was made in connection with the proposed development here by the Village of Bonners Ferry.

A It was made from the County road to the approximate point of diversion named in their application.

MR. ELDER: (Handing Reporter paper to be marked for identification and said paper reffered to was marked Protestants' Exhibit "B")

MR. ELDER: I offer in eivdence, Mr. Commissioner, a certified copy, Protestants' Exhibit "B", including the application for permit; letter of transmission; index in the department books; notice of publication in connection with the application; authorization of the Village of Bonners Ferry by the department to have notice published and letter of the department, dated November 16, 1938, by W. R. Faris, Commissioner of Reclamation.

MR. WILSON: Have you the originals, Bob?

COMMISSIONER FARIS: Mr. Elder, I don't see any point

in offering that. Those are all maters of record here in the office and it seems to me the record would be the best evidence. You can put them in if you want to and have them verified but it seems to me it is encumbering the record.

MR. WILSON: I shal insist on the original record and I object to them on the ground the original records are available and are the best evidence.

MR. ELDER: Then I ask that -- I want this referred to in the record. I am willing to offer the originals.

MR. WILSON: If the originals are offered I shall have no objection to them.

MR. ELDER: I offer the original application for permit to appropriate public waters of the State of Idaho, No. 26042, and the plats and maps which were filed on November 7th; thereafter the letter of transmittal, dated October 1, 1938 accompanying the application, No. 26042, in which said application was returned to the applicant for correction and completion; also offer page 26042 of the application index book No. 260 of the Department of Reclamation of the State of Idaho; I offer the notice of publication in connection with application No. 26042, which notice is dated November 9, 1938, for the authorization for the Village of Bonners Ferry by the Department of Reclamation to have the above mentioned notice published in the Bonners Ferry Herald; I offer the letter of the Department of Reclamation, dated November 16, 1938, trans-

mitting the above mentioned notice to the Bonners Ferry Herald and ordering the publication of the same.

MR. WILSON: No objection.

MR. ELDER: Now I desire, Mr. Commissioner to offer the receipt -- can you get me the receipt which you gave to the Bonners Ferry -- the duplicate.

MR. WILSON: No objection to that.

MR. ELDER: Did you file your proof of publication here.

MR. WISLON: It ought to be here. It come directly here.

COMMISSIONER FARIS: No objection to that.

MR. WILSON: No.

COMMISSIONER FARIS: Then we will produce it.

MR. ELDER: I desire at this time to offer a duplicate copy of receipt No. 16754, dated October 1, 1938, issued by R. W. Faris, Commissioner of Reclamation, to H. M. Buroker, Bonners Ferry, Idaho.

MR. WILSON: No objection.

Q (By Mr. Elder) Mr. Sewell,is the point of diversion shown on the maps submitted with Application No. 26042.

A It is shown on the map surveyed by engineer McGee on October 27, 1938.

Q Mr. Sewell, in your opinion as an engineer, can the point of diversion be shown in the application until

after the survey had been made.

A It could absolutely not be shown until the survey had been made.

MR. ELDER: (Handing Reporter paper to be marked for Identification, and said paper marked Protestants' Exhibit "C")

MR. ELDER: For the purpose of completing this record I offer Protestants' Exhibit "C", being a copy of the Rules and Regulations of the Department with reference to filing permits.

MR. WILSON: No objection.

COMMISSIONER FARIS: It may be admitted.

Q (By Mr. Elder) Now, Mr. Sewell, is the point of diversion shown -- I mean the point of return of the waters shown on the plat here submitted with this application.

A It is shown on the same plat as the point of diversion.

Q Now is there sufficient information shown upon this plat or map to permit an engineer to go on the, lands and lay out the works there described.

A No, there is not.

Q Why.

A There is no alignment profiel shown of the tunner survey whereby it would be possible for an engineer to go on the ground and determine the location of the same. The tunnel shown on the map submitted with the application is simply a sketch in free-hand and shows no curves, tangents

bearings showing distances between stations or plusses as required y the regulations of the Commissioner of Reclamation, and the map is not of a kind to show the character, location and dimensions of the proposed structures as required by the statutes of Idaho.

Q Now, Mr. Sewell, have you examined Permit No. R-651, issued to C. O. Graue.

A I did engineering work in connection with that permit.

MR. ELDER: I offer Permit No. R-651.

MR. WILSON: No objection.

Q (By Mr. Elder) Now, Mr. Sewell, state whether or not this permit will conflict with this application -- this application conflicts with Permit No. R-651.

A Yes, it does.

Q In what particular.

A Because the proposed dam would shut off the use of the reservoir proposed under Permit No. R-651 and prohibit the beneficial use of water under said permit No. R-651.

COMMISSIONER FARIS: What is the permit you are now discussing.

A It is the reservoir permit issued to C. A. Graue and approved September 3, 1938.

COMMISSIONER FARIS: Have you offered it.

MR. ELDER: It has been offered and no objection to it

Q (By Mr. Elder) Now, Mr. Sewell, you are familiar with Application No. 26043, filed by C. O. Graue upon which there was a hearing.

A Yes, sir.

Q Does this application conflict with the application made by Mr. Graue, No. 26043.

A Yes, it does. It would render that application useless because of the fact that it proposes to divert the water above the point of deiversion proposed in application No. 26043 and return it at a point below the point of return proposed in application No. 26043, thereby allowing no water to flow in the creek -- in the river, in Moyie river, at certain stages of the year and at all times diminish the water which would be available under application No. 26043.

Q You prepared an amended application to application No. 26043, which was not allowed by the commissioner; if that amendment was allowed, would this application conflict with the amended application made by Mr. Graue.

A The same statement of conflict would apply to the amended application as applies to the original application No. 26043.

MR. ELDER: I offer at this time the new application made by Mr. Graue, which conforms to the amended application which we submitted.

MR. WILSON: Was it filed today.

MR. ELDER: Yes.

1873

MR. WILSON: We object to it as immaterial.

COMMISSIONER FARIS: I don't see any relevancy, not involving any matter under consideration here.

MR. ELDER: It just simply shows that we have something pending here which conflicts with this application; shows that we have a right to protest

COMMISSIONER FARIS: The offer is denied.

MR. ELDER: We except to the ruling.

MR. ELDER: I offer at this time to show by this witness that the applicaion which was filed this morning, with the maps, No. 26077, Application No. 26077, conflicts with the application here made by the Village of Bonners Ferry?

MR. WILSON: Objected to on the ground incompetent, irrelevant and immaterial.

COMMISSIONER FARIS: Objection sustained.

MR. ELDER: We except.

MR. ELDER: You may enquire.

MR. WILSON: No corss-examination.

MR. ELDER: Call Mr. Berg.

Mr. Berg, called as a witness on begalf of Protestans, being first duly sworn, testified as follows:

D I R E C T E X A M I N A T I O N

By Mr. Elder

Q Mr. Berg, you are Mr. Faris' assistant.

A Yes, sir, Deputy.

Q What is your title.

A Deputy to the Commissioner of Reclamation.

Q Did you receive this application, Permit No. 26042.

A Yes.

Q Was this application, this particular application filed, which is marked here, September 2, 1938, was that filed in your office on that date.

A Yes.

Q Was that application at that time accompanied by plats and maps in duplicate of the proposed works for the diversion and application of water to a beneficial use; did it show the character and location and dimension of the proposed reservoir, dams, canals, ditches, pipe lines and all other works proposed to be used for the diversion of the water, and the location of the lands mentioned as required by Section 4120 of the I.C.A.

MR. WILSON: I object to the question on the ground that the application is a matter of record and speaks for itself.

COMMISSIONER FARIS: The record is the best evidence. Objection sustained.

MR. ELDER: We except and we offer to show by this witness that the application was not accompanied by maps and plats in duplicate showing the proposed works for the diversion and application of water to a beneficial use; showing the character, location and dimension of the proposed

reservoir, dams, canals, ditches, pipe lines and all other works proposed to be used by them in the diversion of the water of Moyie river, and that it was not accompanied with the fees and that the fees were not paid until the 1st day of October, 1938.

MR. WILSON: I object for the same reason.

COMMISSIONER FAIR: He may answer that if he knows.

MR. ELDER: That is the question I aksed before and you sustained the objection. I offered to prove it by this witness.

MR. WILSON: And I objected to the offer and to the question as not the best evidence.

COMMISSIONER FARIS: Objection sustained.

MR. ELDER: We except.

MR. ELDER: That is all.

MR. WILSON: That is all.

18713

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BEFORE R. W. FARIS, COMMISSIONER OF RECLAMATION

IN RE APPLICATION FOR)
PERMIT No. 26042.)
) PROTESTANTS' BRIEF
)
----------)

RECEIVED
DEC 30 1938
Department of Reclamation

The evidence shows clearly that the information contained in the application and the maps submitted therewith was obtained by trespass upon lands belonging to the Protestants. Our Supreme Court in the case of Marshall v. Niagara Springs O. Co., Ltd., 22 Idaho, 144, says:

> "Sec. 3243 provides: 'The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases.'
>
> Sec. 3253 Rev. Codes, provides the procedure by a person who intends to make an appropriation under the statute for a permit to appropriate the waters of the state when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state. This section, among other things, requires that 'any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, or lakes or other public waters in the state of Idaho, shall, before commencing the construction, enlargement or extension or change in the point of diversion of the ditch, canal, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the state engineer for a permit to make such appropriation.' This application referred to requires the application to state, among other things, (2) the source of the water supply, (3) the nature of the proposed use, (4) the location and description of the proposed ditch, channel or other work and the amount of water to be diverted and used, (5) the time required for the completion of construction of such works, which in no case shall exceed five years from the date of approval of the application, (6) the time required for the complete application of the water to the proposed use; that the application shall be accompanied by a plan and map in duplicate of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoir, dams, canal,

18713

ditches, pipe-lines and all other works proposed to be used by them in the diversion of the waters and the area and location of the lands proposed to be irrigated.

It clearly appears from the application required by this statute that such application must state facts which can only be secured by an entrance to the place where the appropriation is made and a survey of the premises and surroundings at the point of diversion and plan of improvement, and also a survey of the realty to be taken for dams and ditches to be used in appropriating the water to a beneficial use, and especially in a case where it is necessary to construct buildings and other works necessary for the utilization of the water for power purposes. Plans and maps are required to be prepared showing the character and location and dimensions of the works and the area and location of the lands proposed to be irrigated or otherwise used. It would be impossible to comply with this provision of the statute unless the person intending to make the appropriation went upon the ground immediately surrounding the point at which the diversion from the natural channel is to be made for the purpose of securing and preparing the data and plans and maps required by this section."

* * *

"In the case now under consideration, in order for the respondent to make an appropriation of the water at a point upon the land owned by the appellant, it was necessary for the respondent to enter upon the lands of the appellant in the first instance for the purpose of making the necessary examination and making the surveys and maps and plans required in order to make a proper application to the state engineer for a permit which permitted the respondent to proceed in the manner prescribed by law in perfecting his appropriation. After this permit was obtained it was necessary under the law for the respondent to do the constructive work required to perfect the appropriation, and this necessarily required the taking of the real property of the appellant for this use, and this could be acquired by agreement of the parties or by condemnation proceedings under the statute. The entry, however, for the purpose of investigation, inspection and the making of surveys, plans and specifications for the purpose of making application for a permit would not necessarily result in the permanent taking of the real property of the appellant, but it would result in the necessary entry upon the land of the appellant. The right to enter the land of the appellant, therefore, should have been secured from the appellant, either by an agreement of the parties, or by condemnation proceedings, and without such remedy being pursued, the respondent in making such entry would be a trespasser. In this instance, therefore, it appears

18713

clearly from the record that in making the entry upon the lands of the appellant for the purpose of making the surveys and plans and maps upon which his application to appropriate the water was based, the respondent was a trespasser upon the lands of the appellant. While the constitution and laws of this state specifically recognize the right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, and that such right shall never be denied, still such provisions of the constitution and statute do not authorize a person to go upon private property of another for the purpose of making an appropriation."

The Court then quotes with approval from Wiel on Water Rights in Western States, Volume 1, Chapter 10, and the Court then states:

"In the text the author recites the different rules that have been announced by the various decisions, and from such discussion it clearly appears that the weight of authority and better reasoning is with the proposition that an appropriation of water at a point upon private land cannot be made by trespass, and that where an attempt is made to initiate the right to appropriate the public water of the state by trespass upon private property, such initiation of such right is void as against the owner of the land."

This case clearly holds that a permit based upon a trespass is void. If the application is void, as held by our Supreme Court, then the Commissioner should disallow the application. It would be rather ridiculous to say that the Commissioner had no authority to reject the application and compel the protestants to go to Court for the purpose of having the Court decide that the application was void.

Respectfully submitted,

ROBERT H. ELDER
Attorney for Protestants

18713

Protestants Ex A
Adm 12/30/38
mm

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BEFORE R. W. FARIS, COMMISSIONER OF RECLAMATION

IN RE APPLICATION FOR PERMIT No. 26042.

AFFIDAVIT OF G. F. JEWETT IN SUPPORT OF PROTEST OF C. O. GRAUE AND THE BONNERS FERRY LUMBER COMPANY, LIMITED, a corporation.

- - -

STATE OF WASHINGTON)
: ss
County of Spokane)

G. F. JEWETT, being first duly sworn, deposes and says:

That he is President of the Bonners Ferry Lumber Company, Limited, a corporation;

That the Bonners Ferry Lumber Company, Limited, is a corporation, organized under and by virtue of the laws of the State of Wisconsin, and is authorized to transact business and to hold real property in the State of Idaho; that its principal place of business is at Coeur d'Alene, Idaho;

That the Bonners Ferry Lumber Company, Limited, is the owner of the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho;

That the Village of Bonners Ferry acquired no right from the Bonners Ferry Lumber Company, Limited, to enter upon said land for the purpose of making a survey for water power purposes or for any other purpose;

That no agent or attorney or engineer or representative or employee of the Village of Bonners Ferry has acquired any right, authority, permission or license from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey or for any other purpose;

That the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said land, and that the said Guy C. McGee had no permission or authority from the Bonners Ferry Lumber Company, Limited, to go upon said land for the purpose of making a survey;

18713

That all information obtained by a survey of said land and shown in said application and on said maps filed on November 7, 1938, was secured by trespass upon said land.

G. F. Jewett.

President of the Bonners Ferry Lumber Company, Limited, a corporation.

Subscribed and sworn to before me this 8th day of December, 1938.

Notary Public for the State of Washington,
Residing at Spokane.

18713

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

IN THE MATTER OF THE PROTEST AGAINST THE APPROVAL OF APPLICATION TO APPROPRIATE THE PUBLIC WATERS, NUMBER 26042, IN ACCORDANCE WITH THE PROVISIONS OF HOUSE BILL NUMBER 293, 1935 SESSION LAWS.

C. O. Graue, Coeur d'Alene, Idaho, and BONNERS FERRY LUMBER COMPANY, LIMITED, a corporation, Coeur d'Alene, Idaho, Protestants VILLAGE OF BONNERS FERRY, IDAHO, Protestee.	NOTICE OF HEARING

You, and each of you, are hereby notified that on the 30th day of December, 1938, at 10:00 A. M., in the office of the Commissioner of Reclamation, at Boise, Idaho, a hearing will be held in the matter of the protests against the approval of application for permit to appropriate one hundred sixty cubic feet per second of the waters of the Moyie River for power purposes.

That the Protestants are required to appear at the office of the Commissioner of Reclamation, at Boise, Idaho, on the date set for the hearing and show cause, if any there be, why said Application No. 26042 should not be approved and permit issued thereunder, and said Protestants and Protestee on said date may file such affidavits in support of their respective allegations as they may desire;

That there have been filed in the Department of Reclamation of the State of Idaho, at Boise, Idaho, on December 15th, 1938, by C. O. Graue, of Coeur d'Alene, Idaho, and by the Bonners Ferry Lumber Company, Limited, a corporation, Coeur d'Alene, Idaho, protests against the granting of said Application No. 26042;

18713

VIII

"That Application No. 26042 conflicts with Permit R-651 issued to C. O. Graue, September 30, 1938.

IX

"That Application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. O. Graue."

That the Bonners Ferry Lumber Company, Limited, protests the granting of this application for the following reasons, to-wit:

I

"That the Bonners Ferry Lumber Company, Limited, a corporation, is the owner of the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; that the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey; that the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said land; that any and all information contained in said Application No. 26042 and said maps was secured by trespass upon said lands belonging to this protestant.

II

"That Application No. 26042 does not comply with the laws of the State of Idaho in that it does not contain the information required by the statutes and rules of the Department of Reclamation.

III

"That this protestant states on information and belief that Application No. 26042 was left with the Commissioner's office on or about the 2nd day of September, 1938; that at said time no plats were submitted with said application; that said application did not describe the works to be constructed in the event the permit was granted; that the said application did not describe the diversion point, and did not describe the point of use;

"This protestant further states that the maps and information now contained in said application were not submitted to the Department of Reclamation until on or about the 7th day of November, 1938; that said application did not contain sufficient facts to permit the Commissioner of Reclamation to receive the same as an application for permit under the laws of Idaho, when the same was submitted with the Commissioner of Reclamation on the 2nd day of September, 1938; and that all material facts now stated in said application for permit No. 26042 were not filed with the Commissioner of Reclamation until on or about the 7th day of November, 1938."

In witness whereof, I have hereunto set my hand and affixed the official seal of the Department of Reclamation of the State of Idaho, at Boise, Idaho, this 20th day of December, 1938.

Robt. Farris

Commissioner of Reclamation

18713

That C. O. Graue protests the granting of this application for the following reasons, to-wit:

I

"That the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company or from C. O. Graue to enter upon the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; for the purpose of making a survey;

"That the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said lands; that any and all information with reference to said survey which is contained in said application and in said maps was secured by trespass upon the lands belonging to this protestant.

II

"That no maps or plats accompanied the application and no maps were filed with said application as required by Section 41-202 of the Idaho Code Annotated, as amended by Chapter 145 of the 1935 Session Laws of Idaho, and that no maps or plats whatever were filed with said application as provided by said section; that the maps and plats certified to by Guy C. McGee were filed on or about the 7th day of November, 1938; that said Guy C. McGee, engineer, certifies that the survey upon which said application, maps and plats were based was made on the 27th day of October, 1938.

III

"That the point of diversion was not stated in said application at the time the same was filed; that the survey determining the point of diversion was not made until the 27th day of October, 1938; that the certificate of the engineer, Guy C. McGee endorsed upon the plats states that the map was made from notes taken during an actual survey made on the 27th day of October, 1938.

IV

"That the application did not state the point of return of the water appropriated to the stream from which it was taken at the time the application was filed; that it was not possible for the application to show the point of return until after the 27th day of October, 1938, for the reason that the application and map submitted therewith as certified to by Guy C. McGee was made from information secured by an actual survey made on October 27, 1938;

V

"That the maps submitted and filed on or about the 7th day of November, 1938, were not prepared or filed in accordance with the laws of the State of Idaho or the Manual of Instructions for Filing Water Rights, and do not comply with the regulation of the Commissioner of Reclamation, and do not comply with Section 41-202, of the Idaho Code Annotated; that said maps do not show the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines and other works proposed to be used in the diversion of water.

VI

"That no conture maps showing the area of the reservoir was filed or submitted with said application.

VII

"That the application was not properly advertised as required by the laws of Idaho.

18713

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

IN THE MATTER OF THE PROTEST AGAINST THE APPROVAL OF APPLICATION TO APPROPRIATE THE PUBLIC WATERS, NUMBER 26042, IN ACCORDANCE WITH THE PROVISIONS OF HOUSE BILL NUMBER 295, 1935 SESSION LAWS.

C. O. Graue, Coeur d'Alene, Idaho, and BONNERS FERRY LUMBER COMPANY, LIMITED, a corporation, Coeur d'Alene, Idaho,

Protestants

VILLAGE OF BONNERS FERRY, IDAHO,

Protestee.

NOTICE OF HEARING

You, and each of you, are hereby notified that on the 30th day of December, 1938, at 10:00 A. M., in the office of the Commissioner of Reclamation, at Boise, Idaho, a hearing will be held in the matter of the protests against the approval of application for permit to appropriate one hundred sixty cubic feet per second of the waters of the Moyie River for power purposes.

That the Protestants are required to appear at the office of the Commissioner of Reclamation, at Boise, Idaho, on the date set for the hearing and show cause, if any there be, why said Application No. 26042 should not be approved and permit issued thereunder, and said Protestants and Protestee on said date may file such affidavits in support of their respective allegations as they may desire;

That there have been filed in the Department of Reclamation of the State of Idaho, at Boise, Idaho, on December 15th, 1938, by C. O. Graue, of Coeur d'Alene, Idaho, and by the Bonners Ferry Lumber Company, Limited, a corporation, Coeur d'Alene, Idaho, protests against the granting of said application No. 26042;

18713

That C. C. Graue protests the granting of this application for the following reasons, to-wit:

I

"That the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company or from C. C. Graue to enter upon the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; for the purpose of making a survey;

"That the survey made by Guy C. McCee on the 27th day of October, 1938 was made by trespass upon said lands; that any and all information with reference to said survey which is contained in said application and in said maps was secured by trespass upon the lands belonging to this protestant.

II

"That no maps or plats accompanied the application and no maps were filed with said application as required by Section 41-202 of the Idaho Code Annotated, as amended by Chapter 145 of the 1935 Session Laws of Idaho, and that no maps or plats whatever were filed with said application as provided by said section; that the maps and plats certified to by Guy C. McCee were filed on or about the 7th day of November, 1938; that said Guy C. McCee, engineer, certifies that the survey upon which said application, maps and plats were based was made on the 27th day of October, 1938.

III

"That the point of diversion was not stated in said application at the time the same was filed; that the survey determining the point of diversion was not made until the 27th day of October, 1938; that the certificate of the engineer, Guy C. McCee endorsed upon the plats states that the map was made from notes taken during an actual survey made on the 27th day of October, 1938.

IV

"That the application did not state the point of return of the water appropriated to the stream from which it was taken at the time the application was filed; that it was not possible for the application to show the point of return until after the 27th day of October, 1938, for the reason that the application and map submitted therewith as certified to by Guy C. McCee was made from information secured by an actual survey made on October 27, 1938;

V

"That the maps submitted and filed on or about the 7th day of November, 1938, were not prepared or filed in accordance with the laws of the State of Idaho or the Manual of Instructions for Filing Water Rights, and do not comply with the regulation of the Commissioner of Reclamation, and do not comply with Section 41-202, of the Idaho Code Annotated; that said maps do not show the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines and other works proposed to be used in the diversion of water.

VI

"That no conture maps showing the area of the reservoir was filed or submitted with said application.

VII

"That the application was not properly advertised as required by the laws of Idaho.

18713

VIII

"That Application No. 26042 conflicts with Permit R-651 issued to C. O. Graue, September 30, 1938.

IX

"That Application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. O. Graue."

That the Bonners Ferry Lumber Company, Limited, protests the granting of this application for the following reasons, to-wit:

I

"That the Bonners Ferry Lumber Company, Limited, a corporation, is the owner of the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; that the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey; that the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said land; that any and all information contained in said Application No. 26042 and said maps was secured by trespass upon said lands belonging to this protestant.

II

"That Application No. 26042 does not comply with the laws of the State of Idaho in that it does not contain the information required by the statutes and rules of the Department of Reclamation.

III

"That this protestant states on information and belief that Application No. 26042 was left with the Commissioner's office on or about the 2nd day of September, 1938; that at said time no plats were submitted with said application; that said application did not describe the works to be constructed in the event the permit was granted; that the said application did not describe the diversion point, and did not describe the point of use;

"This protestant further states that the maps and information now contained in said application were not submitted to the Department of Reclamation until on or about the 7th day of November, 1938; that said application did not contain sufficient facts to permit the Commissioner of Reclamation to receive the same as an application for permit under the laws of Idaho, when the same was submitted with the Commissioner of Reclamation on the 2nd day of September, 1938; and that all material facts now stated in said application for permit No. 26042 were not filed with the Commissioner of Reclamation until on or about the 7th day of November, 1938."

In witness whereof, I have hereunto set my hand and affixed the official seal of the Department of Reclamation of the State of Idaho, at Boise, Idaho, this 20th day of December, 1938.

P. A. Gans

Commissioner of Reclamation

18713

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

C. O. Erickson

(Signature or name of addressee)

F E Erickson

(Signature of addressee's agent)

Date of delivery. DEC 23 19

Form [redacted]1

U. S. GOVERNMENT PRINTING OFFICE

18713

Post Office Department

OFFICIAL BUSINESS

REGISTERED ARTICLE

No. 4034

INSURED PARCEL

No. _____

COEUR D'ALENE
DEC 23
1938
IDAHO.

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

Return to Dept of Reclamation
(NAME OF SENDER)

Street and Number, or Post Office Box, _____

BOISE,

IDAHO.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

E. F. Mohrbacher

(Signature or name of addressee)

(Signature of addressee's agent)

Date of delivery. 12/27, 1938

Form 38

U. S. GOVERNMENT PRINTING OFFICE

18713



Post Office Department

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

REGISTERED ARTICLE

No. 4032

MARK OF DELIVERING OFFICE

INSURED PARCEL

No. _____

Return to Dept of Reclamation
(NAME OF SENDER)

Street and Number, or Post Office Box, _____

BOISE,

IDAHO.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Robt. N. Ellen
(Signature or name of addressee)

Helen Mahoney
(Signature of addressee's agent)

Date of delivery. DEC 23 1936 *19*

Form 3811

U. S. GOVERNMENT PRINTING OFFICE

713

Post Office Department

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

OFFICIAL BUSINESS

REGISTERED ARTICLE

No. 4033

INSURED PARCEL

COUR D'ALENE
DEC 23
4 PM
1938
IDAHO.

POSTMASTER DELIVERING OFFICE

No. _____

Return to Dept of Reclamation
(NAME OF SENDER)

Street and Number, or Post Office Box, _____

BOISE,

IDAHO.

December 20, 1938

REGISTERED LETTER

Re: Application No. 26042.

Mr. H. M. Burcker, Agent
Village of Bonners Ferry
Bonners Ferry, Idaho

Dear Sir:

Mr. Robert H. Elder, on behalf of the Bonners Ferry Lumber Company, Limited, and Mr. C. O. Graue have filed protests against the granting of the above numbered application for permit to appropriate the public waters of the State of Idaho.

We are herewith enclosing a notice of the hearing to be held in connection with these two protests.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

By

Chief Clerk

jl
Encl.

18713

December 20, 1938

REGISTERED LETTER

Re: Application No. 26042,
Village of Bonners Ferry.

Mr. C. O. Graue
Coeur d'Alene, Idaho

Dear Sir:

We are herewith enclosing a notice of the hearing to be held in connection with the protests of yourself and the Bonners Ferry Lumber Company, Limited, against the granting of the above-mentioned application for permit to appropriate the public waters of the State of Idaho.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

By

Chief Clerk

jl
Encl.

18713

December 20, 1938

REGISTERED LETTER

Re: Application No. 26042,
Village of Bonners Ferry.

Mr. Robert H. Elder
Attorney at Law
Coeur d'Alene, Idaho

Dear Sir:

We are herewith enclosing a notice of the hearing to be held in connection with the protests filed by you in behalf of the Bonners Ferry Lumber Company, Limited, and by C. O. Graue, against the granting of the above-mentioned application for permit to appropriate the public waters of the State of Idaho.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

By

Chief Clerk

jl
Encl.

18713

RECEIVED
DEC 15 1938
Department of Reclamation

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BEFORE R. W. FARIS, COMMISSIONER OF RECLAMATION

IN RE APPLICATION FOR PERMIT NO. 26042.

PROTEST OF BONNERS FERRY LUMBER COMPANY, LIMITED, a corporation.

- - -

Comes now the Bonners Ferry Lumber Company, Limited, a corporation, organized under the laws of the State of Wisconsin and authorized to transact business in the State of Idaho, with its principal place of business at Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

That the Bonners Ferry Lumber Company, Limited, a corporation, is the owner of the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; that the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey; that the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said land; that any and all information contained in said Application No. 26042 and said maps was secured by trespass upon said lands belonging to this protestant.

II

That Application No. 26042 does not comply with the laws of the State of Idaho in that it does not contain the information required by the statutes and rules of the Department of Reclamation.

III

That this protestant states on information and belief that Application No. 26042 was left with the Commissioner's office on or about the 2nd day of September, 1938; that at said time no plats were

18713

submitted with said application; that said application did not describe the works to be constructed in the event the permit was granted; that the said application did not describe the diversion point, and did not describe the point of use;

This protestant further states that the maps and information now contained in said application were not submitted to the Department of Reclamation until on or about the 7th day of November, 1938; that said application did not contain sufficient facts to permit the Commissioner of Reclamation to receive the same as an application for permit under the laws of Idaho, when the same was submitted with the Commissioner of Reclamation on the 2nd day of September, 1938; and that all material facts now stated in said application for permit No. 26042 were not filed with the Commissioner of Reclamation until on or about the 7th day of November, 1938.

WHEREFORE, the Bonners Ferry Lumber Company, Limited, a corporation, prays that the Commissioner of Reclamation reject and deny the application for permit No. 26042 made by the Village of Bonners Ferry.

BONNERS FERRY LUMBER COMPANY, LIMITED

By R. H. Eddes
attorney

R. H. Eddes
Attorney for Protestant
Res. and P. O. Address:
Coeur d'Alene, Idaho

18713

EXHIBIT "B"

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BEFORE R. W. FARIS, COMMISSIONER OF RECLAMATION

IN RE APPLICATION FOR PERMIT NO. 26042.

PROTEST OF BONNERS FERRY LUMBER COMPANY, LIMITED, a corporation.

- - -

Comes now the Bonners Ferry Lumber Company, Limited, a corporation, organized under the laws of the State of Wisconsin and authorized to transact business in the State of Idaho, with its principal place of business at Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

That the Bonners Ferry Lumber Company, Limited, a corporation, is the owner of the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; that the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company, Limited to enter upon said land for the purpose of making a survey; that the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said land; that any and all information contained in said Application No. 26042 and said maps was secured by trespass upon said lands belonging to this protestant.

II

That Application No. 26042 does not comply with the laws of the State of Idaho in that it does not contain the information required by the statutes and rules of the Department of Reclamation.

III

That this protestant states on information and belief that Application No. 26042 was left with the Commissioner's office on or about the 2nd day of September, 1938; that at said time no plats were

18713

submitted with said application; that said application did not describe the works to be constructed in the event the permit was granted; that the said application did not describe the diversion point, and did not describe the point of use;

This protestant further states that the maps and information now contained in said application were not submitted to the Department of Reclamation until on or about the 7th day of November, 1938; that said application did not contain sufficient facts to permit the Commissioner of Reclamation to receive the same as an application for permit under the laws of Idaho, when the same was submitted with the Commissioner of Reclamation on the 2nd day of September, 1938; and that all material facts now stated in said application for permit No. 26042 were not filed with the Commissioner of Reclamation until on or about the 7th day of November, 1938.

WHEREFORE , the Bonners Ferry Lumber Company, Limited, a corporation, prays that the Commissioner of Reclamation reject and deny the application for permit No. 26042 made by the Village of Bonners Ferry.

BONNERS FERRY LUMBER COMPANY, LIMITED

By_____

ROBT. H. ELDER
Attorney for Protestant
Res. and P. O. Address:
Coeur d'Alene, Idaho

18713

RECEIVED
DEC 15 1938
Department of Reclamation

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BEFORE R. W. FARIS, COMMISSIONER OF RECLAMATION

IN RE APPLICATION FOR PERMIT NO. 26042. PROTEST OF C.O. GRAUE

- - -

Comes now C. O. Graue, whose residence and post office address is Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

That the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company or from C. O. Graue to enter upon the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; for the purpose of making a survey;

That the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said lands; that any and all information with reference to said survey which is contained in said application and in said maps was secured by trespass upon the lands belonging to this protestant.

II

That no maps or plats accompanied the application and no maps were filed with said application as required by Section 41-202 of the Idaho Code Annotated, as amended by Chapter 145 of the 1935 Session Laws of Idaho, and that no maps or plats whatever were filed with said application as provided by said section; that the maps and plats certified to by Guy C. McGee were filed on or about the 7th day of November, 1938; that said Guy C. McGee, engineer, certifies that the survey upon which said application, maps and plats were based was made on the 27th day of October, 1938.

18713

III

That the point of diversion was not stated in said application at the time the same was filed; that the survey determining the point of diversion was not made until the 27th day of October, 1938; that the certificate of the engineer, Guy C. McGee endorsed upon the plats states that the map was made from notes taken during an actual survey made on the 27th day of October, 1938.

IV

That the application did not state the point of return of the water appropriated to the stream from which it was taken at the time the application was filed; that it was not possible for the application to show the point of return until after the 27th day of October, 1938, for the reason that the application and map submitted therewith as certified to by Guy C. McGee was made from information secured by an actual survey made on October 27, 1938;

V

That the maps submitted and filed on or about the 7th day of November, 1938 were not prepared or filed in accordance with the laws of the State of Idaho or the Manual of Instructions for Filing Water Rights, and do not comply with the regulation of the Commissioner of Reclamation, and do not comply with Section 41-202, of the Idaho Code Annotated; that said maps do not show the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines and other works proposed to be used in the diversion of water.

VI

That no conture maps showing the area of the reservoir was filed or submitted with said application.

VII

That the application was not properly advertised as required by the laws of Idaho.

18713

VIII

That Application No. 26042 conflicts with Permit R-651 issued to C. O. Graue, September 30, 1938.

IX

That Application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. O. Graue.

WHEREFORE, C. O. Graue, protestant, prays, that said application No. 26042 be rejected and denied.

C. O. Graue

C. O. Graue, Protestant
Res. and P. O. Address:
Coeur d'Alene, Idaho

Attorney for Protestant
Res. and P. O. Address:
Coeur d'Alene, Idaho

18713

STATE OF IDAHO)
: ss
County of Kootenai)

C. O. GRAUE, being first duly sworn, deposes and says:

That he is the above named protestant; that he has read the foregoing Protest, and believes the statements therein to be true.

C. O. Graue

Subscribed and sworn to before me this 14th day of December, 1938.

R. N. Elder
Notary Public for Idaho
Residing at Coeur d'Alene

18713

EXHIBIT "B"

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BEFORE R. W. FARIS, COMMISSIONER OF RECLAMATION

IN RE APPLICATION FOR PERMIT NO. 26042. PROTEST OF C.O. GRAUE

- - -

Comes now C. O. Graue, whose residence and post office address is Coeur d'Alene, Idaho, and hereby protests against the approval of Application for Permit No. 26042 filed by the Village of Bonners Ferry and for grounds of protest says:

I

That the Village of Bonners Ferry, its engineers, agents, attorneys, representatives, or its employees, acquired no right from the Bonners Ferry Lumber Company or from C. O. Graue to enter upon the West half of Section 11, Township 62, North, Range 2, East Boise Meridian, Boundary County, Idaho; for the purpose of making a survey;

That the survey made by Guy C. McGee on the 27th day of October, 1938 was made by trespass upon said lands; that any and all information with reference to said survey which is contained in said application and in said maps was secured by trespass upon the lands belonging to this protestant.

II

That no maps or plats accompanied the application and no maps were filed with said application as required by Section 41-202 of the Idaho Code Annotated, as amended by Chapter 145 of the 1935 Session Laws of Idaho, and that no maps or plats whatever were filed with said application as provided by said section; that the maps and plats certified to by Guy C. McGee were filed on or about the 7th day of November, 1938; that said Guy C. McGee, engineer, certifies that the survey upon which said application, maps and plats were based was made on the 27th day of October, 1938.

18713

III

That the point of diversion was not stated in said application at the time the same was filed; that the survey determining the point of diversion was not made until the 27th day of October, 1938; that the certificate of the engineer, Guy C. McGee endorsed upon the plats states that the map was made from notes taken during an actual survey made on the 27th day of October, 1938.

IV

That the application did not state the point of return of the water appropriated to the stream from which it was taken at the time the application was filed; that it was not possible for the application to show the point of return until after the 27th day of October, 1938, for the reason that the application and map submitted therewith as certified to by Guy C. McGee was made from information secured by an actual survey made on October 27, 1938;

V

That the maps submitted and filed on or about the 7th day of November, 1938 were not prepared or filed in accordance with the laws of the State of Idaho or the Manual of Instructions for Filing Water Rights, and do not comply with the regulation of the Commissioner of Reclamation, and do not comply with Section 41-202, of the Idaho Code Annotated; that said maps do not show the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipe lines and other works proposed to be used in the diversion of water.

VI

That no conture maps showing the area of the reservoir was filed or submitted with said application.

VII

That the application was not properly advertised as required by the laws of Idaho.

18713

VIII

That Application No. 26042 conflicts with Permit R-651 issued to C. O. Graue, September 30, 1938.

IX

That Application No. 26042 conflicts with Application No. 26043 filed with the Commissioner of Reclamation by C. O. Graue.

WHEREFORE, C. O. Graue, protestant, prays, that said application No. 26042 be rejected and denied.

C. O. GRAUE
C. O. Graue, Protestant
Res. and P. O. Address:
Coeur d'Alene, Idaho

ROBT. H. ELDER
Attorney for Protestant
Res. and P. O. Address:
Coeur d'Alene, Idaho

18713

STATE OF IDAHO)
: ss
County of Kootenai)

C. O. GRAUE, being first duly sworn, deposes and says:

That he is the above named protestant; that he has read the foregoing Protest, and believes the statements therein to be true.

C. O. Graue

Subscribed and sworn to before me this 14 day of December, 1938.

S. N. Ellen
Notary Public for Idaho
Residing at Coeur d'Alene

18713

FORM NO. 11-A

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

Date November 16, 1938

THE BONNERS FERRY HERALD
Bonners Ferry, Idaho

DEAR SIR:

Enclosed you will find notice for publication once a week for three consecutive weeks prior to December 19, 1938, the last date for protest, the expense of the publication to be paid by the applicant, Village of Bonners Ferry, H. M. Buroker, Clerk,

to whom you should furnish proof of publication on or prior to the last date for protest.

Please acknowledge receipt of this notice and furnish this office with a copy of the first publication.

Very truly yours,

R. W. FARIS

Commissioner of Reclamation

Note: Publication should start with the next issue of the paper.

18713

Form No. 11

RECEIVED
NOV 14 1938

NOTICE TO ACCOMPANY THIS LETTER MUST BE MADE IN DUPLICATE

(Date) Nov 12, 1938

(P. O.) Bonnus Ferry, Idaho.

TO THE COMMISSIONER OF RECLAMATION:

Boise, Idaho.

Dear Sir:

You are hereby authorized to have the attached notice published at my expense in the Bonnus Ferry Herald of Bonnus Ferry, Ida., published in the county in which the works are situated.

Village of Bonnus Ferry
G. M. Brooks Clerk.

(In case of canals or other works designed to divert and carry more than 50 cubic feet of water per second, the following certificate must be signed by a well-known and competent engineer)

I hereby certify that the facts set forth in the attached notice are true.

.....

Engineer.

18713

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

NOTICE OF APPLICATION TO APPROPRIATE WATER IN ACCORDANCE WITH THE PROVISIONS OF HOUSE BILL 293, 1935 SESSION LAWS.

NOTICE IS HEREBY GIVEN That on the 2nd day of September, 1938, the VILLAGE OF BONNERS FERRY, a municipal corporation, County of Boundary, State of Idaho, made Application No. 26042 to appropriate 160 cubic feet of water per second from the Moyie River for power purposes.

That the point of diversion of the water is located N. 43° 35' E. 1070 feet distant from the SW corner of Section 11, T. 62 N., R. 2 E., B. M., and is in the $SW\frac{1}{4}$ $SW\frac{1}{4}$ of Section 11, T. 62 N., R. 2 E., B. M., County of Boundary.

That the point of use of the water is located S. 33° 15' E. 575 feet distant from the NW corner of Section 14, T. 62 N., R. 2 E., B. M., in the $NW\frac{1}{4}$ $NW\frac{1}{4}$ of Section 14, T. 62 N., R. 2 E., B. M.

That the water is to be returned to the Moyie River at a point S. 33° 15' E. 575 feet distant from the NW corner of Section 14, T. 62 N., R. 2 E., B. M., in the $NW\frac{1}{4}$ $NW\frac{1}{4}$ of Section 14, T. 62 N., R. 2 E., B. M.

That any protests against the approval of this application must be filed in the Department of Reclamation within forty (40) days of the date of this notice; such protest shall state the name and address of the protestant and shall clearly set forth his objections to the approval of the said application.

DATED This 9th day of November, 1938.

T. A. Davis

Commissioner of Reclamation

Date of first publication:
Date of last publication:
Last date for protest: December 19, 1938.

SERVICE of the foregoing, by copy, is hereby admitted this 12th day of November, 1938.

Village of Bonners Ferry

Applicant

A. M. Brooks, Clerk

18713

Form 30

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

Boise, Idaho, October 1, 1938

Application No. 26042.

H. M. Buroker, Agent
Village of Bonners Ferry
Bonners Ferry, Idaho

SIR:

Application which has been filed under the above number is herewith returned for correction in the following particulars:

1. Tracing and blueprint.
2. Answers to Questions 12 & 13.

You are allowed until 60 days from date of first return for correction, as stamped in second line on back of application, to file completed application. If received after that date application will be refiled under a new number with later priority, requiring additional fee.

Yours truly,

R. W. FARIS
COMMISSIONER OF RECLAMATION.

By Deputy Commissioner of Reclamation

Encl: App. & Office Receipt for $44.75

18713

26042

VILLAGE OF BONNERS FERRY

Office of City Clerk
Bonners Ferry, Idaho

COPY

September 26, 1938

State of Idaho
Department of Reclamation
Boise, Idaho

Gentlemen:

We enclose herewith Application for Permit to store Public Waters of the State of Idaho. This application will amend Application No. R-26040 which asked for 40,000 acre feet, reducing the storage to 700 acre feet.

Application No. R-26041 should be withdrawn as it is superseded by No. 26042, an application to appropriate 160 C.F.S. of water from the Moyie River.

We are enclosing check to the amount of $44.75 filing fee on the application for 160 second feet of water from the Moyie River. Fee for the enclosed storage application should be drawn from the $89.50 fee paid on applications No. R-26040 and R-26041 and the balance unused returned to this office.

Yours truly,

Village of Bonners Ferry

H. M. BUROKER
Clerk

HMB/b

18713

September 19, 1938

Re: Applications R-26040, R-26041, & 26042.
Village of Bonners Ferry, Idaho.

Mr. O. C. Wilson
Attorney at Law
Bonners Ferry, Idaho

Dear Sir:

We are herewith returning your two applications for permit to store certain waters of the Moyie River, so that you may make the necessary maps and complete the applications.

If you desire to withdraw either or both of these applications, you may do so, or if you desire to withdraw one application and amend the other, you may do so by writing a formal letter requesting that the application be amended, and stating the amendments. If you withdraw an application, you may submit a claim to this department for the refunding of your filing fee; if you amend an application by decreasing the amount of water claimed, you may submit a claim to this department for a refund of the amount paid in excess of the amount that would be due for the amended application.

We note that in a letter dated August 30th, and signed by H. M. Buroker, Clerk of the Village of Bonners Ferry, that the statement was made that it is proposed that a reservoir be constructed to store about 700 acre feet. Therefore, he may amend one of these applications for permit to claim 700 acre feet rather than 40,000 acre feet, and thus retain the date of priority as already established; whereas, if he withdraws both of the present applications and makes a new filing, the new filing would have a date of priority as of the date it was first received in this office.

In connection with an application for permit in the name of the Village of Bonners Ferry claiming 160 cubic feet per second of the waters of the Moyie River, we have not yet received the fee which should accompany this application. This fee will amount to $44.75, and must be sent to this department immediately. The fee paid in connection with the two reservoir applications cannot be applied on the natural flow application unless one of the applications is withdrawn and the fee to be returned to the applicant is assigned to the Department of Reclamation as payment in connection with the natural flow application. The natural flow application will be returned to you for completion and maps about October 1st.

18713

As you doubtless know, the statute requires that you have sixty days after the applications are returned in which you can complete the applications and submit a map in connection therewith to the Department of Reclamation. If this is not done within the sixty days period, your fee will be forfeited.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation

By

Deputy Commissioner

PHB: jl
Encl.

18713

August 25, 1938

Mr. O. C. Wilson
Attorney at Law
Bonners Ferry, Idaho

Dear Sir:

We have had occasion to check your two applications for permits to appropriate certain waters of the Moyie River in Boundary County.

Upon conferring with my secretary, I discovered that your intention was to appropriate enough water so that you would have a continuous flow of 160 second feet at both dam sites.

In stating that you would need to file on 40,000 acre feet, she was in error in that the standard for irrigation in Idaho is 250 acre feet being equal to a continuous flow of one second foot for 125 days. Therefore, by storing and using only stored water, you would have a continuous flow of 160 second feet for only 125 days, and not for 365 days, as, I presume, you desire.

Therefore, I wish to suggest that you make an application for permit to appropriate a certain amount of natural flow of the Moyie River--perhaps 100 second feet, and supplement this natural flow by a lesser storage project, i.e., probably a storage project including about 20,000 acre feet of storage.

During the fall of 1935 and spring of 1936 I had occasion while working for the United States Geological Survey, to make a topographical survey of the Moyie River; and my nearest recollection is that there are not any sites in the vicinity shown by your application that would be suitable for 40,000 acre feet of storage.

It might be well to consult Mr. Guy McGee on this matter prior to making a new filing. Mr. McGee is familiar with the water supply on the Moyie River, and if he is not thoroughly familiar, he will doubtless get in contact with Mr. Christopherson, representative for the U. S. G. S. in the Kootenai Valley.

We will hold the two applications that you have filed with this Department in abeyance until we hear further from you. Also, we are enclosing forms for a natural flow permit.

Very truly yours,

R. W. FARIS
Commissioner of Reclamation
By

PHB: jl
Encl.

Deputy Commissioner of Reclamation

18713

.VITATION TO BIDDERS

Construction of Moyie Power Dam

Contractors are invited to submit a written formal bid for the construction of a concrete gravity dam and appurtenant works, as a part of the municipal hydro-electric power system for the Village of Bonners Ferry, Boundary County, Idaho.

The proposed project is located on the Moyie river, approximately 10 miles northeast of the Village of Bonners Ferry, near the Bonners Ferry-Troy Highway (U. S. No. 2). Bids will be received at the office of the Village Clerk, Power and Light Office, Bonners Ferry, up to 8:00 P. M., February 3rd, 1948.

The work involves the following approximate quantities: 45 acres clearing; diversion and care of river; 5670 cubic yards solid rock excavation; 1080 cubic yards unclassified excavation; 900 lineal feet tunnel excavation; 60 feet shaft excavation; excavating, screening and hauling 13,500 cubic yards gravel; excavating, screening, and hauling 6,400 cubic yards sand; mixing and placing 15,000 cubic yards concrete; placing 230,000 lbs. of reinforcement steel; installing gates, structural steel, trash racks, penstock tubes, and other miscellaneous work. The Village will supply cement, steel, gates, pipe, and other materials, and a limited amount of electric power will be made available to the contractor.

Plans and specifications may be obtained upon payment of $25.00, at the office of H. M. Buroker, Superintendent of Power and Light, Bonners Ferry, Idaho, or at the office of:

C. F. Griggs, Consulting Engineer
819 Paulsen Bldg.,
Spokane, Washington.

Checks offered as payment for plans and specifications must be made payable to the Village of Bonners Ferry.

The Board of Trustees reserves the right to reject any and all bids.

BOARD OF TRUSTEES,
Village of Bonners Ferry,
Boundary County, Idaho
H. M. BUROKER, Clerk.

First publication Jan. 8, 1948.
Last publication Jan. 22, 1948. 18

.CE FOR PUBLICATION

NOTICE OF APPLICATION FOR EXTENSION OF TIME FOR COMPLETION OF WORKS UNDER CHAPTER 28, SESSION LAWS OF 1947.

Notice is hereby given that on the 30th day of January 1948, at 10:00 o'clock A. M., a hearing will be held by the State Reclamation Engineer, or his deputy, at 107 State House, Boise, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18731. The said protests and evidence may be submitted either orally or by affidavit by any person or persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension. IP 713

1. The number of said Permit is 18731.

2. The name and post office address of the person or persons or corporation holding this permit are Village of Bonners Ferry, Bonners Ferry, Idaho.

3. The amount of water claimed by the said permit or permits is 150 cubic feet per second from Moyie River which is tributary to Kootenai River.

MARK R. KULP,
State Reclamation Engineer

First publication Jan. 15, 1948.
Second publication Jan. 22, 1948.

NOTICE FOR PUBLICATION

Notice is hereby given that at 10:00 A. M., on the day of December, 1950, at Bonners Ferry, County of Boundary, State of Idaho, before M. D. Pace, a notary public, proof will be submitted of the completion of works for the diversion of 160 cubic feet per second of the waters of Moyie River in accordance with the terms and conditions of a certain permit heretofore issued by the Department of Reclamation of the State of Idaho.

1. The name of the person or corporation holding said permit is Village of Bonners Ferry.

2. The postoffice address of such person or principal place of business of such corporation is Bonners Ferry, County of Boundary, State of Idaho.

3. The number of such permit is 18713, and the date set for the completion of such work is December 31, 1950.

4. Said water is to be used for power purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 160 cubic feet per second.

The place where said water is diverted is in the SW¼SW¼ Section 11, Twp. 62.N.R. 2. E. and the place of use of said water is in the NW¼NW¼ Section 14, Twp. 62.N. R. 2. E. B. M. 18713

MARK R. KULP,
State Reclamation Engineer.

First publication Nov. 2, 1950
Last publication Nov. 23, 1950.

NOTICE OF PROOF APPLICATION OF WATER TO BENEFICIAL USE.

Notice is hereby give... that at 10:00 A. M. on the 6th day of December, 1955, at Bonners Ferry, County of Boundary, State of Idaho, before Geo. Unternahrer, Probate Judge ,proof will be submitted of the application to beneficial use of 160 cubic feet per second of the waters of Moyie River in accordance with the terms and conditions of Permit No. 18713 heretofore issued by the Department of Reclamation of the State of Idaho.

The name and postoffice address of the person or corporation holding said permit are Village of Bonners Ferry, a Municipal Corporation.

The use to which said water has been applied is Production of power.

The amount applied to beneficial use is 160 cfs.

The place where said water is used NW¼ NW¼ Section 14, Township 62 North, Range 2 East, Boise Meridian.

The name of the canal or ditch or other works by which said water is conducted to such place of use is, rock tunnel and steel penstock.

The right to take water from such works is based upon Permit No. 18713.

The source of supply from which such water is diverted is Moyie River, a tributary of the Kootenai River.

The date of priority which said user is prepared to establish is September 2, 1938.

MARK R. KULP
State Reclamation Engineer

1st Pub. Nov. 10, 1955
Last Pug. ~~Dec. 1, 1955~~ 18713

Notice of Application for Extension of Time for C[illegible]pletio[illegible] Works Under Se[illegible] Bill [illegible] 98, Session Laws of 1943

Notice is hereby given, that on the 4th day of December 1943, at 10:00 o'clock A. M., a hearing will be held by the State Reclamation Engineer, or his deputy, at State House, Boise, County of Ada, State of Idaho, for the purpose of receiving any protests, testimony and evidence regarding an application for extension of time for completion of works under Permit to Appropriate the Public Waters of the State of Idaho, No. 18713. The said protests and evidence may be submitted either orally or by affidavits by any person or persons owning or in possession of a right to the use of any waters of a stream or source of supply affected by the said extension.

1. The number of said Permit is 18713.

2. The name and post-office address of the person or persons or corporation holding said permit or permits are: Village of Bonners Ferry, Idaho.

3. The amount of water claimed by the said permit or permits is 160 cubic feet per second from Moyie River which is tributary to Kootenai River.

JAMES SPOFFORD,
State Reclamation Engineer.

Nov. 18-25Dec. 2—3t.

18713

Nov. 18-1943
B. F. Herald

Moyie River

Dam

Elevation

Remove →

SEE DAM FILES