

**STARTING
LEFT
SIDE OF
FILE**

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 65-22723

Priority: November 02, 2001

Maximum Diversion Rate: 4.86 CFS

This is to certify, that US DEPT OF INTERIOR
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

has applied for a permit to appropriate water from:

Source: DEADWOOD RIVER

Tributary: SOUTH FORK PAYETTE RIVER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
POWER	01/01 to 12/31	4.86 CFS

LOCATION OF POINT OF DIVERSION:

DEADWOOD RIVER SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 8, Twp 11N, Rge 07E, B.M. VALLEY County

PLACE OF USE: POWER

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11N 07E 8															X		
11N 07E 17		X															

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **August 01, 2007**.
2. Subject to all prior water rights.
3. The right holder shall install a measuring device that can be used to determine the instantaneous rate of flow of water through the system, or the right holder shall provide to the department a flow rate measurement or computation made by a certified water right examiner in accordance with actual system design and operation.
4. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
5. This right is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.
6. The rights for the use of water acquired under this right shall be junior and subordinate to all other rights for the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
7. The Director retains jurisdiction of this right in order to limit the use of water for hydropower generation purposes to a specific term of years as required by Section 42-203B(7), Idaho Code.

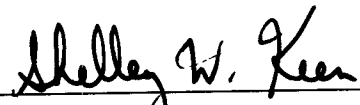
State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 65-22723

8. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 65.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 22nd day of August, 2006.


FOR KARL J. DREHER, Director

RECEIVED

AUG 10 2006

DEPARTMENT OF
WATER RESOURCES

RECEIVED

FEB 19 2002

WATER RESOURCES
WESTERN REGION

Ident. No. 65-22723

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant United States of America, acting through Phone (208) 378-5085
Regional Director, PN Region
Bureau of Reclamation

Mailing address 1150 No. Curtis Rd. Suite 100 Boise, ID 83706-1234

2. Source of water supply Deadwood River, SF Payette River which is a tributary of Snake River

3. Location of point of diversion is Township 11N Range 07E Sec. 8, in the $\frac{1}{4}$,
SW $\frac{1}{4}$, SE $\frac{1}{4}$, Govt. Lot , B. M., Valley County;
additional points of diversion if any: NWNE S. 17 (1 Point)

4. Water will be used for the following purposes:

Amount 4.86 cfs for domestic power purposes from 01/01 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)

Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)

Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)

Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)

Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 4.86 and/or (b)
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source: Four inch pressure pipe with 4"
control valve at elevation 5,213 above M.S.L. Fitz Water Wheel Company turbine rating of 10 kW.

b. Height of storage dam 137 feet; active reservoir capacity 163,000 acre-feet;
total reservoir capacity 163,000 acre-feet

c. Proposed well diameter is ; proposed depth of well is feet

d. Is ground water with a temperature of greater than 85°F being sought?

e. If well is already drilled, when? ; Drilling firm
Well was drilled for (well owner) Drilling Permit No.

7. Time required for completion of works and application of water to proposed beneficial use is n/a 1 yr

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

a. Hydropower; show total feet of head and proposed capacity in kW. 121' of head; 10 kW

b. Stockwatering; list number and kind of livestock.

c. Municipal; show name of municipality.

d. Domestic; show number of households.

e. Other; describe fully.

Revising
Approved

2/14/02
initials & date

RECEIVED

NOV 02 2001

WATER RESOURCES
WESTERN REGION

9. Description of place of use:

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

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

TWP	RGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11N	07E	8															P		
		17		P															

Total number of acres irrigated n/a

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

11. a. Who owns the property at the point of diversion? U.S. Bureau of Reclamation

b. Who owns the land to be irrigated or place of use? U.S. Bureau of Reclamation

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

12. Remarks: _____

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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

 Signature of Applicant (and title, if applicable)

Received by Janis Fontaine Date 11-2-01 Time 12:20 pm Preliminary check by [Signature]

Fee \$ 410.00 Received by Janis Fontaine # W0284 LONG VALLEY ADVOCATE

Publication prepared by [Signature] Date 12-4-11-02 Published in LONG VALLEY ADVOCATE

Publication approved [Signature] Date 2-5-12-03 Date 3-4-03



Sec 17 NW NE }
 T11N R7E Sec 8 SWSE (power)
 and SESE (domestic).

ON/NEAR
 QQ Line

→ OPOD/POU

← 65-22722

NO gov't lots - PL 11/21/02

**NOW
STARTING
RIGHT
SIDE OF
FILE**



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

JAMES E. RISCH
Governor

KARL J. DREHER
Director

August 29, 2006

US DEPT OF INTERIOR
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

RE: Permit No. 65-22723

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

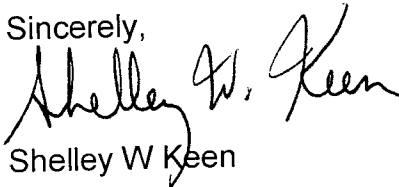
Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should complete and submit this form immediately.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4947.

Sincerely,

A handwritten signature in black ink that reads "Shelley W. Keen". The signature is fluid and cursive, with the first name "Shelley" being the most prominent part.

Shelley W Keen

Water Rights Supervisor

SWK:ka

Enclosure(s)

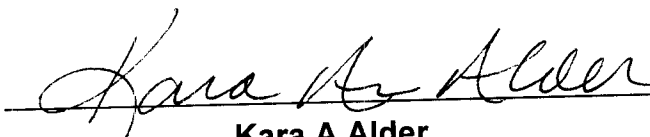
CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2006 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

65-22723

**US DEPT OF INTERIOR
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-1234**

A handwritten signature in cursive script, reading "Kara A Alder", is written over a horizontal line.

**Kara A Alder
Secretary**

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below.

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

MEMORANDUM

TO: File

FROM: Steve Lester

DATE: August 8, 2006

RE: Application 65-22723 Clarification

Western Region inadvertently held this application without cause - it was held with another BOR application that is subject to delay for good reasons. A few clarifying details might be useful for 65-22723.

1. P/D was listed as a single point on/near tract line per older style. Current standards require one tract under those conditions. The Section 8 tract remains in the database for convenient match with P/D 65-2917 (uses Deadwood Reservoir to release water for downstream power production at Black Canyon Dam by Emmett). The application does need to be amended for this in-house convenience.
2. The application lists dam and reservoir details under item 6b. The application does not seek storage water. Disregard item 6b information.
3. Not all of the typical power details apply to this case (see database comments).
4. Conditions 121 and 185 (possible future mitigation and "6/15 cutoff with rental pool lease") should not apply if all the diverted water is returned to the source as expected. However, return flows might require SCA approval (waived for an existing system under these circumstances?).
5. Watermaster approval was secured on 1/16/03. IDFG did not send any comments.

Affidavit of Publication

STATE OF IDAHO COUNTY OF VALLEY

I, Robin M. Simpson, being duly sworn deposes, and says, I am the Publisher of the McCall-Cascade Times Advocate, a weekly newspaper published at Cascade, in Valley County, Idaho, and having a general circulation therein and of legal status in said county.

The Applicant Water Rights, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of every number thereof during the period and time of publication, and was published in the newspaper proper and not in a supplement, and that publication of such notice began 2/12, 2003, and ended 2/15, 2003

Robin M. Simpson

Robin M. Simpson

Signed this the 3 day of March, 2003

STATE OF IDAHO)
:SS.
COUNTY OF VALLEY)

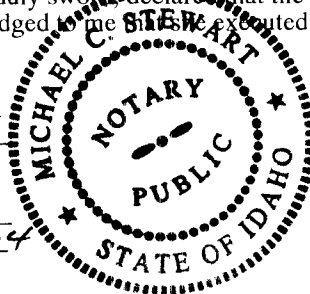
On this the 3rd day of March, 2003, before me, a Notary Public in and for said State, personally appeared Robin M. Simpson, known or identified to me to be the person whose name is subscribed to the within Instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Michael C. Stewart

Notary Public State of Idaho

Residing at: Cascade

Commission Expires: 10/30/2004



APPLICATION FOR WATER RIGHTS

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

65-22723 US DEPT OF INTERIOR
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-5155
Point(s) of Diversion SWSE S8 T11N
R07E VALLEY County
Source DEADWOOD RIVER

Tributary To SOUTH FORK PAYETTE RIVER

Point(s) of Diversion:

NWNE S17 T11N R07E VALLEY County
Source DEADWOOD RIVER

Tributary To SOUTH FORK PAYETTE RIVER

Use: POWER 01/01 To 12/31 4.86 CFS
Total Diversion: 4.86 CFS

Date Filed: 11/02/2001

Place Of Use: POWER T11N R07E S17
NWNE

T11N R07E S8 SWSE

Remark: Power produced at Deadwood Reservoir will be used at a nearby work station.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 02/24/2003. The protestant must also send a copy of the protest to the applicant.

Feb-110

January 30, 2003

Legal Notice Department

Long Valley Advocate

PO Box 1079

Cascade ID 83611

RE: Application for Permit No. 65-22722 and 65-22723

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find two legal notices which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notices on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 02/24/2003. Your cooperation is appreciated.

Sincerely

Sue Taylor
Senior Secretary

- via email -

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

65-22723

US DEPT OF INTERIOR
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-5155

Point(s) of Diversion SWSE S8 T11N R07E VALLEY County Source DEADWOOD RIVER
Tributary To SOUTH FORK PAYETTE RIVER

Point(s) of Diversion NWNE S17 T11N R07E VALLEY County Source DEADWOOD RIVER
Tributary To SOUTH FORK PAYETTE RIVER

Use: POWER 01/01 To 12/31 4.86 CFS

Total Diversion: 4.86 CFS

Date Filed: 11/02/2001

Place Of Use: POWER

T11N R07E S17 NWNE

T11N R07E S8 SWSE

Remark: Power produced at Deadwood Reservoir will be used at nearby work station.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 02/24/2003. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published in the Long Valley Advocate on February 5 and 12, 2003.

State of Idaho
Department of Water Resources

RECEIVED

JAN 16 2003

WATER RESOURCES
WESTERN REGION**RECOMMENDATION OF WATERMASTER**Application No: 65-22723Applicant's Name: United States of America, PN Regional Director, Bureau of Reclamation

Watermaster's Recommendation:

- a) X I do not oppose approval of this application.
- b) I do not oppose approval of this application if it is conditioned as follows: _____

- c) I oppose approval of this application for the following reasons:

- d) Additional Comment: _____

Dated this 13th day of January, 2003

Water District No. 65


Ron Shurtleff, Watermaster

Use reverse side of page if you need more space.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

December 10, 2002

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

STATE OF IDAHO
DEPT OF FISH & GAME
3101 S POWERLINE RD
NAMPA ID 83686

Re: Application for Water Right No. 65-22641 in the Name of United States of America
Bureau of Reclamation.
Application for Water Right No. 65-22723 in the Name of United States of America
Bureau of Reclamation.

Dear Sir or Madam:

Enclosed are copies of the above-referenced applications that the proposed use is from surface water. Please review the applications and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if your agency desires to file a formal protest against the approval any of these applications, your written protest, along with the \$25.00 protest fee for each application protested, must be received in this office by December 23, 2002.

If you have any questions regarding the applications, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lester', is written over a horizontal line.

Steve Lester

SL:lm
Encl: Copy of Application



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 10, 2002

RON SHURTLEFF
WATER DISTRICT 65
102 N MAIN
PAYETTE ID 83661

Re: Application for Water Right No. 65-22641 in the Name of United States of America
Bureau of Reclamation.
Application for Water Right No. 65-22723 in the Name of United States of America
Bureau of Reclamation.

Dear Mr. Shurtleff:

Enclosed are copies of the above-referenced applications for permit. Also enclosed are forms for your recommendation concerning these applications.

Please review the applications. We must have your comments within two weeks.

If you have any questions or need information, feel free to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lester', is written over a horizontal line.

Steve Lester

SL:lm

Encl: Copy of Applications
Recommendations of Watermaster Forms



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION

Snake River Area Office
214 Broadway Avenue
Boise, Idaho 83702-7298

WTR-4.10
SRA-6434

FEB 14 2002

RECEIVED
FEB 19 2002
WATER RESOURCES
WESTERN REGION

Mr. Steve Lester
Water Rights Supervisor
Idaho Department of Water Resources
2735 Airport Way
Boise ID 83705-5082

Subject: *Steve* Applications for Permit (Your Letter dated December 24, 2001)

Dear Mr. Lester:

Enclosed are the revised applications for Application No. 65-22641, Deadwood domestic, and **Deadwood power**. We have made the necessary changes and initialed the original permits. A request to process is included for Application No. 65-22641 and the Deadwood domestic lawn irrigation.

Regarding Application No. 65-22641 and Rule 40, we have sent letters of inquiry to the necessary parties with a copy of the letter to your agency.

The Federal Energy Regulatory Commission does not regulate federal hydropower projects. We have enclosed information on this subject.

Should you have further questions on these applications, please do not hesitate to contact Rick Wells, Water Operations Manager, Snake River Area Office (334-9078).

Sincerely,



Jerrold D. Gregg
Area Manager

Enclosures

See *infra* text accompanying notes 95-97.

10. The Commission does not regulate federal hydropower projects. Instead, federal hydropower projects are regulated by congressional legislation authorizing the particular project. See, e.g., Boulder Canyon Project Act, 43 U.S.C. § 617 (1994). This comment focuses solely on projects licensed pursuant to the Federal Power Act.

11. Under the Federal Power Act, a project is a

complete unit of . . . development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit.

16 U.S.C. § 796(11) (1994).

12. See Bruce Babbitt, *Making History with a Sledgehammer*, *Denv. Post*, Sept. 20, 1998, at H1 (noting a priority shift from the dam-building era to a modern climate where "we recognize other forms of commerce--such as self-sustaining salmon runs--in our nation's rivers, and find growing, broad-based constituencies arguing on their behalf").

13. An original license is a project's first license, see 18 C.F.R. § 16.2(b) (1998), which the Commission can issue for up to 50 years. See 16 U.S.C. § 799 (1994). Upon expiration of the original license, the licensee may seek a "new" license, which is granted during the relicensing process. See 18 C.F.R. § 16.2(b) (1998).

14. See *Economic Dev. Corp.*, 32 F.P.C. 598, 600 (1964).

15. See *Edwards Mfg. Co.*, 81 F.E.R.C. ¶ 61,255, at 62,199 (1997), *dismissed*, 84 F.E.R.C. ¶ 61,228 (1998).

16. See *id.* at 62,202.

17. See *id.* Under the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321-4370d (1994 & Supp. II 1996), the Commission is required to conduct an environmental review of any major federal action that has a significant impact on the quality of human health and the environment. See 42 U.S.C. § 4332(2) (1994); 18 C.F.R. § 380.1 (1998). In implementing NEPA, the Commission's regulations require licensees seeking a new license to prepare an environmental assessment ("EA") during the relicensing process, see *id.* § 380.5(b)(10), which is a concise document briefly analyzing whether the proposed major federal action would have a significant environmental impact. See *id.* § 380.2(d). If the EA indicates that the project would have a significant impact, the Commission conducts an EIS, see *id.* § 380.5(a), which is a comprehensive, detailed report of the project's impact on the environment. See *id.* § 380.2(e). For applications seeking to construct a new dam and to obtain an original license, an EIS is prepared as a matter of course. See *id.* § 380.6(a)(4).

18. See *Edwards Mfg. Co.*, 81 F.E.R.C. at 62,203.

19. The primary non-developmental benefit was the restoration of many fish species--including alewives, American shad, Atlantic salmon, Atlantic sturgeon, shortnose sturgeon, rainbow smelt, striped bass, and brown trout--to their native habitat and spawning grounds. See *id.* at 62,210. Other benefits included increased sport fishing opportunities and the creation of white water boating opportunities. See *id.*

(ii) is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);

(C) "qualifying cogenerator" means the owner or operator of a qualifying cogeneration facility;

(19) "Federal power marketing agency" means any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy;

(20) "evidentiary hearings" and "evidentiary proceeding" mean a proceeding conducted as provided in sections 554, 556, and 557 of title 5, United States Code;

(21) "State regulatory authority" has the same meaning as the term "State commission", except that in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority (as defined in section 3 of the Public Utility Regulatory Policies Act of 1978), such term means the Tennessee Valley Authority;

(22) "electric utility" means any person or State agency which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency.

.01 Act of June 10, 1920 as amended by the Act of August 26, 1935 and P.L. 95-617, November 9, 1978.

Paragraphs (17)-(22) were added by P.L. 95-617, November 9, 1978.

Paragraph (17)(A)(i), appearing in P. L. 95-617, November 9, 1978, read as follows until its amendment by P. L. 96-294, June 30, 1980:

(17)(A) "small power production facility" means a facility which—

(i) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, or any combination thereof; and

[§ 5204]

[General Powers of Commission]

Sec. 4. The Commission is hereby authorized and empowered—

(a) To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites, and whether the power from Government dams can be advantageously used by the United States for its public purposes, and what is a fair value of such power, to the extent the Commission may deem necessary or useful for the purposes of this Act.

(b) To determine the actual legitimate original cost of and the net investment in a licensed project, and to aid the Commission in such determinations, each licensee shall, upon oath, within a reasonable period of time to be fixed by the Commission, after the construction of the original

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project or any addition thereto or betterment thereof, file with the Commission, in such detail as the Commission may require, a statement in duplicate showing the actual legitimate original cost of construction of such project, addition, or betterment, and of the price paid for water rights, rights-of-way, lands, or interest in lands. The licensee shall grant to the Commission or to its duly authorized agent or agents, at all reasonable times, free access to such project, addition, or betterment, and to all maps, profiles, contracts, reports of engineers, accounts, books, records, and all other papers and documents relating thereto. The statement of actual legitimate original cost of said project, and revisions thereof as determined by the Commission, shall be filed with the Secretary of the Treasury.

(c) To cooperate with the executive departments and other agencies of State or National Governments in such investigations; and for such purpose the several departments and agencies of the National Government are authorized and directed upon the request of the Commission to furnish such records, papers, and information in their possession as may be requested by the Commission, and temporarily to detail to the Commission such officers or experts as may be necessary in such investigations.

(d) To make public from time to time the information secured hereunder and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use. The Commission, on or before the 3d day of January of each year, shall submit to Congress for the fiscal year preceding a classified report showing the permits and licenses issued under this Part, and in each case the parties thereto, the terms prescribed, and the moneys received, if any, on account thereof.

(e) To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided*, That licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation. *Provided further*, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of the Army. Whenever the

contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the Commission and shall become a part of the records of the Commission: *Provided further*, That in case the Commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to June 10, 1920: *And provided further*, That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by the proviso of said subsection. In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

(f) To issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 9 hereof: *Provided, however*, That upon the filing of any application for a preliminary permit by any person, association, or corporation the Commission, before granting such application, shall at once give notice of such application in writing to any State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application once each week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated.

(g) Upon its own motion to order an investigation of any occupancy of, or evidenced intention to occupy, for the purpose of developing electric power, public lands, reservations, or streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States by any person, corporation, state or municipality and to issue such order as it may find appropriate, expedient, and in the public interest to conserve and utilize the navigation and water power resources of the region.

.01 Subsections (a)-(c)—Act of June 10, 1920 as amended by the Act of August 26, 1935: Subsection (d)—Act of June 10, 1920, as amended by the Act of August 26, 1935, and by P.L. 97-375, December 21, 1982: Subsections (e)-(g)—Act of June 10, 1920, as amended by the Act of August 26, 1935.

The last sentence of Subsection (d) read as follows until its deletion in P.L. 97-375, December 21, 1982:

Such report shall contain the names and show the compensation of the persons employed by the Commission.

Subsection (e), appearing in Act of August 26, 1935, read as follows until



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 24, 2001

Mr. Jerold Gregg
United States of America, Bureau of Reclamation
1150 N. Curtis Rd., Suite 100
Boise ID 83706

Re: Applications for Permit

Dear Jerry:

Enclosed are three original applications for permit regarding Black Canyon and Deadwood facilities administered by the Bureau of Reclamation (BOR). The applications are returned for clarification as discussed in this letter. First let me say I hope you are the appropriate contact for these applications. If not, please provide this information to the right person at your earliest convenience.

Application No. 65-22641 addresses existing uses provided by Black Canyon Reservoir. Please address or confirm the following items for this application.

1. Indicate agreement to revisions of items 3 and 4 for diversion point and beneficial uses. For example, "irrigation storage" and "irrigation from storage" are the terms to describe irrigation in this context as noted by the margin notes. The noted revisions are adequate as shown without re-doing the application.
2. The minimum answer of one year in item 7 was added to correctly describe existing uses.
3. It is acceptable to have a generally described place of use for irrigation in this case but a definite acre limit is needed. An 80,000 acre limit is assumed to be correct.
4. A completed "request to process" form is required for consumptive use (irrigation from storage). Most applicants choose the last option about possible future mitigation. A form and explanation are enclosed.

5. Water Appropriation Rule 40 requires additional information for "large diversion" projects. An abbreviated response suffices for existing and/or supplemental uses. For this situation, Rule 40 only requires BOR to seek comment and submit all letters of comment from the Gem County Commissioners, the Gem County irrigation districts associated with the dam, and the Idaho Departments of Fish and Game and Environmental Quality. BOR should provide the Idaho Department of Water Resources (IDWR) with copies of letters of inquiry to these entities plus any replies you receive (or the replies could be sent directly to IDWR).
6. Power production from the facility is probably subject to jurisdiction of the Federal Energy Regulatory Commission (FERC) and/or the Idaho Public Utilities Commission (PUC). Copies of FERC and/or PUC approvals, or documentation of why approvals are not needed, should be submitted to IDWR.

Domestic well at Deadwood Reservoir

This unnumbered application appears to cover an existing well for two BOR cabins not already covered by a water filing. Please clarify the following points.

1. Will the well be used for lawn irrigation? If so, describe this use as irrigation in item 4 together with an appropriate rate of flow. Irrigation of up to .03 cfs per acre is acceptable for up to five acres. The standard irrigation season for the site is April 15 through October 31. The number of irrigated acres should be charted in item 9.
2. Item 7 needs a numerical response. Again, use one year for an existing use or up to five years for a use not already developed.
3. The map should show the well location and the site of the two homes. The locations should agree with the written locations in items 3 and 9.
4. A "request to process" form should be completed if lawn irrigation will be included.
5. If lawn irrigation exceeding one-half acre is involved, the approved well drilling permit should be upgraded from a \$75 domestic well to a \$200 non-domestic well. If that is the case, an additional \$125 needs to be paid.

Power production at Deadwood Reservoir

This unnumbered application discusses minor power production at the site. Has this use already been developed? Please clarify these points for generating power.

- ✓ 1. IDWR standards do not include a reservoir name for a source of water. The source should state Deadwood River, tributary to the South Fork Payette River.

- ✓ 2. Item 7 needs a numerical response similar to the previous information.
- ✓ 3. Show the point of diversion and place of use on the application map to correspond with the written locations in items 3 and 9.
- ✓ 4. It appears the power is for use at BOR facilities at Deadwood. PUC jurisdiction is probably not involved. FERC oversight might be involved due to power production on federal land. Please document whether or not FERC allows an exemption for minor power plants. Please address the FERC issue as you did in the Black Canyon situation, and document if FERC and/or PUC approvals apply to this situation.

The "request to process" form does not apply to this non-consumptive use of public water.

Changes to the applications can be made on the enclosed originals. Please have the appropriate person initial and date all three applications at the bottom of each first page as noted. Alternately, amended applications can be prepared, signed, and returned with the originals. The original applications, together with any amended versions, can be returned to this office for immediate processing upon receipt.

Thank you for your attention to these matters and be sure to let me know if I can lend a hand with anything. Best wishes for the holidays.

Sincerely,



Steve Lester
Water Rights Supervisor

Enclosures 3 original applications
 2 Request to Process forms
 Blank application forms