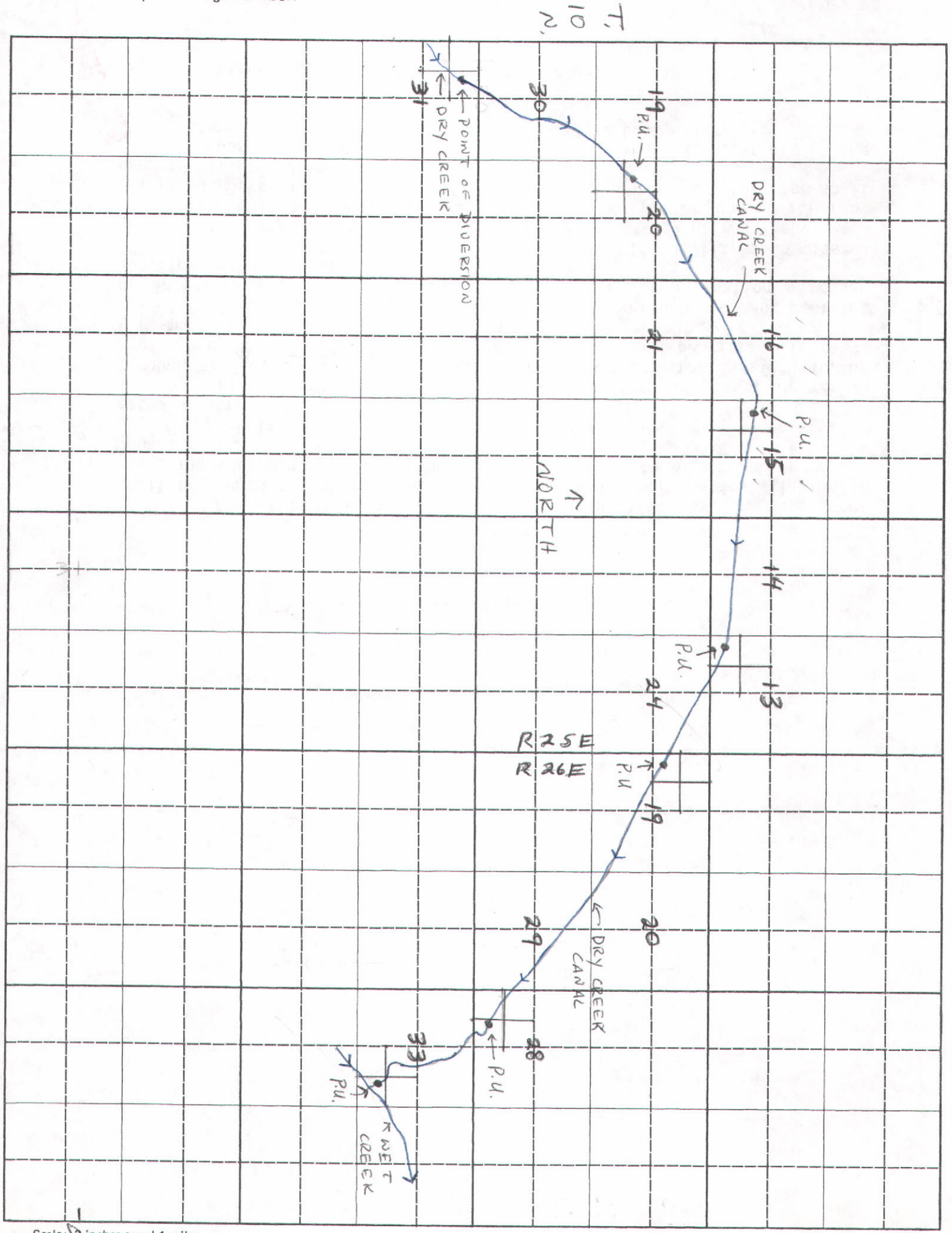
11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.

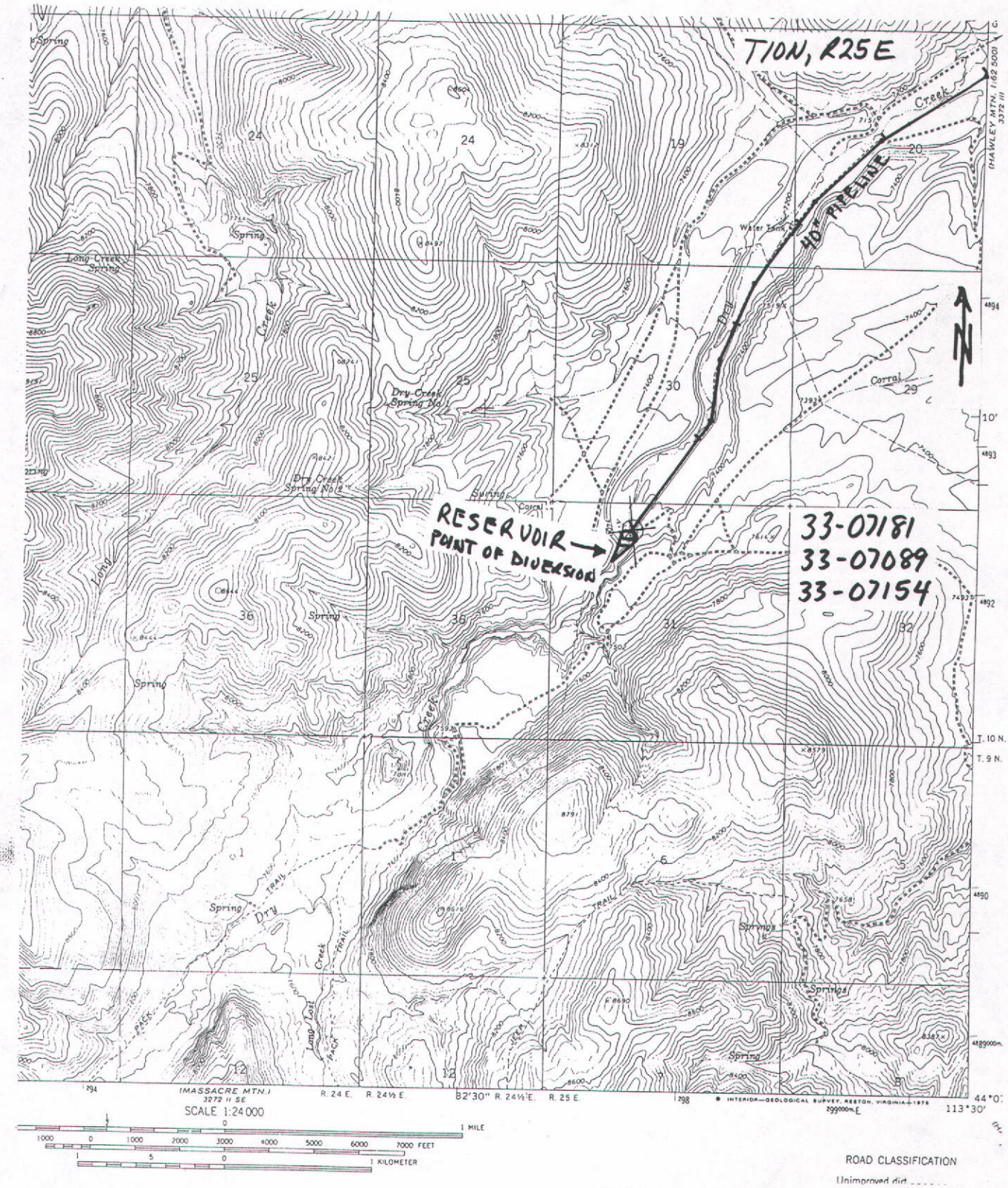


Scale: 2 inches equal 1 mile.

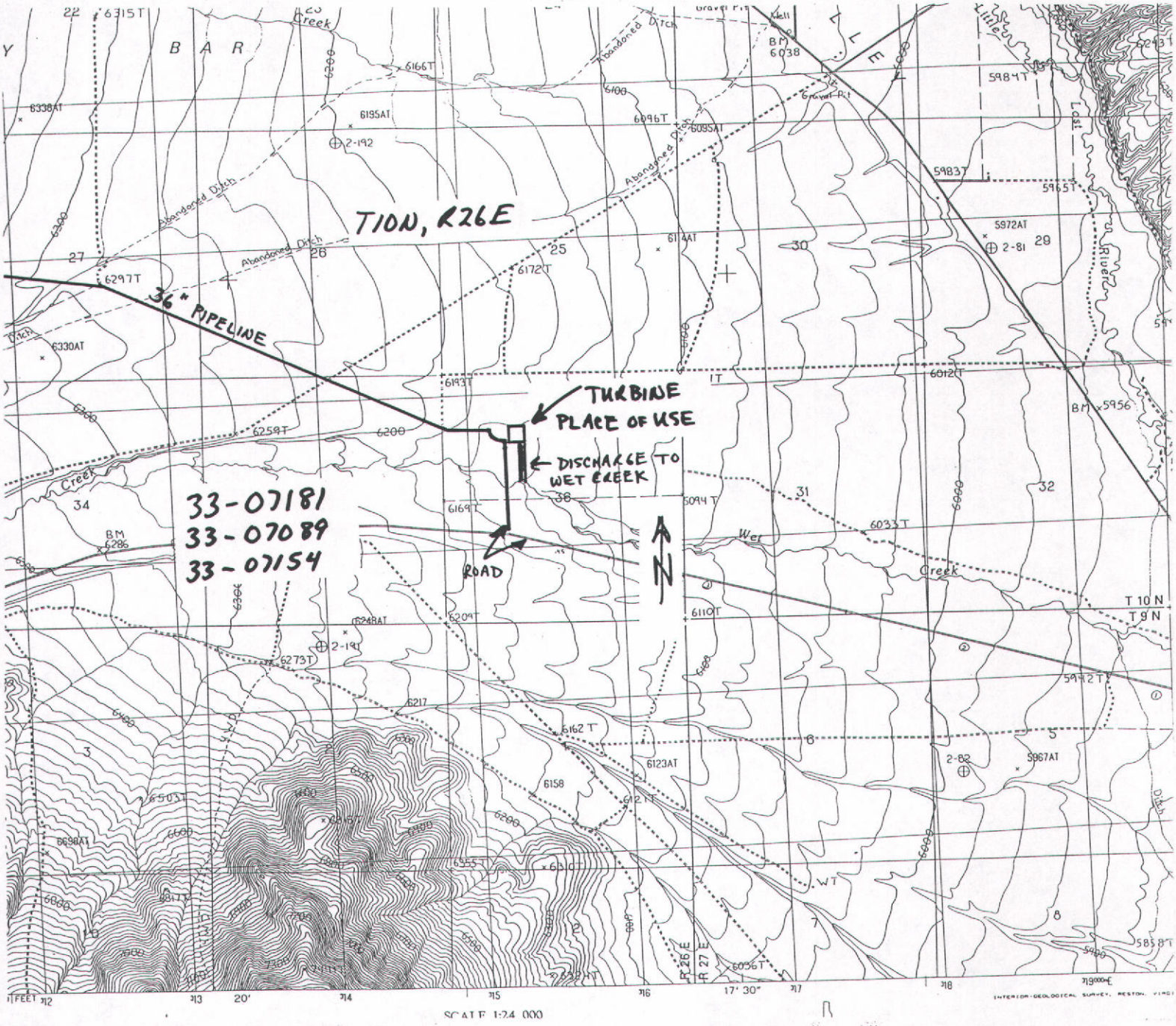
BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

George Woodlie Pres.
(Applicant)
Dry Creek Irrigation Dist. Inc

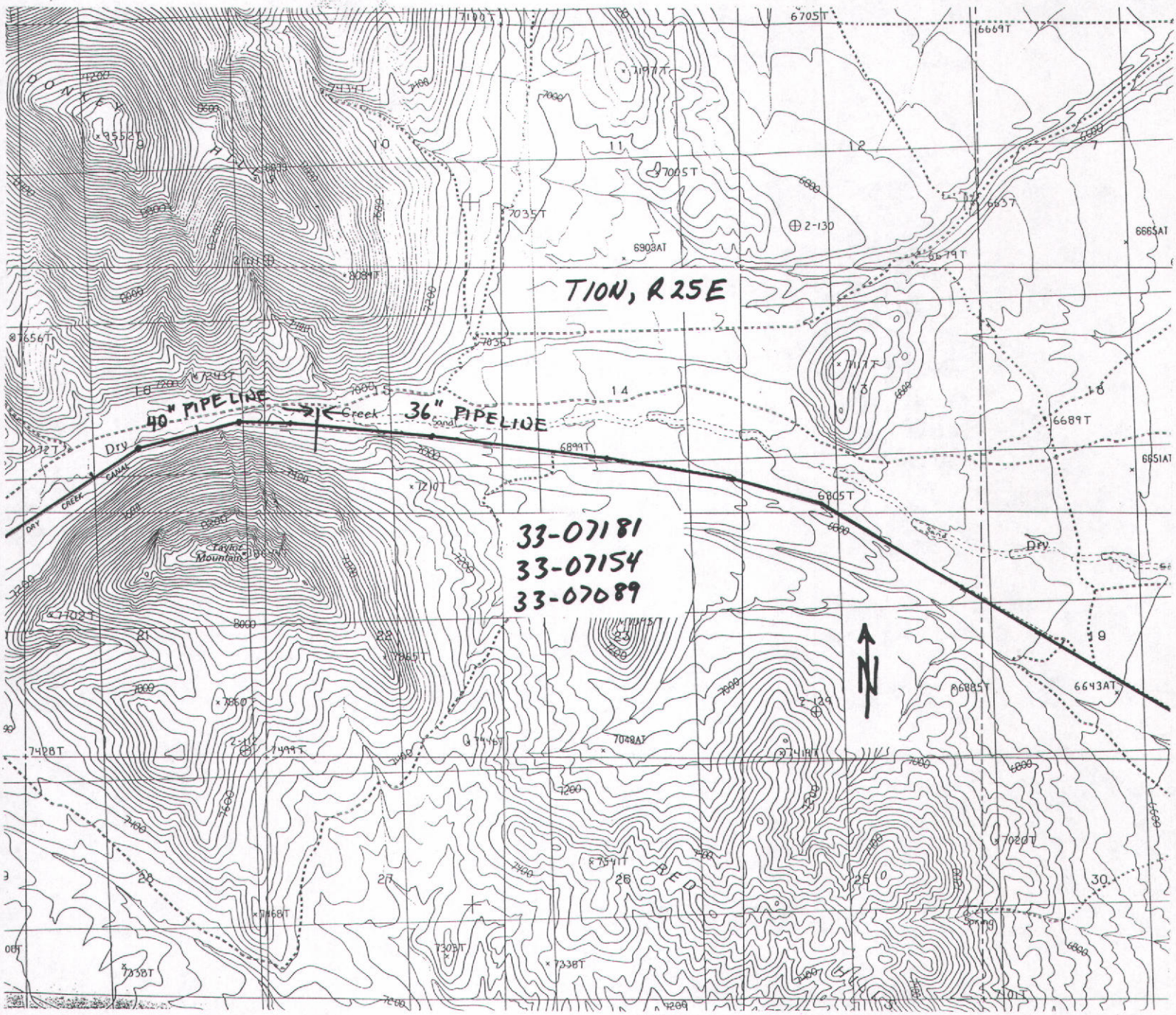
MISCELLANEOUS



MICROFILMED
JUL 18 19
33-07089



MICROFILMED
JUL 18 1997
33-07089



MICROFILMED
JUL 18 1997

33-07089

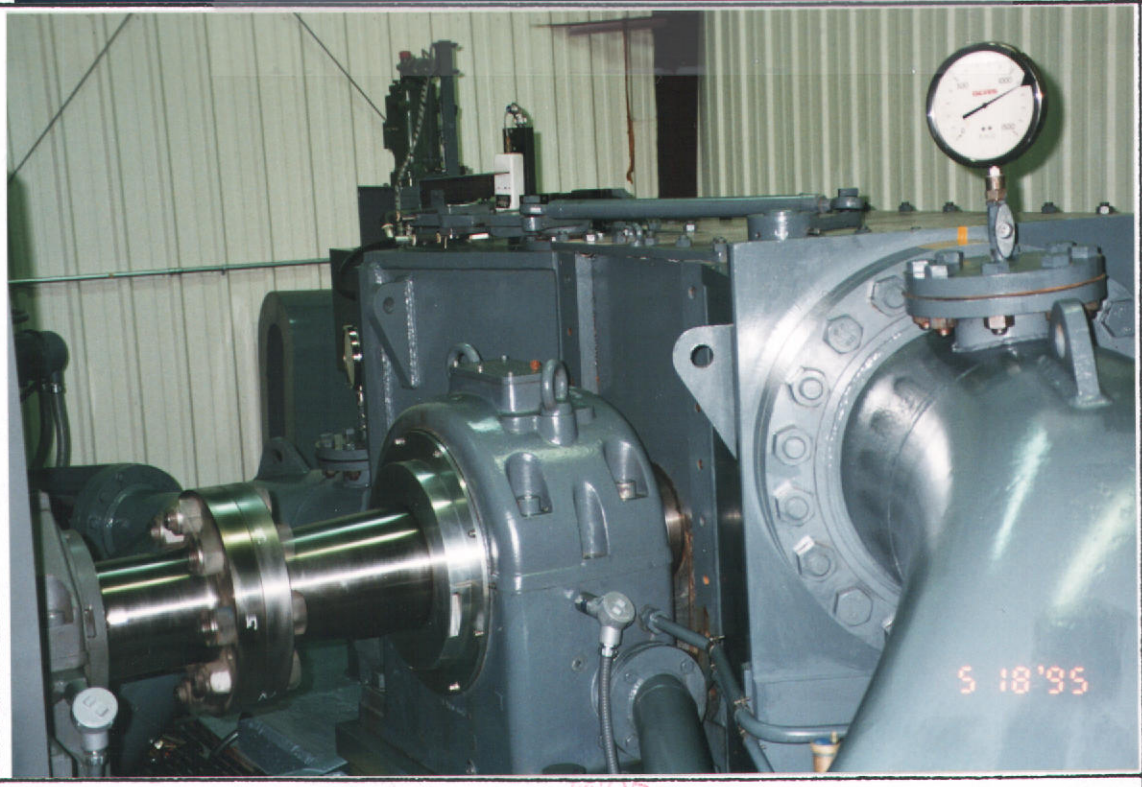
WESTINGHOUSE ELECTRIC CORP.
POWER

1 of 2



VIEW OF DRY CREEK RESERVOIR

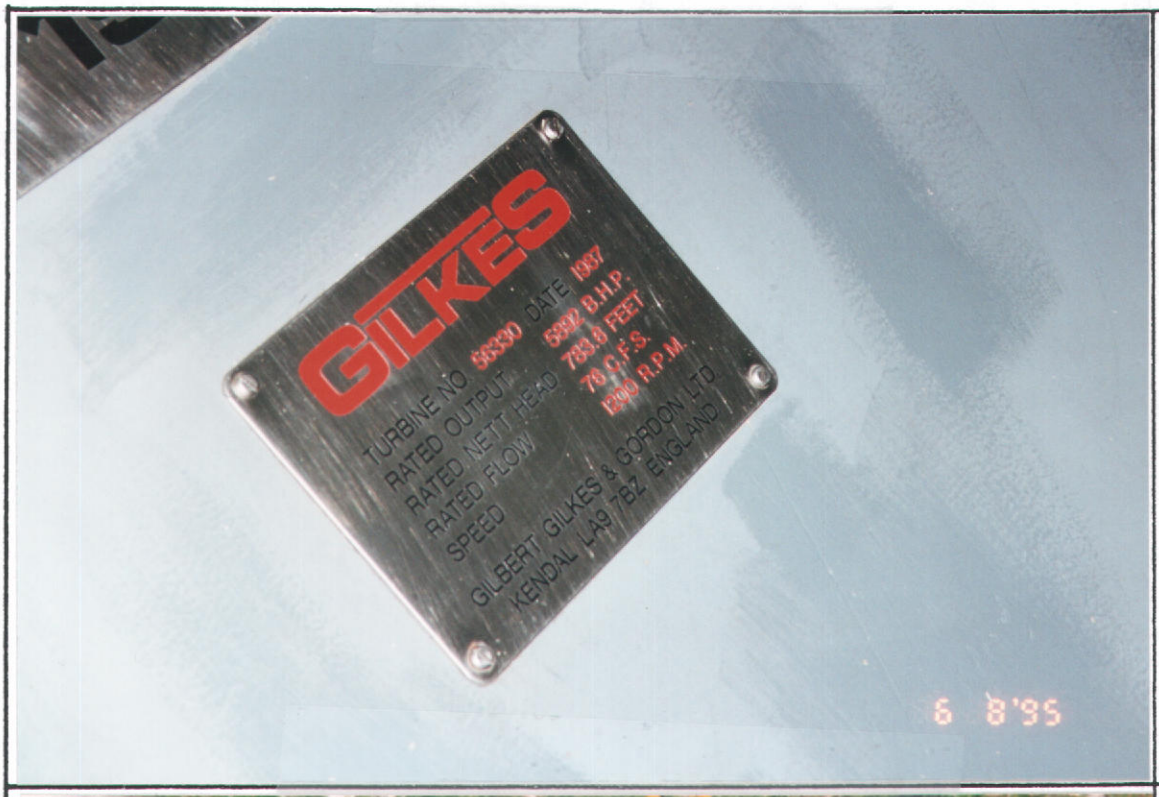
POINT OF DIVERSION



VIEW OF GILKES TURBINE IN POWER HOUSE

MICROFILMED
JUL 18 1997

33-07089



VIEW OF TURBINE RATING PLATE.

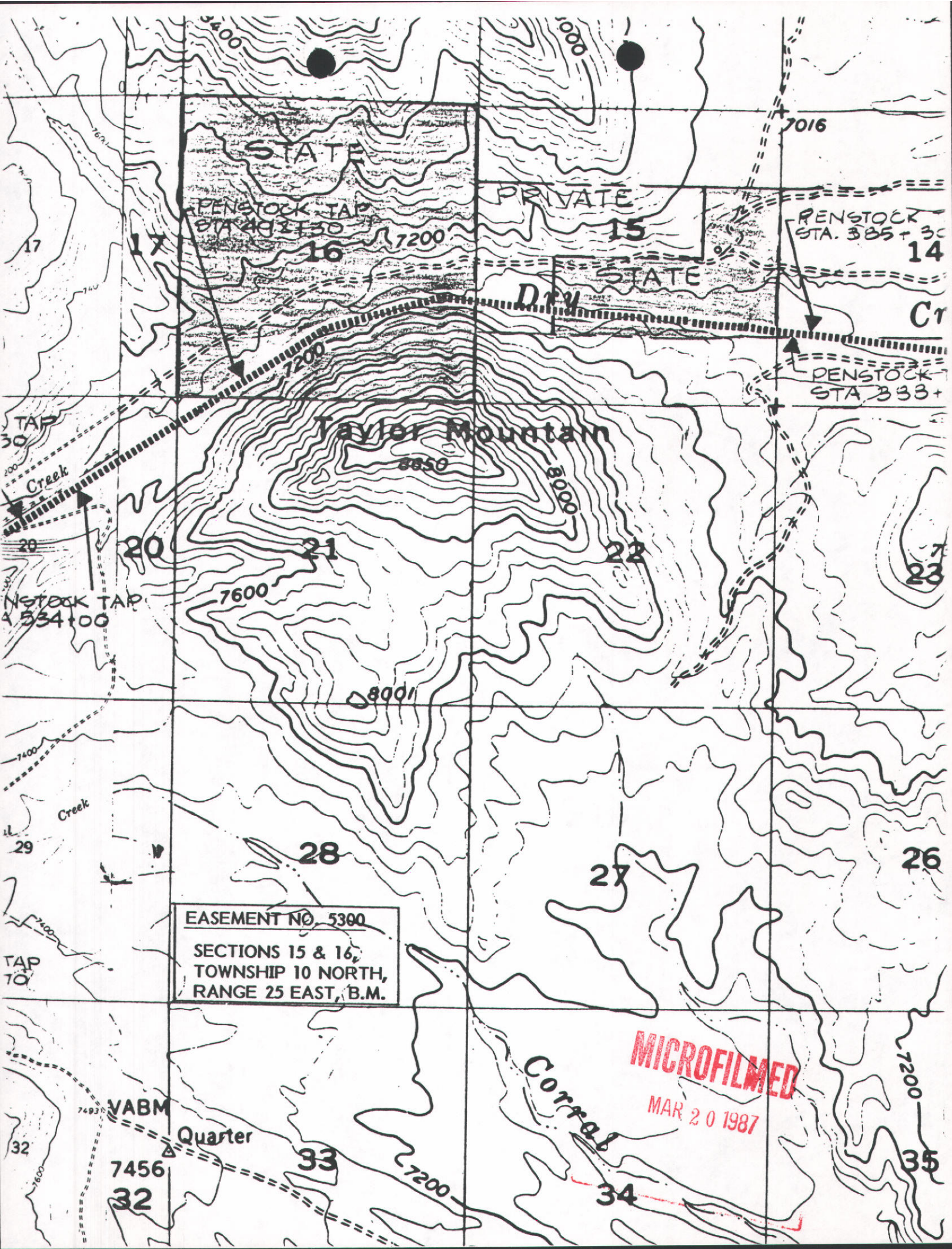
MAX. 76 CFS



VIEW OF FLUME IN DISCHARGE CHANNEL

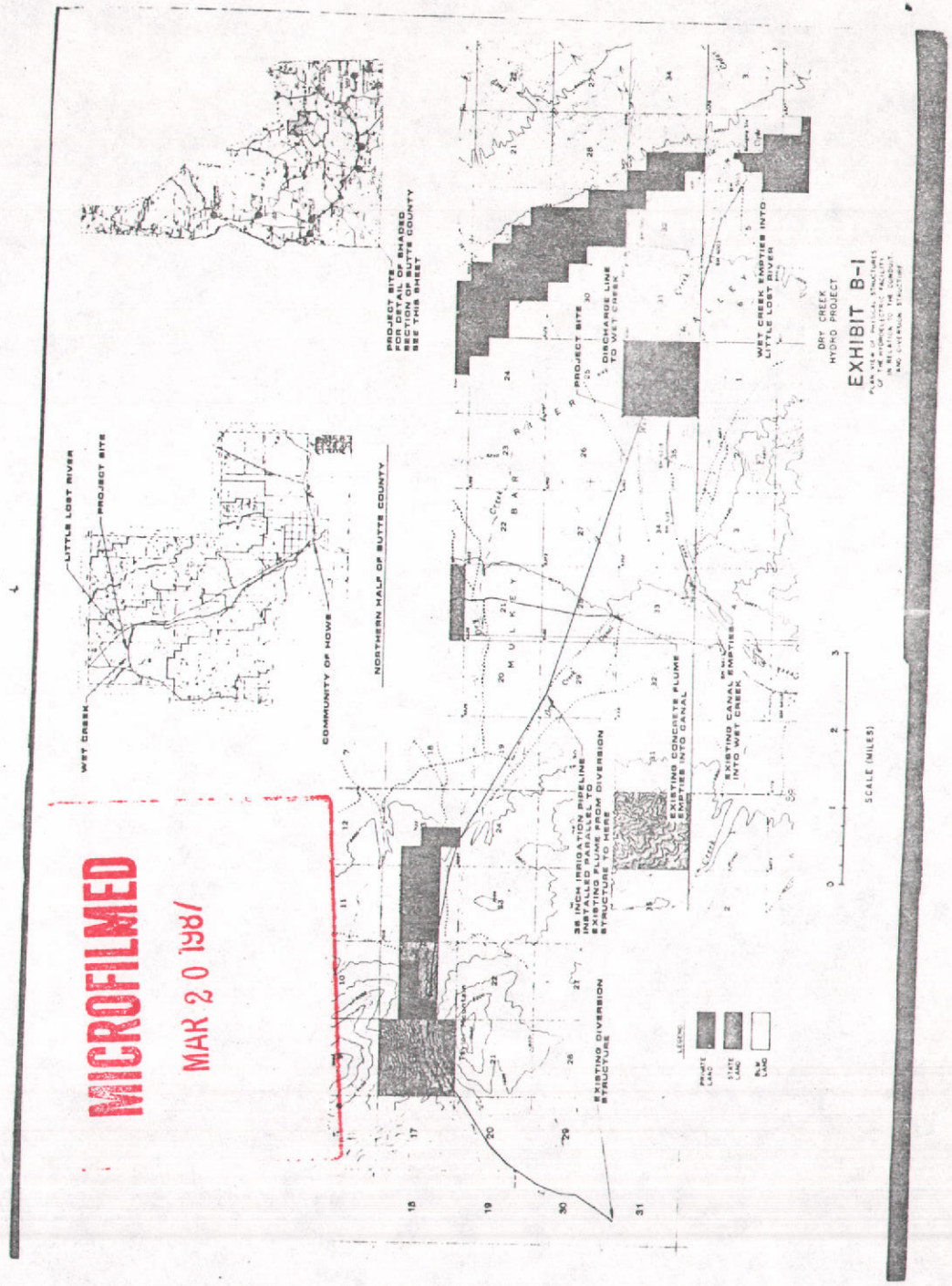
MICROFILMED
JUL 18 1997

33-07089


STATE
PRIVATE
STATE
PENSTOCK TAP
STA 401+50
PENSTOCK
STA. 385+3
PENSTOCK
STA. 333+
Taylor Mountain
8050
8000
8001
7600
7200
7016
Dry
Creek
Creek
Corral
TAP
30
TAP
70
NSTOCK TAP
4 534+00
17
16
15
14
20
21
22
23
28
27
26
29
33
34
35
32
EASEMENT NO. 5300
SECTIONS 15 & 16,
TOWNSHIP 10 NORTH,
RANGE 25 EAST, B.M.
VABM
Quarter
7456
MICROFILMED
MAR 20 1987

D3b. Agency Comments - The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kenneth F. Plumb
Secretary



MICROFILMED
MAR 20 1981

Form42-248/42-1409(6)July,2000

RECEIVED
FEB - 6 2002
Department of Water Resources

STATEOFIDAHO
DEPARTMENTOFWATERRESOURCES
NOTICEOFCHANGEINWATERRIGHTOWNERSHIP

Pleaseprintortype.Attachpageswithadditionalinformation.Instructionsareincludedattheendofthisform.
Incompleteformswillbereturned.

1. Pleaselistthewaterrightnumber(s)and/oradjudicationclaimnumber(s)(ifany)foreachwaterrighttobechanged.Listjustthe adjudicationclaimnumberifthereisnocorrespondingwaterrightrecordonfilewiththedepartment.Indicate,bycheckinginthe space provided(underthe"split"heading),ifthechangeinownershipislimitedtoaportionofawaterrightinwhichcase divisionoftheexistingwaterrightoradjudicationclaimrecordwillberequired.

Water RightNo(s).	Adjudication ClaimNo(s).	Split	Water RightNo(s).	Adjudication ClaimNo(s).	Split
33-07089					
33-07154					
33-07181					

2. Thefollowing **REQUIRED**informationmustbesubmittedwiththisform:

   A. Theappropriate**FILINGFEE** .Seeinstructionsforfeeamounts.

   B. A copyofthemostrecent **DEED,TITLEPOLICY,CONTRACTOFSALE** orotherlegaldocumentindicatingyour ownershipofthepropertyandwaterright(s)orclaim(s)inquestion, **WITHATTACHEDLEGALDESCRIPTION** .

   C. Eitherofthefollowing(ifnecessarytoclarifydivisionofwaterrightsorothercomplexpropertydescriptions): **PLATOFPROPERTY** or **SURVEYMAP** clearlyshowingthelocationofthepoint(s)ofdiversionandplaceofuseof yourwaterright(s)and/oradjudicationclaim(s)(theseareusuallyattachedtoyourdeedoronfilewiththecounty).

   OR

   Ifyourwaterright(s)and/oradjudicationclaim(s)isfortenormoreacresofirrigation,youmustsubmit aUSDAFarm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The AERIALPHOTOshouldbesubmittedinplaceofthePLATOFPROPERTYorSURVEYMAP.

3. NameandAddressofFormer Owner/Claimant(s): Westinghouse II Stanwix Street Rm 1188
   Pittsburgh, PA 15222

4. NewOwner/Claimant(s): Dry Creek, L.L.C.
   NameConnector(Checkone): []and,[]or,[]and/or

   NewMailingAddress: 5203 South 11th East

   City,StateandZIPCode: Idaho Falls, ID 83404

   NewTelephoneNumber: 0(208)522-8069

5. Dateyouacquiredtheproperty: 9/15/00

MICROFILMED
APR 0 3 2002

Form 42-248/42-1409(6) July, 2000

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

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number _____

Water Use, Diversion Rate or Volume, Description
(cubic feet per second or acre-feet per annum) (acres, number and type of stock, homes, etc)

Irrigation _____

Stock _____

Domestic _____

Other _____

Total _____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number _____

Water Use, Diversion Rate or Volume, Description
(cubic feet per second or acre-feet per annum) (acres, number and type of stock, homes, etc)

Irrigation _____

Stock _____

Domestic _____

Other _____

Total _____

7. Signature of New Owner(s) or Claimant(s) T M A
(include title if applicable)
Member

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

For Office Use Only
Received by J. Mase Date 2/6/02 Fee $75.00
Receipted by J. Mase Date 2/6/02 Receipt No. 0059774
Processed by _____ AJ Date _____ WR _____ Date _____

MICROFILMED
APR 0 3 2002

ASSIGNMENT OF WATER RIGHTS

Viacom, Inc., a Delaware Corporation, hereby assigns to Dry Creek, L.L.C., an Idaho Limited Liability, the following water rights:

License 33-07089

License 33-07154

License 33-07181

Dated: 1/28/02

VIACOM INC.

By: J. Kenneth Hill

Title: Vice President and Asst. Treasurer

Word\BirchPow\Assignment

MICROFILMED

APR 0 3 2002

Dry Creek, L.L.C.

RECEIVED
FEB 15 2002
Department of Water Resource

TO: Kari Lynn Townsend

FROM: Gayle A. Sorenson

DATE: February 15, 2002

RE: Dry Creek Water Rights

FAX #: 208-327-7866

of pages: (including cover): two(2)

COMMENTS:

attached is a copy of the deed we discussed

MICROFILMED
APR 0 5 2002

0035310

SEP 25 2000

2:35

GRANT DEED

THIS INDENTURE is made this 19th day of September, 2000, between Viacom Inc., successor by merger to CBS Corporation, formerly known as Westinghouse Electric Corporation, successor by merger to Westinghouse Credit Corporation, a Delaware Corporation, the "Grantor", and Dry Creek, L.L.C., an Idaho Limited Liability Company, whose mailing address is 5203 South 11th East, Idaho Falls, Idaho 83404, the "Grantee".

WITNESSETH, that Grantor, for and in consideration of the sum of Ten Dollars ($10.00) lawful money of the United States of America, and other good and valuable consideration, to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, has granted, and by these presents does grant and confirm unto Grantee, and to Grantee's heirs and assigns forever, all of the following described property in the Counties of Butte and Custer, State of Idaho, to-wit:

See Attached Exhibit "A"

SUBJECT to all existing easements or claims of easements, patent reservations, rights of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, encroachments, overlaps, boundary line disputes and other matters which would be disclosed by an accurate survey or inspection of the premises.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, any remainders, and rents, issues and profits therefrom; and all estate, right, title and interest in and to said property, as well in law as in equity, of the Grantor.

TO HAVE AND TO HOLD, the premises and the appurtenances unto the Grantee, and to Grantee's heirs and assigns forever.

In construing this deed and where the context so requires, the singular includes the plural.

MICROFILMED

APR 03 2002

IN WITNESS WHEREOF, the Grantor has executed the within instrument the day and year first above written.

VIACOM INC.

By: Robert G. Freedline

Title: Vice President & Treasurer

STATE OF New York)
: ss.
COUNTY OF New York)

I do hereby certify that on this 19th day of September, 2000, personally appeared before me Robert G. Freedline who being by me first duly sworn, declared that he/she is the V.P. & Treasurer of Viacom Inc., that he/she signed the foregoing document as V.P. & Treasurer of the corporation, and that the statements therein contained are true.

Mallory Levitt

Notary Public for _____

Residing at: _____

My Commission Expires: _____

MALLORY LEVITT
Notary Public, State of New York
No. 31-5026009
Qualified in New York County
Commission Expires 4/11/02

MICROFILMED
APR 03 2002

EXHIBIT "A"

TRACT XXVI:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 36: Commencing at the SW corner of the NW 1/4 of said Section 36, thence due N. 1,500 feet; thence due E. 240 feet; thence due S. 1,500 feet; thence due W. 240 feet to the point of beginning.

TRACT XXVII:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 36: Commencing at a point on the West line of said Section 36 that is 1500 feet N. of the SW corner of the NW 1/4 of said Section 36, and running thence N. 100 feet; thence E. 240 feet; thence S. 100 feet; thence W. 240 feet to the point of beginning.

MICROFILMED
APR 03 2002

NOV 1 8 1997

Microfilm Number _____ Filed with the Department of State on _____

Entity Number 0386973

Secretary of the Commonwealth

ARTICLES OF AMENDMENT-DOMESTIC BUSINESS CORPORATION
DSCB:15-1915 (Rev 90)

In compliance with the requirements of 15 Pa.C.S. § 1915 (relating to articles of amendment), the undersigned business corporation, desiring to amend its Articles, hereby states that:

1. The name of the corporation is: Westinghouse Electric Corporation

2. The (a) address of this corporation's current registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a) _____
Number and Street City State Zip County

(b) c/o: CT Corporation System Allegheny
Name of Commercial Registered Office Provider County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

3. The statute by or under which it was incorporated is: Special Act of the General Assembly approved April 9, 1872

4. The date of its incorporation is: April 9, 1872

5. (Check, and if appropriate complete, one of the following):

___ The amendment shall be effective upon filing these Articles of Amendment in the Department of State.

X The amendment shall be effective on December 1, 1997 at 12:01 AM
Date Hour

6. (Check one of the following):

___ The amendment was adopted by the shareholders (or members) pursuant to 15 Pa.C.S. § 1914(a) and (b).

X The amendment was adopted by the board of directors pursuant to 15 Pa.C.S. § 1914(c).

7. (Check, and if appropriate complete, one of the following):

___ The amendment adopted by the corporation, set forth in full, is as follows:

PA DEPT. OF STATE
NOV 1 8 1997

(PA.-1427 - 10/97)

MICROFILMED
APR 0 8 2002

DSCB:15-1915 (Rev 90)-2

__X__ The amendment adopted by the corporation is set forth in full in Exhibit A attached hereto and made a part hereof.

8. ___ The restated Articles of Incorporation supersede the original Articles and all amendments thereto.

IN TESTIMONY WHEREOF, the undersigned corporation has caused these Articles of Amendment to be signed by a duly authorized officer thereof this 18th day of November, 19 97.

Westinghouse Electric Corporation
(Name of Corporation)

BY: Angeline C. Straka
Angeline C. Straka (Signature)

TITLE: Vice President, Secretary and Associate General Counsel

(PA. - 1427)

MICROFILMED
APR 0 8 2002

EXHIBIT A

RESOLVED, that Article FIRST of the Restated Articles of Incorporation of the Company is hereby amended and restated in its entirety to read as follows: The name of the corporation (hereinafter called the "Company") is CBS Corporation.

MICROFILMED
APR 03 2002

1-2917

CONSENT TO USE OF SIMILAR NAME
DSCB:17.3 (Rev 90)

Pursuant to 15 Pa. Code § 17.3 (relative to use of a confusingly similar name) the undersigned association, desiring to consent to the use by another association of a name which is confusingly similar to its name, hereby certifies that:

1. The name of the association executing this Consent to Use of Similar Name is: CBS Inc.

2. The (a) address of this association's current registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a) _____
Number and Street City State Zip County

(b) c/o: The Prentice-Hall Corporation System, Inc. New York
Name of Commercial Registered Office Provider County

For an association represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the association is located for venue and official publication purposes.

3. The date of its incorporation or other organization is: January 27, 1927

4. The statute under which it was incorporated or otherwise organized is: Business Corporation Law of the State of New York

5. The association(s) entitled to the benefit of this Consent to Use of Similar Name is (are): Westinghouse Electric Corporation which intends to change its name to CBS Corporation

6. A check in this box: ___ indicates that the association executing this Consent to Use of Similar Name is the parent or prime affiliate of a group of associations using the same name with geographic or other designations, and that such association is authorized to and does hereby act on behalf of all such affiliated associations, including the following (see 15 Pa. Code § 17.3 (c) (6)): _____

IN TESTIMONY WHEREOF, the undersigned association has caused this consent to be signed by a duly authorized officer thereof this 18th day of November, 1997.

CBS Inc.
(Name of Association)

BY: _____
(Signature) Claudia E. Morr

TITLE: Vice President and Treasurer

(PA. - 038 - 10/1/91)

MICROFILMED
DEC 03 2002

ID:

NOV 1 8 1997

Microfilm Number _____ Filed with the Department of State on _____

Entity Number 0386973

Secretary of the Commonwealth

ARTICLES OF AMENDMENT-DOMESTIC BUSINESS CORPORATION
DSCB:15-1915 (Rev 90)

In compliance with the requirements of 15 Pa.C.S. § 1915 (relating to articles of amendment), the undersigned business corporation, desiring to amend its Articles, hereby states that:

1. The name of the corporation is: Westinghouse Electric Corporation

2. The (a) address of this corporation's current registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a) _____
Number and Street City State Zip County

(b) c/o: CT Corporation System Allegheny
Name of Commercial Registered Office Provider County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

3. The statute by or under which it was incorporated is: Special Act of the General Assembly approved April 9, 1872

4. The date of its incorporation is: April 9, 1872

5. (Check, and if appropriate complete, one of the following):

___The amendment shall be effective upon filing these Articles of Amendment in the Department of State.

X The amendment shall be effective on December 1, 1997 at 12:01 AM
Date Hour

6. (Check one of the following):

___The amendment was adopted by the shareholders (or members) pursuant to 15 Pa.C.S. § 1914(a) and (b).

X The amendment was adopted by the board of directors pursuant to 15 Pa.C.S. § 1914(c).

7. (Check, and if appropriate complete, one of the following):

___The amendment adopted by the corporation, set forth in full, is as follows:

PA DEPT. OF STATE
NOV 1 8 1997

MICROFILMED

(PA.-1417-10/97)

DSCB:15-1915 (Rev 90)-2

X The amendment adopted by the corporation is set forth in full in Exhibit A attached hereto and made a part hereof.

B. ___ The restated Articles of Incorporation supersede the original Articles and all amendments thereto.

IN TESTIMONY WHEREOF, the undersigned corporation has caused these Articles of Amendment to be signed by a duly authorized officer thereof this 18th day of November, 19 97.

Westinghouse Electric Corporation
(Name of Corporation)

BY: Angeline G. Straka
Angeline G. Straka (Signature)

TITLE: Vice President, Secretary and Associate General Counsel

(PA. - 1437)

MICROFILMED
APR 0 2 2002

EXHIBIT A

RESOLVED, that Article FIRST of the Restated Articles of Incorporation of the Company is hereby amended and restated in its entirety to read as follows: The name of the corporation (hereinafter called the "Company") is CBS Corporation.

MICROFILMED

12547

CONSENT TO USE OF SIMILAR NAME
DSCB:17.3 (Rev 90)

Pursuant to 15 Pa. Code § 17.3 (relative to use of a confusingly similar name) the undersigned association, desiring to consent to the use by another association of a name which is confusingly similar to its name, hereby certifies that:

1. The name of the association executing this Consent to Use of Similar Name is: CBS Inc.

2. The (a) address of this association's current registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a) _____
Number and Street City State Zip County

(b) c/o: The Prentice-Hall Corporation System, Inc. New York
Name of Commercial Registered Office Provider County

For an association represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the association is located for venue and official publication purposes.

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4. The statute under which it was incorporated or otherwise organized is: Business Corporation Law of the State of New York

5. The association(s) entitled to the benefit of this Consent to Use of Similar Name is (are): Westinghouse Electric Corporation which intends to change its name to CBS Corporation

6. A check in this box: ___ indicates that the association executing this Consent to Use of Similar Name is the parent or prime affiliate of a group of associations using the same name with geographic or other designations, and that such association is authorized to and does hereby act on behalf of all such affiliated associations, including the following (see 15 Pa. Code § 17.3 (c) (6)): _____

IN TESTIMONY WHEREOF, the undersigned association has caused this consent to be signed by a duly authorized officer thereof this 18th day of November, 1997.

CBS Inc.
(Name of Association)

BY: _____
(Signature) Claudia E. Mori

TITLE: Vice President and Treasurer

(PA. - 436 - 10/1/91)

MICROFILMED
SEP 03 2002

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 08:00 AM 05/04/2000
001226567 – 2106821

CERTIFICATE OF MERGER

MERGING

CBS CORPORATION

INTO

VIACOM INC.

(Pursuant to Section 252 of the
Delaware General Corporation Law)

The undersigned Delaware corporation does hereby certify that:

FIRST: The name and state of incorporation of each of the constituent corporations in the merger (the "Merger") are as follows:

Name	State of Incorporation
CBS Corporation	Pennsylvania
Viacom Inc.	Delaware

SECOND: An Amended and Restated Agreement and Plan of Merger between Viacom Inc., CBS Corporation and Viacom/CBS LLC dated as of September 6, 1999, as amended and restated as of October 8, 1999, and as of November 23, 1999 (the "Merger Agreement") has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 252 of the Delaware General Corporation Law.

THIRD: Viacom Inc. shall be the surviving corporation.

FOURTH: The Restated Certificate of Incorporation of the surviving corporation, Viacom Inc., with such amendments as are effected by the Merger, is attached to this Certificate of Merger as Exhibit A, and, as so amended, shall constitute the Restated Certificate of Incorporation, as amended, of the surviving corporation.

MICROFILMED
MAY 03 2000

FIFTH: The executed Agreement and Plan of Merger is on file at an office of the surviving corporation. The address of the principal place of business of the surviving corporation is 1515 Broadway, New York, NY 10036.

SIXTH: A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation.

SEVENTH: That the authorized capital stock of CBS Corporation consists of 1,100,000,000 shares of common stock, par value $1.00 per share, and 25,000,000 shares of preferred stock, par value $1.00 per share.

IN WITNESS WHEREOF, Viacom Inc. has caused this Certificate of Merger to be executed by its duly authorized officer this 4th of May, 2000.

VIACOM INC.

By: _____
Name: Michael D. Fricklas
Title: Senior Vice President, General Counsel and Secretary

MICROFILMED

EXHIBIT A

RESTATED CERTIFICATE OF INCORPORATION OF VIACOM INC.

(Originally incorporated on November 10, 1986 under the name Arsenal Holdings, Inc.)

ARTICLE I

NAME

The name of this Corporation is Viacom Inc.

ARTICLE II

REGISTERED OFFICE AND AGENT FOR SERVICE

The registered office of the Corporation in the State of Delaware is located at 1013 Centre Road, City of Wilmington, County of New Castle. The name and address of the Corporation's registered agent for service of process in Delaware is:

Corporation Service Company
1013 Centre Road
Wilmington, Delaware 19805-1297

ARTICLE III

CORPORATE PURPOSES

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV

CAPITAL STOCK

(1) *Shares, Classes and Series Authorized.*

(a) The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 3,525,000,000 shares. The classes and the aggregate number of shares of stock of each class which the Corporation shall have authority to issue are as follows:

MICROFILM
APR 0 3 2002

(i) 500,000,000 shares of Class A Common Stock, $0.01 par value ("Class A Common Stock").

(ii) 3,000,000,000 shares of Class B Common Stock, $0.01 par value ("Class B Common Stock").

(iii) 25,000,000 shares of Preferred Stock, $0.01 par value ("Preferred Stock").

(b) The number of authorized shares of Class B Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote.

(2) *Powers and Rights of the Class A Common Stock and the Class B Common Stock.*

Except as otherwise expressly provided in this Restated Certificate of Incorporation, all issued and outstanding shares of Class A Common Stock and Class B Common Stock shall be identical and shall entitle the holders thereof to the same rights and privileges.

A. *Voting Rights and Powers.* Except as otherwise provided in this Restated Certificate of Incorporation or required by law, with respect to all matters upon which stockholders are entitled to vote, the holders of the outstanding shares of Class A Common Stock shall vote together with the holders of any other outstanding shares of capital stock of the Corporation entitled to vote, without regard to class, and every holder of outstanding shares of Class A Common Stock shall be entitled to cast thereon one vote in person or by proxy for each share of Class A Common Stock standing in his name. The holders of shares of Class A Common Stock shall have the relevant class voting rights set forth in Article IX. Except as otherwise required by law, the holders of outstanding shares of Class B Common Stock shall not be entitled to any votes upon any questions presented to stockholders of the Corporation, including but not limited to, whether to increase or decrease (but not below the number of shares then outstanding) the number of authorized shares of Class B Common Stock.

B. *Dividends.* Subject to the rights and preferences of the Preferred Stock set forth in this Article IV and in any resolution or resolutions providing for the issuance of such stock as set forth in Section (3) of this Article IV, the holders of Class A Common Stock and Class B Common Stock shall be entitled to receive ratably such dividends as may from time to time be declared by the Board of Directors out of funds legally available therefor.

C. *Distribution of Assets Upon Liquidation.* In the event the Corporation shall be liquidated, dissolved or wound up, whether voluntarily or involuntarily, after there shall have been paid or set aside for the holders of all shares of the Preferred Stock then outstanding the full preferential amounts to which they are entitled under Section 5

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of this Article IV or the resolutions, as the case may be, authorizing the issuance of such Preferred Stock, the net assets of the Corporation remaining thereafter shall be divided ratably among the holders of Class A Common Stock and Class B Common Stock.

D. *Split, Subdivision or Combination.* If the Corporation shall in any manner split, subdivide or combine the outstanding shares of Class A Common Stock or Class B Common Stock, the outstanding shares of the other class of Common Stock shall be proportionally split, subdivided or combined in the same manner and on the same basis as the outstanding shares of the other class of Common Stock have been split, subdivided or combined.

E. Conversion. So long as there are 10,000 shares of Class A Common Stock outstanding, each record holder of shares of Class A Common Stock or Class B Common Stock may convert any or all of such shares into an equal number of shares of Class B Common Stock by surrendering the certificates for such shares, accompanied by payment of documentary, stamp or similar issue or transfer taxes, if any, along with a written notice by such record holder to the Corporation stating that such record holder desires to convert such shares into the same number of shares of Class B Common Stock and requesting that the Corporation issue all of such Class B Common Stock to the persons named therein, setting forth the number of shares of Class B Common Stock to be issued to each such person and the denominations in which the certificates therefor are to be issued.

(3) *Powers and Rights of the Preferred Stock.*

Subject to Article XIII of this Restated Certificate of Incorporation, the Preferred Stock may be issued from time to time in one or more series, with such distinctive serial designations as may be stated or expressed in the resolution or resolutions providing for the issue of such stock adopted from time to time by the Board of Directors; and in such resolution or resolutions providing for the issuance of shares of each particular series, the Board of Directors is also expressly authorized to fix: the right to vote, if any; the consideration for which the shares of such series are to be issued; the number of shares constituting such series, which number may be increased (except as otherwise fixed by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by action of the Board of Directors; the rate of dividends upon which and the times at which dividends on shares of such series shall be payable and the preference, if any, which such dividends shall have relative to dividends on shares of any other class or classes or any other series of stock of the Corporation; whether such dividends shall be cumulative or noncumulative, and, if cumulative, the date or dates from which dividends on shares of such series shall be cumulative; the rights, if any, which the holders of shares of such series shall have in the event of any voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding up of the affairs of the Corporation; the rights, if any, which the holders of shares of such series shall have to convert such shares into or exchange such shares for shares of any other class or classes or any other series of stock of the Corporation or for any debt securities of the Corporation and the terms and conditions,

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including, without limitation, price and rate of exchange, of such conversion or exchange; whether shares of such series shall be subject to redemption, and the redemption price or prices and other terms of redemption, if any, for shares of such series including, without limitation, a redemption price or prices payable in shares of Class A Common Stock or Class B Common Stock; the terms and amounts of any sinking fund for the purchase or redemption of shares of such series; and any and all other powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof pertaining to shares of such series permitted by law.

(4) *Issuance of Class A Common Stock, Class B Common Stock and Preferred Stock.*

Subject to Article XIII of this Restated Certificate of Incorporation, the Board of Directors of the Corporation may from time to time authorize by resolution the issuance of any or all shares of Class A Common Stock, Class B Common Stock and Preferred Stock herein authorized in accordance with the terms and conditions set forth in this Restated Certificate of Incorporation for such purposes, in such amounts, to such persons, corporations, or entities, for such consideration, and in the case of the Preferred Stock, in one or more series, all as the Board of Directors in its discretion may determine and without any vote or other action by any of the stockholders of the Corporation, except as otherwise required by law.

(5) *Series C Preferred Stock*

(a) DESIGNATION AND AMOUNT. The shares of this series shall be designated as "Series C Preferred Stock" (the "Series C Preferred Stock"). The par value of each share of Series C Preferred Stock shall be $.01. The number of shares constituting the Series C Preferred Stock shall initially be the Preferred Exchange Ratio (as defined in the Amended and Restated Agreement and Plan of Merger dated as of September 6, 1999, as amended and restated as of October 8, 1999, as it may be further amended from time to time, among the Corporation and CBS (as defined in Article XIII of this Restated Certificate of Incorporation) (the "Merger Agreement")) multiplied by the number of shares of CBS Series B Participating Preferred Stock, par value $1.00 per share, issued and outstanding immediately prior to the Effective Time (as defined in the Merger Agreement). The Corporation is authorized to issue fractional shares of Series C Preferred Stock to 1/1000th of a share in accordance with the terms herein. All references herein to shares of Series C Preferred Stock shall be deemed to include, if applicable, references to such fractional shares.

(b) DIVIDENDS AND DISTRIBUTIONS.

(1) Subject to the provisions for adjustment hereinafter set forth, the holders of outstanding shares of Series C Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, a cash dividend in an amount per share (rounded to the nearest cent) equal to 1000 times the aggregate per share amount of each cash dividend declared or paid on the Class B Common Stock. In addition, in the event the Corporation shall, at any time after the

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issuance of any share or fraction of a share of Series C Preferred Stock, pay any dividend or make any distribution on the shares of Class B Common Stock of the Corporation, whether by way of a dividend or a reclassification of stock, a recapitalization, reorganization or partial liquidation of the Corporation or otherwise, which is payable in cash or any debt security, debt instrument, real or personal property or any other property (other than (x) cash dividends subject to the immediately preceding sentence, (y) a distribution of shares of Class B Common Stock or other capital stock of the Corporation subject to paragraph (h)(1) below or (z) a distribution of rights or warrants to acquire any such shares subject to paragraph (h)(3) or (h)(5) below, including as such a right any debt security convertible into or exchangeable for any such shares, at a price less than the Fair Market Value (as hereinafter defined) of such shares on the date of issuance of such rights or warrants), then, and in each such event, the Corporation shall simultaneously pay on each then outstanding share of Series C Preferred Stock a distribution, in like kind, of 1000 times such distribution paid on a share of Class B Common Stock (subject to the provisions for adjustment hereinafter set forth). The dividends and distributions on the Series C Preferred Stock to which holders thereof are entitled pursuant to the first and second sentences of this paragraph (b)(1) are hereinafter referred to as "Dividends" and the multiple of such cash and non-cash dividends and distributions on the Class B Common Stock applicable to the determination of the Dividends, which shall be 1000 initially but shall be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Dividend Multiple." In the event the Corporation shall, at any time after the issuance of any share or fraction of a share of Series C Preferred Stock, declare or pay any dividend or make any distribution on Class B Common Stock payable in shares of Class B Common Stock, or effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Class B Common Stock into a greater or lesser number of shares of Class B Common Stock, then in each such case the Dividend Multiple thereafter applicable to the determination of the amount of Dividends which holders of shares of Series C Preferred Stock shall be entitled to receive shall be the Dividend Multiple applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Class B Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class B Common Stock that were outstanding immediately prior to such event.

(2) The Corporation shall declare each Dividend at the same time it declares any cash or non-cash dividend or distribution on the Class B Common Stock in respect of which a Dividend is required to be paid. No cash or non-cash dividend or distribution on the Class B Common Stock in respect of which a Dividend is required to be paid shall be paid or set aside for payment on the Class B Common Stock unless a Dividend in respect of such dividend or distribution on the Class B Common Stock shall be simultaneously paid, or set aside for payment, on the Series C Preferred Stock.

(3) All Dividends paid with respect to shares of the Series C Preferred Stock shall be paid pro rata on a share-by-share basis to the holders entitled thereto.

(4) The holders of shares of Series C Preferred Stock shall not be entitled to receive any dividends or distributions except as provided herein.

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(c) VOTING RIGHTS. The holders of record of outstanding shares of Series C Preferred Stock shall have the following voting rights:

(1) Subject to the provisions for adjustment hereinafter set forth, each share of Series C Preferred Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the holders of the Common Stock. The number of votes which a holder of a share of Series C Preferred Stock is entitled to cast, as the same may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Vote Multiple." In the event the Corporation shall, at any time after the issuance of any share or fraction of a share of Series C Preferred Stock, declare or pay any dividend on Class A Common Stock, payable in shares of Class A Common Stock, or effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Class A Common Stock into a greater or lesser number of shares of Class A Common Stock, then in each such case the Vote Multiple thereafter applicable to the determination of the number of votes per share to which holders of shares of Series C Preferred Stock shall be entitled after such event shall be the Vote Multiple applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Class A Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class A Common Stock that were outstanding immediately prior to such event.

(2) Except as otherwise provided in this Restated Certificate of Incorporation or required by law, the holders of shares of Series C Preferred Stock and the holders of shares of Class A Common Stock shall vote together as one class on all matters submitted to a vote of shareholders of the Corporation.

(3) Except as otherwise provided in this Restated Certificate of Incorporation or required by law, holders of Series C Preferred Stock shall have no other special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Class A Common Stock as set forth herein) for the taking of any corporate action.

(d) CONVERSION. The shares of Series C Preferred Stock shall be convertible as follows:

(1) Each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Series C Preferred Stock. Subject to the provisions for adjustment hereinafter set forth, each share of Series C Preferred Stock shall be convertible into 1000 shares of Class B Common Stock. The number of shares of Class B Common Stock into which each share of Series C Preferred Stock may be converted is hereinafter referred to as the "Conversion Rate." In the event the Corporation shall, at any time after the issuance of any share or fraction of a share of Series C Preferred Stock, declare or pay any dividend or make any distribution on Class B Common Stock payable in shares of Class B Common Stock, or effect a subdivision or

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split or a combination, consolidation or reverse split of the outstanding shares of Class B Common Stock into a greater or lesser number of shares of Class B Common Stock, then in each such case the Conversion Rate thereafter applicable shall be the Conversion Rate applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Class B Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class B Common Stock that were outstanding immediately prior to such event.

(2) No fractional shares of Class B Common Stock shall be issued upon conversion of the Series C Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then Fair Market Value per share of the Class B Common Stock. For such purpose, all shares of Series C Preferred Stock being converted by a holder shall be aggregated, and any resulting fractional share of Class B Common Stock shall be paid in cash. Before any holder of shares of Series C Preferred Stock shall be entitled to convert the same into full shares of Class B Common Stock, and to receive certificates therefor, the holder shall surrender the certificate or certificates representing the shares of Series C Preferred Stock, duly endorsed, at the office of the Corporation or of any transfer agent for the Series C Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same.

The Corporation shall, as soon as practicable after such delivery, issue and deliver at such office to such holder of Series C Preferred Stock a certificate or certificates for the number of shares of Class B Common Stock to which such holder shall be entitled and a check payable to such holder in the amount of any cash amount payable as the result of a conversion into fractional shares of Class B Common Stock, plus any declared and unpaid dividends on the converted Series C Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of receipt of such surrender of the shares of Series C Preferred Stock to be converted, and the person or persons entitled to receive the shares of Class B Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class B Common Stock on such date.

(3) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class B Common Stock, solely for the purpose of effecting the conversion of the shares of Series C Preferred Stock, such number of shares of Class B Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series C Preferred Stock.

(4) Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series C Preferred Stock or to the Corporation shall be given via facsimile transmission or via certified or registered U.S. mail or via private overnight delivery service, if to the holder, at (615) 316-6570 or such holder's address appearing on the books of the Corporation, and if to the Corporation, at 1515 Broadway, New York, NY 10036, attention General Counsel, facsimile no.: 212-258-6134, or such other facsimile number or address as the holder or the Corporation shall notify the other of in

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accordance with the notice provisions set forth in this paragraph (d)(5). Notice shall be deemed to have been given on the date of facsimile transmission (if the notice is faxed) or five days after mailing (if the notice is mailed) or the day after the notice is given to the delivery service (if sent by overnight courier).

(e) CERTAIN RESTRICTIONS.

(1) Whenever Dividends are in arrears or the Corporation shall be in default on payment thereof, thereafter and until all accrued and unpaid Dividends, whether or not declared, on shares of Series C Preferred Stock outstanding shall have been paid or set irrevocably aside for payment in full, and in addition to any and all other rights which any holder of shares of Series C Preferred Stock may have in such circumstances, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration, any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series C Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity as to dividends with the Series C Preferred Stock, unless dividends are paid ratably on the Series C Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled if the full dividends accrued thereon were to be paid;

(iii) except as permitted by subparagraph (iv) of this paragraph (e)(1), redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (both as to dividends and upon liquidation, dissolution or winding up) to the Series C Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series C Preferred Stock, or any shares of stock ranking on a parity with the Series C Preferred Stock (either as to dividends or upon liquidation, dissolution or winding up) except as permitted by subparagraph (iii) of this paragraph (e)(1) or in accordance with a purchase offer made to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

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(2) The Corporation shall not permit any Subsidiary (as hereinafter defined) of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under subparagraph (1) of this paragraph (e), purchase or otherwise acquire such shares at such time and in such manner. A "Subsidiary" of the Corporation shall mean any corporation or other entity of which securities or other ownership interests entitled to cast at least a majority of the votes that would be entitled to be cast in an election of the board of directors of such corporation or other entity or other persons performing similar functions are beneficially owned, directly or indirectly, by the Corporation or by any corporation or other entity that is otherwise controlled by the Corporation.

(3) The Corporation shall not issue any shares of Series C Preferred Stock except pursuant to the Merger Agreement, a copy of which is on file with the Secretary of the Corporation at its principal executive offices and shall be made available to holders of Series C Preferred Stock without charge upon written request therefor addressed to the Secretary of the Corporation at the address set forth in paragraph (d)(4) above. Notwithstanding the foregoing sentence, nothing contained in the provisions of this Article IV shall prohibit or restrict the Corporation from issuing for any purpose any series of Preferred Stock with rights and privileges similar to, different from, or greater than, those of the Series C Preferred Stock or, subject to the limitations set forth in paragraph (n), from creating other securities senior to, junior to or on a parity with the Series C Preferred Stock.

(f) REACQUIRED SHARES. Any shares of Series C Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares upon their retirement and cancellation shall become authorized but unissued shares of Preferred Stock, without designation as to series, and such shares may be redesignated and reissued as part of any series of Preferred Stock.

(g) LIQUIDATION, DISSOLUTION OR WINDING UP.

(1) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made (i) to the holders of shares of stock ranking junior (upon liquidation, dissolution or winding up) to the Series C Preferred Stock unless the holders of shares of Series C Preferred Stock outstanding shall have received out of the assets of the Corporation available for distribution to its shareholders after payment or provision for payment of any securities ranking senior to the Series C Preferred Stock, for each share of Series C Preferred Stock, subject to adjustment as hereinafter provided, (A) $.01 plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment or, (B) if greater than the amount specified in clause (i)(A) of this sentence, an amount equal to 1000 times the aggregate amount to be distributed per share to holders of Class B Common Stock, as the same may be adjusted as hereinafter provided, and (ii) to the holders of stock ranking on a parity upon liquidation, dissolution or winding up with the Series C Preferred Stock, unless simultaneously therewith distributions are made ratably

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on the Series C Preferred Stock and all other shares of such parity stock in proportion to the total amounts to which the holders of shares of Series C Preferred Stock are entitled under clause (i)(A) of this sentence and to which the holders of such parity shares are entitled, in each case upon such liquidation, dissolution or winding up. The amount to which holders of Series C Preferred Stock may be entitled upon liquidation, dissolution or winding up of the Corporation pursuant to clause (i)(B) of the foregoing sentence is hereinafter referred to as the "Participation Liquidation Amount" and the multiple of the amount to be distributed to holders of shares of Class B Common Stock upon the liquidation, dissolution or winding up of the Corporation applicable pursuant to said clause to the determination of the Participating Liquidation Amount, as said multiple may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Liquidation Multiple". In the event the Corporation shall, at any time after the issuance of any share or fraction of a share of Series C Preferred Stock, declare or pay any dividend or make any distribution on Class B Common Stock payable in shares of Class B Common Stock, or effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Class B Common Stock into a greater or lesser number of shares of Class B Common Stock, then in each such case the Liquidation Multiple thereafter applicable to the determination of the Participating Liquidation Amount to which holders of Series C Preferred Stock shall be entitled after such event shall be the Liquidation Multiple applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event. Except as provided in this paragraph (g)(1), holders of Series C Preferred Stock shall not be entitled to any distribution in the event of liquidation, dissolution or winding up of the Corporation.

(2) For the purposes of this paragraph (g), none of the following shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation:

(i) the voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or assets of the Corporation;

(ii) the consolidation or merger of the Corporation with or into one or more other corporations or other associations;

(iii) the consolidation or merger of one or more corporations or other associations with or into the Corporation; or

(iv) the participation by the Corporation in a share exchange.

(h) CERTAIN RECLASSIFICATIONS AND OTHER EVENTS.

(1) In the event that holders of shares of Class B Common Stock receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class B Common Stock any share of capital stock of the Corporation (other than any share of Class B Common Stock), whether by way of reclassification, recapitalization, reorganization, dividend or other distribution or otherwise (a "Class B Transaction"), then, and in each such event, the dividend rights, conversion rights and rights upon the liquidation, dissolution or winding up of the Corporation of the shares of Series C Preferred Stock shall be adjusted so that after such Transaction the holders of Series C Preferred Stock shall be entitled, in respect of each share of Series C Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such adjustment, (i) to such additional dividends as equal the Dividend Multiple in effect immediately prior to such Class B Transaction multiplied by the additional dividends which the holder of a share of Class B Common Stock shall be entitled to receive by virtue of the receipt in the Class B Transaction of such capital stock, (ii) upon surrender of shares of Series C Preferred Stock for conversion, to the aggregate number and kind of shares of capital stock of the Corporation which, if such shares of Series C Preferred Stock had been converted immediately prior to such Class B Transaction, such holder would have been entitled to receive by virtue of such Class B Transaction and (iii) to such additional distributions upon liquidation, dissolution or winding up of the Corporation as equal the Liquidation Multiple in effect immediately prior to such Class B Transaction multiplied by the additional amount which the holder of a share of Class B Common Stock shall be entitled to receive upon liquidation, dissolution or winding up of the Corporation by virtue of the receipt in the Class B Transaction of such capital stock, as the case may be, all as provided by the terms of such capital stock.

(2) In the event that holders of shares of Class A Common Stock receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class A Common Stock any share of capital stock of the Corporation (other than any share of Class A Common Stock), whether by way of reclassification, recapitalization, reorganization, dividend or other distribution or otherwise (a "Class A Transaction"), then, and in each such event, the voting rights of the shares of Series C Preferred Stock shall be adjusted so that after such Class A Transaction the holders of Series C Preferred Stock shall be entitled, in respect of each share of Series C Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such adjustment, to such additional voting rights as equal the Vote Multiple in effect immediately prior to such Class A Transaction multiplied by the additional voting rights to which the holder of a share of Class A Common Stock shall be entitled by virtue of the receipt in the Class A Transaction of such capital stock.

(3) In the event that holders of shares of Class B Common Stock receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class B Common Stock any right or warrant to purchase

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Class B Common Stock (including as such a right, for all purposes of this paragraph (h)(3), any security convertible into or exchangeable for Class B Common Stock) at a purchase price per share less than the Fair Market Value of a share of Class B Common Stock on the date of issuance of such right or warrant, then and in each such event the dividend rights, conversion rights and rights upon the liquidation, dissolution or winding up of the Corporation of the shares of Series C Preferred Stock shall each be adjusted so that after such event the Dividend Multiple, the Conversion Rate and the Liquidation Multiple shall each be the product of the Dividend Multiple, the Conversion Rate and the Liquidation Multiple, as the case may be, in effect immediately prior to such event multiplied by a fraction the numerator of which shall be the number of shares of Class B Common Stock outstanding immediately before such issuance of rights or warrants plus the maximum number of shares of Class B Common Stock which could be acquired upon exercise in full of all such rights or warrants and the denominator of which shall be the number of shares of Class B Common Stock outstanding immediately before such issuance of rights or warrants plus the number of shares of Class B Common Stock which could be purchased, at the Fair Market Value of the Class B Common Stock at the time of such issuance, by the maximum aggregate consideration payable upon exercise in full of all such rights or warrants.

(4) In the event that holders of shares of Class A Common Stock receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class A Common Stock any right or warrant to purchase Class A Common Stock (including as such a right, for all purposes of this paragraph (h)(4), any security convertible into or exchangeable for Class A Common Stock) at a purchase price per share less than the Fair Market Value of a share of Class A Common Stock on the date of issuance of such right or warrant, then and in each such event the voting rights of the shares of Series C Preferred Stock shall be adjusted so that after such event the Vote Multiple shall be the product of the Vote Multiple in effect immediately prior to such event multiplied by a fraction the numerator of which shall be the number of shares of Class A Common Stock outstanding immediately before such issuance of rights or warrants plus the maximum number of shares of Class A Common Stock which could be acquired upon exercise in full of all such rights or warrants and the denominator of which shall be the number of shares of Class A Common Stock outstanding immediately before such issuance of rights or warrants plus the number of shares of Class A Common Stock which could be purchased, at the Fair Market Value of the Class A Common Stock at the time of such issuance, by the maximum aggregate consideration payable upon exercise in full of all such rights or warrants.

(5) In the event that holders of shares of Class B Common Stock of the Corporation receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class B Common Stock any right or warrant to purchase capital stock of the Corporation (other than shares of Class B Common Stock), including as such a right, for all purposes of this paragraph (h)(5), any security convertible into or exchangeable for capital stock of the Corporation (other than Class B Common Stock) at a purchase price per share less than the Fair Market Value of a share of such capital stock on the date of issuance of such right or warrant, then and in each

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such event the dividend rights, conversion rights and rights upon liquidation, dissolution or winding up of the Corporation of the shares of Series C Preferred Stock shall each be adjusted so that after such event each holder of a share of Series C Preferred Stock shall be entitled, in respect of each share of Series C Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such event, to receive (i) such additional dividends as equal the Dividend Multiple in effect immediately prior to such event multiplied, first, by the additional dividends to which the holder of a share of Class B Common Stock shall be entitled upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise, and multiplied again by the Discount Fraction (as hereinafter defined),(ii) such additional conversion rights as equal the Conversion Rate in effect immediately prior to such event multiplied by a fraction the numerator of which shall be the Fair Market Value per share of Class B Common Stock on the date of such event less the Fair Market Value of the portion of the right or warrant so distributed applicable to one share of Class B Common Stock and the denominator of which shall be the Fair Market Value per share of Class B Common Stock on the date of such event and (iii) such additional distributions upon liquidation, dissolution or winding up of the Corporation as equal the Liquidation Multiple in effect immediately prior to such event multiplied, first, by the additional amount which the holder of a share of Class B Common Stock shall be entitled to receive upon liquidation, dissolution or winding up of the Corporation upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise, and multiplied again by the Discount Fraction. For purposes of this paragraph, the "Discount Fraction" shall be a fraction the numerator of which shall be the difference between the Fair Market Value of a share of the capital stock subject to a right or warrant distributed to holders of shares of Class B Common Stock of the Corporation as contemplated by this paragraph (h)(5) immediately after the distribution thereof and the purchase price per share for such share of capital stock pursuant to such right or warrant and the denominator of which shall be the Fair Market Value of a share of such capital stock immediately after the distribution of such right or warrant.

(6) In the event that holders of shares of Class A Common Stock of the Corporation receive, after the issuance of any share or fraction of a share of Series C Preferred Stock, in respect of their shares of Class A Common Stock any right or warrant to purchase capital stock of the Corporation (other than shares of Class A Common Stock), including as such a right, for all purposes of this paragraph (h)(6), any security convertible into or exchangeable for capital stock of the Corporation (other than Class A Common Stock) at a purchase price per share less than the Fair Market Value of a share of such capital stock on the date of issuance of such right or warrant, then and in each such event the voting rights of the shares of Series C Preferred Stock shall be adjusted so that after such event each holder of a share of Series C Preferred Stock shall be entitled, in respect of each share of Series C Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such event, to receive such additional voting rights as equal the Vote Multiple in effect immediately prior to such event multiplied, first, by the additional voting rights to which the holder of a share of Class A Common Stock shall be entitled upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise, and multiplied

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again by the Voting Discount Fraction (as hereinafter defined). For purposes of this paragraph, the "Voting Discount Fraction" shall be a fraction the numerator of which shall be the difference between the Fair Market Value of a share of the capital stock subject to a right or warrant distributed to holders of shares of Class A Common Stock of the Corporation as contemplated by this paragraph (h)(6) immediately after the distribution thereof and the purchase price per share for such share of capital stock pursuant to such right or warrant and the denominator of which shall be the Fair Market Value of a share of such capital stock immediately after the distribution of such right or warrant.

(7) For purposes of this Section 5 of Article IV, the "Fair Market Value" of a share of capital stock of the Corporation on any date shall be deemed to be the average of the daily closing price per share thereof over the 15 consecutive Trading Days (as hereinafter defined) immediately prior to such date; provided, however, that in the event the Fair Market Value of any such share of capital stock is determined during a period which includes any date that is within 15 Trading Days after (i) the ex-dividend date for a dividend or distribution on stock payable in shares of such stock or securities convertible into shares of such stock, or (ii) the effective date of any subdivision, split, combination, consolidation, reverse stock split or reclassification of such capital stock, then, and in each such case, the Fair Market Value shall be appropriately adjusted by the Board of Directors of the Corporation to take into account ex-dividend or post-effective date trading. The closing price for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way (in either case, as reported in the applicable transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange), or, if the shares are not listed or admitted to trading on the New York Stock Exchange, as reported in the applicable transaction reporting system with respect to securities listed on the principal national securities exchange on which the shares are listed or admitted to trading or, if the shares are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by The Nasdaq Stock Market or such other system then in use, or if on any such date the shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the shares selected by the Board of Directors of the Corporation. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the shares are listed or admitted to trading is open for the transaction of business or, if the shares are not listed or admitted to trading on any national securities exchange, on which the New York Stock Exchange or such other national securities exchange as may be selected by the Board of Directors of the Corporation is open. If the shares are not publicly held or not so listed or traded on any day within the 15 Trading Day period applicable to the determination of Fair Market Value thereof as aforesaid, "Fair Market Value" shall mean the fair market value thereof per share as determined in good faith by the Board of Directors of the Corporation. In either case referred to in the foregoing sentence, the determination of Fair Market Value shall be described in a statement filed with the Secretary of the Corporation.

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(i) CONSOLIDATION, MERGER, ETC. In case the Corporation shall enter into any consolidation, merger, division, share exchange, combination, sale of all or substantially all of the Corporation's assets, or other transaction in which the shares of Class B Common Stock are exchanged for or changed into other securities, cash and/or any other property, then in any such case each outstanding share of Series C Preferred Stock shall at the same time be similarly exchanged for or changed into the aggregate amount of securities, cash and/or other property (payable in like kind), as the case may be, for which or into which each share of Class B Common Stock is changed or exchanged multiplied by the highest of the Dividend Multiple, the Conversion Rate or the Liquidation Multiple in effect immediately prior to such event; provided, however, that no fractional share or scrip representing fractional shares of any other securities shall be issued. Instead of any fractional interest in a share of such other securities which would otherwise be deliverable pursuant to this paragraph (i), the Corporation will pay to the holder thereof an amount in cash (computed to the nearest cent) equal to the same fraction of the Fair Market Value of a share of such other security or such other amount as may be set forth in the agreement governing the related consolidation, division, share exchange, combination, sale of all or substantially all of the Corporation's assets or other transactions.

(j) EFFECTIVE TIME OF ADJUSTMENTS.

(1) Adjustments to the Series C Preferred Stock required by the provisions hereof shall be effective as of the time at which the event requiring such adjustments occurs.

(2) The Corporation shall give prompt written notice to each holder of a share of outstanding Series C Preferred Stock of the effect of any adjustment to the voting rights, dividend rights, conversion rights or rights upon liquidation, dissolution or winding up of the Corporation of such shares required by the provisions hereof. Notwithstanding the foregoing sentence, the failure of the Corporation to give such notice shall not affect the validity or the force or effect of, or the requirement for, such adjustment.

(k) NO REDEMPTION. The shares of Series C Preferred Stock shall not be redeemable at the option of the Corporation or any holder thereof. Notwithstanding the foregoing sentence of this paragraph (11), the Corporation may acquire shares of Series C Preferred Stock in any other manner permitted by law, the provisions of this Restated Certificate of Incorporation.

(l) RANKING. Unless otherwise provided in this Restated Certificate of Incorporation or in any certificate of designation relating to the determination of a subsequent series of Preferred Stock, the Series C Preferred Stock shall rank senior to the Class B Common Stock and the Class A Common Stock and the Series C Preferred Stock shall rank junior to all other series of Preferred Stock as to the payment of dividends and the distribution of assets on liquidation, dissolution or winding up.

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(m) LIMITATIONS. Except as may otherwise be required by law, the shares of Series C Preferred Stock shall not have any powers, preferences or relative, participating, optional or other special rights other than those specifically set forth in this Article IV (as such may be amended from time to time) or otherwise in the Restated Certificate of Incorporation.

(n) AMENDMENT. So long as any shares of the Series C Preferred Stock are outstanding, the Corporation shall not amend this Article IV or the Restated Certificate of Incorporation in any manner which would alter or change the rights, preferences or limitations of the Series C Preferred Stock so as to affect such rights, preferences or limitations in any material respect prejudicial to the holders of the Series C Preferred Stock without, in addition to any other vote of shareholders required by law, the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series C Preferred Stock, voting together as a single class either in writing or by resolution adopted at an annual or special meeting called for the purpose; provided, however, that the creation of another series of Preferred Stock ranking senior to or on a parity with the Series C Preferred Stock as to the payment of dividends or the distribution of assets on liquidation, dissolution or winding up, or which has equivalent or greater voting rights than the Series C Preferred Stock, in each case shall not be deemed to be prejudicial to the holders of the Series C Preferred Stock for the purposes of this paragraph (n).

ARTICLE V

DIRECTORS

(1) *Power of the Board of Directors.* Subject to Article XIII of this Restated Certificate of Incorporation, the property and business of the Corporation shall be controlled and managed by or under the direction of its Board of Directors. In furtherance, and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized, subject in all cases to Article XIII of this Restated Certificate of Incorporation:

(a) To make, alter, amend or repeal the By-Laws of the Corporation; *provided* that no By-Laws hereafter adopted shall invalidate any prior act of the Directors that would have been valid if such By-Laws had not been adopted;

(b) To determine the rights, powers, duties, rules and procedures that affect the power of the Board of Directors to manage and direct the property, business and affairs of the Corporation, including, without limitation, the power to designate and empower committees of the Board of Directors, to elect, appoint and empower the officers and other agents of the Corporation, and to determine the time and place of, and the notice requirements for Board meetings, as well as the manner of taking Board action; and

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(c) To exercise all such powers and do all such acts as may be exercised by the Corporation, subject to the provisions of the laws of the State of Delaware, this Restated Certificate of Incorporation, and the By-Laws of the Corporation.

(2) *Number and Qualifications of Directors.* The number of directors constituting the entire Board of Directors shall be fixed from time to time by resolution of the Board of Directors but shall not be less than three nor more than twenty. Directors shall be elected to hold office for a term of one year. As used in this Restated Certificate of Incorporation, the term "entire Board of Directors" means the total number of Directors fixed in the manner provided in this Article V Section (2) and in the By-Laws.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

(1) *Action Not By or on Behalf of Corporation.* The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent (including, without limitation, a trustee) of another corporation, partnership, joint venture, trust or other enterprise, against judgments, fines, amounts paid in settlement and expenses (including, without limitation, attorneys' fees), actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(2) *Action By or on Behalf of Corporation.* The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including, without limitation, attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have

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been adjudged to be liable to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability and in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(3) *Successful Defense.* To the extent that a present or former Director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or 2 of this Article VI, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including, without limitation, attorneys' fees) actually and reasonably incurred by him in connection therewith.

(4) *Determination of Right to Indemnification in Certain Circumstances.* Any indemnification under Section 1 or 2 of this Article VI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former Director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 or 2 of this Article IV. Such determination shall be made, with respect to a person who is a Director or officer at the time of such determination, (1) by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such Directors designated by a majority vote of such Directors, even though less than a quorum, or (3) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders of the Corporation entitled to vote thereon.

(5) *Advance Payment of Expenses.*

(a) Expenses (including attorneys' fees) incurred by a Director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer, to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article.

(b) Expenses (including attorneys' fees) incurred by any other employee or agent in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon such terms and conditions, if any, as the Corporation deems appropriate.

(6) *Not Exclusive.* The indemnification and advancement of expenses provided by, or granted pursuant to, the other sections of this Article VI shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any statute, by-law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his official capacity and as to

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action in another capacity while holding such office. Without limiting the foregoing, the Corporation is authorized to enter into an agreement with any Director, officer, employee or agent of the Corporation providing indemnification for such person against expenses, including, without limitation, attorneys' fees, judgments, fines and amounts paid in settlement that result from any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, including, without limitation, any action by or in the right of the Corporation, that arises by reason of the fact that such person is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, to the full extent allowed by law, except that no such agreement shall provide for indemnification for any actions that constitute fraud, actual dishonesty or willful misconduct.

(7) *Insurance.* The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving as the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article VI.

(8) *Certain Definitions.* For the purposes of this Article VI, (A) any Director, officer, employee or agent of the Corporation who shall serve as a director, officer, employee or agent of any other corporation, joint venture, trust or other enterprise of which the Corporation, directly or indirectly, is or was a stockholder or creditor, or in which the Corporation is or was in any way interested, or (B) any director, officer, employee or agent of any subsidiary corporation, joint venture, trust or other enterprise wholly owned by the Corporation, shall be deemed to be serving as such director, officer, employee or agent at the request of the Corporation, unless the Board of Directors of the Corporation shall determine otherwise. In all other instances where any person shall serve as a director, officer, employee or agent of another corporation, joint venture, trust or other enterprise of which the Corporation is or was a stockholder or creditor, or in which it is or was otherwise interested, if it is not otherwise established that such person is or was serving as such director, officer, employee or agent at the request of the Corporation, the Board of Directors of the Corporation may determine whether such service is or was at the request of the Corporation, and it shall not be necessary to show any actual or prior request for such service. For purposes of this Article VI, references to a corporation include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, joint venture, trust or other enterprise shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as he would if he had served the resulting or surviving corporation in the same capacity. For purposes of this Article VI, references to "other enterprises" shall include employee

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benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries, and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VI.

(9) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE VII

DIRECTOR LIABILITY TO THE CORPORATION

(a) A Director's liability to the Corporation for breach of duty to the Corporation or its stockholders shall be limited to the fullest extent permitted by Delaware law as now in effect or hereafter amended. In particular no Director of the Corporation shall be liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, as the same exists or hereafter may be amended, or (iv) for any transaction from which the Director derived an improper personal benefit.

(b) Any repeal or modification of the foregoing paragraph (a) by the stockholders of the Corporation entitled to vote thereon shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

(c) If the General Corporation Law of the State of Delaware is amended to authorize corporate action further eliminating or limiting the liability of directors, then a director of the Corporation, in addition to the circumstances in which he is not now liable, shall be free of liability to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

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ARTICLE VIII

RESERVATION OF RIGHT TO AMEND
CERTIFICATE OF INCORPORATION

Subject to Article XIII of this Restated Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation in the manner now or hereafter prescribed by law, and all the provisions of this Restated Certificate of Incorporation and all rights and powers conferred in this Restated Certificate of Incorporation on stockholders, directors and officers are subject to this reserved power.

Each reference in the Restated Certificate of Incorporation to "the Restated Certificate of Incorporation," "hereunder," "hereof," or words of like import and each reference to the Restated Certificate of Incorporation set forth in any amendment to the Restated Certificate of Incorporation shall mean and be a reference to the Restated Certificate of Incorporation as supplemented and amended through such amendment to the Restated Certificate of Incorporation.

ARTICLE IX

VOTING RIGHTS

(1) *Class A Common Stock.* In addition to any other approval required by law or by this Restated Certificate of Incorporation, the affirmative vote of a majority of the then outstanding shares of Class A Common Stock, voted separately as a class, shall be necessary to approve any consolidation of the Corporation with another corporation, any merger of the Corporation into another corporation or any merger of any other corporation into the Corporation pursuant to which shares of Common Stock are converted into or exchanged for any securities or any other consideration.

(2) *Preferred Stock.* Subject to Article XIII of this Restated Certificate of Incorporation, in addition to any other approval required by law or by this Restated Certificate of Incorporation, each particular series of any class of Preferred Stock shall have such right to vote, if any, as shall be fixed in the resolution or resolutions, adopted by the Board of Directors, providing for the issuance of shares of such particular series.

ARTICLE X

STOCK OWNERSHIP
AND THE FEDERAL COMMUNICATIONS LAWS

(1) *Requests for Information.* So long as the Corporation or any of its subsidiaries holds any authorization from the Federal Communications Commission (or any successor thereto), if the Corporation has reason to believe that the ownership, or proposed ownership, of shares of capital stock of the Corporation by any stockholder or any person

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presenting any shares of capital stock of the Corporation for transfer into his name (a "Proposed Transferee") may be inconsistent with, or in violation of, any provision of the Federal Communications Laws (as hereinafter defined), such stockholder or Proposed Transferee, upon request of the Corporation, shall furnish promptly to the Corporation such information (including, without limitation, information with respect to citizenship, other ownership interests and affiliations) as the Corporation shall reasonably request to determine whether the ownership of, or the exercise of any rights with respect to, shares of capital stock of the Corporation by such stockholder or Proposed Transferee is inconsistent with, or in violation of, the Federal Communications Laws. For purposes of this Article X, the term "Federal Communications Laws" shall mean any law of the United States now or hereafter in effect (and any regulation thereunder) pertaining to the ownership of, or the exercise of the rights of ownership with respect to, capital stock of corporations holding, directly or indirectly, Federal Communications Commissions authorizations, including, without limitation, the Communications Act of 1934, as amended (the "Communications Act"), and regulations thereunder pertaining to the ownership, or the exercise of the rights of ownership, of capital stock of corporations holding, directly or indirectly, Federal Communications Commission authorizations, by (i) aliens, as defined in or under the Communications Act, as it may be amended from time to time, (ii) persons and entities having interests in television or radio stations, daily newspapers and cable television systems or (iii) persons or entities, unilaterally or otherwise, seeking direct or indirect control of the Corporation, as construed under the Communications Act, without having obtained any requisite prior Federal regulatory approval to such control.

(2) *Denial of Rights, Refusal to Transfer.* If any stockholder or Proposed Transferee from whom information is requested should fail to respond to such request pursuant to Section (1) of this Article or the Corporation shall conclude that the ownership of, or the exercise of any rights of ownership with respect to, shares of capital stock of the Corporation, by such stockholder or Proposed Transferee, could result in any inconsistency with, or violation of, the Federal Communications Laws, the Corporation may refuse to permit the transfer of shares of capital stock of the Corporation to such Proposed Transferee, or may suspend those rights of stock ownership the exercise of which would result in any inconsistency with, or violation of, the Federal Communications Laws, such refusal of transfer or suspension to remain in effect until the requested information has been received and the Corporation has determined that such transfer, or the exercise of such suspended rights, as the case may be, is permissible under the Federal Communications Laws, and the Corporation may exercise any and all appropriate remedies, at law or in equity, in any court of competent jurisdiction, against any such stockholder or Proposed Transferee, with a view towards obtaining such information or preventing or curing any situation which would cause any inconsistency with, or violation of, any provision of the Federal Communications Laws.

(3) *Legends.* The Corporation may note on the certificates of its capital stock that the shares represented by such certificates are subject to the restrictions set forth in this Article.

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(4) *Certain Definitions.* For purposes of this Article, the word "person" shall include not only natural persons but partnerships, associations, corporations, joint ventures and other entities, and the word "regulation" shall include not only regulations but rules, published policies and published controlling interpretations by an administrative agency or body empowered to administer a statutory provision of the Federal Communications Laws.

ARTICLE XI

TRANSACTIONS WITH DIRECTORS AND OFFICERS

No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose if (a) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or the committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum, or (b) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of such stockholders, or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders entitled to vote thereon. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE XII

COMPROMISE AND REORGANIZATION

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 3 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or

class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agrees to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

ARTICLE XIII

GOVERNANCE OF THE CORPORATION DURING SPECIFIED PERIOD

(1) *Definitions.* As used in this Article XIII, the following terms shall have the following meanings:

(a) "CBS" shall mean CBS Corporation, a Pennsylvania corporation, immediately prior to the Effective Time.

(b) "CBS Directors" shall mean (i) eight (8) of those directors serving as members of the Board of Directors of CBS on September 6, 1999 (or any Independent Directors elected or appointed prior to the Effective Time to serve as a CBS Director) who are designated as such by the Board of Directors of CBS prior to the Effective Time and (ii) any Replacement CBS Director (as defined in Section 2(b) of this Article XIII).

(c) "CEO" shall mean the Chief Executive Officer.

(d) "COO" shall mean the President and Chief Operating Officer.

(e) "Effective Time" shall mean the time of filing of the Certificate of Merger to which this Certificate of Incorporation is attached.

(f) "Independent Director" shall mean a disinterested, independent person (determined in accordance with customary standards for independent directors applicable to U.S. public companies).

(g) "NAI" shall mean National Amusements, Inc., a Maryland corporation, and its successors or assigns.

(h) "Specified Independent Directors" shall mean the directors of the Corporation first elected after 1993 and who are not management of the Corporation or NAI (together with any replacements of such persons).

(i) "Specified Period" shall mean the period of three years commencing at the Effective Time.

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(j) "Stockholder Agreement" shall mean the Stockholder Agreement dated as of September 6, 1999, by and between NAI and CBS, relating to Corporation governance matters.

(k) "Viacom Directors" shall mean the ten (10) directors of the Corporation serving as the Board of Directors of the Corporation immediately prior to the Effective Time (including the Specified Independent Directors).

(2) *Directors.*

(a) Effective immediately at the Effective Time, the Board of Directors shall consist of eighteen (18) directors. The number of directors may be fixed by resolution of the Board from time to time, provided, however, that the size of the Board of Directors may not be changed during the Specified Period without the approval of at least fourteen (14) directors. At the Effective Time, ten (10) directors shall be Viacom Directors and eight (8) directors shall be CBS Directors.

(b) Until the expiration of the Specified Period, the Board of Directors (subject to the fiduciary duties of the directors) shall take all action necessary to ensure that any seat on the Board of Directors held by (i) a CBS Director which becomes vacant is filled promptly by a person qualifying as an Independent Director and designated to fill such seat by a majority of the CBS Directors remaining on the Board of Directors (a "Replacement CBS Director") and (ii) a Specified Independent Director which becomes vacant is filled promptly by an Independent Director who is the chief executive officer, chief operating officer or chief financial officer or former chief executive officer of a Fortune 500 company or a non-U.S. public company of comparable size.

(c) During the Specified Period, all committees of the Board of Directors (other than the Compensation Committee and the Officers Nominating Committee) shall have such number of CBS Directors as equals the total number of members of the Committee multiplied by a fraction, the numerator of which is eight (8) and the denominator of which is eighteen (18), rounded to the closest whole number; provided that in no event shall any committee have (x) fewer than one (1) CBS Director or (y) less than a majority of Viacom Directors.

(d) During the Specified Period, the Board of Directors shall not take any action or fail to take any action which would have the effect of eliminating, limiting, restricting, avoiding or otherwise modifying the effect of the provisions set forth in this Article XIII (e.g., by creating a holding company structure if the certificate of incorporation or similar document of such holding company does not contain equivalent provisions).

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(3) *Chairman and Chief Executive Officer.*

(a) At the Effective Time, Sumner Redstone shall remain the Chairman and CEO. In the event that Sumner Redstone is not the CEO at the Effective Time or ceases to be the CEO at any time during the Specified Period, then Mel Karmazin, if he is COO at such time, shall succeed to the position of CEO for the remainder of the Specified Period. During any such period of succession, Mel Karmazin shall continue to exercise the powers, rights, functions and responsibilities of the COO in addition to exercising those of the CEO.

(b) The Chairman shall chair all meetings of the Board of Directors and stockholders at which he is present.

(c) The CEO shall be responsible, in consultation with the COO, for corporate policy and strategy and the COO shall consult on all major decisions with, and shall report directly to, the CEO, during the Specified Period; provided, however, that the CEO shall not exercise any powers, rights, functions or responsibilities of the COO unless Mel Karmazin is the CEO.

(4) *President and Chief Operating Officer.*

(a) At the Effective Time, the President and Chief Operating Officer of the Corporation shall be Mel Karmazin. During the Specified Period, Mel Karmazin may not be terminated or demoted from the position of COO (or, in the event that Sumner Redstone is not the CEO, from the position of CEO) and no COO Functions (as defined below) may be changed without the affirmative vote of at least fourteen (14) directors.

(b) Subject to the requirement that the COO consult with the CEO on all major decisions, the powers, rights, functions and responsibilities of the COO (collectively, the "COO Functions") shall include, without limitation, the following:

(i) supervising, coordinating and managing the Corporation's business, operations, activities, operating expenses and capital allocation;

(ii) matters relating to officers (other than the Chairman, CEO and COO) and employees, including, without limitation, hiring (subject to (A) the specific Board of Directors authority described below with respect to the CFO, the General Counsel and the Controller and (B) Section 5 below), terminating, changing positions and allocating responsibilities of such officers and employees; and

(iii) substantially all of the powers, rights, functions and responsibilities typically exercised by a chief operating officer.

All officers (other than the Chairman, CEO and COO) will report, directly or indirectly, to the COO (this reporting relationship will be deemed a COO Function).

(c) In the event that Mel Karmazin is not COO or CEO, the Board may terminate the COO's employment, eliminate the COO position and the Officers Nominating Committee and reallocate the COO Functions without regard to the other provisions of this Article XVIII.

(5) *Officers Nominating Committee; Compensation Committee.*

(a) Subject to the powers of the Compensation Committee set forth below, during the Specified Period, all powers of the Board of Directors, including, without limitation, the right to hire, elect, terminate, change positions, allocate responsibilities or determine non-equity compensation, with respect to officers and employees, shall be exercised, subject to clauses (b) and (c) below, by, and delegated to, the Officers Nominating Committee of the Board of Directors. The Officers Nominating Committee shall consist solely of the member of the Board of Directors who is the COO, except that in the event Mel Karmazin succeeds to the position of CEO, the sole member of the Officers Nominating Committee shall be the member of the Board of Directors who is the CEO.

(b) The Officers Nominating Committee shall have no powers with respect to the Chairman, CEO and COO, and shall not have the power to fill the positions of Chief Financial Officer, Controller or General Counsel of the Corporation without the approval of the Board of Directors; provided that this provision shall in no way affect the other powers and authorities of the Officers Nominating Committee with respect to the Chief Financial Officer, Controller and General Counsel positions, including, without limitation, the power to terminate employment of persons holding such positions.

(c) The Compensation Committee shall not be required to, or have any power to, approve the annual compensation of (i) any employee if the total value of such employee's annual cash compensation (assuming for this purpose that the actual bonus of each officer and employee is equal to his or her target bonus) is less than $1 million or (ii) talent (as such term is commonly used in the media or entertainment industries), in each such case which power shall be delegated to the Officers Nominating Committee. The annual compensation of all other officers and employees and any equity or equity-based compensation of any officer or employee must be approved by the Compensation Committee.

(d) The Compensation Committee shall consist of three CBS Directors who are Independent Directors and three non-CBS Directors, two of whom will be the Specified Independent Directors and the other of whom will be an Independent Director.

(e) Any decision or determination of the Officers Nominating Committee may be reversed or overridden by (and only by) the affirmative vote of at least fourteen (14) directors.

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APR 0 3 2002

(6) *Stockholder Agreement.*

The Stockholder Agreement may not be amended, and no provision thereof may be modified or waived, except with the approval of at least fourteen (14) directors.

(7) *Issuance of Voting Stock.*

During the Specified Period, in addition to any other approval required by law or by this Restated Certificate of Incorporation, the Corporation may not issue (i) additional shares of Class A Common Stock or (ii) any shares of Preferred Stock or any other class or series of stock or securities, in each case with, or convertible into or exchangeable or exercisable for stock or other securities with, the right to vote on any matter on which stockholders are entitled to vote if the result would be that parties bound by the Stockholder Agreement could fail to own at least a majority of the outstanding shares of voting stock of the Corporation.

(8) *Voting.*

During the Specified Period, except for those actions set forth on Annex I to this Restated Certificate of Incorporation, which shall require the approval of the Board of Directors, all action by the Board of Directors shall require the affirmative vote of at least fourteen (14) directors. At all meetings of the Board of Directors a majority of the full Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or this Restated Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(9) *Amendment.*

Until the expiration of the Specified Period the provisions of any Article of this Restated Certificate which refer to this Article XIII, the provisions of this Article XIII, and the provisions of Article VIII of the by-laws of the Corporation, may not be amended, altered, repealed or waived in any respect without the approval of at least fourteen (14) directors.

(10) *Successors.*

During the Specified Period, the provisions of this Article XIII shall be applicable to (i) any successor to the Corporation as the result of a merger, consolidation or other business combination, whether or not the Corporation is the surviving company in such transaction, or otherwise and (ii) any corporation or other entity with respect to which the Corporation or its successor is or becomes a direct or indirect subsidiary, the Board of Directors shall not permit the Corporation to be a party to any transaction which

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APR 0 8 2002

would not comply with the foregoing without the approval of at least fourteen (14) directors.

(11) *Subsidiaries.*

The Board of Directors shall have the right, following consultation with the COO or, if Mel Karmazin is the CEO, the CEO, with respect to any public company which is a subsidiary of the Corporation, to take such steps as the Board of Directors reasonably determines are necessary to implement corporate governance arrangements applicable to such subsidiary in a manner as consistent as practicable with the provisions contained in this Restated Certificate of Incorporation; provided that any such steps shall not vest in the Board of Directors greater power or provide the COO with fewer rights than those provided for in this Restated Certificate of Incorporation.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation, which restates and integrates the provisions of the Restated Certificate of Incorporation of this Corporation as heretofore amended or supplemented, there being no discrepancy between such provisions and the provisions of this Restated Certificate of Incorporation, having been duly adopted by the Board of Directors of the Corporation in accordance with Section 245 of the Delaware General Corporation Law, has been executed by its duly authorized officer this 4th day of May, 2000.

VIACOM INC.

By: _____
Name: Michael D. Fricklas
Title: Senior Vice President, General Counsel and Secretary

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APR 03 2000

ANNEX I
TO VIACOM INC. RESTATED
CERTIFICATE OF INCORPORATION

The provisions of this Annex I shall form a part of, and be incorporated in all respects in, the Restated Certificate of Incorporation to which this Annex I is attached. The following actions shall require the approval of a majority of the directors:

A. Acquisitions, Divestitures, Joint Ventures, Guarantees

- Any acquisition, equity investment or joint venture (each an "Acquisition") by the Corporation or any of its subsidiaries for more than $25 million.

- Any divestiture or other sale of assets (each a "Divestiture") (not in the ordinary course) by the Corporation or any of its subsidiaries for more than $25 million (based on purchase price or net book value of assets).

- Any real estate purchase, sale or lease by the Corporation or any of its subsidiaries for more than $25 million.

- Any guarantee by the Corporation or any of its subsidiaries of an obligation of a third party where the obligation guaranteed is more than $25 million.

- Notwithstanding the above, any Acquisition or Divestiture by the Corporation or any of its subsidiaries of (a) internet or internet related businesses for more than $25 million but less than $100 million, with the value thereof represented by multi-year commitments for advertising, promotion and content licensing, is excluded, so long as the aggregate of such Acquisitions or Divestitures, in each case, does not exceed $550 million and (b) radio or outdoor advertising businesses for more than $25 million but less than $100 million, is excluded, so long as the aggregate of such Acquisitions or Divestitures, in each case, does not exceed $300 million; provided that (i) any Divestiture of shares of a publicly traded internet or internet related business with a value of up to $75 million is excluded and shall not be included in the calculation of any of the threshold amounts set forth above, (ii) Board approval may be secured (but is not required) for any transaction of more than $25 million but less than $100 million where the regular meeting schedule of the Board so permits (and shall not otherwise be required), (iii) the Board will be provided with information about and a status report on such transactions completed without Board approval and (iv) this limit of authority will be reviewed in 12 months from the Effective Time (as defined in Article XIII of the Restated Certificate) and may be amended only with the approval of 14 members of the Board of Directors.

- Any contract of the Corporation or any of its subsidiaries not in the ordinary course with a value in excess of $25 million.

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MAY 03 2002

- Notwithstanding the above, any of the foregoing transactions that is approved by the Board shall not be included in the calculation of any of the threshold amounts set forth above.

B. Employee Matters

- Employee benefit plans (at the Corporation or a subsidiary): (a) creating a new plan, (b) suspending or terminating an existing plan, (c) any amendment that materially increases cost to the Corporation or subsidiary.

- Entering into any modifications or amendments to the employment agreements with the CEO or the COO.

C. General

- The Annual Report on Form 10-K.

- Proxy statement and notice of meeting (including annual or special meeting date, location, record date for voting).

- Any issuance of Corporation stock, or options, warrants or other similar rights (including stock appreciation rights) or debt or other securities convertible into or exchangeable for Corporation stock.

- Any issuance of debt unless such debt is short term and is within the spending limits of the annual operating budget or is replacing existing debt.

- Annual capital expenditure and annual operating budgets and individual capital expenditure transactions in excess of $25 million for the Corporation or any of its subsidiaries.

- Any Corporation or subsidiary pays a dividend or repurchases stock from a third party.

- Review and approve any action or transaction where Board action is required by law (other than 141(a) of the Delaware General Corporation Law) or by the terms of the transaction (in all cases other than as specifically set forth in the Restated Certificate of Incorporation).

- Review and approve Board minutes.

- Subject to Article XIII of the Restated Certificate of Incorporation, determine Board administration, including number of directors, meeting schedule, nominees, committees, director compensation, D&O insurance authorization, internal investigations and retention of advisors in connection therewith, and decisions regarding indemnification of individuals.

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- Subject to Article XIII of the Restated Certificate of Incorporation, amendments to the Restated Certificate of Incorporation and by-laws of the Corporation.
- Commencement and settlement of major litigation.
- Selection of independent auditors.
- All matters on which the Corporation Board of Directors has historically taken action other than (1) matters relating to the subject matters addressed in this Annex I and not requiring approval of the Board of Directors hereunder and (2) those matters delegated to the COO, including all of the COO Functions (as defined in Article XIII of this Restated Certificate of Incorporation).

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State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 33-07089

Priority: February 6, 1981 — Maximum Diversion Rate: 18.00 CFS; Maximum Diversion Volume: 5453.0 AF

This is to certify, that WESTINGHOUSE ELECTRIC CORP
C/O CHUCK STERM
FINANCIAL SERVICES UNIT
11 STANWIX ST. RM 1188
PITTSBURGH PA 15222 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 6, 1983; and has submitted Proof of Beneficial Use on November 6, 1989. An examination indicates that the works have a diversion capacity of 76.000 cfs of water from:

DRY CREEK tributary to **LITTLE LOST RIVER**

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
POWER	06/01 to 10/31	18.00 CFS	5453.0 AF

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 31, Township 10N, Range 25E
CUSTER County

PLACE OF USE: POWER

TWN	RGE	SEC	
10N	26E	36	SWNW

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. Use of water under this right shall be non-consumptive.
6. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
7. Use of water under this water right will be regulated by the watermaster of State Water District No. 33.

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JUL 18 1997

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 33-07089

CONDITIONS OF APPROVAL AND REMARKS

8. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
9. Water used under this right when discharged into a natural channel or subsurface system shall meet Idaho Water Quality Standards.
10. The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after November 1, 2024. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
11. A measuring device and lockable controlling works of a type acceptable to the Department shall be maintained as part of the diverting works.
12. Rights 33-07089, 33-07154, and 33-07181 in combination shall not exceed a total diversion rate of 76.0 cfs.
13. Rights 33-07154 and 33-07181 are also diverted through the point(s) of diversion described above.
14. Facility known as Dry Creek Project.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 25TH day of JUNE, 1997.

Acting for KARL J. DREHER, Director

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JUN 12 1997
Department of Water Resources

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT

(For Licensing Purposes)

WATER RIGHT NO. 33-07089

Date of Priority: February 6, 1981

Maximum Diversion Rate: 18.00 CFS
Maximum Diversion Volume: 5453.0 AF

Comes now WESTINGHOUSE ELECTRIC CORP
C/O DONALD PATON
LEASE FINANCE GROUP
301 GRANT ST
PITTSBURGH PA 15219 and represents to the Director of the

Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 33-07089, and requests that the permit be changed as follows:

Source: **DRY CREEK** tributary to **LITTLE LOST RIVER**

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
POWER	06/01 to 10/31	18.00 CFS	5453.0 AF

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 31, Township 10N, Range 25E
CUSTER County

PLACE OF USE: POWER

TWN	RGE	SEC	
10N	26E	36	SWNW

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

Signed at PITTSBURGH PA, this 6TH day of JUNE, 1997.

MICROFILMED
JUL 18 1997

Charles H. Stern
(Signature)

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 33-07089

****

FOR DEPARTMENT USE ONLY

Preliminary check by SC Fee = 50.00 Receipted by KS #C039213 Date 6/12/97

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, Karl J. Dreher, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 33-07089 with the following;

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. Use of water under this right shall be non-consumptive.
6. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
7. Use of water under this water right will be regulated by the watermaster of State Water District No. 33.
8. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
9. Water used under this right when discharged into a natural channel or subsurface system shall meet Idaho Water Quality Standards.

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JUL 18 1997

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 33-07089

CONDITIONS OF APPROVAL AND REMARKS

10. The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after November 1, 2024. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
11. A measuring device and lockable controlling works of a type acceptable to the Department shall be maintained as part of the diverting works.
12. Rights 33-07089, 33-07154, and 33-07181 in combination shall not exceed a total diversion rate of 76.0 cfs.
13. Rights 33-07154 and 33-07181 are also diverted through the point(s) of diversion described above.
14. Facility known as Dry Creek Project.

Witness my hand this 25TH day of June, 1997.

Norman C Young
Acting for KARL J. DREHER, Director

MICROFILMED
JUL 18 1997

Form 217
6/86

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NOV 06 1989

For Office Use Only
Fee Received $600.00
Date 11/9/89
Receipt # C012761
Receipt by C. Wong
Reviewed by _____
Sent to region ____

STATE OF IDAHO
Department of Water Resources
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

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

Permit No. 33-7089

Name(s) of Permit Holder: HDI Associates IV, an Idaho Limited Partnership

Post Office Address: 10394 W. Chatfield Ave., Suite 108

Littleton, Colorado 80127 Telephone No. 303-973-0951

Source of Water: Dry Creek

Extent of Use:

Domestic _____ (number of households) Stockwater _____ (number and type of stock)

Irrigation _____ (acres) Other/Remark Hydroelectric power production

Total rate and/or volume for which proof is submitted 76 cfs _____ acre-feet

Show the date water was first diverted and beneficially used under this permit: Dec. 10, 1987

Measuring Device: Required? ___ Yes ✓ No
Installed? ✓ Yes ___ No

Fee enclosed $_____
(See License Examination Fee Schedule)

Flow Measurement Port: Required? ___ Yes ✓ No
Installed? ___ Yes ✓ No

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DEC 13 1989

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

John Crocket (Name) 208-336-1425 (Telephone Number)

Myers Engineering 750 Warm Springs Ave. Boise, Idaho 83712 (Address)

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

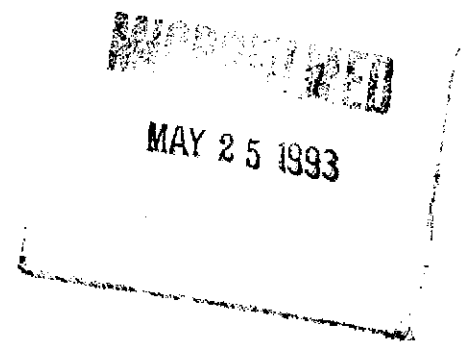
I request the department conduct the field inspection during a good water year when system can be operated at capacity.

10/23/89
Date

Dennis A. Pope, Vice President HDI ~~Assoc~~ Idaho, Inc.
Signature of Permit Holder (and title, if appropriate) Corp. Gen. Partner HDI Assoc. IV

WATER RIGHT SUMMARY

ACTION	RIGHT NO.	NAME	AMOUNT CFS
Original Application	33-07089	Dry Creek Development	18.0
~~Full Assignment~~	~~33-07089~~	~~HDI Associates IV~~	~~18.0~~
~~Full Assignment~~	~~33-07089~~	~~Westinghouse Credit Corp~~	~~18.0~~
Full Assignment	33-07089	Westinghouse Electric Corp	18.0



HOLLAND & HART
ATTORNEYS AT LAW

DENVER
DENVER TECH CENTER
COLORADO SPRINGS
ASPEN
BILLINGS
BOISE
CHEYENNE
JACKSON
WASHINGTON, D.C.

SUITE 1400
WEST ONE PLAZA
BOISE, IDAHO 83702-7714
MAILING ADDRESS
P.O. BOX 2527
BOISE, IDAHO 83701-2527

TELEPHONE (208) 342-5000
FACSIMILE (208) 343-8869

Dana L. Hofstetter

RECEIVED
MAY 13 1993
Department of Water Resources

May 13, 1993

HAND DELIVERED

Idaho Department of Water Resources
Water Allocation Section
1301 North Orchard
Boise, ID 83706

Re: Idaho Water Permit Nos. 33-7089, 33-7154 and 33-7181

Dear Sir/Madam:

We are writing this letter to request that the Idaho Department of Water Resources ("IDWR") amend its records to reflect the transfer to Westinghouse Electric Company of Idaho Water Permit Nos. 33-7089, 33-7154 and 33-7181.

WCC was a wholly owned subsidiary of Westinghouse Electric Corporation. On May 3, 1993, WCC merged into Westinghouse Electric Corporation, the surviving corporation of the merger. As a result of the merger, all of WCC's personal and real property has been transferred to Westinghouse Electric Corporation. Enclosed are copies of the Articles of Merger, the Agreement and Plan of Merger, the First Amendment to Agreement and Plan of Merger and a Pennsylvania Certificate of Merger.

Section 2.2 of the Agreement and Plan of Merger indicates that all of WCC's real and personal property would be transferred upon merger to Westinghouse Electric Corporation. As a result of the merger, Westinghouse Electric now is the owner of the Dry Creek Hydroelectric Project and the three water right permits associated with that project, Nos. 33-7089, 33-7154 and 33-7181. The Dry Creek Hydroelectric Project is operational and Westinghouse Electric plans to continue operation of the Project.

We also enclose the following documents in support of our request that IDWR amend its records to reflect the new ownership:

1. A State of Idaho Certificate of Corporate Status for Westinghouse Electric Corporation dated May 10, 1993,

MAY 25 1993

indicating that Westinghouse Electric Corporation has the authority to do business in the State; and

2. A January 29, 1987 Transfer Agreement and Water Service contract granting HDI Associates IV, a limited partnership, all of Dry Creek Development, Inc.'s right, title and interest in irrigation facilities used by the Dry Creek Hydroelectric Project. As a result of the prior foreclosure of HDI's interest in the Dry Creek Hydroelectric Project and the recent merger of WCC into Westinghouse Electric Corporation, Westinghouse Electric Corporation has succeeded to HDI's interest under this January 29, 1987 agreement.

Please let me know if you have any questions or need further documentation. Thank you for your attention to this matter.

Sincerely,

HOLLAND & HART

Dana Hofstetter

Dana L. Hofstetter

DLH:dkb
Enclosures
29031/19623.1002

MAY 25 1993

State of Idaho

Department of State

CERTIFICATE OF CORPORATE STATUS
OF

WESTINGHOUSE ELECTRIC CORPORATION

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of Pennsylvania and was issued a certificate of qualification in Idaho on May 1, 1950.

I FURTHER CERTIFY That the corporation is in goodstanding on the records of this office.

Dated: May 10, 1993

GREAT SEAL OF THE STATE OF IDAHO
ESTO PERPETUA

Pete T. Cenarrusa
SECRETARY OF STATE

MAY 25 1993

By _____

DSCB-221

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MAY 1 3 1993
Department of Water Resources

COMMONWEALTH OF PENNSYLVANIA

May 3, 1993

Department of State

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

I DO HEREBY CERTIFY, That from an examination of the indices and corporate records of this department, it appears that on May 3, 1993, Articles of Merger were filed in this department, whereby WESTINGHOUSE FINANCIAL SERVICES, INC., a Delaware corporation, incorporated January 15, 1987 and WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation, incorporated May 29, 1954, was merged into and became part of WESTINGHOUSE ELECTRIC CORPORATION, a Pennsylvania corporation, incorporated April 9, 1872, which was the surviving corporation to the merger.

WHEREFORE, It appears that WESTINGHOUSE ELECTRIC CORPORATION, the Pennsylvania corporation, remains a presently subsisting corporation as of the date hereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the Secretary's Office to be affixed, the day and year above written.

RECORDED
MAY 25 1993

Secretary of the Commonwealth

dp

Microfilm Number_____ Filed with the Department of State on MAY 03 1993

THIS IS A TRUE COPY OF THE ORIGINAL SIGNED DOCUMENT FILED WITH THE DEPARTMENT OF STATE.

Entity Number_____

Secretary of the Commonwealth

ARTICLES OF MERGER-DOMESTIC BUSINESS CORPORATION

DSCB:15-1926 (Rev 89)

In compliance with the requirements of 15 Pa.C.S. § 1926 (relating to articles of merger or consolidation), the undersigned business corporations, desiring to effect a merger, hereby state that:

1. The name of the corporation surviving the merger is: Westinghouse Electric Corporation

2. (Check and complete one of the following):

X The surviving corporation is a domestic business corporation and the (a) address of its current registered office in this Commonwealth or (b) commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following address to conform to the records of the Department):

(a) Westinghouse Building, 6 Gateway Center, Pittsburgh, PA 15222 Allegheny
Number and Street City State Zip County

(b) _____
Name of Commercial Registered Office Provider County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

___ The surviving corporation is a qualified foreign business corporation incorporated under the laws of_____ and the (a) address of its current registered office in this Commonwealth or (b) commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following address to conform to the records of the Department):

(a) N/A
Number and Street City State Zip County

(b) _____
Name of Commercial Registered Office Provider County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

___ The surviving corporation is a nonqualified foreign business corporation incorporated under the laws of_____ and the address of its principal office under the laws of such domiciliary jurisdiction is: N/A

_____
Number and Street City State Zip

3. The name and the address of the registered office of each other domestic business corporation and qualified foreign business corporation which is a party to the plan of merger are as follows:

Westinghouse Financial Services, Inc.
c/o The Prentice-Hall Corporation System, Inc.
100 Pine Street
Harrisburg, PA 17108

Westinghouse Credit Corporation
c/o The Prentice-Hall Corporation System, Inc.
100 Pine Street
Harrisburg, PA 17108

MAY 25 1993

M. BURR KEIM COMPANY, PHILADELPHIA

4. (Check, and if appropriate complete, one of the following):

___The plan of merger shall be effective upon filing these Articles of Merger in the Department of State.

X The plan of merger shall be effective on The later of the filing of these Articles of Merger or the filing of the Agreement and Plan of Merger with the Secretary of State of Delaware.

5. The manner in which the plan of merger was adopted by each domestic corporation is as follows:

Name of corporation	Manner of adoption
Westinghouse Electric Corporation	Resolution of Board of Directors

6. (Strike out this paragraph if no foreign corporation is a party to the merger). The plan was authorized, adopted or approved, as the case may be, by the foreign business corporation (or each of the foreign business corporations) party to the plan in accordance with the laws of the jurisdiction in which it is incorporated.

7. (Check, and if appropriate complete, one of the following):

X The plan of merger is set forth in full in Exhibit A attached hereto and made a part hereof.

___Pursuant to 15 Pa.C.S. § 1901 (relating to omission of certain provisions from filed plans) the provisions of the plan of merger that amend or constitute the operative Articles of Incorporation of the surviving corporation as in effect subsequent to the effective date of the plan are set forth in full in Exhibit A, attached hereto and made a part hereof. The full text of the plan of merger is on file at the principal place of business of the surviving corporation, the address of which is:

Number and Street ____ City ____ State ____ Zip ____

IN TESTIMONY WHEREOF, each undersigned corporation has caused these Articles of Merger to be signed by a duly authorized officer thereof this 30th day of April, 1993.

Westinghouse Credit Corporation

BY: R.H. Watson

TITLE: Chairman

Westinghouse Electric Corporation
(Name of Corporation)

BY: Robert H. Watson
(Signature)

TITLE: Executive Vice President

Westinghouse Financial Services, Inc.
(Name of Corporation)

BY: R.H. Watson
(Signature)

TITLE: Chairman

FILED

MAY 25 1993

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER ("Agreement"), dated as of April 7, 1993, is made and entered into by and among Westinghouse Electric Corporation ("Westinghouse"), a Pennsylvania corporation, Westinghouse Financial Services, Inc. ("WFSI"), a Delaware corporation and wholly-owned subsidiary of Westinghouse, and Westinghouse Credit Corporation ("WCC"), a Delaware corporation and subsidiary of WFSI (Westinghouse, WFSI and WCC being sometimes referred to herein as the "Constituent Corporations" and Westinghouse as the "Surviving Corporation"),

W I T N E S E T H:

WHEREAS, Westinghouse is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania having an authorized capital stock, as of the date hereof, consisting of 480,000,000 shares of common stock, par value $1.00 per share ("Westinghouse Common"), and 25,000,000 shares of preferred stock, par value $1.00 per share ("Westinghouse Preferred");

WHEREAS, WFSI is a corporation duly organized and existing under the laws of the State of Delaware having an authorized capital stock, as of the date hereof, consisting of 1,000 shares of common stock, par value $1.00 per share ("WFSI Common"), all of which are presently issued and outstanding and held by Westinghouse;

WHEREAS, WCC is a corporation duly organized and existing under the laws of the State of Delaware having an authorized capital stock, as of the date hereof, consisting of 100,000 shares of common stock, par value $100.00 per share ("WCC Common"), of which, as of the date hereof, 80,000 shares are issued and outstanding and held by WFSI, and 2,000,000 shares of Preferred Stock, par value $1.00 per share (the "WCC Preferred"), of which 1,050 shares are issued and outstanding; and

WHEREAS, the respective Boards of Directors of the Constituent Corporations deem it advisable that WCC and WFSI merge with and into Westinghouse (the "Merger"), upon the terms and conditions set forth herein and in accordance with the Delaware General Corporation Law and the Pennsylvania Business Corporation Law,

NOW THEREFORE, the Constituent Corporations agree as follows:

ARTICLE 1
The Merger

1.1 The Surviving Corporation. At the Merger Effective Time (as defined in Section 1.3 hereof), WCC and WFSI shall be merged with and into Westinghouse upon the terms and conditions hereinafter set forth as permitted by and in accordance with the Pennsylvania Business Corporation Law and the Delaware General Corporation Law. Thereupon the separate existence of WCC and WFSI shall cease and Westinghouse, as the Surviving Corporation, shall survive and continue to exist under and be governed by the Pennsylvania Business Corporation Law, with its Restated Articles and its By-laws as in effect at the Merger Effective Time.

1.2 Filings. Provided that all conditions to the Merger set forth in Article 5 hereof have been satisfied, or waived by the party entitled to waive such condition, and this Agreement has not been terminated pursuant to Article 5 hereof, Westinghouse shall cause each of the filings described in Section 1.3 to be made on a business day selected by it in its sole discretion following receipt of the orders, consents or approvals described in Section 5.1 hereof.

1.3 Effective Time of the Merger. The Merger Effective Time shall mean 5:00 p.m., Eastern time, on the day on which the last of the following shall occur: (1) an executed counterpart or a conformed copy

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of this Agreement, or a Certificate of Merger in lieu thereof, has been duly filed in the office of the Secretary of State of the State of Delaware, pursuant to Section 252 of the Delaware General Corporation Law; (2) an executed Certificate of Merger or Certificate of Ownership and Merger has been duly filed in the office of the Secretary of State of the State of Delaware, pursuant to Section 252 or 253 of the Delaware General Corporation Law; and (3) executed Articles of Merger have been duly filed with the Department of State of the Commonwealth of Pennsylvania, pursuant to Section 1927 of the Pennsylvania Business Corporation Law.

ARTICLE 2
Certain Effects of the Merger

2.1 Certain Effects of the Merger. When the Merger becomes effective, the directors and officers of Westinghouse immediately prior to the Merger shall be the directors and officers, respectively, of the Surviving Corporation. The effect of the Merger as of the Merger Effective Time shall be as provided in the applicable provisions of the laws of the Commonwealth of Pennsylvania and the State of Delaware.

2.2 Additional Effects of the Merger. Without limiting the generality of Section 2.1, and subject thereto, at the Merger Effective Time: the Constituent Corporations shall be a single corporation which shall be the Surviving Corporation and which shall possess all the rights, privileges, powers and franchises as well of a public as of a private nature, and be subject to all the restrictions, disabilities and duties, of each of the Constituent Corporations; the separate existence of each of the Constituent Corporations, except that of the Surviving Corporation, shall cease; all the property, real, personal and mixed, of each of the Constituent Corporations, and all debts due on whatever account to any of them, including subscriptions for shares and other choses in action belonging to any of them, shall be deemed to be transferred to and vested in the Surviving Corporation, without further action; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the several and respective Constituent Corporations, and the title to any real estate, or any interest therein, vested by deed or otherwise in any of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger; but all rights of creditors and all liens upon any property of any of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective Constituent Corporations shall thenceforth attach to the Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it; any claim existing or action or proceeding pending by or against WCC or WFSI may be prosecuted to judgment as if the Merger had not taken place or the Surviving Corporation may be proceeded against or substituted in their respective places; any taxes, penalties and public accounts of the Commonwealth of Pennsylvania, claimed against WCC or WFSI but not settled, assessed or determined prior to the Merger, shall be settled, assessed or determined against the Surviving Corporation and, together with interest thereon, shall be a lien against the franchises and property, both real and personal, of the Surviving Corporation.

2.3 Further Actions. (a) If any party hereto shall so request prior to the Merger Effective Time, the party to whom the request is made will from time to time and at any reasonable time execute and deliver to the requesting party such other and further documents, instruments and assurances and take such other actions as may be reasonably necessary, appropriate or convenient in order to carry out the purpose and intent of this Agreement and the transactions contemplated hereby.

(b) If, at any time after the Merger Effective Time, the Surviving Corporation shall consider or be advised that the execution and delivery of any further conveyances, agreements, documents, instruments or assurances or the taking of any other actions may be necessary, appropriate or convenient to (i) vest, perfect or confirm, of record or otherwise, in the Surviving Corporation, title to and possession of any property, rights, privileges, powers and franchises of WCC and WFSI acquired or to be acquired by reason of, or as a result of, the Merger or (ii) otherwise carry out the purpose and intent of this Agreement and the transactions contemplated hereby, WCC and WFSI and their respective officers and directors shall be deemed to have granted hereby to the Surviving Corporation an irrevocable power of attorney to execute and deliver all such documents, instruments and assurances and to take all actions necessary, appropriate or convenient to vest, perfect or confirm title to and possession of such property, rights, privileges, powers and

franchises in the Surviving Corporation and otherwise to carry out the purpose and intent of this Agreement and the transactions contemplated hereby, and the officers and directors of the Surviving Corporation are hereby fully authorized in the name of WCC and WFSI or otherwise to take any and all such actions.

ARTICLE 3
Effect on Stock of the Constituent Corporations

3.1 Effect on WCC and WFSI Common. At the Merger Effective Time, all issued shares of WCC Common and all issued shares of WFSI Common, whether or not outstanding, immediately prior to the Merger Effective Time shall be cancelled and retired and all rights in respect thereof shall cease to exist, without any conversion thereof or any payment with respect thereto or in exchange therefor.

3.2 Effect on WCC Preferred. Each share of WCC Preferred issued and outstanding immediately prior to the Merger Effective Time will be cancelled and retired, and (other than shares of WCC Preferred held by persons who properly perfect their appraisal rights pursuant to Section 262 of the Delaware General Corporation Law) will be converted automatically into the right to receive an amount of cash equal to $106,500 per share in the case of Class B WCC Preferred and $115,000 per share in the case of Class C WCC Preferred, plus in each case an amount of cash equal to dividends on such Preferred Stock at the rate currently set therefor to the extent unpaid for the period ending at the Merger Effective Time, without interest thereon. Thereafter, the holders of certificates for shares of WCC Preferred shall cease to have any rights as stockholders of WCC (except such rights, if any, as they may have pursuant to Section 262 of the Delaware General Corporation Law).

3.3 Effect on Stock of Westinghouse. At the Merger Effective Time, each share of Westinghouse Common and each share of Westinghouse Preferred issued at such time shall continue to be one share of Common Stock, par value $1.00 per share, and one share of Preferred Stock, par value $1.00 per share, respectively, of the Surviving Corporation.

ARTICLE 4
WCC Preferred Stockholder Approval

Westinghouse, WFSI and WCC acknowledge that this Agreement may be submitted to the WCC Preferred stockholders for approval and adoption by such stockholders pursuant to Section 10(d)(ii) of the Certificate of Designation for the WCC Variable Term Preferred Stock, being a resolution adopted by WCC's Board of Directors pursuant to and incorporated in Article FOURTH of WCC's Certificate of Incorporation. WCC shall use its best efforts to obtain the adoption and approval of this Agreement by the holders of a majority of the outstanding shares of WCC Preferred. As soon as practicable, WCC agrees to solicit consents to such adoption and approval or to call a special meeting of WCC Preferred for the purpose of voting on adoption and approval of this Agreement.

ARTICLE 5
Termination and Deferral

5.1 Right of Westinghouse to Terminate. Westinghouse shall have the right to terminate this Agreement in the event any one or more of the following shall have occurred at or prior to the Merger Effective Time notwithstanding each party's best efforts and after such extensions of time for performance as are reasonable under the circumstances.

5.1.1 Any of Westinghouse, WFSI or WCC shall have been prevented from performing one or more of its material obligations or agreements required by this Agreement, the Pennsylvania Business Corporation Law, or the Delaware General Corporation Law to be performed by them at or before the Merger Effective Time.

5.1.2 Any of Westinghouse, WFSI or WCC shall not have received all orders, consents or approvals, governmental or otherwise, which are required by law or advisable to

permit the consummation of the Merger and to permit or enable the Surviving Corporation to succeed, at the Merger Effective Time, to all or any material part of the rights, privileges, assets, liabilities and obligations of any of the Constituent Corporations, or to conduct, at or after the Merger Effective Time, all or any material part of the business or activities theretofore conducted by any of the Constituent Corporations.

5.1.3 The holders of at least a majority of the shares of WCC Preferred outstanding and entitled to vote on or consent to the Merger shall not have voted in favor of or consented to the adoption and approval of this Agreement.

5.1.4 Any action or proceeding shall have been instituted before any court or governmental agency ("Proceeding) to enjoin, restrain or prohibit, or seeking damages material to WCC, WFSI or Westinghouse with respect to, this Agreement or the transactions contemplated hereby or such Proceeding or any other occurrence would, in the reasonable judgment of Westinghouse, make it inadvisable to consummate the Merger in whole or in part.

5.2 Deferral. Notwithstanding approval of this Agreement by the WCC Preferred stockholders, the consummation of the Merger may be deferred for such period of time as may be required in order to obtain necessary or desirable consents or to satisfy any conditions otherwise set forth in this Article 5.

5.3 Effect of Termination. In the event this Agreement is terminated as provided in this Article 5, this Agreement shall forthwith become wholly void and of no effect and there shall be no liability on the part of any party hereto or any of their respective directors, officers, employees, agents, representatives, independent contractors or stockholders.

ARTICLE 6
Miscellaneous

6.1 Notices. All notices and other communications required or permitted hereunder shall be in writing and, unless otherwise provided in this Agreement, shall be deemed to have been duly given when delivered to the addressees at the addresses specified below:

If to Westinghouse, to:

Office of Chairman
Westinghouse Electric Corporation
11 Stanwix Street
Pittsburgh, Pennsylvania 15222

With a copy to:

Office of General Counsel
Westinghouse Electric Corporation
11 Stanwix Street
Pittsburgh, Pennsylvania 15222

If to WFSI, to:

Westinghouse Financial Services, Inc.
One Oxford Centre
Pittsburgh, Pennsylvania 15219

Attention: Chairman

MAY 25 1993

With a copy to:

Vice President - Law
Westinghouse Financial Services, Inc.
One Oxford Centre
Pittsburgh, Pennsylvania 15219

If to WCC, to:

Westinghouse Credit Corporation
One Oxford Centre
Pittsburgh, Pennsylvania 15219

Attention: Chairman

With a copy to:

Vice President - Law
Westinghouse Credit Corporation
One Oxford Centre
Pittsburgh, Pennsylvania 15219

6.2 Counterparts. This Agreement may be executed simultaneously in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.3 Headings. The headings of articles and sections herein are for convenience of reference only, do not constitute a part of this Agreement, and shall not be deemed to limit or affect any of the provisions hereof.

6.4 Variation and Amendment. This Agreement may be varied or amended, at any time prior to the Merger Effective Time, by action of the respective Boards of Directors of Westinghouse, WFSI and WCC; provided, that subsequent to the adoption and approval of this Agreement by the WCC Preferred stockholders as provided in Article 4, no such variation or amendment of this Agreement shall affect the rights of the WCC Preferred stockholders in a manner which is materially adverse to such stockholders without resubmission for adoption or approval.

6.5 Governing Law. This Agreement and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

6.6 Complete Agreement. This Agreement contains the complete agreement among the parties hereto with respect to the Merger and supersedes all prior agreements and understandings with respect to the Merger.

6.7 Binding Effects, Benefits. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; provided, that nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

MAY 25 1993

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf and attested to by its respective officers thereunto duly authorized, all as of the day and year first above written.

Attest:

Assistant Secretary
[Corporate Seal]

WESTINGHOUSE ELECTRIC CORPORATION

By: L. A. Clapman
Title: Vice President and Treasurer
Date: As of April 7, 1993

Attest:

Secretary
[Corporate Seal]

WESTINGHOUSE FINANCIAL SERVICES, INC.

By: Robert A. Watson
Title: Chairman and Chief Executive Officer
Date: As of April 7, 1993

Attest:

Secretary
[Corporate Seal]

WESTINGHOUSE CREDIT CORPORATION

By: Robert A. Watson
Title: Chairman and Chief Executive Officer
Date: As of April 7, 1993

RECORDED
MAY 25 1993

FIRST AMENDMENT TO AGREEMENT AND PLAN OF MERGER

THIS FIRST AMENDMENT TO AGREEMENT AND PLAN OF MERGER ("Agreement"), dated as of April 7, 1993, is made and entered into by and among Westinghouse Electric Corporation ("Westinghouse"), a Pennsylvania corporation, Westinghouse Financial Services, Inc. ("WFSI"), a Delaware corporation and wholly-owned subsidiary of Westinghouse, and Westinghouse Credit Corporation ("WCC"), a Delaware corporation and wholly-owned subsidiary of WFSI (Westinghouse, WFSI and WCC being sometimes referred to herein as the "Constituent Corporations" and Westinghouse as the "Surviving Corporation"),

W I T N E S S E T H:

WHEREAS, Westinghouse, WFSI and WCC executed the Agreement and Plan of Merger dated as of April 7, 1993;

WHEREAS, The Agreement and Plan of Merger require certain technical amendments relating to the appointment of a statutory agent and certain statutory citations which the Constituent Corporations agree to make; and

NOW, THEREFORE, the Constituent Corporations agree as follows:

1. Article I, Section 1.3 is amended to read:

"Effective Time of the Merger. The Merger Effective Time shall mean 5:00 p.m., Eastern time, on the day on which the last of the following shall occur: (1) an executed counterpart or a conformed copy of this Agreement, or a Certificate of Merger in lieu thereof, has been duly filed in the office of the Secretary of State of the State of Delaware, pursuant to Section 252 of the Delaware General Corporation Law; (2) an executed Certificate of Merger or Certificate of Ownership and Merger has been duly filed in the office of the Secretary of State of the State of Delaware, pursuant to Section 252 of the Delaware General Corporation Law; and (3) executed Articles of Merger have been duly filed with the Department of State of the Commonwealth of Pennsylvania, pursuant to Section 1927 of the Pennsylvania Business Corporation Law."

2. Article VII is added and provides as follows:

"7.1 Service of Process. Westinghouse Electric Corporation agrees that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of Westinghouse Financial Services, Inc. and Westinghouse Credit Corporation, as well as for enforcement of any obligation of Westinghouse Electric Corporation arising from the merger, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to Section 262 of the General Corporation Law of the State of Delaware in connection with the merger, and said corporation irrevocably appoints the Secretary of State

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of the State of Delaware as its agent to accept service of process in any such suit or such other proceeding and a copy of such process shall be mailed by the Secretary of State to Westinghouse Electric Corporation, Office of the General Counsel, Westinghouse Electric Corporation, 11 Stanwix Street, Pittsburgh, Pennsylvania 15222."

3. All of the other terms of the Agreement and Plan of Merger NOT amended hereby remain unchanged.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf and attested to by its respective officers thereunto duly authorized, all as of the day and year first above written.

ATTEST:

WESTINGHOUSE ELECTRIC CORPORATION

Title: Executive Vice President
Date: as of April 7, 1993

[Corporate Seal]

ATTEST:

WESTINGHOUSE FINANCIAL SERVICES, INC.

Assistant Secretary

Title: Chairman and Chief Executive Officer
Date: as of April 7, 1993

[Corporate Seal]

ATTEST:

WESTINGHOUSE CREDIT CORPORATION

Assistant Secretary

Title: Chairman and Chief Executive Officer
Date: as of April 7, 1993

[Corporate Seal]

FILED
MAY 25 1993

State of Idaho

Department of State

CERTIFICATE OF CORPORATE STATUS
OF

WESTINGHOUSE CREDIT CORPORATION

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of Delaware and was issued a certificate of Qualification in Idaho on May 7, 1956.

I FURTHER CERTIFY That the corporation's authority to do business has not been forfeited.

Dated: December 19, 1991

Pete T. Cenarrusa

SECRETARY OF STATE

Tonya Coulson

Corporation Clerk

MAY 25 1993

TRANSFER AGREEMENT AND WATER SERVICE CONTRACT

THIS AGREEMENT, Made this 15th day of January, 1987, between HDI, Associates IV, Limited Partnership, a limited partnership, and Dry Creek Development, Incorporated, an Idaho corporation;

WITNESSETH:

WHEREAS, HDI, Associates IV, Limited Partnership, has acquired the rights, permits, licenses, exemptions, and other governmental authorizations necessary to develop a hydroelectric project which will utilize waters of Dry Creek, a stream located in Custer and Butte Counties, Idaho; and

WHEREAS, Dry Creek Development, Inc., constructed a diversion structure on Dry Creek and an attached concrete canal in 1965, which improvements are utilized to divert and convey the waters of Dry Creek for irrigation purposes; and

WHEREAS, Dry Creek Development, Inc., financed the construction costs of said diversion structure and concrete canal with a loan obtained from the Farmer's Home Administration, which loan has an outstanding balance of $59,535.82 and is secured by a mortgage encumbering said diversion structure and concrete canal; and

WHEREAS, Dry Creek Development, Inc., possesses a right-of-way (easement) for the construction, operation, and maintenance of said diversion structure and concrete canal, which was granted by the Bureau of Land Management on behalf of the fee owner of the real property, the United States Government; and

WHEREAS, Dry Creek Development, Inc., possesses a right-of-way (easement) for the construction, operation, and maintenance of said

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concerete canal, which was granted by the fee owner of the real property, the State of Idaho, and

WHEREAS, The diversion structure and concrete canal, which was constructed by Dry Creek Development, Inc., are in need of substantial repair or complete replacement in order to properly divert and transport the waters of Dry Creek; and

WHEREAS, HDI, Associates IV, Limited Partnership, desires to utilize the existing Dry Creek diversion structure and make substantial improvements thereto as part of its Dry Creek hydroelectric project; and

WHEREAS, HDI, Associates IV, Limited Partnership, desires to construct a buried steel pipeline, which will be connected to the diversion structure and will convey the waters of Dry Creek for irrigation and hydroelectric purposes; and

WHEREAS, HDI, Associates IV, Limited Partnership, desires to utilize the rights-of-way (easements), previously granted to Dry Creek Development, Inc., by the Bureau of Land Management and the State of Idaho, for the construction, operation, and maintenance of the diversion structure improvements and the buried steel pipeline; and

WHEREAS, The Bureau of Land Management has required HDI, Associates IV, Limited Partnership, to cover the existing Dry Creek concrete canal as a condition of the assignment of the said right-of-way (easement) from Dry Creek Development, Inc., to HDI, Associates IV, Limited Partnership, which condition has been incorporated as part of the Federal Energy Regulatory Commission exemption from licensing for the Dry Creek hydroelectric project; and

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WHEREAS, The Farmer's Home Administration has refused to release the mortgage encumbering the Dry Creek diversion structure and concrete canal unless HDI, Associates IV, Limited Partnership, and Dry Creek Development enter into a water delivery contract, which is acceptable to the Farmer's Home Administration; and

WHEREAS, Dry Creek Development, Inc., desires to enter into a water delivery contract with HDI, Associates IV, Limited Partnership, which is acceptable to the Farmer's Home Administration; and

WHEREAS, Dry Creek Development, Inc., desires to convey, transfer, and assign to HDI, Associates IV, Limited Partnership, the rights-of-way (easements), previously granted to Dry Creek Development, Inc., by the Bureau of Land Management and the State of Idaho; and

WHEREAS, Dry Creek Development, Inc., desires to convey the Dry Creek diversion structure and concrete canal to HDI, Associates IV, Limited Partnership;

NOW, THEREFORE, In consideration of the mutual and dependent stipulations and convenants herein contained, it is hereby mutually agreed by and between the parties as follows:

1. Dry Creek Development, Inc., hereby transfers, conveys, grants, and assigns to HDI, Associates IV, Limited Partnership, and its successors in interest, all of its right, title, and interest in the Dry Creek diversion structure and concrete canal owned by Dry Creek Development, Inc., and the rights-of-way (easements) for said structures, previously granted to Dry Creek Development, Inc., by the Bureau of Land Management and the State of Idaho, for which HDI,

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Associates IV, Limited Partnership, agrees to pay Dry Creek Development, Inc., $1.00 (one dollar) U.S. currency and other valuable consideration, which consideration is hereby acknowledged by the parties.

2. HDI, Associates IV, Limited Partnership, agrees to construct, operate, and maintain improvements to the Dry Creek diversion structure and a buried steel pipeline, which will convey the waters of Dry Creek to a discharge point in Wet Creek, after the waters have been used to generate hydroelectric power.

3. HDI, Associates IV, Limited Partnership, agrees to convey the waters of Dry Creek through the transferred diversion structure and buried steel pipeline and discharge said waters into Wet Creek from March 15 through November 15 of each year, so that said waters can be used for irrigation purposes by the shareholders of Dry Creek Development, Inc. This obligation shall commence only after the construction of the buried steel pipeline is complete. Prior to that event, HDI, Associates IV, Limited Partnership, agrees to convey the waters of Dry Creek through the transferred diversion structure and concrete canal, and discharge said waters into Wet Creek from March 15, 1987, until the buried steel pipeline is operational.

4. Dry Creek Development, Inc., in exchange for the water delivery described above in paragraph 3, agrees to pay a water delivery fee, payable on or before March 1 of each year. The fee shall be $13,515.00 for each of the years 1987-1990. The total water delivery fees shall not exceed the total of $59,535.82 plus any accrued interest owed to the Farmer's Home Administration by Dry Creek Development, Inc. The water delivery fee for 1991 shall be in

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the amount of the balance of the Farmer's Home Administration loan and shall be payable on or before January 1, 1991. In lieu of payment of such water delivery fees to HDI, Associates IV, Limited Partnership, such payments shall be made to the Farmer's Home Administration in said amounts to be applied as payments on said loan and upon receipt thereof by Farmer's Home Administration shall constitute satisfaction of the payment of water delivery fees hereunder to the extent of such payment amount. After the Farmer's Home Administration loan has been fully repaid, no further water delivery fees shall be required.

5. Dry Creek Development, Inc., agrees that HDI, Associates IV, Limited Partnership, shall have the right to terminate the delivery of water through the transferred diversion structure and concrete canal or the buried steel pipeline to the discharge point in Wet Creek, for the irrigation use of Dry Creek Development, Inc., or its shareholders, if the water delivery fees are not paid in the manner and in the amounts specified in paragraph 4 above.

6. Dry Creek Development, Inc., also agrees and consents to the assignment to the Farmer's Home Administration by HDI, Associates IV, Limited Partnership, of the rights of termination, contained in paragraph 5 of this contract, and of the water delivery fees, described in paragraph 4 of this contract.

7. Dry Creek Development, Inc., retains no responsibility or liability pertaining to the fencing which borders the sides of the concrete canal.

8. HDI, Associates IV, Limited Partnership, agrees to continue to discharge water into Wet Creek from March 15 through

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November 15 of each year during periods when the power-generating facilities are not in operation. This provision is subject to the water delivery fee payment requirements contained in paragraphs 4, 5, and 6 above.

9. Dry Creek Development, Inc., agrees and consents that HDI, Associates IV, Limited Partnership, may assign this agreement, as a collateral assignment, to a financial institution of its choice, for the purposes of financing the development costs of this project.

10. HDI, Associates IV, Limited Partnership, agrees that all right, title, and interest in the rights-of-way (easements) and the diversion structure, herein granted, conveyed, and transferred to it by Dry Creek Development, Inc., together with the buried steel pipeline to be constructed by HDI, Associates IV, Limited Partnership, shall automatically revert and vest in Dry Creek Development, Inc., if HDI, Associates IV, Limited Partnership, provides Dry Creek Development, Inc., with express written notice that it has permanently abandoned the Dry Creek hydroelectric project. In no event shall such reversion occur prior to the full repayment of the Farmer's Home Administration Loan as described in paragraphs 4 through 6 above.

IN WITNESS WHEREOF, The parties hereto have caused this Agreement to be executed the day and year first above written.

HDI, ASSOCIATES IV, LIMITED PARTNERSHIP
By HDI-Idaho, Inc., General Partner

By Donnie R. Pope
Donnie R. Pope, Vice President

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DRY CREEK DEVELOPMENT, INC.
BOARD OF DIRECTORS

William Stauffer
William Stauffer, President

Robert Amy
Robert Amy, Vice President

Emlen G. Mays
Emlen Mays, Board Member

George Woodie
George Woodie, Board Member

Earl Wortley
Earl Wortley, Board Member

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Form 204
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Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

For Office Use Only
$15 FEE Receipted by AG
Date 3-9-87
Receipt # 41539

REQUEST FOR EXTENSION OF TIME

To provide additional time in which to submit proof of beneficial use for a water right permit

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time in which to complete development of a water right under the provisions of Section 42-204, Idaho Code.

Permit No. 33-7089

Name(s) of Permit Holder: HDI, Associates IV, Limited Partnership

Post Office Address: 10394 West Chatfield Avenue, #108

Littleton, Colorado 80127 Telephone No. 303-973-0951

Date Proof is Due: October 1, 1987

Describe what work has been completed toward the development of this water right: See Exhibit A, paragraph 1.
(This must be filled out! If no work has been completed, show "none".)

Costing $See Exhibit A, paragraph 1

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

See Exhibit A, paragraph 2

Permit holder(s) request an extension to March 6, , 1992.
(1 yr. minimum)

Donnie R. Pope
(Signature)*
*IF OTHER THAN PERMIT HOLDER, POWER OF ATTORNEY MUST BE SUPPLIED.

FEE: $15.00

ACTION OF THE DEPARTMENT OF WATER RESOURCES

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IT IS HEREBY ORDERED that the above request for extension of time be APPROVED and the time within which to submit proof of beneficial use is extended to October 1, 1989.
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Signed this 16th day of March, 1987.

L. Glen Saxton
Chief, Operations Bureau

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Department of Water Resources

EXHIBIT A

1. The preexisting diversion dam, located at the upstream portion of the Dry Creek Development Company irrigation ditch, has been completely rebuilt. Additionally, headworks for the burried steel penstock at the diversion dam have been constructed. Approximately 200 cubic yards of concrete was utilized in this construction.

Additionally, approximately 4,000 linear feet of 40 inch interior diameter penstock has been installed. The remaining steel pipe for completion of the project has been ordered, at a cost of approximately two million dollars. Installation of the remaining pipe will resume as soon as weather conditions at the project site permit.

Up to the date of this request, in excess of $310,000 has been expended for materials and labor for the improvements which have been constructed.

2. A number of factors have interfered with completion of the remainder of the work prior to the date for proof of beneficial use. These factors are described as follows:

(1) Easement across state land for penstock not granted until February 23, 1987 (Exhibit B hereto). This prevented construction of the penstock across state land until the spring of 1987.

(2) The short construction season at the diversion dam and along the penstock route. The elevation at the site of the diversion dam exceeds 6,000 feet, and the remaining elevations along the penstock route are in the 5,000 to

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6,000 feet range. Consequently, the severe winter weather conditions prevent construction activities until the late spring, i.e., May or June. This factor, coupled with the need to utilize the diversion dam until October 15 of each year for diversion of irrigation water into the Dry Creek Development Company concrete irrigation ditch prevented construction except for a few number of weeks during the fall of 1986.

(3) Delays have been encountered in the acquisition of required real property interests from private property owners. (Copies of the pertinent deeds and easement documents regarding these property interests are attached as Exhibit C hereto.) Because these properties were encumbered by outstanding mortgages, approval of the Farmers Home Administration, the Federal Land Bank, and the state of Idaho have also been required. Final approval from the Federal Land Bank to one of these transfers is still pending. These delays have contributed to the delays in construction of the steel penstock and powerhouse.

(4) The turbines for the generating facilities are being manufactured by Gordon Gilkes and Company, located in Kendal, England. Delivery date for the turbine is presently scheduled for September 14, 1987. It is possible that delays in this delivery date may arise.

(5) The electrical generator for the project is being manufactured by Ideal Electric Company, located in Cleveland, Ohio, and is not scheduled for delivery until October 19,

MICROFILMED
MAR 20 1987

1987. While the permit holder is attempting to accelerate that delivery date, no firm commitments to accelerate delivery have been provided by the manufacturer.

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MAR 20 1987

WATER RIGHT SPLIT

SUMMARY

ACTION	RIGHT NO.	NAME	AMOUNT CFS
Original Permit	33-7089	Dry Creek Development Inc.	18.0 cfs
Full Assignment		Rick & Rob Stauffer Howe, Idaho 83244	18.0 cfs
Full Assignment		HDI Associates IV	18.0

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MAR 20 1987

State of Idaho

Department of Water Resources

ASSIGNMENT OF PERMIT

I, Rick Stauffer dba D & D Stauffer, Inc, hereby assign to HDI Associates IV, Limited Partnership

of 10394 W. Chatfield Avenue, #108, Littleton, Colorado 80127
Address

CHECK ONE

[X] All my right, title, and interest in and to Permit No. 33-7089 to appropriate the public waters of the State of Idaho.

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

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

Made this 12th day of December, 19 86.

Rick Stauffer dba D & D Stauffer
Permit Holder

Colleen Stauffer
Spouse of Permit Holder

State of Idaho)
County of Butte) ss.

On this 12 day of December, 19 86, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

seal

Jacqueline A. Grupe
Notary Public residing at Butte, Ida

My commission expires: 4.6.99

MICROFILMED

MAR 20 1987

State of Idaho

Department of Water Resources

ASSIGNMENT OF PERMIT

I, Rob Stauffer dba D & D Stauffer, Inc., hereby assign to HDI Associates IV, Limited Partnership

of 10394 W. Chatfield Avenue, #108, Littleton, Colorado 80127
Address

CHECK ONE

[X] All my right, title, and interest in and to Permit No. 33-7089 to appropriate the public waters of the State of Idaho.

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

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

_____

_____

_____

_____

Made this 12 day of December, 1986.

Rob stauffer D+D Stauffer
Permit Holder

Dennie Stauffer
Spouse of Permit Holder

State of Idaho)
County of Butte) ss.

On this 12 day of December, 1986, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

seal

Notary Public residing at
Arco, Id

My commission expires:
4-6-99

MICROFILMED

MAR 20 1987

Form 205/206
4/85

State of Idaho
Department of Water Resources

33-7089
Permit No.

RECEIVED
FEB 03 1987

AFFIDAVIT FOR WATER RIGHTS TO BE USED FOR POWER PURPOSES

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

1. Individual Applicant or Individual Members of a Partnership:

I, _____ Department of Water Resources ,
(name) *(city)*.

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

2. ~~Corporation~~ Limited Partnership:

I, David B. Lincoln _____ of Boise _____.
(name) *(city)*.

County of Ada _____ , State of Idaho, being duly sworn, depose and say: That I am the designated registered agent of the HDI Associates IV, Limited Partnership
_____ : that as such I am in charge of the registered office
(name of corporation)

of the said ~~corporation~~ limited partnership as required by Section ~~30-1-52~~ 53-204, Idaho Code, at Boise
(city)

Idaho, wherein are kept the ~~corporate~~ records required by Section ~~30-1-52~~ 53-205 Idaho Code: and that HDI Associates IV Limited Partnership, is a ~~corporation~~ limited partnership qualified to do business in the State of Idaho under the laws
(name of corporation)

of the State of Idaho.

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

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

(check one)

☐ Will not utilize existing man-made irrigation facilities such as a dam or a canal.

☐ Will utilize existing man-made irrigation facilities such as a dam or a canal, and permission of the owner is documented in an affidavit attached hereto.

☒ Will utilize existing man-made irrigation facilities such as a dam or a canal, and the owner of the facilities is ~~the signee of this affidavit.~~ HDI Associates IV, Limited Partnership

David B. Lincoln
Applicant

State of Idaho)
County of Ada) ss.

On this 3rd day of February, 19 87, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Elisa A. Hyldenberg
Notary Public residing at Boise Idaho

seal

My commission expires:
8/12/92

MICROFILMED
MAR 20 1987

State of Idaho

Department of State.

C E R T I F I C A T E

HDI ASSOCIATES IV, LIMITED PARTNERSHIP

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the limited partnership records of this State.

I FURTHER CERTIFY That the records of this office show that HDI ASSOCIATES IV, LIMITED PARTNERSHIP, an Idaho limited partnership, filed a certificate of limited partnership in this office on the 2nd day of October, 1986 and that the certificate of limited partnership has not been canceled.

Dated: October 8, 1986

Pete T. Cenarrusa

SECRETARY OF STATE

By Elaine Walker

MICROFILMED

MAR 20 1987

IN THE MATTER OF:)
Dry Creek Development, Inc.)
Howe, Idaho 83244)
)
)
)
State of Idaho)
County of Butte)

AFFIDAVIT

RECEIVED
AUG 16 1983
Department of Water Resources
Eastern District Office

Emlen G. Mays, President being first duly sworn, deposes and says: Following a Board of Directors meeting of Dry Creek Development, Inc., it was decided and agreed upon to transfer the energy permit for 18 cfs (granted under permit # 33-7089) to Rick Stauffer and Rob Stauffer. It was further agreed to comply with certain provisions listed under seperate cover.

RECEIVED
NOV - 1983
Department of Water Resources

Emlen G. Mays
(Signature)

Subscribed and sworn to before me this 12 day of August, 1983

Jacqueline A. Drage
(Notary Public)

Residing at Howe, Id. Butte County.
My Commission Expires 3-6-85.

MICROFILMED

Form 205/206
7/81

Ident. No. 33-7089

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
AFFIDAVIT FOR WATER RIGHTS TO BE USED
FOR POWER PURPOSES

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

1. Individual Applicant or Individual Members of a Partnership:

I, We, Rick and Rob Stauffer (name) of Howe (city),

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

2. Corporation:

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

County of _____, State of Idaho, being duly sworn, depose and say: That I am the designated registered agent of the _____ (name of corporation): that as such I am in charge of the registered office of the said corporation as required by Section 30-1-12, Idaho Code, at _____ (city) Idaho, wherein are kept the corporate records required by Section 30-1-52, Idaho Code: and that _____ (name of corporation) is a corporation qualified to do business in the State of Idaho under the laws of the State of Idaho.

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

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

(check one)

☐ Will not utilize existing man-made irrigation facilities such as a dam or a canal.

☒ Will utilize existing man-made irrigation facilities such as a dam or a canal, and permission of the owner is documented in an affidavit attached hereto.

☐ Will utilize existing man-made irrigation facilities such as a dam or a canal and the owner of the facilities is the signee of this affidavit.

Rick Stauffer Rob Stauffer
Applicant

State of Idaho)
County of Bonneville) ss.

On this 11th day of October, 1983, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Colleen Wray
Notary Public residing at
Idaho Falls

seal

My commission expires:
6-15-85

Form 202
3/78

33 7089
Ident. No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APPROVED

To appropriate the public waters of the State of Idaho

1. Name of applicant Dry Creek Development Inc. Phone 767-3461

   Post office address Howe, Idaho 83244

2. Source of water supply Dry Creek which is a tributary of Little Lost River

3. Location of point of diversion is NE ¼ of NW ¼ of Section 31 Township 10 N.

   Range 25 E. B.M. Custer County, additional points of diversion if any: ____

4. Water will be used for the following purposes:

   Amount 18 (cfs or ~~acre-feet per annum~~) for Power purposes from 1 June to 31 October (both dates inclusive)

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

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

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

5. Total quantity to be appropriated:

   a. 18 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. Dry Creek ditch, 10 miles long, 6 feet wide, with six Pelton wheel sites. 750 feet of vertical drop over the length of the ditch.

   b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____

   Period of year when water will be diverted to storage _____ (Month/Day) to _____ (Month/Day) inclusive.

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

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years *(minimum 1 year – maximum 5 years).*

8. Description of proposed uses:
   a. If water is **not** for irrigation:
   (1) Give the place of use of water: SW/SE ¼ of NW/SW ¼ of Section 19/28/33 Township 10 N.
   Range 26 E. B.M. SW/NW 13, T.10N., R.25E.; SE/SW 15 " "; SE/SW 20 " "
   (2) Amount of power to be generated: 171.1 horsepower under 750 feet of head.
   (3) List number of each kind of livestock to be watered _____

   (4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____.

   (5) If water is to be used for other purposes describe: _____

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

c. Describe any other water rights used for the same purposes as described above. Blaine County decree, 4-15-1891, for 1099.5 inches.

9. a. Who owns the property at the point of diversion BLM

b. Who owns the land to be irrigated or place of use BLM and Hartman Land and Livestock Co.

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Dry Creek Development, Inc., has easements with the BLM and Hartman Land and Livestock Co.

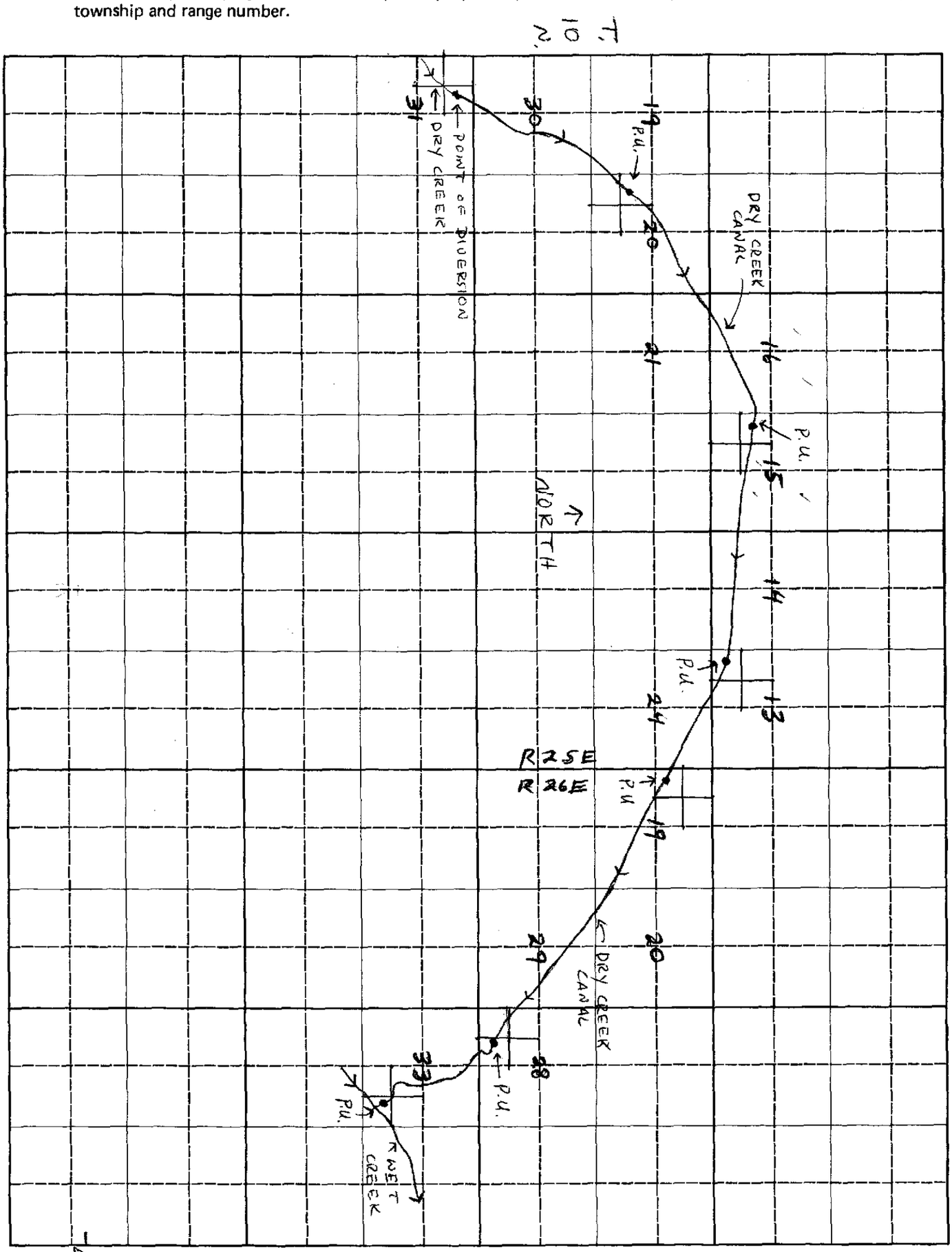
10. Remarks Power calculation: $P = \frac{Q \times H \times e}{11.8}$

$= \frac{18 \text{ cfs} \times 60 \text{ feet} \times .50}{11.8}$

$= 45.76 \text{ kw} \times 5 \text{ sites} = 228.8 \text{ kw}$

$228.8 \text{ kw} \times 0.748 \text{ HP/kw} = 171.1 \text{ HP}$

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

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.

George Woodlie Pres.
(Applicant)
Dry Creek Dept. Inc

Proposed Priority 2/6/1981

Prepared
~~Received~~ by JWK Date 6 Feb 1981 Time 1.30 PM

Preliminary check by HWJ Fee $ 385 cc

Receipted by ~~JWK~~ /cw Date 6 Feb 1981 # 17027

Publication prepared by kw Date 2/12/81

Published in Custer County Publishing Co.

Publication dates 2/19 & 2/26/81

Publication approved kw Date 3/24/81

Protests filed by: None

Copies of protests forwarded by

Hearing held by Date

Recommended for approval denial by

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 33-7089, and said application is hereby APPROVED.

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

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before October 1, 19 87.

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

   d. Other: An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.

   The issuance of this permit in no way grants any right-of-way or easement across the land of another.

   This permit is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this permit. Failure to comply with these provisions is cause for immediate cancellation of this permit.

   This project shall be operated in a manner that will not conflict or interfere with the future diversion of water for irrigation or other beneficial consumption.

   This permit does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.

   Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.

   Use of water under this permit is subject to control by the Watermaster of State Water District No. 33, Little Lost River.

Witness my hand this 26th day of October, 1982.

L. Glen Saxton
Chief, Operations Bureau

DRK

Form 205
7/81

Ident. No. 33-7089

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
AFFIDAVIT FOR WATER RIGHTS TO BE USED
FOR POWER PURPOSES

RECEIVED
AUG 10 1981
Department of Water Resources

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

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

(check one)

☐ Will not utilize existing man-made irrigation facilities such as a dam or a canal.

☐ Will utilize existing man-made irrigation facilities such as a dam or a canal, and permission of the owner is documented in an affidavit attached hereto.

☒ Will utilize existing man-made irrigation facilities such as a dam or a canal and the owner of the facilities is the signee of this affidavit.

Dry Creek Development, Inc
Emilen G. Mays - Pres.
Applicant

State of Idaho)
County of Butte) ss.

On this 6 day of August, 19 81, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Marguerite A. Mays
Notary Public residing at
Howe, Idaho

seal

My commission expires:

03-26-85

MAYS LAND AND LIVESTOCK, INC.
Box 1
HOWE, IDAHO 83244
James 767-3405 Phone Emlen 767-3403

HOWE ID
AUG
6
A.M
1981
83244

B
US Postage

Department of Water Resources
State Office
450 W. State Street
Boise Idaho
83720

MICROFILMED

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, MARGARET PARKS

Publisher of the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated 2-6-19, 19 81 and ending with the issued dated 2-26, 19 81

Margaret Parks

Subscribed and sworn to before me this 20 day of Nov, 19 81.

Notary Public, residing at Challis, Idaho. My commission expires on 4-30-83

NOTICE OF APPLICATION FOR WATER RIGHT

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho:

33-7089

DRY CREEK DEVELOPMENT INC.
HOWE, IDA 83244
Source: DRY CREEK tributary to LITTLE LOST RIVER
Date Filed: 02/06/1981
Amount: 18.00 CFS
Diversion Point: NENW Sec 31 T 10N R 25E, CUSTER Co.
Use: POWER (18.00 CFS) from 06/01 to 10/31
Place of Use: SWNW Sec 19 T 10N R 26E SESW Sec 28 T 10N R 26E SESE Sec 33 T 10N R 26E SWSW Sec 13 T 10N R 25E NWSW Sec 15 T 10N R 25E NWSW Sec 20 T 10N R 25E
Diversion Means; DITCH & PELTON WHEELS.

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, Idaho 83401 on or before MARCH 9, 1918.

C. STEPHEN ALLRED
Director
pub. 2/19 & 2/26/81

Individual Owner

AFFIDAVIT TO ESTABLISH RESIDENCE

I, _____ of _____ County of _____

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

/s/_____

Subscribed and sworn to before me this ___ day of _____, 19____

/s/_____
Notary Public
Residence_____
My Commission expires_____

NOTE: This permit is issued subject to the provisions of S. L. 1937, Ch. 142; am. 1957, Ch. 66. (Idaho Code, Sections 42-205 to 42-210).

****

Corporation or Association

AFFIDAVIT TO ESTABLISH RESIDENCE
OR QUALIFICATSION TO DO BUSINESS UNDER THE LAWS OF
IDAHO...

I, George Woodie of Howe County of Butte
State of Idaho, being first duly sworn, depose and say:

That I am the designated statutory agent of the Dry Creek Development, Inc., that as such I am in charge of the registered office of the said corporation _____, as provided by Section 30-143, Idaho Code, at Howe, Idaho, wherein are kept the records provided by Section 30-144, Idaho Code, and that Dry Creek Development is a legal corporation qualified to do business in the State of Idaho under the laws of the State of Idaho.

/s/ George Woodie

Subscribed and sworn to before me this 6 day of February, 19 81

/s/ Colleen Wray
Notary Public
Residence Idaho Falls Id
My commission expires 6/15/81

NOTE: This permit is issued subject to the provisions of S. L. 1937, Ch. 142; am. 1947, Ch. 66, (Idaho Code, Sections 42-205 to 42-210).

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 27, 2002

DRY CREEK LLC
5203 S 11TH EAST
IDAHO FALLS ID 83404

RE: Change of Ownership for Water Rights 33-7089, 33-7154, 33-7181

Dear Water Right Holder(s):

The department acknowledges receipt of correspondence changing ownership of the above referenced water rights to you. The department has modified its records to reflect the changes in ownership and has enclosed computer-generated reports for your records. Also enclosed is a receipt for the $75.00 filing fee.

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

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

Sincerely,

for Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosures

MICROFILMED
APR 0 2 2002

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 12, 2002

DRY CREEK LLC
GAYLE A SORENSON
5203 SOUTH 11TH EAST
IDAHO FALLS ID 83404

RE: Change in Ownership for Water Rights 33-7089, 33-7181, 33-7154

Dear Ms. Sorenson:

The Department of Water Resources acknowledges receipt of your Notice of Change in Water Right Ownership. Our review of your notice indicates that additional information is required before we can process the change. The information required is indicated below:

✓ Proof of Ownership: A quitclaim deed listing each of the water right numbers would suffice. The Assignment of Water Rights you provided does not meet the Department requirements for support documentation.

Because the Department cannot process the ownership change without proper documentation, we will hold any action on your notice pending receipt of the necessary information. If we do not receive the necessary information within **30 days** we will return your notice and all attachments and your notice will not be processed.

Please note that water right owners are required to report any change in 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 (http://www.idwr.state.id.us) on the Internet to obtain the proper forms and instructions.

Please feel free to contact the Department if you have any questions.

Sincerely,

Kari Lynn Townsend
Secretary

KLT:k

MICROFILMED
APR 03 2002

Dry Creek, L.L.C.
5203 South 11th East
Idaho Falls, Idaho 83404

Phone: (208) 522-8069
Fax: (208) 522-8223
e-mail: sorenson@ida.net

RECEIVED
FEB - 6 2002
Department of Water Resources

February 4, 2002

Ms. Kari Lynn Townsend
Department of Water Resources
1301 N. Orchard
Boise, ID 83720

Re: Assignment of Water License Nos. 33-7089, 33-7181 and 33-7154

Dear Ms. Townsend:

Enclosed are the following:

1. Check in the amount of $75.00
2. Notice of Change in Water Rights Ownership
3. Assignment of Water Right
4. Articles of Amendment (amending Westinghouse Corporation and Westinghouse Electric Corporation name to CBS Corporation)
5. Certificate of Merger of CBS Corporation into Viacom, Inc.

We would appreciate your prompt attention to this matter. If you have any questions or concerns, please feel free to call me.

Thank you for your assistance in this matter.

Very truly yours,

Gayle A. Sorenson

GAS/ptj
Encs.
C:\My Documents\Word Perfect\Dry Creek\Townsend.ltr.wpd

MICROFILMED
APR 0 3 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 7, 1997

WESTINGHOUSE ELECTRIC CORP
C/O CHUCK STERN
FINANCIAL SERVICES UNIT
11 STANWIX ST RM 1188
PITTSBURGH PA 15222

RE: WATER RIGHT NOS. 33-07089/33-07154/33-07181

Dear Water Right Holders:

The Department of Water Resources (the Department) has issued the enclosed licenses confirming that water rights have been established in accordance with the permits referenced above. The licenses are **Preliminary Orders** issued by the Department pursuant to section 67-5243, Idaho Code. **They can and will become final orders without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as further described below:**

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

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

RECEIVED
JUL 10 1997

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) the petition for reconsideration is disposed of; or
> (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosure

CERTIFICATE OF MAILING

I hereby certify that on the **7th** day of **July, 1997,** I mailed a true and correct copy, postage prepaiud, of the foregoing **PRELIMINARY ORDER (Approved License)** to the person(s) listed below:

Water Right Nos. 33-07089/33-07154/33-07181

WESTINGHOUSE ELECTRIC CORP
C/O CHUCK STERN
FINANCIAL SERVICES UNIT
11 STANWIX ST RM 1188
PITTSBURGH PA 15222

Kari Lynn Townsend
Secretary

JUL 18 1997

MEMORANDUM

TO: Files 33-07089/07154/07181

FROM: Sharla

DATE: May 27, 1997

RE: Additional Fees and Application for Amendment

On this date, Fred Moss called regarding the forwarded correspondence we had attempted to mail to Westinghouse Electric Corp. He was concerned that they would fail to wrap this up before the 30 days ran out which were mentioned in the letter dated 5/6. I assured him we would allow 30 days from the time we sent the letter on to him (May 21). He will forward the amendment for signature by Chuck Stern, head of Financial Services at Westinghouse and they would return it with a total of $150.00 to cover the additional fees and amendment.

Mr. Moss told me that the current address to use is:

Westinghouse Electric Corp.
c/o Chuck Stern
Financial Services Business Unit
11 Stanwix St., Room 1188
Pittsburgh, PA 15222

The database has been updated with this address.

RECEIVED
JUL 16 1997

MEMORANDUM

DATE: May 21, 1997

TO: Files 33-07089, 33-07181, and 33-07154

FROM: Shelley W. Keen (SWK)

RE: Address

This morning I spoke to Rob Stauffer, the plant manager for the Dry Creek hydro facility. He informed me that Dominion Power Services is the project manager for Westinghouse Electric and that correspondence pertaining to the water rights should be mailed to the following address:

Dominion Power Services, Inc.
Attn: Fred Moss
699 E. S. Temple
Suite #220
Salt Lake City, UT 84102

RECEIVED
JUL 18 1997

MEMORANDUM

TO: Files 33-07154, 33-07181 AND 33-07089

FROM: Kari Lynn

DATE: May 20, 1997

RE: Address Correction

After having 2 attempts to send mail to Westinghouse Electric Corp. c/o Donald Paton, Lease Finance Group, 301 Grant Street, Pittsburgh, PA 151219 end in having the mail returned to us I called Pittsburgh, PA telephone information and was given the number 412-937-6100.

I called that number - they didn't know Donald Paton and gave me a number (412-244-4888) for the "main office" for Westinghouse Electric. I spoke to Betty at that number. She searched her data base and was unable to locate Donald Paton. She also checked under the spelling of "Patton" and found nothing. When I explained the nature of the call she suggested we contact the Westinghouse Legal Dept. at 11 Stanwix Street, Pittsburgh, PA 15222.

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 12, 1997

Dominion Power Services, Inc.
699 E. S. Temple, #220
Salt Lake City, UT 84102

Attn: Fred Moss

Dear Mr. Moss:

Enclosed is Receipt No. C039213 for the additional examination fees and the amendment for Right 33-07089.

The late penalty fees of $25 for each right are required for all rights where the examination fees are not paid at the time of filing the proof of beneficial use form. Thus, an additional $50 is required for the two permits for which you paid additional examination fees. In my conversation with you on May 27, I may have calculated the fees required as totalling $150 rather than $200 and if so, I apologize for the error.

Please submit the additional $50 at your earliest convenience. If you have any questions, just give me a call. I will be out of the office all next week but will return on the 23rd.

Sincerely,

Sharla Curtis

SHARLA CURTIS
Water Resource Agent

RECEIVED
JUL 15 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 6, 1997

WESTINGHOUSE ELECTRIC CORP
C/O DONALD PATON
LEASE FINANCE GROUP
301 GRANT STREET
PITTSBURGH PA 15219

RE: Permit No.(s) 33-07154/33-07181 and 33-07089

Dear Water Right Holders:

Your permits are currently being reviewed for licensing. The Department's field examiner recommended licensing Water Right No. 33-07154 with a diversion rate of 52.0 cfs and Water Right No. 33-07181 with a diversion rate of 24.0 cfs.

If you want the licenses for these rights to reflect the rates recommended by the examiner, you must submit an additional examination fee of $100.00 ($50.00 for each right) required for higher diversion rates, plus a late payment penalty of $50.00 ($25.00 for each right), within 30 days. The examination fee of $550.00 previously paid for each of these rights is sufficient only to cover up to 19.0 cfs under each right. If we receive the examination fees after 30 days from the date of this letter, the priority date of your right will be advanced in accordance with Section 42-217, Idaho Code.

Also enclosed is an Order Advancing Date of Priority for Permit No. 33-07154 to May 5, 1985, and an Application for Amendment for Permit No. 33-07089. The amendment contains information that will be included on the license when it is issued. The amendment reflects a change in the location of the place(s) of use description. Please review it carefully and if you concur, sign the amendment and return it with the $50.00 filing fee within fourteen (14) days.

The last page of the Application for Amendment form contains a list of Conditions of Approval and Remarks proposed for the license when it is issued. These conditions of approval and remarks may be modified upon further administrative review.

MICROFILMED
JUL 18 1997

If you have any questions, please contact me as soon as possible at (208) 327-7946.

Sincerely,

Shelley Walter Keen
Water Rights Supervisor

SWK:klt

Enclosures

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Boise, Idaho 83706-2237

RECEIVED
MAY 5 - 1997
Department of Water Resources

F.O.E
1952 w

BOISE
MAY 2 5 PM
FORWARDED
UNDELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

15219

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

April 25, 1997

WESTINGHOUSE ELECTRIC CORP
C/O DONALD PATON
LEASE FINANCE GROUP ← 301 Grant St.
PITTSBURGH PA 15219

Letter returned by PO - Bad address

RE: Permit No.(s) 33-07154/ 33-07181 and 33-07089

Dear Water Right Holders:

Your permits are currently being reviewed for licensing. The Department's field examiner recommended licensing Water Right No. 33-07154 with a diversion rate of 52.0 cfs and Water Right No. 33-07181 with a diversion rate of 24.0 cfs.

If you want the licenses for these rights to reflect the rates recommended by the examiner, you must submit an additional examination fee of $100.00 ($50.00 for each right) required for higher diversion rates, plus a late payment penalty of $50.00 ($25.00 for each right), within 30 days. The examination fee of $50.00 previously paid for each of these rights is sufficent only to cover up to 19.0 cfs under each right. If we receive the examination fees after 30 days from the date of this letter, the priority date of your right will be advanced in accordance with Section 42-217, Idaho Code.

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The last page of the Application for Amendment form contains a list of Conditions of Approval and Remarks proposed for the license when it is issued. These conditions of approval and remarks may be modified upon further administrative review.

MICROFILMED
JUL 18 1997

If you have any questions, please contact me as soon as possible at (208) 327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SWK:vrr

Enclosures

RECEIVED
JUL 19 '07

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

March 12, 1997

WESTINGHOUSE ELECTRIC CORP
11 STANWIX ST
PITTSBURGH PA 15222

RE: WATER RIGHT NO. 33-07089

Dear Permit Holder:

I previously forwarded to you an Application for Amendment so that you could amend your permit to correspond with the findings of the Department's field examiner.

As of this date, I have not received this amendment. If I do not receive the amendment within fourteen (14) days, I will assume you no longer have any interest in the permit and cancellation proceedings will begin. Enclosed for your convenience is another amendment form in the event the first one was misplaced. Please note that the filing fee for the amendment is $50.00.

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

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SWK:ph

Enclosure

RECEIVED
JUL 18 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

January 29, 1997

WESTINGHOUSE ELECTRIC CORP.
11 STANWIX ST
PITTSBURGH PA 15222

RE: Permit Nos. 33-07154, 33-07181 and 33-07089

Dear Water Right Holders:

Your permits are currently being reviewed for licensing. The Department's field examiner recommended licensing Water Right No. 33-07154 with a diversion rate of 52.0 cfs and Water Right No. 33-7181 with a diversion rate of 24.0 cfs.

If you want the licenses for these rights to reflect the rates recommended by the examiner, you must submit an additional examination fee of $100.00 ($50.00 for each right) required for higher diversion rates, plus a late payment penalty of $50.00 ($25.00 for each right), within 30 days. The examination fee of $550.00 previously paid for each of these rights is sufficient only to cover up to 19.0 cfs under each right. If we receive the examination fees after 30 days from the date of this letter, the priority date of your right will be advanced in accordance with Section 42-217, Idaho Code.

Also enclosed is an Order Advancing Date of Priority for Permit No. 33-07154 to May 5, 1985, and an Application for Amendment for Permit No. 33-07089. The amendment contains information that will be included on the license when it is issued. The amendment reflects a change in the location of the place(s) of use description. Please review carefully and if you concur, sign the amendment and return it with the $50.00 filing fee within fourteen (14) days.

The last page of the Application for Amendment form contains a list of Conditions of Approval and Remarks proposed for the license when it is issued. These conditions of approval and remarks may be modified upon further administrative review.

MICROFILMED
JUL 1 3 1997

If you have any questions, please contact me as soon as possible at (208) 327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SWK:ph

Enclosures

JUL 19 1987

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	WESTINGHOUSE ELECTRIC CORP 11 STANWIX ST PITTSBURGH PA 15222	02/06/1981	POWER	06/01	10/31	18.000 CFS	5453.00 AFA
				TOTAL DIVERSION:		18.000 CFS	5453.00 AFA

Water Source: DRY CREEK Tributary to: LITTLE LOST RIVER Stage: LICENSE

Point(s) of Diversion Capacity: 76.000 CFS

Point(s) of Diversion: T10N R25E S31 NENW CUSTER County

Place of use Legal Description for: POWER

	NE				NW				SW				SE			
	NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T R S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
10N 26E 36							P									

Pou County: CUSTER

Other Water Rights with Same Point(s) of Diversion and Source:
33-07089 33-07154 33-07181 L33-07154 L33-07181

Other Water Rights Listing Overlapping Place(s) of use:
33-07094

Conditions of Approval:

027 - Use of water under this right shall be non-consumptive.
025 - This right does not constitute Idaho Public Utilities Commission
- or Federal Energy Regulatory Commission approval that may be
- required.
R04 - Use of water under this water right will be regulated by the
- watermaster of State Water District No. 33.
R22 - The rights for the use of water confirmed in this license
- shall be junior and subordinate to all rights for the use of
- water other than hydropower, within the State of Idaho that are
- initiated later in time than the priority of this right and
- shall not give rise to any right or claim against any future
- rights for the use of water, other than hydropower, within the
- State of Idaho initiated later in time than the priority of this
- right.
09E - Water used under this right when discharged into a natural
- channel or subsurface system shall meet Idaho Water Quality
- Standards.

Remarks: The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after November 1, 2024. Upon appropriate findings relative to the

Remarks: interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
A measuring device and lockable controlling works of a type acceptable to the Department shall be maintained as part of the diverting works.
Rights 33-07089, 33-07154, and 33-07181 in combination shall not exceed a total diversion rate of 76.0 cfs.
Rights 33-07154 and 33-07181 are also diverted through the point(s) of diversion described above.
Facility known as Dry Creek Project.

Dates: App. Received: 02/06/1983 Priority Date: 02/06/1981 (Priority Date Advanced.)
Proof Due Date: 10/01/1989 Proof Made Date: 11/06/1989 (Proof Received Late.)
Exam Made Date: 05/18/1995 Exam Sent to S.O.: 04/11/1996
Licensed Date:

Misc: Water District Number: 33 Field Exam Fee: R (Received)

Audit: 01/15/97 SCURTIS 01/16/97 SCURTIS 01/16/97 SCURTIS 01/17/97 SCURTIS
01/28/97 SCURTIS

MEMORANDUM

TO: Files 33-07089/07154/07181

FROM: Sharla

DATE: January 22, 1997

RE: Licensing

The rated flow for the turbine under these three rights is 76.0 cfs. This is the capacity used for the licensing. Between the three rights (two of which are for partial seasons), the rates of flow licensed total 76.0 cfs year-round. Right 33-07181 has been changed regarding the rates of flow from what was recommended by the examiner based on the above.

A copy of the original power purchase agreement can be found in 33-07154. I spoke to Karen at IPUC and she stated the agreement was somewhat amended when transferred to Westinghouse. As best as she could tell, the term probably began in 1989. By an order dated 3/16/87 for rights 33-07154 and 33-07181, the term limits were set by the department for 35 years (same as power purchase agreement) from the date of first beneficial use. Beneficial use was filed in November of 1989 for the first permit, 33-07089, and for continuity, this is the date used for calculating the term limits on the licenses.

Insufficient proof of beneficial use fees were paid for 33-07154 and 33-07181. A letter requesting the additional fees will be sent. An error in the calculating of the new priority date for late submittal of proof of beneficial use under 33-07154 was found, and this has been corrected by order.

MICROFILMED
JUL 18 '97

LICENSE REVIEW CHECKLIST

PERMIT NO. 33-07089 DATE 1/14/97 REVIEWER: *SHARLA*

	Change	OK	
NAME	__	✓	Address Change NO
SOURCE	__	✓	Is change clarification of originally intended source? __ If not, prepare Notice of Intent to Void __
POINT OF DIV	__	✓	Amendment required NO
PLACE OF USE	✓	__	Amendment required yes

Does map agree with written description? ✓ yes __ no

OVERLAPS __ P/D __ P/U

RATE OF DIV

Permitted Rate 18.0 cfs

Fee limit 20+ cfs $600.00

Measured 76.69 cfs

Theoretical _____ cfs

Recommended Total Div Rate 18.0 cfs

ANNUAL VOLUME/ NATURE OF USES __ ✓ Use

Use	Volume Calculation
Power	_____ af
_____	_____ af
_____	_____ af
_____	_____ af
SUBTOTAL	_____ af

Flow rate 18.0 cfs X 365 days X 1.98 = ~~13,008.6~~ 5452.9 af

Total ~~volume~~ recommended _____ af
(SUBTOTAL or Flow Rate, whichever is less)

REMARKS W42

CONDITIONS R04 Watermaster Control WD# 33

__ GW Measurement/Measuring Device

__ Overlap

__ Use-specific conditions 027 025 R22

Advancement of Priority Date Required __ yes ✓ no

SRBA Claim Filed N/A

Adjustment Memo __

1st Amend Letter P41 P38

2nd Amend Letter P47

Form 219
6/92

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

RECEIVED
APR 1 1996

A. GENERAL INFORMATION

Permit No. 33-07089

1. Owner: WESTINGHOUSE ELECTRIC CORPORATION Phone No. (412) 393-3522

Current Address: 11 STANWIX STREET, PITTSBURGH, PA 15222

2. Accompanied by: ROB STAUFFER EXAM DATE: 5/18/95

Address: P.O. BOX 501, ARCO, IDAHO 83213 Phone No. (208) 767-3356
PLANT (208) 767-3025

Relationship to Permit Holder: MANAGER

3. Source: DRY CREEK tributary to LITTLE LOST RIVER

B. OVERLAP REVIEW

1. Other water rights with the same place of use: 33-07154, 33-07181

2. Other water rights with the same point of diversion: 33-07154, 33-07181

C. DIVERSION AND DELIVERY SYSTEM

1. **Point(s) of Diversion:**

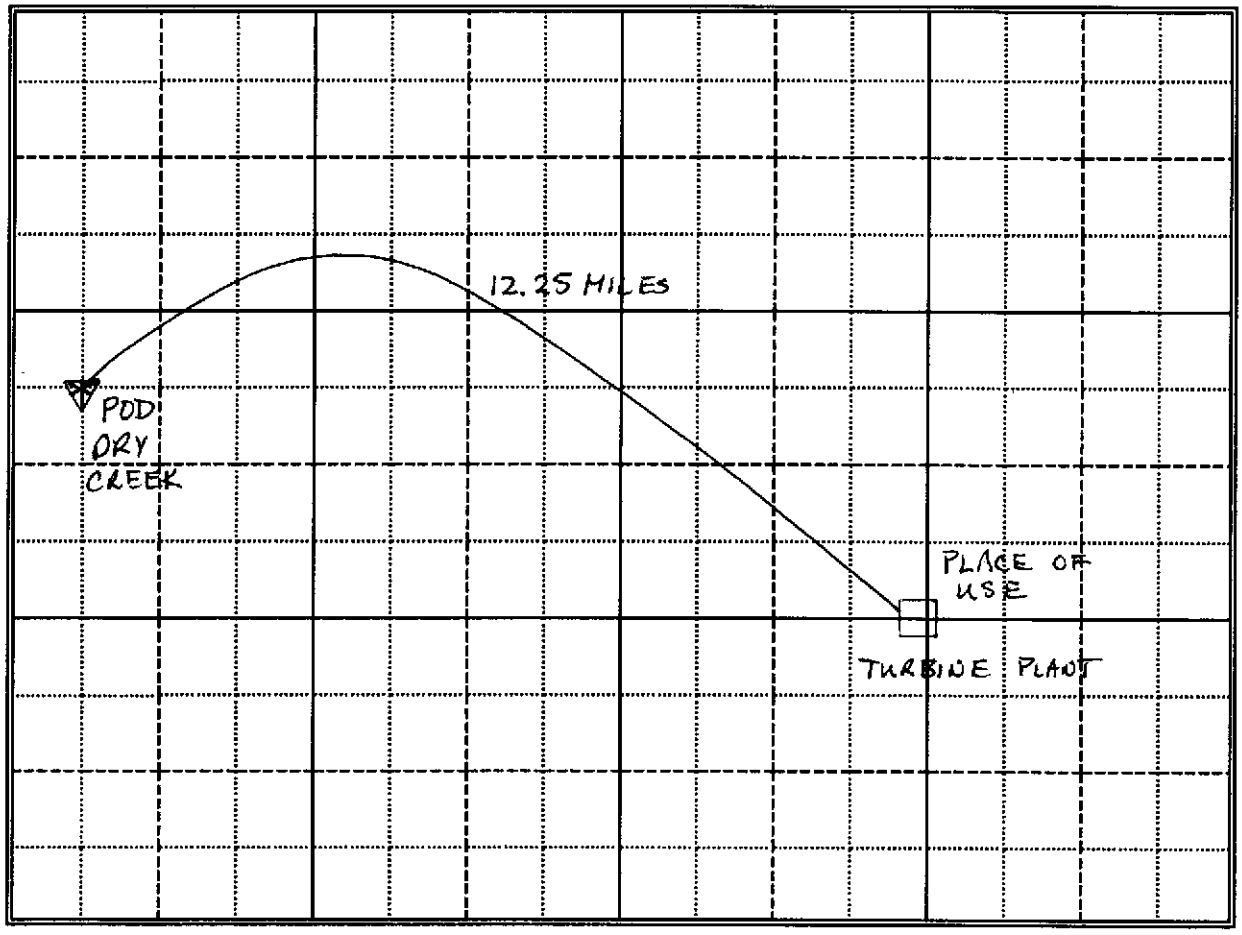
Ident No.	Gov't Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			NE	NW	31	10N	25E	CUSTER	U.S.G.S. TOPO MAP.

2. **Place(s) of Use:** Indicate Method of Determination

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10N	26E	36							P										

MICROFILMED
JUL 18 1997

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



Scale: 1" = _____.

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

_____ Aerial Photo Attached (required for irrigation of 10+ acres)

_____ Photo of Diversion and System Attached

4.

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

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

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

2. **Measurements:** SONIC METER - SEE REMARKS + ATTACHMENT

MICROFILMED
JUL 13 1987

E. NARRATIVE/REMARKS/COMMENTS

WATER USED FOR THIS PERMIT IS PIPED 12¼ MILES FROM DRY CREEK RESERVOIR TO THE TURBINE PLANT VIA AN UNDERGROUND PIPELINE. (4 MILES OF 40" STEEL PIPE + 8¼ MILES OF 36" STEEL PIPE). AFTER PASSING THROUGH TURBINES WATER IS DISCHARGED ~~BACK~~ TO WET CREEK VIA A DISCHARGE CHANNEL. DISCHARGED WATER PASSES THROUGH A PARSHALL FLUME PRIOR TO WET CREEK.

HYDRO TURBINE:

GILKES DATE 1987 RATED OUTPUT 5,892 B.H.P.

TURBINE # 56330 RATED NET HEAD 783.6 F.T.

* RATED FLOW 76.0 CFS SPEED 1200 RPM 22½" TWIN JET TYME-FLYTE

POLYSONIC METER # TF-P SER. 7M0263

FLOW TEST ON 6/8/95

LOWER TURBINE (LEFT HAND) = 1.794 E 4GPM AT 84% NOZZEL

UPPER TURBINE (RIGHT HAND) = 1.648 E 4GPM AT 84% NOZZEL

$\frac{17,940}{448.8}$ = 39.97 CFS SYSTEM HEAD 1140 FEET

PRESSURE 600 PSI

$\frac{16,480}{448.8}$ = 36.72 CFS MAX JET OPENING 7½"

76.69 CFS

Have conditions of permit approval been met? ✓ yes ___ no

MICROFILMED
JUL 19 1995

F. FLOW CALCULATIONS _____ Additional Computation Sheets Attached

Measured Method:

Q = LOWER TURBINE 39.97
UPPER TURBINE 36.72
76.69 CFS

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{I.R.}$ = (Acres Irrigated) x (Irrigation Requirement) = _____

$V_{D.R.}$ = [Diversion Rate (cfs)] x (Days in Irrigation Season) x 1.9835 = _____

V = Smaller of $V_{I.R.}$ and $V_{D.R.}$ = _____

2. Volume Calculations for Other Uses:

H. RECOMMENDATIONS PERMIT LIMITS TO 18 CFS

1. Recommended Amounts

Beneficial Use	Period of Use From	Period of Use To	Rate of Diversion Q (cfs)	Annual Volume V (afa)
POWER	6/1	10/31	18	
		Totals:	18 CFS	

2. Recommended Amendments

___ Change P.D. as reflected above ___ Add P.D. as reflected above ___ None
✓ Change P.U. as reflected above ___ Add P.U. as reflected above ___ Other

I. AUTHENTICATION

Field Examiner's Name SIMPKINS Date 1/8/96

Reviewer [signature] Date 3-5-96

SEAL

Lower Turbine
Left Hand
(2)

00-00 00:4700 *R
+002.60 % AI2

0642.7 MMSEC
100.34 % T0

PRINTER USE
? YES

MODE SELECT
INPUT

OUTER DIAMETER
18.5000 IN

PIPE MATERIAL
? CS,SS

WALL THICKNESS
0.7620 IN

INNER LINING
? NO LING.

KIND OF FLUID
? ANOTHER

SOUND VELOCITY
1470 M/S-

SENSOR MOUNTING
? V

TYPE OF SENSOR
? SMALL

DATA CHANGE
? NO

SPACING
15.669 IN V

ZERO MODE
AUT ZERO

MM-DD HH:MN
06-08 11:18

06-08 11:1000 *R
+002.60 % AI2

MODE SELECT
T0 CHECK

0642.6 MMSEC
100.03 % T0

46% Nozzle

06-08 11:1500 *R
+ 1.287E 4GPM

84% Nozzle

06-08 11:2700 *R
+ 1.794E 4GPM

1.794E 4GPM

Lower Turbine
Left Hand
Test 2

33-7154
33-7181

Test #1 Upper Turbine
(1)

PRINTER USE
? YES

33-7154
33-7181

00-00 00:1600
+002.60 % AI2

MODE SELECT
T0 CHECK

0644.4 MMSEC
100.26 % T0

0644.4 MMSEC
100.26 % T0

MODE SELECT
INPUT

OUTER DIAMETER
18.0500 IN

PIPE MATERIAL
? CS,SS

WALL THICKNESS
0.4720 IN

INNER LINING
? NO LING.

KIND OF FLUID
? ANOTHER

SOUND VELOCITY
1479 M/S-

SENSOR MOUNTING
? V

TYPE OF SENSOR
? SMALL

DATA CHANGE
? NO

SPACING
14.914 IN V

ZERO MODE
AUT ZERO

46% Nozzle

00-00 00:1900 *R
+ 1.225E 4GPM

Data 84% Nozzle

00-00 01:2600 *R
+ 1.648E 4GPM

1.648E 4GPM

+002.60 % AI2

(1A)

OUTER DIAMETER
19.050 IN

33-7154
33-7181

PIPE MATERIAL
? CS,SS

WALL THICKNESS
0.4720 IN

INNER LINING
? NO LING.

KIND OF FLUID
? ANOTHER

SOUND VELOCITY
1480 M/S-

SENSOR MOUNTING
? V

TYPE OF SENSOR
? SMALL

DATA CHANGE
? NO

SPACING
14.561 IN V

ZERO MODE
AUT ZERO

00-00 00:1000
+002.60 % AI2

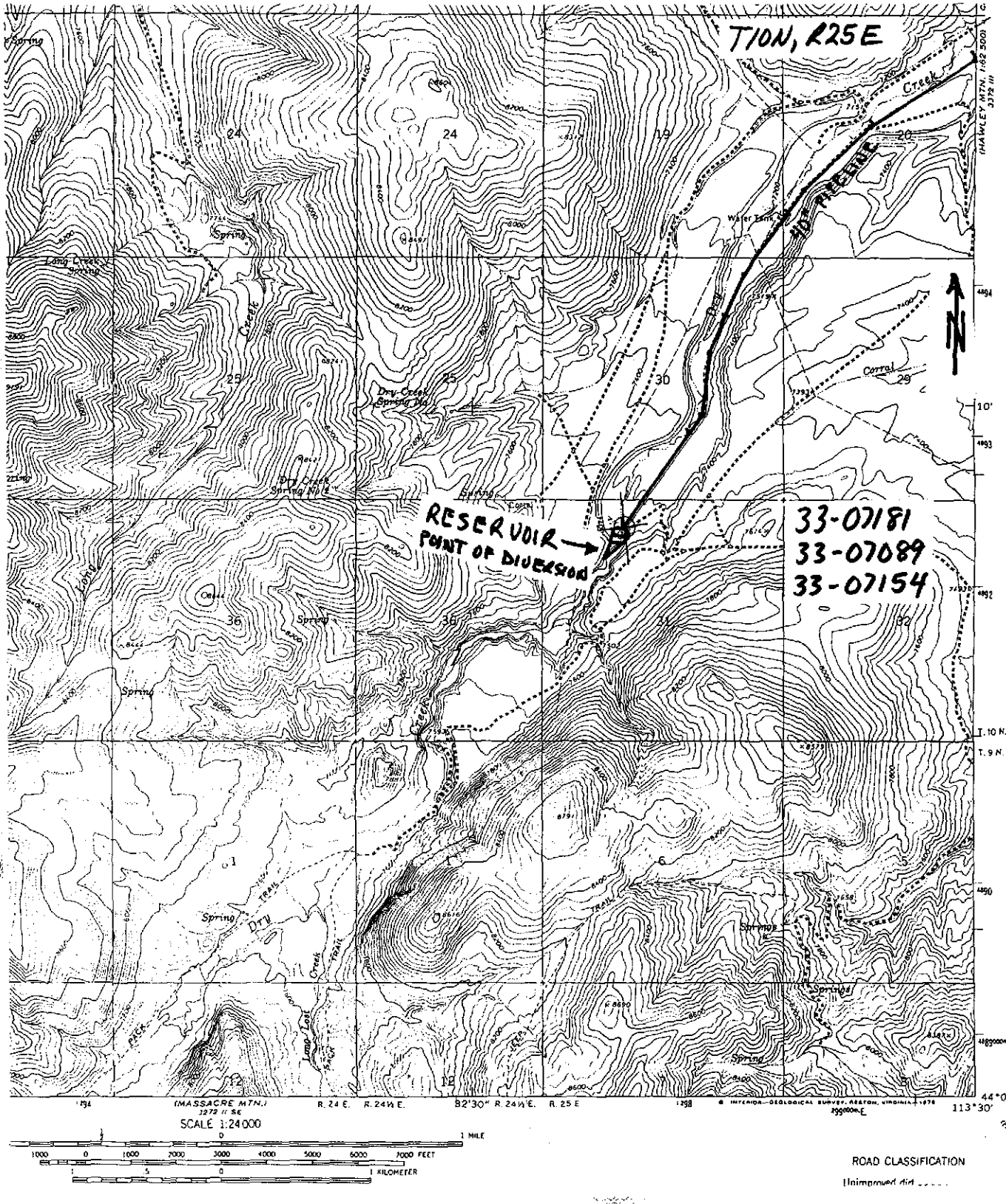
MODE SELECT
T0 CHECK

0644.4 MMSEC
099.58 % T0

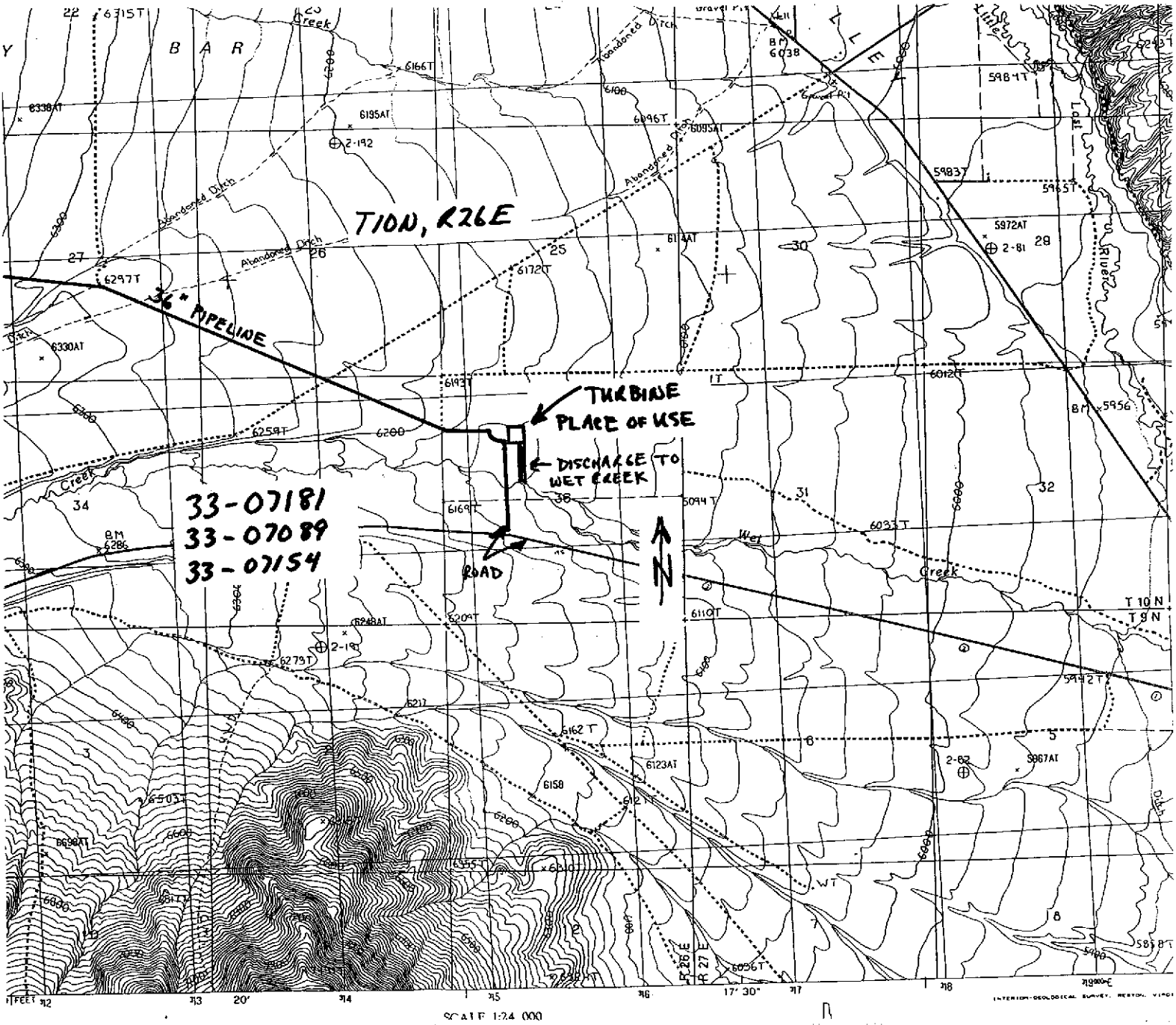
MODE SELECT
DATA SET

DATA SET MODE
? PRINTER

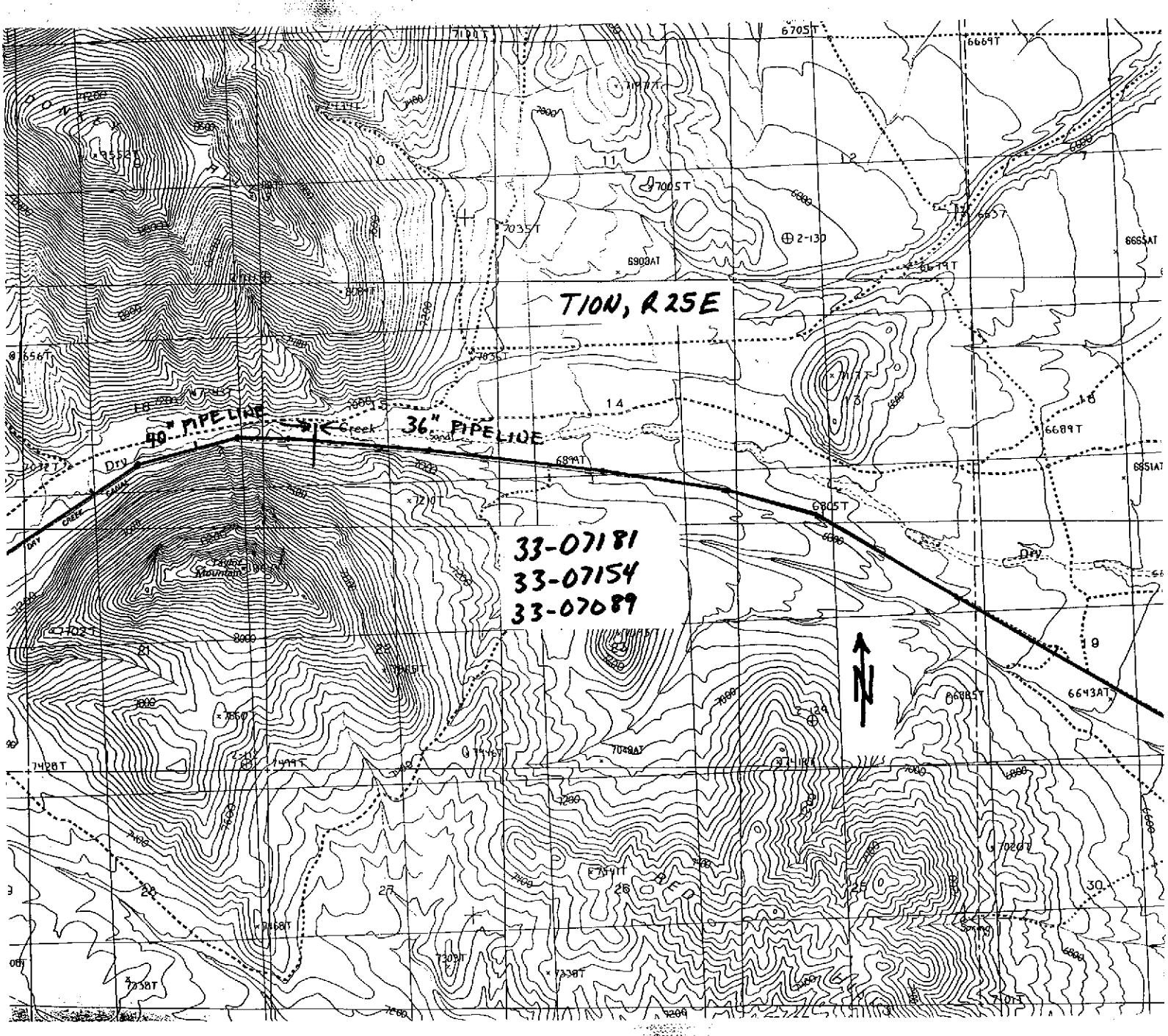
33-07089


T10N, R25E
HOT SPRINGS
Creek
Water Tank
Corral
Dry Creek Spring No. 2
Dry Creek Spring No. 1
RESERVOIR
POINT OF DIVERSION
33-07181
33-07089
33-07154
Spring
Long Creek
Dry Creek
Trail
Pack
Long Lost Creek
(MASSACRE MTN.)
1272 II SE
R. 24 E.
R. 24 W. E.
82°30"
R. 24 W. E.
R. 25 E.
T. 10 N.
T. 9 N.
SCALE 1:24000
1 MILE
1000 0 1000 2000 3000 4000 5000 6000 7000 FEET
1 KILOMETER
ROAD CLASSIFICATION
Unimproved dirt
113°30'
44°0'

33-07089


T10N, R26E
36" PIPELINE
TURBINE
PLACE OF USE
DISCHARGE TO WET CREEK
ROAD
33-07181
33-07089
33-07154
N
T 10 N
T 9 N
Wet Creek
Abandoned Ditch
Gravel Pit
BM 6038
BM 6286
BM 5956
2-192
2-81
2-82
17' 30"
SCALE 1:24 000

33-07089


T10N, R25E
40" PIPELINE
36" PIPELINE
Dry
Creek
Mountain
33-07181
33-07154
33-07089
N

33-07089

(1)

6/8/95 Howe / Palmerio

0800 Enroute

1000

M. Hammond 6/7 56.22 cfs
1.42 on

55.58 cfs.

Weir Reading 1.41 ft.
Ft. H_2O 825 on 0-1500 Hilker
Plate Hilker Turbine #56330 Unit 1987
Rated Output 5892 B.H.P.
Rated Net Head 783.6 ft.
Rated Flow 76 CFS
Speed 1200 RPM.
England

Test #1 Right Hand Turbine (Upper)
Thickness .472
Dia 18.05
Spacing 14.561 1 Reading 3.2 Mega Watt.
1,225 46PM Valve 46% 825 ft Head. 27,295 cfs.
1,649 46PM Valve. 84% 720 ft Head. Max 36.74 cfs.

Test #2 Left Hand Turbine (Lower.
Thick .702
Dia 18.5
Spacing 15.668

1,287 46PM 790 ft Head at 46% Nozzle 28.676 / 55.9
1,792 46PM 720 ft Head at 84% Nozzle → 39.70

76.445 cfs.

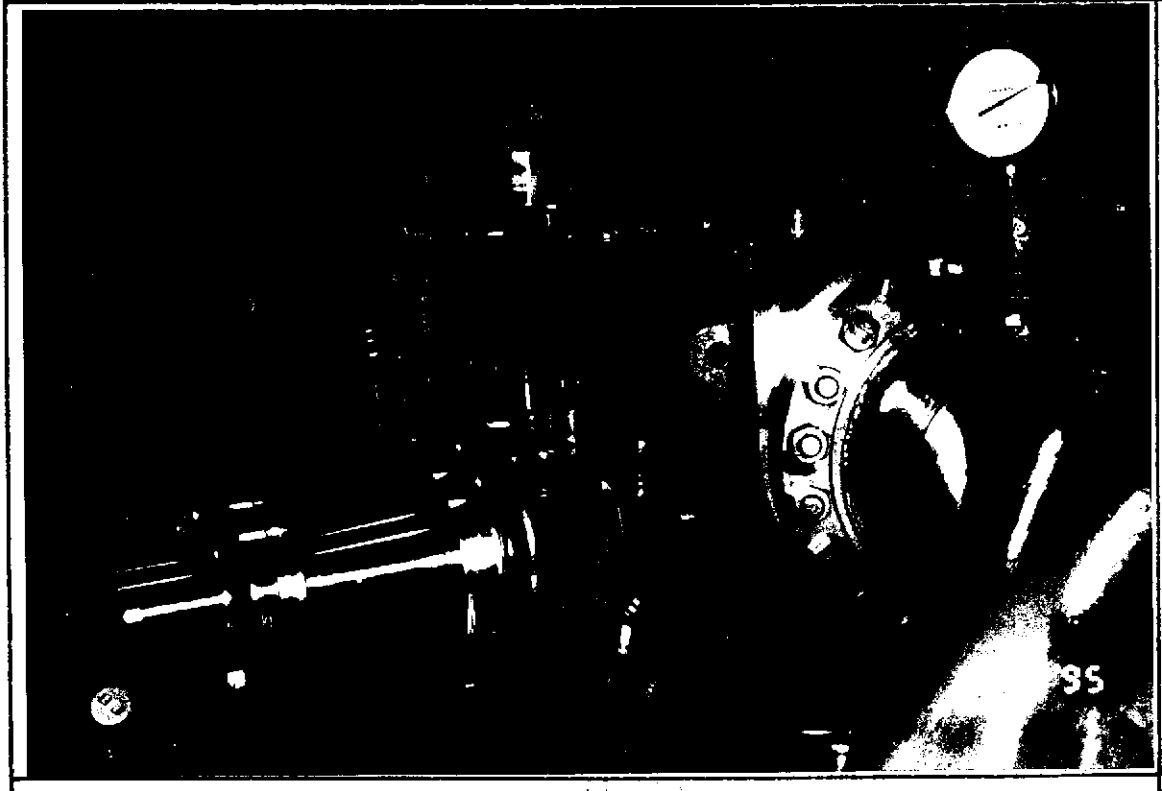
ARCHIVES 33-07089
JUL 18 '97

WESTINGHOUSE ELECTRIC CORP.
POWER



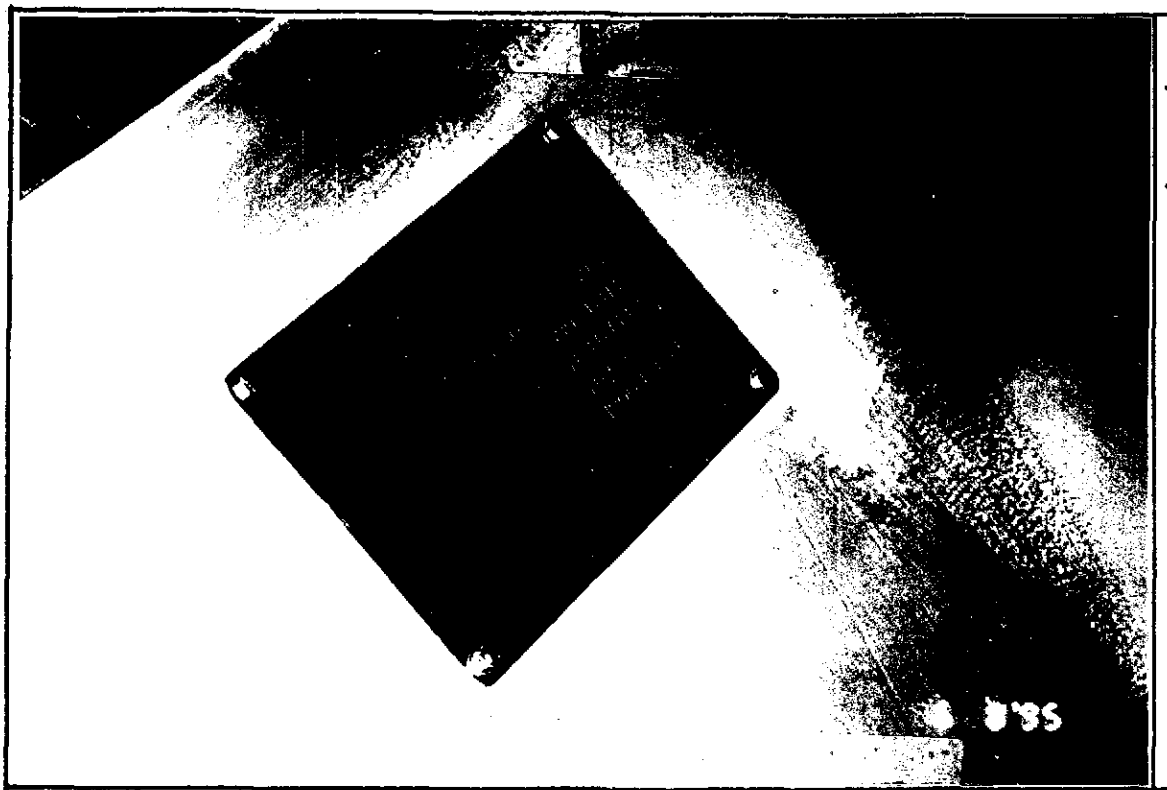
VIEW OF DRY CREEK RESERVOIR

POINT OF DIVERSION



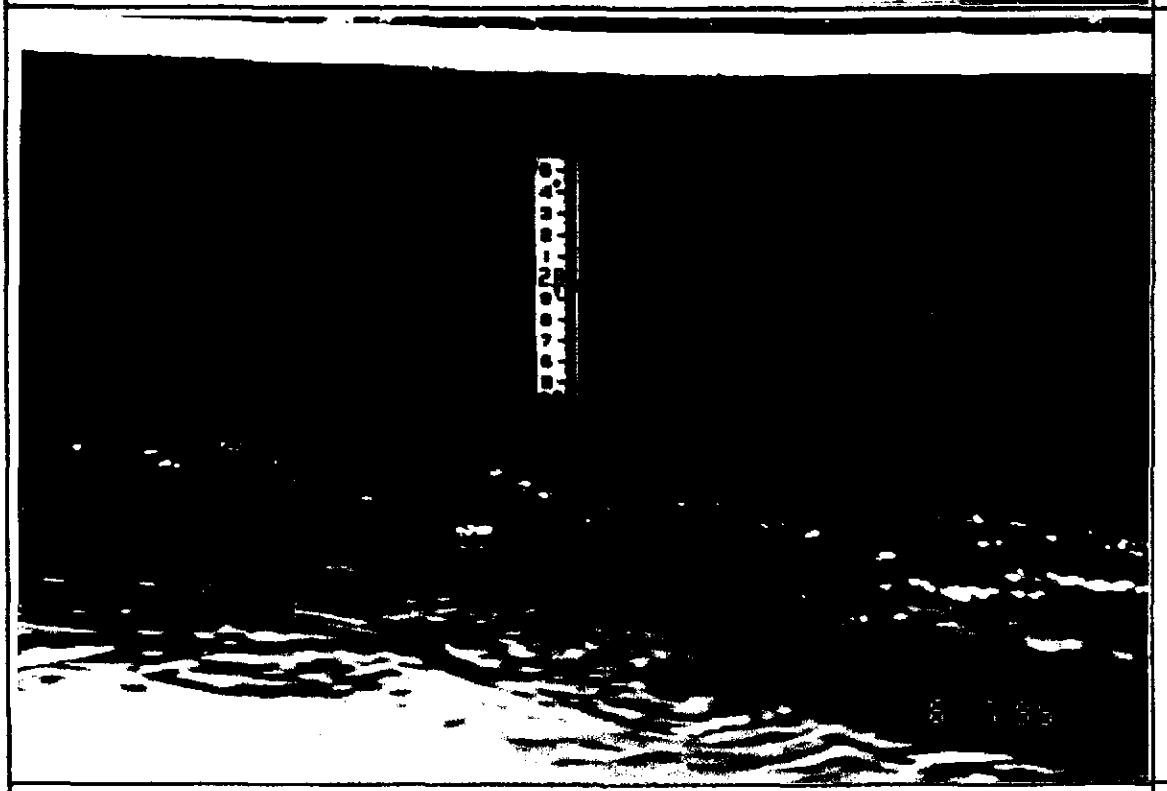
VIEW OF GILKES TURBINE IN POWER HOUSE

33-07089



VIEW OF TURBINE RATING PLATE.

MAX. 76 CFS



VIEW OF FLUME IN DISCHARGE CHANNEL

33-07089

RECEIVED
JUL 0 9 1993
Department of Water Resources

HOLLAND & HART
ATTORNEYS AT LAW

DENVER
DENVER TECH CENTER
COLORADO SPRINGS
ASPEN
BILLINGS
BOISE
CHEYENNE
JACKSON
WASHINGTON, D.C.

SUITE 1400
WEST ONE PLAZA
BOISE, IDAHO 83702-7714
MAILING ADDRESS
P.O. BOX 2527
BOISE, IDAHO 83701-2527

TELEPHONE (208) 342-5000
FACSIMILE (208) 343-8869

Dana L. Hofstetter

July 8, 1993

Idaho Department of Water Resources
ATTN: Karen Gustafson
1301 North Orchard
Statehouse Mail
Boise, ID 83720-9000

Re: Permit No. 33-07089, 33-07154 and 33-07181

Dear Karen:

Thank you for forwarding to me Jim Johnson's May 21, 1993 letter confirming receipt of correspondence transferring ownership of the above referenced water rights to Westinghouse Electric Corporation. I noticed that the letter was sent to Westinghouse Electric Corporation but was not sent to anyone's attention. Since Westinghouse Electric Corporation is a very large entity, it is unlikely that correspondence will reach the appropriate place unless it is sent to a particular individual's attention. Accordingly, on behalf of Westinghouse Electric Corporation we respectfully request that the Idaho Department of Water Resources amend its records to ensure that future correspondence concerning the above referenced permits is sent to:

Mr. Donald Paton
Vice President, Investment Manager
Financial Services
Westinghouse Electric Corporation
Lease Finance Group
301 Grant Street
Pittsburgh, PA 15219

Thank you for your attention to this matter.

Sincerely,

HOLLAND & HART

Dana L. Hofstetter

MICROFILMED
JUL 1 6 1993

DLH:cd

Data Entry done
7/9/93
Klg

cc: Donald Paton
Robert K. Dannhauser, Esq.

30262/19623.1002

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 21, 1993

WESTINGHOUSE ELECTRIC CORP
6 GATEWAY CENTER
PITTSBURGH PA 15222

Re: Permit Nos. 33-07089, 33-07154 & 33-07181

Dear Permit Holder(s):

We acknowledge receipt of the correspondence transferring ownership of the above referenced water right to you. We have modified our computer records to reflect this change in ownership.

If you have any questions regarding this matter, please feel free to contact us.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:dc

RECEIVED
MAY 25 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 19, 1992

Dana L. Hofstetter
Holland & Hart
P.O. Box 2527
Boise, Idaho 83701-2527

Re: Permit Nos. 33-07089, 33-07154, and 33-07181

Dear Ms. Hofstetter:

Thank you for returning the address information for Westinghouse Credit Corporation. The database has been updated to reflect the correction in their company name and address for the above referenced permits.

Thank you for your assistance with this matter.

Sincerely,

Brenda L. Miller
Technical Records Specialist

MAY 25 1993

HOLLAND & HART
ATTORNEYS AT LAW

DENVER
DENVER TECH CENTER
COLORADO SPRINGS
ASPEN
BILLINGS
BOISE
CHEYENNE
JACKSON
WASHINGTON, D.C.

SUITE 1400
WEST ONE PLAZA
BOISE, IDAHO 83702-7714
MAILING ADDRESS
P.O. BOX 2527
BOISE, IDAHO 83701-2527

TELEPHONE (208) 342-5000
FACSIMILE (208) 343-8869

February 14, 1992

RECEIVED
FEB 18 1992
Department of Water Resources

Brenda L. Miller
Technical Records Specialist
State of Idaho
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720-9000

Re: Permit Nos.: 33-07089, 33-07154 and 33-07181

Dear Ms. Miller:

As we discussed on the telephone earlier this week, your letter of February 7, 1991 indicates that Idaho Department of Water Resources ("IDWR") records regarding the above-referenced permits have been revised to designate Westinghouse Farm Credit Corporation as the current owner. However, Westinghouse Credit Corporation is the correct name of the owner. I would appreciate your correcting the records, if necessary, to provide the correct name of the owner.

Further, you requested we provide you the address of Westinghouse Credit Corporation. Westinghouse Credit Corporation's address is:

Attention: Donald Paton
Westinghouse Credit Corporation
One Oxford Centre
Pittsburgh, Pennsylvania 15219

Please also correct IDWR records for the above referenced permits to include this address.

MAY 25 1993

I would appreciate a note confirming these changes. Thank you for your assistance with these matters.

Sincerely,

HOLLAND & HART

Dana L. Hofstetter

DLH/md

cc: Donald Paton
Robert Dannhauser, Esq.

MICROFILMED

MAY 25 1993

February 7, 1992

RE: Permit Nos.: 33-07089, 33-07154, & 33-07181

Westinghouse Farm Credit Corporation
c/o Holland & Hart
Attn: Dana Hofstetter
PO Box 2527
Boise, ID 83701-2527

Dear Water Right Holder:

We acknowledge receipt of the correspondence transferring ownership of the above referenced water rights to you. We have modified our computer records to reflect this change in ownership.

If you have any questions regarding this matter, please feel free to contact us.

Sincerely,

BRENDA L. MILLER
Technical Records Specialist

BLM:clh

MAY 25 1993

INTER-DEPARTMENT MEMO

TO: File

FROM: Karen

SUBJECT: additional correspondence

DATE: 11/6/91

Correspondence from Law Firm of Holland & Hart Reference WR#

33-7089 - 33-7154 - 33-7181

Original Correspondences in File #

33-7154

MICROFILMED

MAY 25 1993

( ) For your information

( ) Response required

Karen Gustafson
signature

WHITE – State Auditor
YELLOW – Remittance Advice
PINK – State Auditor then Agency
GOLDENROD – Agency Copy

EXPENDITURE VOUCHER

STATE OF IDAHO
Office of State Auditor

AUDITOR USE

Document No.

Pre–Audit | Date

Warrant No.

AGENCY USE

7378

Date
11/22/89

Code
193002

VENDOR: If you require additional information regarding this payment, please contact the State agency listed below.

AGENCY NAME: DEPT. OF WATER RESOURCES

CHECK ONE:

(1) MISCELLANEOUS EXPENDITURE

( ) STATE CONTRACT

( ) PURCHASE ORDER

( ) MISCELLANEOUS ENCUMBRANCE REQUISITION

PAY TO

HDI ASSOCIATES IV
10394 W. CHATFIELD AVE. #108
LITTLETON, CO 80127

PAYMENT: ( ) PARTIAL ( ) FINAL

Encumbrance Reference No.

LINE No.	PROGRAM	FUND	ACCT. Maj	ACCT. Min	DESCRIPTION	LINE AMOUNT	AGENCY USE
1	06 10 199	1238	8831		PERMIT #33-7089 PER RITA FLECK 11/21/89 15.00	15.00	

MISCELLANEOUS
DEC 13 1989

TOTAL 15.00

NOTE: Final payment must be accompanied by a receiving copy

TO STATE AUDITOR

Request is hereby made that a warrant be authorized and drawn in payment of the item or items described above. I hereby certify that the items described were ordered by proper authority; that they are necessary in the public service, that the items have been received and accounted for, and that the account as stated is correct and just.

Date Head of Agency or Institution

AUDITOR'S CERTIFICATE

I hereby certify that the above account is in proper form; that totals carried hereon are correct; that receipts when required by law or regulation of the State Board of Examiners covering items for which reimbursement is asked are submitted herewith; and that there are funds in the state treasury and balances in appropriation accounts out of which the same may be lawfully paid.

State Auditor

MEMORANDUM

DATE: November 21, 1989

TO: ACCOUNTING SECTION - Pearl

FROM: Nina Shields or Rita Fleck

RE: REFUND - Permit No. 33-7089

Please prepare a refund of $100.00 (receipt No. C009933). Attached is a copy of a letter which explains why the refund is necessary along with the receipt.

Also, please reference the water right identification number on any papers returned to me for the file. Thanks.

Attachments: Letter
Receipt

MICROFILMED

DEC 13 1989

November 22, 1989

HDI Associates IV
10394 W. Chatfield Ave. Suite 108
Littleton, CO 80127

Gentlemen:

RE: Permit No. 33-7089

This office acknowledges receipt of the proof of beneficial use and fee submitted on November 6, 1989. Returned is the request for extension of time form submitted on August 18, 1989. I have prepared a refund request and the $15 will be mailed to you in several weeks from the Auditor's Office.

The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have any questions concerning this permit, please feel free to contact this office or our Eastern Region office in Idaho Falls at 525-7161.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosure

c: Region
Acct. Sec.

MICROFILMED

DEC 13 1989

1/88

PROOF OF BENEFICIAL USE

ANALYSIS SHEET

Permit No. 33-7089 Date: 11-21-89

General Considerations:
- y Name same as permit
- y Signature the same as permit holder
- y Address change _____ If yes, prepare a data entry
- y Proof received timely
- N/A Reinstated

Source of Water:
- y Surface water
- _____ Groundwater
  - N/A 1. well log in file
  - N/A 2. drilling permit
    - _____ A. amount of drilling fee paid for proposed uses

Extent of Use and Rate of Diversion:
- y Rate of diversion appropriate for uses
  - y Is rate or volume and fee appropriate?
- y Has permit holder indicated when water was first put to a beneficial use?

Measuring Device:
- y Is a measuring device or access port required?
- y Has one been installed?
- N/A Waiver or modification of measuring device requested

Remarks: Proof acceptable
Ext Req. returned. Proof submitted in lieu of.

N/A Priority Calculation:

Date proof received	_____	_____
Date proof due	_____	-_____
No. of days late		=_____
Priority date	_____	+_____
NEW PRIORITY DATE	_____	=_____

SEND FILES TO DATA ENTRY AND THEN TO MICROFILM

MEMORANDUM

November 21, 1989

To: File 33-7089

From: Rita Fleck

Re: Extension Request and Proof Submittal

On July 31, 1989, the department mailed a proof due notice to the permit holder advising that proof was due October 1, 1989. In response, I received a request for extension of time on August 18, 1989. The reason given for the extension request was that due to the drought conditions, the turbines has not operated at maximum capacity. The facility has been on-line since December 1987 and operating continuously.

Since the extension request was a second request, I doubted that the department would granted it and since the project was complete, I saw no need for additional time. I responded to the permit holder with a letter advising that proof is the appropriate document to submit which the permit holder did.

The big concern here is timing. Note that my letter requesting the proof submittal was after the proof due date which in turn makes it appear that the proof was not received timely. The proof should be considered as being received timely with no advance in priority.

MICROFILMED

DEC 13 1989

U352753

098040 - D[redacted]Creek Westinghouse Cash Coll [redacted] 11-1-89

Department of Water Resources $600.00
Payment on Policy No 33-7089 as per Disbursement
Request dtd 10-31-89

DEC 13 1989

THIS STUB IS FOR YOUR RECORD. DETACH BEFORE PRESENTING FOR PAYMENT.

First Security Bank of Utah, N.A.

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

October 10, 1989

Donnie R. Pope
HDI Associates IV
10394 W. Chatfield Ave. #108
Littleton, CO 80127

Dear Mr. Pope:

Re: Permit No. 33-7089

Pursuant to our telephone conversation of this date, enclosed is a proof of beneficial use form along with a fee schedule. Upon receipt of the proof form, I will return the request for extension of time.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Rita T. Fleck
RITA T. FLECK
Secretary/Records Manager

Enclosures

FILMED
DEC 13 1989

July 31, 1989

138470

HDI ASSOC. IV
10394 W. CHATFIELD AVE. #108
LITTLETON, CO 801270000

PROOF DUE NOTICE

RE: PERMIT NO. 33-07089

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before October 1, 1989. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

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

SINCERELY,

Rita Fleck
Secretary/Records Manager

Enclosures

c: Westinghouse Credit Corporation

MICROFILMED
DEC 13 1989

LAW OFFICES
ORRICK, HERRINGTON & SUTCLIFFE
600 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 392-1122
TELECOPIER (415) 773-5759 TELEX 70-3520

NEW YORK, NEW YORK 10022
599 LEXINGTON AVENUE
TELEPHONE (212) 326-8800

SAN JOSE, CALIFORNIA 95113
55 ALMADEN BOULEVARD
TELEPHONE (408) 298-8800

SACRAMENTO, CALIFORNIA 95814
555 CAPITOL MALL
TELEPHONE (916) 447-9200

LOS ANGELES, CALIFORNIA 90071
333 SOUTH HOPE STREET
TELEPHONE (213) 680-7000

WRITER'S DIRECT DIAL NUMBER
(415) 773-5862

RECEIVED
MAR 14 1988
Department of Water Resources

March 9, 1988

State of Idaho
Department of Water Resources
State Office
450 West State Street
Boise, Idaho 83720

Re: Water Permit Nos. 33-7089, 33-7154, 33-7181

Ladies/Gentlemen:

On behalf of Westinghouse Credit Corporation ("Westinghouse"), I am writing to inform you that Westinghouse has taken a security interest in the above-referenced Water Permits and any licenses that in the future may be issued in their place (the "Permits") currently held by HDI Associates IV Limited Partnership ("HDI Associates") pursuant to a sale/leaseback transaction between HDI Associates and Westinghouse. Attached hereto is a copy of the Security Agreement granting Westinghouse a security interest in the Permits.

Please send a copy of all notices to and correspondence with HDI Associates, or its successors or assigns, to:

Westinghouse Credit Corporation
Leasing Division
One Oxford Centre
Pittsburgh, PA 15219

Attention: James F. Risoleo
Vice President, Specialized Finance

Please contact the undersigned at the number above if you have any questions or need further information.

Very truly yours,

Jane B. Kroesche

Jane B. Kroesche

JBK:acm
cc: Donnie R. Pope
Richard Grosdidier

MICROFILMED
APR 01 1988

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

March 28, 1988

Jane B. Kroesche
Attorney at Law
600 Montgomery Street
San Francisco, CA 94111

Re: Water Permit Nos. 33-7089, 33-7154, and 33-7181

Dear Ms. Kroesche:

The Department of Water Resources acknowledges receipt of your letter and accompanying documents regarding your security interest in the above water permits. We will place the letter and documents in our files.

Our computer records do not guarantee that all correspondence will be mailed to a secured party, if the secured party is not the owner of the permits. The security interest which Westinghouse Credit Corporation (Westinghouse) took was not one of direct possession or ownership. Westinghouse will not be listed in our database as the official entity to whom all notice is given. We cannot guarantee that all correspondence will be sent to Westinghouse, although most correspondence will probably be carbon copied to Westinghouse, but we cannon guarantee that Westinghouse will receive notice of every transaction regarding the permits.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

MICROFILMED
APR 01 1988

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 1301 North Orchard Street Boise, Idaho 83706-2237 • (208) 334-4440

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

March 9, 1988

Scott L. Campbell
Attorney at Law
P.O. Box 1559
Boise, ID 83701

Re: Mortgage/Security Interest in Water Permit Nos. 33-7089, 33-7154, and 33-7181

Dear Scott:

I have reviewed the documents which you transmitted to this office on March 8, 1988. I understand that HDI Associates IV, Limited Partnership, will secure financing by offering Permit Nos. 33-7089, 33-7154, and 33-7181 as collateral for a loan provided by Westinghouse Credit Corporation.

I find that Westinghouse Credit Corporation is authorized to do business in the state of Idaho as evidenced by an Idaho certificate of corporate status. I also find that the mortgage is made in good faith and not for purposes of speculation or delay, particularly because the power plant is currently operating.

Finally, I understand that HDI Associates IV, Limited Partnership, will retain ownership of the permits.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

MICROFILMED
APR 01 1988

ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

BOISE OFFICE
702 WEST IDAHO
POST OFFICE BOX 1559
BOISE, IDAHO 83701
TELEPHONE 208-343-5454

CANYON COUNTY OFFICE
1120 SIXTH STREET SOUTH
POST OFFICE DRAWER E
NAMPA, IDAHO 83653
TELEPHONE 208-466-9222

RECEIVED
MAR - 8 1988
Department of Water Resources

BOISE OFFICE
LAUREL E. ELAM (1888-1974)
CARL A. BURKE (1898-1961)
CARL P. BURKE
PETER J. BOYD
J. RAY DURTSCHI
[illegible] DINGEL, JR.
[illegible] S. GJORDING
JOHN MAGEL
DAVID B. LINCOLN
RICHARD C. MELLON, JR.
ROBERT M. TYLER, JR.
JAMES D. LaRUE
RANDALL A. PETERMAN
WILLIAM J. RUSSELL
KAYE L. O'RIORDAN
RYAN P. ARMBRUSTER
DAVID E. COMSTOCK
MELVILLE W. FISHER II
WILLIAM G. DRYDEN
TODD J. WILCOX
PETER C. K. MARSHALL
KENNETH M. SEBBY
TRUDY HANSON FOUSER
D. ALAN KOFOED
SCOTT L. CAMPBELL
BOBBI KILLIAN DOMINICK
W. DALLAS BURKHALTER
ALAN CONILOGUE
ELAINE D. HANSON
JEFFERY J. VENTRELLA
BRENDA G. MEIER
JOHN J. JANIS
WENDY E.D. SMITH
JAMES A. FORD
STEVEN D. ERDAHL
SCOTT W. DAVIDSON
JEFFREY A. THOMSON

CANYON COUNTY OFFICE
WILLIAM F. YOST

March 8, 1988

Gary Spackman, Division Chief
Water Rights Allocation Division
State of Idaho
Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

VIA HAND DELIVERY

Re: Water Permit Nos. 33-7089, 33-7154, 33-7181

Dear Gary:

Pursuant to our discussions of March 7, 1988, I have enclosed copies of the following documents:

1. Participation Agreement among Westinghouse Credit Corporation, lessor; HDI Associates IV, Limited Partnership, lessee; HDI-Idaho, Inc., general partner; and Hydroelectric Development, Inc., guarantor;

2. Leasehold Mortgage, Assignment of Lease and Rents, Security Agreement and Fixture Filing between HDI Associates IV, Limited Partnership and Westinghouse Credit Corporation;

3. Ground Lease between HDI Associates IV, Limited Partnership and Westinghouse Credit Corporation;

4. Facility and Site Lease between Westinghouse Credit Corporation, lessor, and HDI Associates IV, Limited Partnership, lessee; and

5. Certificate of Corporate Status of Westinghouse Credit Corporation.

As you will note, all of the documents listed above, with the exception of the Certificate of Corporate Status, are in draft form. These documents represent the substantially final form of the documents which the parties anticipate executing

MICROFILMED
APR 01 1988

As I explained during our conversation on March 7, 1988, the basic transaction involves a sale of the hydroelectric powerhouse facility to Westinghouse Credit Corporation, a lease of the real property, which is retained in the ownership of HDI Associates IV, Limited Partnership, and a leaseback of the hydroelectric facility from Westinghouse Credit Corporation to HDI Associates IV, Limited Partnership.

The parties to this transaction are presenting this documentation to the Idaho Department of Water Resources to satisfy the requirements of Idaho Code section 42-207, inasmuch as the Leasehold Mortgage, Assignment of Lease and Rents, Security Agreement and Fixture Filing will constitute a mortgage or creation of a security interest in the water permits for the project described above. Consequently, we have submitted the Certificate of Corporate Status, demonstrating that Westinghouse Credit Corporation is qualified to do business in the State of Idaho.

As I indicated to you on March 7, 1988, the parties desire to close this transaction on or before March 9, 1988. Consequently, your expedited review and action on this matter is respectfully requested.

Thank you for your anticipated cooperation.

Very truly yours,

ELAM, BURKE & BOYD

DICTATED BY THE ATTORNEY
AND SIGNED WITHOUT SIGNATURE
IN HIS ABSENCE TO AVOID DELAY

Scott L. Campbell

SLC:jc
Enclosures

MICROFILMED

APR 01 1988

State of Idaho

Department of State.

CERTIFICATE OF CORPORATE STATUS
OF

WESTINGHOUSE CREDIT CORPORATION

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of Delaware and was issued a certificate of qualification in Idaho on May 7, 1956.

I FURTHER CERTIFY That the corporation's authority to do business has not been forfeited.

Dated March 7, 1988

GREAT SEAL OF THE STATE OF IDAHO
ESTO PERPETUA

Pete T. Cenarrusa
SECRETARY OF STATE

by Sandra McCaughey

MICROFILMED
APR 01 1988

CCSSF 781

RECEIVED
MAR - 8 1988
Department of Water Resources

PARTICIPATION AGREEMENT

Dated as of March 1, 1988

Among

WESTINGHOUSE CREDIT CORPORATION,

Lessor,

HDI ASSOCIATES IV, LIMITED PARTNERSHIP

Lessee,

HDI-IDAHO, INC.,

General Partner

and

HYDROELECTRIC DEVELOPMENT, INC.,

Guarantor.

Dry Creek Hydroelectric Project

MICROFILMED
APR 01 1988

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MICROFILMED
APR 01 1988

LIST OF SCHEDULES

SCHEDULE 3(c) - Assignments Required

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EXHIBIT B - GROUND LEASE

EXHIBIT C - FACILITY AND SITE LEASE

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EXHIBIT E - ESCROW AGREEMENT

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EXHIBIT J - OPINIONS

(1) Counsel for Lessee

(2) Counsel for Hydro

(3) Counsel for HDI-Idaho

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PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT dated as of March 1, 1988, by and between WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation ("Lessor"), HDI ASSOCIATES IV, LIMITED PARTNERSHIP, an Idaho limited partnership ("Lessee"), HDI-IDAHO, INC., an Idaho corporation ("HDI-Idaho"), and HYDROELECTRIC DEVELOPMENT, INC., an Colorado corporation ("Hydro");

W I T N E S S E T H :

WHEREAS, the defined terms in Exhibit A annexed hereto are hereby incorporated herein;

WHEREAS, HDI-Idaho is a general partner, and Hydro is a limited partner, of Lessee;

WHEREAS, Lessee is the owner of the Dry Creek Hydroelectric Project located on Dry Creek in Custer and Butte Counties, Idaho (the "Facility"), and owns in fee or owns an easement to the land on which the Facility is located (the "Site");

WHEREAS, Lessor and Lessee propose (a) to enter into the Ground Lease in the form annexed hereto as Exhibit B (the "Ground Lease") providing for the leasing of the Site by Lessee, as landlord, to Lessor, as tenant, (b) that Lessor buy the Facility from Lessee and (c) to enter into the Facility and Site Lease in the form annexed hereto as Exhibit C (the "Lease") providing for the leasing by Lessor to Lessee of the Facility and the subleasing by Lessor to Lessee of the Site (the "Leased Property");

WHEREAS, Lessee will secure its obligations under the Lease with a grant to Lessor pursuant to a Mortgage, Assignment of Lease and Rents, Security Agreement and Fixture Filing in the form annexed hereto as Exhibit D (the "Mortgage") of a security interest in all of Lessee's assets, which shall include, but shall not be limited to, Lessee's remaining interest in the Leased Property and the Power Purchase Agreement;

WHEREAS, Lessee shall enter into an Escrow Agreement in the form annexed hereto as Exhibit E (the "Escrow Agreement") with First Security Bank of Utah (the "Escrow Agent") pursuant to which Lessee will establish and grant to Lessor a security interest in an escrow account (the "Escrow Account");

WHEREAS, Lessee will enter into and deliver a Tax Indemnity Agreement in the form annexed hereto as Exhibit F (the "Tax Indemnity Agreement") pursuant to which Lessee will indemnify Lessor against the loss of certain federal income tax benefits;

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WHEREAS, HDI-Idaho will grant to Lessor a security interest in HDI-Idaho's general partnership interest in Lessee pursuant to a Pledge Agreement in the form annexed hereto as Exhibit G (the "HDI-Idaho Pledge Agreement");

WHEREAS, Hydro will deliver to Lessor a Guarantee in the form annexed hereto as Exhibit H (the "Guarantee") pursuant to which Hydro will guarantee all obligations of Lessee and HDI-Idaho to Lessor, which obligations shall include, without limitation, Lessee's obligations under the Participation Agreement, the Lease, the Mortgage and the Tax Indemnity Agreement;

WHEREAS, Hydro will deliver to Lessor a Pledge Agreement in the form annexed hereto as Exhibit I (the "Hydro Pledge Agreement"), pursuant to which Hydro will grant a security interest in all issued and outstanding stock of its subsidiary HDI-Idaho and in Hydro's limited partnership interest in Lessee;

WHEREAS, such actions and the other actions and events described in this Participation Agreement are referred to herein as the "Overall Transaction";

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

Section 1. Commitments

(a) Lessor Commitment. Subject to fulfillment of the conditions specified in Section 3, Lessor hereby agrees, on the Closing Date, to purchase the Facility from Lessee, to lease the Site from Lessee and to lease the Leased Property to Lessee.

(b) Lessee Commitment. Lessee hereby agrees, on the Closing Date, to lease the Site to Lessor, to sell the Facility to Lessor, to lease the Leased Property from Lessor and to execute and deliver to Lessor the Mortgage, the Tax Indemnity Agreement and the Escrow Agreement.

(c) HDI-Idaho Commitment. HDI-Idaho hereby agrees, on the Closing Date, to execute and deliver to Lessor the HDI-Idaho Pledge Agreement;

(d) Hydro Commitment. Hydro hereby agrees, on the Closing Date, to execute and deliver to Lessor the Hydro Pledge Agreement and the Guarantee.

Section 2. Closing.

The Closing for the Overall Transaction shall take place at the offices of Orrick, Herrington & Sutcliffe, Special Counsel to Lessor, at 600 Montgomery Street, San Francisco, California, on March 8, 1988, or on such later date as the parties hereto agree, which shall in no event be after March 10, 1988.

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Section 3. Conditions Precedent to Closing.

The obligation hereunder of Lessor on the Closing Date to carry out its obligations set forth in Section 1(a) hereof is subject to the satisfaction of the obligations of Lessee, HDI-Idaho and Hydro set forth in Section 1 hereof and to fulfillment of the following conditions to the satisfaction of Lessor and Special Counsel on or prior to the Closing Date:

(a) Fully executed copies of the following documents (the "Fundamental Agreements") shall have been delivered to each party thereto with executed counterparts delivered to Lessor:

(i) the Participation Agreement;

(ii) the Lease (with the counterpart marked "Counterpart Number 1" delivered to Lessor);

(iii) the Ground Lease;

(iv) the Tax Indemnity Agreement;

(v) the Mortgage;

(vi) the Escrow Agreement;

(vii) the HDI-Idaho Pledge Agreement;

(viii) the Hydro Pledge Agreement; and

(ix) the Guarantee.

(b) Lessor shall have received original or conformed copies, identified to its satisfaction, of execution copies of the following documents (the "Related Agreements"):

(i) the Power Purchase Agreement; and

(ii) the Transfer Agreement and Water Service Contract.

(c) Lessor shall have received the assignments of all contracts listed in Schedule 3(c)(1) hereto in form and substance satisfactory to Lessor, and shall have received consents to a grant of security interest in all contracts listed in Schedule 3(c)(2) hereto in form and substance satisfactory to Lessor.

(d) Applicable Uniform Commercial Code financing statements with respect to the Overall Transaction shall have been filed in all places which are necessary or appropriate, in the opinion of Lessor and Special Counsel, to perfect the interest of Lessor in all the assets of Lessee which shall include, but shall not be limited to, Lessee's remaining interest in the Leased Property and the Power Purchase Agreement

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(e) Lessee shall have delivered to Lessor an owner's A.L.T.A. policy of title insurance with respect to the coverage described in subsection (i) below and a lender's policy with respect to the coverage described in subsection (ii) below, together with such endorsements as required by Lessor (such policy and endorsements being hereinafter referred to as the "Title Policy"), in the amount of Five Million Four Hundred Thousand Dollars ($5,400,000), with such reinsurance as is satisfactory to Lessor, issued by _____ Title Insurance Company (the "Title Insurer"), in form and substance satisfactory to Lessor, insuring (or agreeing to insure) that:

(i) Lessee and the grantors of the Easements listed on Schedule 3(e) hereto have good, marketable and insurable fee simple title to the Site and the Easements, as the case may be, free and clear of liens, encumbrances or other exceptions to title except Permitted Liens; Lessor is the owner of the Facility and all improvements to the Site and the Easements; the Ground Lease creates a valid and subsisting leasehold interest in the Site and Easements on the terms and conditions therein contained; such leasehold estate is valid, subsisting and in full force and effect as of the Closing Date; and the Lessor has good, marketable and insurable title to such leasehold estate, free and clear of all liens, encumbrances or other exceptions to title except Permitted Liens; and

(ii) the Mortgage is (or will be when recorded) a valid first lien on the fee estate in the Site and the Easements, free and clear of all liens, encumbrances and exceptions to title whatsoever, other than Permitted Liens.

The Title Policy shall effect full coverage against losses arising out of encroachments on boundary or setback lines, against losses from existing mechanics' or materialmen's liens and subsequent mechanics' and materialmen's liens which may gain priority over the Mortgage and such other losses with respect to which Lessor may request coverage.

(f) Lessor shall have received an executed Certificate of Delivery and Acceptance with respect to the Leased Property as contemplated by the Lease.

(g) Lessor shall have received an executed Bill of Sale for the Facility.

(h) Lessor shall have received certificates of such insurance as Lessee is required to maintain pursuant to the Lease.

(i) Lessor shall have received a certificate of the respective secretary or an assistant secretary of each of HDI-Idaho, Hydro and the general partner of Lessee as to (i) such party's partnership agreement, charter or articles of incorporation and bylaws, (ii) the incumbency and specimen signatures of those officers or partners of such party executing the Fundamental Agreements and the Related Agreements and the other instruments contemplated herein and therein and (iii) the corporate authority or

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partnership authority of such party and such officers or partners to execute and deliver such documents.

(j) Special Counsel shall have received copies certified not earlier than ten (10) days prior to the Closing Date of the corporate organizational documents of each of HDI-Idaho and Hydro.

(k) The representations and warranties of Lessee, HDI-Idaho and Hydro contained herein, in the Fundamental Agreements and in the Related Agreements and of each such party in any certificate delivered pursuant thereto and hereto shall be true and correct on and as of the Closing Date with the same effect as though made on and as of the Closing Date; on the Closing Date each Fundamental Agreement and Related Agreement shall be in full force and effect and there shall be no default thereunder or hereunder nor shall there have occurred any event which, but for the lapse of time or the giving of notice or both, would be such a default; and Lessor shall have received from each of Lessee, HDI-Idaho and Hydro a certificate to such effect dated the Closing Date signed, respectively, by an officer or partner of each such party.

(l) Lessor shall have received a signed opinion, dated the Closing Date, of (i) such legal counsel for Lessee as is acceptable to Lessor HDI-Idaho in the form of Exhibit J(1) annexed hereto, (ii) such legal counsel for HDI-Idaho as is acceptable to Lessor in the form of Exhibit J(2) annexed hereto and (iii) such legal counsel for Hydro as is acceptable to Lessor in the form of Exhibit J(3) annexed hereto.

(m) Lessor shall have received an appraisal by CH2M Hill, satisfactory in form and substance to Lessor, to the effect that (i) the Total Project Cost on the Closing Date does not exceed the fair market value of the Leased Property, (ii) the Facility has a useful life of at least fifty (50) years, (iii) the Leased Property shall have on the Expiration Date an estimated residual value, without regard to inflation or deflation, of 20% or more of the Total Project Cost, (iv) the Initial Term is not greater than 80% of the economic life of the Facility, and (v) the Facility is not "limited use property" within the meaning of Revenue Procedure 75-21 or any other applicable successor statute, regulation, revenue procedure, information release or published Internal Revenue Service policy.

(n) Lessor shall have received an opinion of Special Counsel, satisfactory in form and substance to Lessor, as to the "tax assumptions" referred to in the Tax Indemnity Agreement.

(o) There shall have been no change in any law regulating investments to which Lessor may be subject which shall result in the purchase and lease of the Leased Property by Lessor on the Closing Date not qualifying as a legal investment.

(p) Neither Lessor's ownership nor Lessee's operation of the Facility will cause Lessor to become subject to regulation by any federal, state or local governmental authority or regulatory commission (including,

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without limitation, the SEC, the FERC and the PUC) as a "public utility," a "public utility holding company," an "electric utility," an "electric utility holding company" or an "electrical corporation" under any federal, state or local law rule or regulation (including, without limitation, the Public Utility Holding Company Act of 1935, the Federal Power Act and the Idaho Public Utility Law, each as amended).

(q) The performance tests as outlined in the Power Purchase Agreement and in the Construction Contract have been performed and passed to the satisfaction of Lessor.

(r) Lessor shall have received a completed engineering and hydrological review of the Facility performed by CH2M Hill, the results of such review being to Lessor's satisfaction.

(s) The Facility shall be in compliance with all laws, rules and regulations promulgated by all regulatory and governmental authorities having jurisdiction with respect to the construction, ownership, use and operation of the Facility and Lessee shall have obtained all permits and authorizations described in Section 4(b)(xiv) hereto, a copy of each of which shall have been delivered to Lessor.

(t) All construction on the Facility shall be complete, except as permitted by Section 4(b)(xvii) hereto.

(u) Lessor shall have received a certificate from each of O & F Construction, Inc. and Specialty Electrics, Inc., satisfactory to Lessor, certifying that the Leased Property is free of all vendor's and mechanic's liens.

(v) There shall have been no material adverse change in the financial conditions of any of the Utah Power & Light Company, Lessee, Hydro or HDO-Idaho since _____, 19__.

(w) No default shall have occurred and be continuing under Lessee's loan agreement with Baybank Boston, N.A., a national banking association.

(x) Lessor shall have received such evidence of the satisfactory fulfillment of the foregoing conditions of this Section 3 as Lessor or Special Counsel may reasonably require, including, without limitation, certificates of officers or partners of Lessee, HDI-Idaho, Hydro, public officials and others.

Section 4. Representations and Warranties.

(a) Lessor. Lessor represents and warrants to Lessee that:

(i) Lessor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;

(ii) Lessor has full power and authority to execute, deliver and perform the Fundamental Agreements to which it is a party;

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(iii) The Fundamental Agreements to which Lessor is a party have each been duly authorized, executed and delivered by Lessor and, assuming due authorization, execution and delivery by the other parties thereto, constitute legal, valid and binding obligations of Lessor enforceable against it in accordance with the terms thereof and hereof subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

(iv) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by Lessor of the Fundamental Agreements; and

(v) Lessor is buying the Leased Property with its general assets and no funds used to acquire the Leased Property will be furnished directly or indirectly out of the assets of or in connection with any employee benefit plan (or its related trust) as defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

(b) Lessee. Lessee represents and warrants to each other party hereto that:

(i) Lessee is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Idaho, with its principal place of business and chief executive office (as such terms are used in the Idaho Uniform Commercial Code) in _____ County, _____, and is qualified to do business in all jurisdictions where failure to do so would have a materially adverse effect on Lessee or would prevent Lessor from enforcing any of the Fundamental Agreements;

(ii) Lessee has full power and authority to execute, deliver and perform the Fundamental Agreements and the Related Agreements to which it is a party (the "Lessee Documents") and to own or lease its properties and to carry on its business as now conducted and as contemplated by the Lease;

(iii) The Lessee Documents have each been duly authorized, executed and delivered by Lessee and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding obligations of Lessee enforceable against it in accordance with the terms thereof and hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

(v) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by Lessee of the Lessee Documents or for the installation, use and maintenance of the Facility;

(vi) Neither the execution, delivery or performance by Lessee of the Lessee Documents, nor compliance with the terms and provisions thereof

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or hereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, of Lessee or any order, writ, injunction or decree of any court or governmental authority against Lessee or by which it or any of its properties is bound, or any indenture, mortgage or contract or other agreement or instrument to which Lessee is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

(vii) There are no suits or proceedings pending or, to the knowledge of Lessee, threatened in any court or before any regulatory commission, board or other governmental administrative agency against or affecting Lessee which might have a material adverse effect on the business or operations of Lessee, financial or otherwise, or on its ability to fulfill its obligations under the Lessee Documents;

(viii) Title to the Facility and the leasehold interest in the Site, immediately upon delivery and acceptance of the Leased Property under the Lease, will be conveyed to Lessor, free of all claims, liens and encumbrances except Permitted Liens;

(ix) Neither Lessee nor anyone, authorized to act on its behalf has directly or indirectly offered the Leased Property or similar securities related to the Facility for sale to, or solicited any offer to acquire any of the same from, anyone other than Lessor and no more than ten (10) other institutional investors;

(x) Lessee has delivered to Lessor its annual financial statement for the fiscal year ending _____, 1987. There has been no material adverse change in the business, condition or operations (financial or otherwise) of Lessee since _____, ____;

(xi) Neither (A) the Lessee Documents, (B) financial statements described in paragraph (x) above nor (C) any document or certificate furnished to Lessor by Lessee pursuant hereto or in connection herewith, contains or will contain, as of its date, any untrue statement of a material fact or omits or will omit to state, as of its respective date, a material fact regarding Lessee necessary in order to make the statements contained therein and herein regarding Lessee not misleading; there are no facts presently known to Lessee which, individually or in the aggregate, materially and adversely affect or involve any substantial probability of materially and adversely affecting the financial condition of Lessee or its respective properties and assets and which have not been disclosed herein or in said documents;

(xii) Lessee does not know of any fact which materially adversely affects or, so far as Lessee can now foresee, will materially adversely affect the business, operations, properties or financial condition of Lessee or the performance of Lessee of its obligations under the Lessee Documents;

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(xiii) Lessee has filed or caused to be filed all federal, state and local sales, use, property and income tax returns which are required to be filed by it and has paid or caused to be paid all taxes shown to be due and payable on such returns or (except to the extent being contested in good faith and for the payment of which adequate reserves have been provided) due and payable on any assessment received by Lessee;

(xiv) All necessary governmental authorizations required by the FERC, the PUC, the EPA, the Idaho Department of Health and Welfare and any other regulatory or governmental authority having jurisdiction with respect to the construction, ownership, use or operation of the Facility and the Site and with respect to the transactions contemplated by the Fundamental Agreements and the Related Agreements have been validly obtained (in each case subject to any periodic or occasional renewal or reissuance of such governmental authorizations in the normal course of business), such governmental authorizations are in full force and effect and constitute or will constitute sufficient authorization for such ownership, use, operation and transactions, and there are no actions or proceedings pending or, to Lessee's knowledge, threatened that could result in a revocation, termination or adverse modification or amendment of any such governmental authorization;

(xv) To the best knowledge of Lessee, no release, emission, or discharge into the environment of hazardous substances, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by Public Law 99-499, 100 Stat. 16-13 (October 18, 1986), or hazardous waste as defined under The Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or air pollutants as defined under the Clean Air Act, 42 U.S.C. § 7401 et seq., or pollutants as defined under the Clean Water Act, 33 U.S.C. § 1251 et seq., is presently occurring in excess of federally permitted releases or reportable quantities, or other concentrations, standards or limitations under the foregoing laws or any state law governing the protection of health and the environment or under any other federal, state, or local laws or regulations in connection with the construction, fuel supply, power generation and transmission or waste disposal, or any other operations or processes relating to the Facility or the Site. To the best knowledge of Lessee, the Facility and Lessee's use and proposed use thereof are not and will not be in violation of any environmental, occupational safety and health or other law now in effect, the effect of which violation, in any case or in the aggregate, would materially adversely affect the Facility or Lessee's use thereof, or which, in any case or in the aggregate, would impose a material liability on Lessor or jeopardize the interest of Lessor in the Facility;

(xvi) Lessee is and will remain a partnership with the single purpose of operating the Facility, and it does not and will not own any securities of any other person;

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(xvii) With the exception of construction work scope activities and other project requirements specified in Schedule 4(b)(xvii) hereto, which construction work scope activities and project requirements will be completed by Lessee prior to the date which is thirty (30) days after the Closing Date, all construction on the Facility is complete;

(xviii) No event, act or omission has taken place, which event, act or omission (A) constitutes or which solely with the passage of time or the giving of notice (or both) would constitute an event of default hereunder or under any of the Related Agreements or Fundamental Agreements, (B) has or could have a material adverse effect on the present or prospective financial or business affairs of the Utah Power & Light Company or Lessee or (C) has or could have a material adverse effect on any material portion of the assets of Lessee or with respect to any material portion of the Facility;

(xvix) Based upon historical river flow data and independent hydrological reports furnished by Lessee, copies of which have been delivered to Lessor, there is sufficient water flow at the Facility to produce an average of 16,998,000 KWH of electricity net to Utah Power and Light Company annually;

(xx) The Facility has the right to the entire river flow at the intake diversion structure for its hydroelectric operations. There are no easements, assignments or other encumbrances (A) upon the water flow at the Facility and intake diversion structure; or (B) which might limit, impede, or otherwise lessen the ability of Lessor or Lessee to fully and completely use, develop, exploit or employ the Facility for hydroelectric purposes;

(xxi) There are no projects, plans, diversions or other state of facts known to the Lessee, which might reduce the aggregate water flow and corresponding net pressure head at the Facility available for the production of electricity at the Facility;

(xxii) The facilities at the Facility are designed, and have been constructed, to have an ability to produce power at a water flow as low as 3 CFS and to have sufficient combined capacity to generate not less than 16,998,000 KWH of electricity net to Utah Power & Light Company annually (with an installed and operational capacity of 4.0 Megawatts);

(xxiii) Upon execution and delivery thereof, the Mortgage (assuming the due authorization, execution and delivery thereof by Lessor) will create a valid lien on the Closing Date in the collateral described therein, securing the payment and performance of all obligations intended to be secured thereby, and all filings and other actions necessary or reasonably requested by Lessor to perfect and protect each such lien will have been duly taken on or before the Closing Date. Other than Permitted Liens, on the Closing Date there will be no liens against the collateral described in the Mortgage;

(xxiv) The Facility is a "qualifying facility" within the meaning of PURPA, and neither Lessor's ownership nor Lessee's operation of the

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Facility will cause Lessor to become subject to regulation by any federal, state or local governmental authority or regulatory commission (including, without limitation, the SEC, the FERC and the PUC) as a "public utility," a "public utility holding company," an "electric utility," an "electric utility holding company" or an "electrical corporation" under any federal, state or local law rule or regulation (including, without limitation, the Public Utility Holding Company Act of 1935, the Federal Power Act and the Idaho Public Utilities Law, Title 61, Chapter 1, each as amended);

(xxv) The Power Purchase Agreement is a complete statement of Lessee's agreement with Utah Power & Light Company and every other governmental or regulatory authority regarding the sale of electricity generated by the Facility;

(xxvi) Neither the execution, delivery or performance by Lessee of the Lessee Documents nor any transaction contemplated by the Lessee Documents, violates any law concerning sale/leasebacks, fraudulent conveyances, bulk sales or the vendor-in-possession doctrine; and

(xxvii) No broker's or finder's fees or commissions or management or advisory fees are, will or may become payable arising out of any actions or omissions to act on Lessee's part in connection with the Overall Transaction; Lessee has not, directly or indirectly, used the services of any broker, agent or finder in regard to any of the transactions contemplated hereby.

(c) HDI-Idaho. HDI-Idaho represents and warrants to each other party hereto that:

(i) HDI-Idaho is a corporation duly organized, validly existing and in good standing under the laws of the State of Idaho, with its principal place of business and chief executive office (as such terms are used in the Utah Uniform Commercial Code) in _____, _____, and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction wherein the failure to so qualify could have a material adverse effect on the business or financial condition of HDI-Idaho;

(ii) HDI-Idaho has full power and authority to execute, deliver and perform the Fundamental Agreements and the Related Agreements to which it is a party (the "HDI-Idaho Documents");

(iii) The HDI-Idaho Documents have each been duly authorized, executed and delivered by HDI-Idaho and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding obligations of HDI-Idaho enforceable against it in accordance with the terms thereof and hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

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(iv) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by HDI-Idaho of the HDI-Idaho Documents;

(v) Neither the execution, delivery or performance by HDI-Idaho of the HDI-Idaho Documents, nor compliance with the terms and provisions thereof or hereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, of HDI-Idaho or any order, writ, injunction or decree of any court or governmental authority against HDI-Idaho or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which HDI-Idaho is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

(vi) There are no suits or proceedings pending or, to the knowledge of HDI-Idaho, threatened in any court or before any regulatory commission, board or other governmental administrative agency against or affecting HDI-Idaho which might have a material adverse effect on the business or operations of HDI-Idaho, financial or otherwise, or on its ability to fulfill its obligations under the HDI-Idaho Documents;

(vii) Neither (A) the HDI-Idaho Documents, (B) the consolidated balance sheets of HDI-Idaho and its consolidated subsidiaries as of _____, 1987, and the related consolidated statements of earnings of HDI-Idaho and its consolidated subsidiaries for the year ended _____, 1987 nor (C) any document or certificate furnished to Lessor by or on behalf of HDI-Idaho pursuant hereto or in connection herewith, contains or will contain, as of its date, any untrue statement of a material fact or omits or will omit to state, as of its respective date, a material fact regarding HDI-Idaho necessary in order to make the statements contained therein and herein regarding HDI-Idaho not misleading; there are no facts presently known to HDI-Idaho which, individually or in the aggregate, materially and adversely affect or involve any substantial probability of materially and adversely affecting the financial condition of HDI-Idaho or its respective properties and assets and which have not been disclosed herein or in said documents;

(viii) HDI-Idaho does not know of any fact which materially adversely affects or, so far as HDI-Idaho can now foresee, will materially adversely affect the business, operations, properties or financial condition of HDI-Idaho and its subsidiaries or the performance of HDI-Idaho of its obligations under the HDI-Idaho Documents;

(ix) No broker's or finder's fees or commissions or management or advisory fees are, will or may become payable arising out of any actions or omissions to act on HDI-Idaho's part in connection with the Overall Transaction; HDI-Idaho has not, directly or indirectly, used the

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services of any broker, agent or finder in regard to any of the transactions contemplated hereby; and

(x) HDI-Idaho has filed or caused to be filed all federal, state and local sales, use, property and income tax returns which are required to be filed by it and has paid or caused to be paid all taxes shown to be due and payable on such returns or (except to the extent being contested in good faith and for the payment of which adequate reserves have been provided) due and payable on any assessment received by HDI-Idaho.

(d) Hydro. Hydro represents and warrants to each other party hereto that:

(i) Hydro is a corporation duly organized, validly existing and in good standing under the laws of the State of _____, with its principal place of business and chief executive office (as such terms are used in the Idaho Uniform Commercial Code) in _____, and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction wherein the failure to so qualify could have a material adverse effect on the business or financial condition of Hydro;

(ii) Hydro has full power and authority to execute, deliver and perform the Fundamental Agreements and the Related Agreements to which it is a party (the "Hydro Documents");

(iii) The Hydro Documents have each been duly authorized, executed and delivered by Hydro and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding obligations of Hydro enforceable against it in accordance with the terms thereof and hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

(iv) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by Hydro of the Hydro Documents;

(v) Neither the execution, delivery or performance by Hydro of the Hydro Documents, nor compliance with the terms and provisions hereof or thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, of Hydro or any order, writ, injunction or decree of any court or governmental authority against Hydro or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which Hydro is a party or by which it or any of its properties is bound, or constitutes or will constitute a default

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thereunder or will result in the imposition of any lien upon any of its properties;

(vi) There are no suits or proceedings pending or, to the knowledge of Hydro, threatened in any court or before any regulatory commission, board or other governmental administrative agency against or affecting Hydro which might have a material adverse effect on the business or operations of Hydro, financial or otherwise, or on its ability to fulfill its obligations under the Hydro Documents;

(vii) Neither (A) the Hydro Documents, (B) the consolidated balance sheets of Hydro and its consolidated subsidiaries as of _____, 1986, and _____, 1987 and the related consolidated statements of earnings of Hydro and its consolidated subsidiaries for the year ended _____, 1986, and _____, 1987 nor (C) any document or certificate furnished to Lessor by or on behalf of Hydro pursuant hereto or in connection herewith, contains or will contain, as of its date, any untrue statement of a material fact or omits or will omit to state, as of its respective date, a material fact regarding Hydro necessary in order to make the statements contained therein and herein regarding Hydro not misleading; there are no facts presently known to Hydro which, individually or in the aggregate, materially and adversely affect or involve any substantial probability of materially and adversely affecting the financial condition of Hydro or its respective properties and assets and which have not been disclosed herein or in said documents;

(vii) Each pension, profit-sharing or other employee benefit plan maintained by each of Hydro and each subsidiary of Hydro (individually, a "Plan") is in material compliance with the Employee Retirement Income Security Act ("ERISA"), the Internal Revenue Code of 1986, as amended (the "Code") and all applicable rules and regulations promulgated thereunder, and Lessee has filed or caused to be filed all material reports required to be filed by ERISA, the Code and such rules and regulations with respect to each Plan. There is no accumulated funding deficiency, as defined in Section 412(a) of the Code, with respect to any Plan subject to Section 412 of the Code, and each of Hydro and each subsidiary of Hydro has no termination or withdrawal liability under Title IV of ERISA;

(ix) Hydro does not know of any fact which materially adversely affects or, so far as Hydro can now foresee, will materially adversely affect the business, operations, properties or financial condition of Hydro and its subsidiaries or the performance of Hydro of its obligations under the Hydro Documents;

(x) No broker's or finder's fees or commissions or management or advisory fees are, will or may become payable arising out of any actions or omissions to act on Hydro's part in connection with the Overall Transaction; Hydro has not, directly or indirectly, used the services of any broker, agent or finder in regard to any of the transactions contemplated hereby; and

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(xi) Hydro has filed or caused to be filed all federal, state and local sales, use, property and income tax returns which are required to be filed by it and has paid or caused to be paid all taxes shown to be due and payable on such returns or (except to the extent being contested in good faith and for the payment of which adequate reserves have been provided) due and payable on any assessment received by Hydro.

Section 5. Transaction Indemnity.

In the event that, for any reason whatsoever, each condition precedent to the transactions as contemplated herein is not satisfied or waived, Lessee hereby unconditionally agrees to indemnify, defend, protect and keep harmless Lessor and its successors, assigns, representatives, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, taxes, claims, actions, suits, costs, expenses or disbursements (including, without limitation, reasonable legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Lessor in any way relating to or arising out of the Lease or the Overall Transaction or any document contemplated thereby, or the performance of any of the terms thereunder, or in any way relating to or arising out of the purchase, acceptance, ownership, delivery, use, financing, sale, return or other disposition of the Facility.

Section 6. Successors and Assigns.

This Participation Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

Section 7. Governing Law and Counterparts.

The terms of this Participation Agreement and all rights and obligations of the parties hereto shall be governed by the laws of the State of [Idaho], to the jurisdiction of whose courts each of Lessor, Lessee, HDI-Idaho and Hydro hereby submit for all matters with respect to this Agreement and the Overall Transaction. Such terms, rights and obligations may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought. This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, but all of such counterparts shall together constitute a single instrument.

Section 8. Notices.

All notices herein required shall be deemed to have been duly given when signed by an appropriate officer or other representative and delivered to a general partner in Lessee, an officer of Lessor, HDI-Idaho or Hydro, as the case may be, or mailed prepaid by certified mail, return receipt requested, and addressed to the address indicated herein for such party or to such other address as such party may designate in writing pursuant hereto.

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Section 9. Reproduction of Documents.

This Participation Agreement and all documents relating hereto, including, without limitation, (a) consents, waivers and modifications which may hereafter be executed, (b) documents received by any party at the Closing Date and (c) financial statements, certificates and other information previously or hereafter furnished to any party hereto, may be reproduced by such party by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and such party may destroy any original document so reproduced. Each party hereto agrees and stipulates that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by any party hereto in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

Section 10. Amendment of Agreements.

Lessee, HDI-Idaho and Hydro each hereby consent to all the terms and provisions of the Participation Agreement, the Fundamental Agreements and the Related Agreements and the documents contemplated thereby, it being understood that such consent shall not be construed to require that party's consent to any future supplement to, or amendment, waiver, or modification of, the terms of any of such documents. Lessee, HDI-Idaho and Hydro each hereto agree that from the Closing Date neither the Participation Agreement nor the Fundamental Agreements and the Related Agreements and the documents contemplated thereby may be terminated, changed, amended, modified or supplemented, nor may any waiver of any of the terms thereof be granted without the prior written consent of Lessor.

Section 11. Further Assurances.

Lessor, Lessee, HDI-Idaho and Hydro each will cooperate with the other parties hereto and take such actions as are reasonably necessary to effect the transactions contemplated by the Participation Agreement, the Fundamental Agreements and the Related Agreements and the documents contemplated thereby. Lessee, at its own expense, will cause to be promptly and duly taken, executed, acknowledged, and delivered all such further acts, conveyances, documents, and assurances as Lessor may from time to time reasonably request in writing in order to carry out more effectively the intent and purposes of the Participation Agreement, the Fundamental Agreements and the Related Agreements and the documents and transactions contemplated thereby.

Section 12. Survival of Covenants and Representations.

All covenants, representations and warranties made by any party hereto in this Participation Agreement herein and in the Fundamental Agreements, the Related Agreements and any certificate delivered pursuant hereto shall survive the delivery of this Agreement, the Fundamental Agreements, the Related Agreements and the documents contemplated hereby.

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Section 13. Change of Office.

Lessee, HDI-Idaho and Hydro each agrees to give prompt written notice to Lessor of any change in name and change in the location of its principal place of business or its chief executive office (as such terms are used in the Idaho Uniform Commercial Code).

Section 14. Resist Regulatory Change.

If the FERC or the PUC shall issue any order, judgment, regulation, or decision the effect of which is to rescind, terminate, repeal, invalidate, suspend, enjoin, amend or modify the Power Purchase Agreement, then, under such circumstances, if such regulatory change shall be known to Lessee and if, as a result of such regulatory change, there shall exist in the good faith opinion of Lessor a reasonable possibility that such regulatory change will have a material and adverse effect on any of the Fundamental Agreements or the Related Agreements or documents contemplated thereby, Lessee shall diligently and timely (a) make all filings, (b) pursue all remedies and appeals, and (c) take such other lawful action, in each case as shall be necessary or, in the good faith opinion of Lessee or Lessor, desirable to (i) prevent such regulatory change from becoming final and nonappealable or otherwise irrevocable, (ii) postpone the effectiveness of such regulatory change, and (iii) cause such regulatory change to be revoked or amended or modified so as to eliminate the reasonable possibility of such material adverse effect.

Section 15. Qualifying Facility.

Neither Lessor, Lessee, HDI-Idaho nor Hydro shall take any affirmative act, and Lessee shall not fail to take any action, that would cause the Facility not to be a "qualifying facility" within the meaning of PURPA. If the FERC determines in a final order that the Facility has for any reason ceased to be a qualifying facility, Lessee shall immediately cease operating the Facility.

Section 16. Pollution Control.

Lessee shall not release, emit, or discharge into the environment hazardous substances, as defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or hazardous waste as defined under the Resource Conservation and Recovery Act, as amended, or air pollutants as defined under the Clean Air Act Amendments of 1977, as amended, or pollutants as defined under the Water Pollution Control Act, as amended, in excess of federal y permitted releases or reportable quantities, or other concentrations, standards, or limitations under the foregoing laws or any state law governing the protection of health and the environment or under any other federal, state, or local laws, regulations or governmental authorizations in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Facility.

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Section 17. Fees and Expenses. Lessee shall pay or cause to be paid all of the costs and expenses incurred by Lessor in connection with the preparation, execution and delivery of this Agreement, the Fundamental Documents and the documents contemplated hereby and thereby, including fees and disbursements of Special Counsel and the costs of preparing, printing and distributing this Agreement, the Fundamental Documents and all related documents.

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IN WITNESS WHEREOF, the parties hereto have executed this Participation Agreement as of the date first above written.

HDI ASSOCIATES, INC., LIMITED PARTNERSHIP

By HDI-Idaho, Inc.
Its General Partner

By _____
Title: President

HDI-IDAHO, INC.

By _____
Title: _____

HYDROELECTRIC DEVELOPMENT, INC.

By _____
Title: _____

WESTINGHOUSE CREDIT CORPORATION

By _____
Title:

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EXHIBIT A
TO THE
PARTICIPATION
AGREEMENT

DEFINITIONS

The terms defined in the Lease, the HDI-Idaho Pledge Agreement, the Hydro Pledge Agreement, the Guarantee, and the Mortgage when used herein shall have the same meanings as so defined unless otherwise defined.

"Bill of Sale" for the Leased Property shall mean a warranty bill of sale for the Facility from Lessee to Lessor acceptable in form and substance to Lessor.

"Closing" shall mean the Closing hereunder to be held on the Closing Date.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Closing Date" shall mean March 8, 1988, or such later date as the parties hereto may agree, which date shall in no event be after March 10, 1988.

"Construction Contract" shall mean that certain Contract No. 56330 dated April 10, 1987, between Gilbert Gilkes & Gordan, Ltd. and Hydro, as assigned to Lessee pursuant to that certain Collateral Assignment of Equipment Purchase Agreement dated April 10, 1987, by and among Lessee, Gilbert Gilkes & Gordan, Ltd., and Baybank Boston, N.A.

"Easements" shall mean all easements described in Schedule 3(c) hereto.

"EPA" shall mean the Federal Environmental Protection Agency or any successor agency thereto.

"ERISA" shall mean the Employee Retirement Income Security Act.

"Escrow Account" shall mean the escrow account established by the Escrow Agreement.

"Escrow Agent" shall mean First Security Bank of Utah.

"Escrow Agreement" shall mean the Escrow Agreement, dated as of the date hereof, substantially in the form of Exhibit E annexed hereto, by and between Lessee and Escrow Agent, as such Escrow Agreement may hereafter be amended, supplemented or modified from time to time in accordance with its terms and Section 10 of the Participation Agreement.

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"Facility" shall mean the 4 MW (gross) megawatt hydroelectric facility for the generation of electrical energy located on the Site, including without limitation any and all alterations and components from time to time incorporated in or installed as part of such Facility.

"FERC" shall mean the Federal Energy Regulatory Commission or any successor agency thereto.

"Fundamental Agreements" shall mean the Participation Agreement, the Lease (with the counterpart marked "Counterpart Number 1" delivered to Lessor), the Ground Lease, the Tax Indemnity Agreement, the Mortgage, the Escrow Agreement, the HDI-Idaho Pledge Agreement, the Hydro Pledge Agreement and the Guarantee, as such Fundamental Agreements may hereafter be amended, supplemented or modified from time to time in accordance with their terms and Section 1(c) of the Participation Agreement.

"Ground Lease" shall mean the agreement for lease of the Site, dated as of the date hereof, between Lessee and Lessor, substantially in the form of Exhibit B annexed hereto, as such Ground Lease may hereafter be amended, supplemented or modified from time to time in accordance with its terms and Section 10 of the Participation Agreement.

"Initial Term" shall mean the initial term of this Lease commencing on the Closing Date and terminating on the Expiration Date.

"Lease" shall mean the Facility and Site Lease, dated as of the date hereof, between Lessor and Lessee, substantially in the form of Exhibit C annexed hereto, as such Lease may hereafter be amended, supplemented or modified from time to time in accordance with its terms and Section 10 of the Participation Agreement.

"Leased Property" shall mean the Facility and the Site.

"Lessee" shall mean HDI Associates IV, Limited Partnership, an Idaho limited partnership.

"Lessor" shall mean Westinghouse Credit Corporation, a Delaware corporation.

"Mortgage" shall mean the Mortgage, Assignment of Lease and Rents, Security Agreement and Fixture Filing between Lessee and Lessor, substantially in the form of Exhibit D annexed hereto, as such Mortgage may hereafter be amended, supplemented or modified from time to time in accordance with its terms and Section 10 of the Participation Agreement.

"Overall Transaction" shall mean the actions and events described in the "whereas" clauses of the Participation Agreement as the Overall Transaction.

"Participation Agreement," "herein," "hereunder" or other like words shall mean this Participation Agreement dated as of the date hereof among

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Lessor, Lessee, HDI-Idaho and Hydro, as such Participation Agreement may hereafter be amended, supplemented or modified from time to time in accordance with its terms.

"Permitted Liens" shall mean (a) the respective rights of a permitted sublessee or assignee as provided in the Lease, (b) Lessor Liens, (c) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings diligently conducted so long as such proceedings shall stay the enforcement thereof and the sale or forfeiture of the Facility, the Site or any part thereof or interest therein, (d) undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or employees' liens or other like liens arising in the ordinary course of business and securing obligations which are not delinquent or which shall have been bonded or the enforcement of which shall have been suspended (but only for the duration of such suspension) and (e) rights of way or easements appearing of record and shown on the Commitment for Title Insurance issued by _____ Company dated _____, 1988 (Commitment _____).

"Power Purchase Agreement" shall mean the Power Purchase Agreement between Lessee and Utah Power & Light Company dated May 2, 1986 and the Memorandum of Understanding between Lessee and Utah Power & Light Company dated August 13, 1986.

"PUC" shall mean the Idaho Public Utilities Commission or any successor agency thereto.

"PURPA" shall mean the Public Utility Regulatory Policies Act of 1978 and Part 292 of Title 18 of the Code of Federal Regulations.

"Related Agreements" shall mean the Power Purchase Agreement and the Transfer Agreement and Water Service Contract, as such Related Agreements may hereafter be amended, supplemented or modified from time to time in accordance with their terms and Section 10 of the Participation Agreement.

"SEC" shall mean the Federal Securities Exchange Commission or any successor agency thereto.

"Site" shall mean the location of the Facility on the real property in Eastern Idaho approximately 55 miles north of the town of Arco on Dry Creek, and as more particularly described in the Lease.

"Special Counsel" shall mean Orrick, Herrington & Sutcliffe, 600 Montgomery Street, San Francisco, California 94111.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement, dated as of the date hereof, by and between Lessee and Lessor, as such Tax Indemnity Agreement may hereafter be supplemented, amended or modified from time to time in accordance with its terms and Section 10 of the Participation Agreement.

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"Title Policy" shall have the meaning set forth in Section 3(c).

"Total Project Cost" of the Leased Property shall mean $5,400,000.

"Transfer Agreement and Water Service Contract" shall mean that certain Transfer Agreement and Water Service Contract, dated January 29, 1987, between Lessee and Dry Creek Developers Incorporated, an Idaho corporation.

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EXHIBIT J(1)
TO THE
PARTICIPATION
AGREEMENT

Opinion of Counsel for Lessee

1. Opinion. The opinion of Counsel for Lessee shall state the following:

(a) Lessee is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Idaho, with its principal place of business and chief executive office (as such terms are used in the Idaho Uniform Commercial Code) in _____, _____, and is qualified to do business in all jurisdictions where failure to do so would have a materially adverse effect on Lessee or would prevent Lesser from enforcing any of the Fundemental Agreements.

(b) Lessee has the full partnership power to execute, deliver and perform the Fundamental Agreements and the Related Agreements to which it is a party (the "Lessee Documents") and to own or lease its properties and to carry on its business as now conducted and as contemplated by the Lease.

(c) The Lessee Documents have each been duly authorized, executed and delivered by Lessee and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding obligations of Lessee enforceable against it in accordance with the terms thereof and hereof.

(d) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by Lessee of the Lessee Documents or for the installation, use and maintenance of the Facility.

(e) Neither the execution, delivery or performance by Lessee of the Lessee Documents, nor compliance with the terms and provisions thereof or hereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, of Lessee, or to such Counsel's knowledge, any order, writ, injunction or decree of any court or governmental authority against Lessee or by which it or any of its properties is bound.

(f) To the knowledge of Counsel, there are no suits or proceedings pending or, to the knowledge of Counsel, threatened in any court or before any regulatory commission, board or other governmental administrative agency against

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or affecting Lessee which might have a material adverse effect on the business or operations of Lessee, financial or otherwise, or on its ability to fulfill its obligations under the Lessee Documents.

(g) Neither the execution, delivery or performance by Lessee of the Lessee Documents, nor any transaction contemplated by the Lessee Documents, violates any law of the State of Idaho concerning sale/leasebacks, fraudulent conveyances, bulk sales or the vendor-in-possession doctrine.

(h) All necessary governmental authorizations required by the Idaho PUC, the Idaho Department of Health and Welfare and any other Idaho regulatory or governmental authority having jurisdiction with respect to the construction, ownership, use or operation of the Facility and the Site and with respect to the transactions contemplated by the Fundamental Agreements and the Related Agreements have been validly obtained (in each case subject to any periodic or occasional renewal or reissuance of such governmental authorizations in the normal course of business), such governmental authorizations are in full force and effect and constitute sufficient authorization for such ownership, use, operation and transactions, and, to such Counsel's knowledge, there are no actions or proceedings pending or threatened that could result in a revocation, termination or adverse modification or amendment of any such governmental authorization.

(i) Upon execution and delivery thereof, the Mortgage (assuming the due authorization, execution and delivery thereof by Lessor) will create valid lien on the Closing Date in the collateral described therein, securing the payment and performance of all obligations intended to be secured thereby, and all filings and other actions necessary or appropriate to perfect and protect each such lien has been taken.

(j) Neither Lessor's ownership nor Lessee's operation of the Facility will cause Lessor to become subject to regulation by any Idaho, state or local governmental authority or regulatory commission (including, without limitation, the SEC, the FERC and the PUC) as a "public utility," a "public utility holding company," an "electric utility," an "electric utility holding company" or an "electrical corporation" under any federal, state or local law rule or regulation (including, without limitation, the Public Utility Holding Company Act of 1935, the Federal Power Act and the Idaho Public Utilities Law, Title 61, Chapter 1, each as amended).

(k) The Facility is a "qualifying facility" (within the meaning of the Public Utility Regulatory Policies Act of 1978 and Part 292 of Title 18 of the Code of Federal Regulations, respectively, collectively referred to herein as "PURPA").

2. Qualification and Reliance. In giving an opinion provided for herein, Counsel for Lessee may qualify such opinion that any agreement is enforceable in accordance with its terms by a general reference to (a) limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of lessors' or creditors' rights generally, (b) applicable laws

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limiting certain remedial provisions of the Lease and the Mortgage which, in the opinion of Counsel for Lessee, will not materially interfere with the practical realization of the benefits or security to be provided by such document, and (c) general principles of equity. Counsel for Lessee may further qualify such opinion by a limitation to the laws of the State of Idaho and the laws of the United States.

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EXHIBIT J(2)
TO THE
PARTICIPATION
AGREEMENT

Opinion of Counsel for Hydro

1. Opinion. The opinion of Counsel for Hydro shall state the following:

(a) Hydro is a corporation duly organized, validly existing and in good standing under the laws of the State of _____, with its principal place of business and chief executive office (as such terms are used in the Idaho Uniform Commercial Code) in _____, and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction wherein the failure to so qualify could have a material adverse effect on the business or financial condition of Hydro.

(b) Hydro has full corporate power and authority to execute, deliver and perform the Fundamental Agreements and the Related Agreements to which it is a party (the "Hydro Documents").

(c) The Hydro Documents have each been duly authorized, executed and delivered by Hydro and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding obligations of Hydro enforceable against it in accordance with the terms thereof.

(d) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by Hydro of the Hydro Documents.

(e) Neither the execution, delivery or performance by Hydro of the Hydro Documents, nor compliance with the terms and provisions hereof or thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, of Hydro or any order, writ, injunction or decree of any court or governmental authority against Hydro or by which it or any of its properties is bound or, to such Counsel's knowledge, any indenture, mortgage or contract or other agreement or instrument to which Hydro is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties.

(f) To such Counsel's knowledge, there are no suits or proceedings pending or, to the knowledge of Hydro, threatened in any court or before any regulatory commission, board or other governmental

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administrative agency against or affecting Hydro which might have a material adverse effect on the business or operations of Hydro, financial or otherwise, or on its ability to fulfill its obligations under the Hydro Documents.

(g) To such Counsel's knowledge, each pension, profit-sharing or other employee benefit plan maintained by each of Hydro and each subsidiary of Hydro (individually, a "Plan") is in material compliance with the Employee Retirement Income Security Act ("ERISA"), the Internal Revenue Code of 1986, as amended (the "Code") and all applicable rules and regulations promulgated thereunder, and each of Hydro and each subsidiary of Hydro has filed or caused to be filed all material reports required to be filed by ERISA, the Code, and such rules and regulations with respect to each Plan; there is no accumulated funding deficiency, as defined in Section 412(a) of the Code, with respect to any Plan subject to Section 412 of the Code; and Lessee has no termination or withdrawal liability under Title IV of ERISA.

2. Qualification and Reliance. In giving an opinion provided for herein, Counsel for Hydro may qualify such opinion that any agreement is enforceable in accordance with its terms by a general reference to (a) limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of lessors' or creditors' rights generally and (b) general principles of equity. Counsel for Hydro may further qualify such opinion by a limitation to the laws of the State of Idaho and the laws of the United States.

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EXHIBIT J(3)
TO THE
PARTICIPATION
AGREEMENT

Opinion of Counsel for HDI-Idaho

1. Opinion. The opinion of Counsel for HDI-Idaho shall state the following:

(a) HDI-Idaho is a corporation duly organized, validly existing and in good standing under the laws of the State of Idaho, with its principal place of business and chief executive office (as such terms are used in the Utah Uniform Commercial Code) in _____, _____, and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction wherein the failure to so qualify could have a material adverse effect on the business or financial condition of HDI-Idaho.

(b) HDI-Idaho has full corporate power and authority to execute, deliver and perform the Fundamental Agreements and the Related Agreements to which it is a party (the "HDI-Idaho Documents").

(c) The HDI-Idaho Documents have each been duly authorized, executed and delivered by HDI-Idaho and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding obligations of HDI-Idaho enforceable against it in accordance with the terms thereof.

(d) No authorization, consent or approval of, notice to or filing with any governmental authority is required for the execution, delivery or performance by HDI-Idaho of the HDI-Idaho Documents.

(e) Neither the execution, delivery or performance by HDI-Idaho of the HDI-Idaho Documents, nor compliance with the terms and provisions thereof or hereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the charter documents, as amended, of HDI-Idaho or to such Counsel's knowledge any order, writ, injunction or decree of any court or governmental authority against HDI-Idaho or by which it or any of its properties is bound or any indenture, mortgage or contract or other agreement or instrument to which HDI-Idaho is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties.

(f) To such Counsel's knowledge, there are no suits or proceedings pending or threatened in any court or before any regulatory

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commission, board or other governmental administrative agency against or affecting HDI-Idaho which might have a material adverse effect on the business or operations of HDI-Idaho, financial or otherwise, or on its ability to fulfill its obligations under the HDI-Idaho Documents.

2. Qualification and Reliance. In giving an opinion provided for herein, Counsel for HDI-Idaho may qualify such opinion that any agreement is enforceable in accordance with its terms by a general reference to (a) limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of lessors' or creditors' rights generally and (b) general principles of equity. Counsel for HDI-Idaho may further qualify such opinion by a limitation to the laws of the State of Idaho and the laws of the United States.

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SCHEDULE 3(c)(1)
TO THE
PARTICIPATION
AGREEMENT

Assignments Required

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Schedule 3(c)(2)
To The
Participation
Agreement

CONSENTS REQUIRED

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SCHEDULE 3(e)
TO THE
PARTICIPATION
AGREEMENT

Easements

FILED
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SCHEDULE 4(b)(xviii)
TO THE
PARTICIPATION
AGREEMENT

Items to be Completed Within 30 Days of the Closing Date

1. purchase and long-term caring of two (2) snowmobiles to be located at powerhouse

2. construction of a permanent fence around transformer

3. bus duct conduit from transformer to transmission pole embedded in concrete.

4. receipt and installation of Motorola telemetry equipment necessary to optimize intake water flow rates and therefore, power output

5. fire extinguishers in powerhouse
   - 1 in control room area
   - 1 in turbine room area

6. battery rack cover

7. eye wash station above or near battery racks

8. first aid kit in powerhouse building

9. flume and fencing removal or backfill

10. retention of Myers Engineering thru 1988. (contract with HDI)

11. permanent battery 24 volt system to replace temporary system

12. all final painting scheduled for completion

13. receipt and installation of new transmission relay device satisfactory to UP&L

14. all work previously contracted and agreed to by all involved project entities must be completed and signed-off (all vendors, contractors, subcontractors, UP&L, etc.)

Items 5, 6, 7 and 8 are safety related items which may or may not be required to be in compliance with State of Idaho building codes (i.e., OSHA).

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SCHEDULE 8
TO THE
PARTICIPATION
AGREEMENT

Information for Notices

LESSOR: Westinghouse Credit Corporation
One Oxford Centre
Pittsburg, Pennsylvania 15219
Attention: Vice President, Leasing Operations

LESSEE: HDI Associates, Ltd., Limited Partnership
c/o HDI Idaho, Inc.
_____
_____
_____

HDI-Idaho: _____
_____
_____
_____

HYDRO: Hydroelectric Development, Inc.
10394 West Chetfield Avenue, Suite 108
Littleton, Colorado, 80127
Attention: _____

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RECEIVED
MAR - 8 1988
Department of Water Resources

EXHIBIT
TO THE
PARTICIPATION
AGREEMENT

Recording Requested By And
When Recorded Mail to:

ORRICK, HERRINGTON & SUTCLIFFE
600 Montgomery Street,
San Francisco, California 94111
Attention: Daniel R. Bedford, Esq.

(Space above this line for Recorder's Use)

LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASE AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

This MORTGAGE, dated as of March 1, 1988, by HDI ASSOCIATES IV, LIMITED PARTNERSHIP, an Idaho limited partnership ("Mortgagor"), in favor of WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation ("Mortgagee"),

W I T N E S S E T H

Reference is hereby made to that certain Participation Agreement dated as of March 1, 1988 (the "Participation Agreement") among Mortgagee, Mortgagor, HDI Idaho, Inc., an Idaho corporation, and Hydroelectric Development, Inc., a Colorado corporation. Capitalized terms not otherwise defined herein are used as defined in Exhibit A to the Participation Agreement.

GRANT IN TRUST:

Mortgagor, in consideration of the indebtedness herein recited and the trust herein created, and subject to Section 1.4 hereof, hereby irrevocably grants, conveys, transfers, and assigns to Mortgagee, its successors and assigns, in trust forever, with power of sale and right of entry and possession as provided below, all of its present and future estate, right, title and interest in and to the following described property (the "Mortgaged Property"):

(a) That certain real property located in eastern Idaho along Dry Creek approximately fifty five miles north of the town of Arco, and more particularly described in Exhibit A attached hereto (the "Site"), which is the location of a four megawatt hydroelectric facility (the "Facility").

(b) That certain Ground Lease, dated as of March 1, 1988 by and between Mortgagor and Mortgagee (the "Ground Lease").

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(c) All covenants, agreements, rights, appurtenances, tenements, hereditaments, privileges, franchises and appendages of or relating to the Site and all rights of Mortgagor in and to the Easements and any streets, roads or public places, easements or rights of way relating to the Site; and the diversion structure, the penstock and the transmission line associated with the Site and the Facility including, without limitation:

(i) United States Department of the Interior Bureau of Land Management Right of Way permit Serial Number I-23042;

(ii) State of Idaho Easement number 2780;

(iii) Grant of Easement from Hatch Livestock dated November 6, 1986;

(iv) Special Use Easement and Water Distribution and Containment Agreement From Alan J. Amy and Afton Louise Amy dated February 11, 1987;

(v) Idaho Water Permit numbers 33-7089, 33-7154, and 33-7181; and

(vi) Grant of Easement by Robert Amy and Judy Amy dated February 13, 1987.

(d) All development rights, air rights, water, water rights, water stock, ditches or ditch rights and reservoirs or reservoir rights of Mortgagor relating to the Site, including without limitation Idaho Water Permits Nos. 33-7089, 33-7154 and 33-7181, and any licenses that the Idaho Department of Water Resources may issue in the future for the appropriation of water for the Project.

(e) All present and future structures, buildings, improvements, appurtenances and fixtures of any kind on the Site, including without limitation the Facility (the "Improvements").

(f) All leases, subleases and subtenancies, occupancy agreements, and concessions (including the Ground Lease) affecting any of the Mortgaged Property, the Site or the Improvements (collectively, the "Project Leases"), and all rents, royalties, income and profits arising from the Site, the Improvements or the Project Leases and all production payments or other similar payments and all proceeds of the conversion, voluntary or involuntary, of the Mortgaged Property into cash or liquidated amounts or claims for the purposes and upon the terms and conditions hereinafter set forth. Mortgagee is hereby authorized to collect and receive the foregoing rents, issues, profits, royalties, production and other payments and proceeds, to give proper receipts and acquittances therefor and to apply the same to the payment of the obligations secured hereby, notwithstanding the fact that the same may not then be due and payable, however, Mortgagor may collect and receive such rents, issues, profits, royalties, production and other payments and proceeds until an Event of Default occurs pursuant to the terms hereof. The foregoing assignment shall not impose upon Mortgagee any duty to produce rents from the Mortgaged Property, and said assignment shall not cause Mortgagee to be a "mortgagee in possession" for any purpose.

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(g) All proceeds and claims arising on account of any damage to or taking of the Site or Improvements or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Site or Improvements.

(h) All chattel paper of Mortgagor now existing or hereafter arising, and all present and future amendments thereto.

(i) All accounts of Mortgagor, now existing or hereafter arising, and all goods repossessed or returned in connection therewith.

(j) All goods, machinery, equipment, fittings and fixtures of Mortgagor of every kind and nature whatsoever, including without limitation; all machinery, dies, blueprints, catalogues, computer hardware and software, tools, motors, vehicles, furniture and furnishings, together with all additions and accessions thereto and replacements therefor, related to the development and use of the Site, Facility and the Improvements.

(k) All general intangibles of Mortgagor, including without limitation all right, title and interest of Mortgagor in, to or arising out of (i) the Power Agreement, (ii) all contracts and agreements with respect to the Facility, including, without limitation, the Power Sales Agreement, and the Construction Contracts (the "Contracts"), (iii) all patents, copyrights, and deposit accounts now owned or hereafter acquired, (iv) all consents, rights, exemptions, concessions, permits, licenses, authorizations, certificates, orders, franchises, determinations and approvals of any federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality with respect to or in connection with the Facility or the Site, now existing or hereafter arising, including without limitation, the water permits listed in subsection (d) above, Federal Energy Regulatory Commission (FERC) Preliminary Permit No. 7623, and Final Permit No. 9134 (the "Governmental Authorizations") to the extent such Governmental Authorizations can be assigned or subjected to security interests under applicable law, and any other rights necessary to own, operate, and use the Facility, now held or hereafter acquired, (v) all warranties, guaranties and obligations of each and every contractor under all construction contracts, purchase orders, installation or supply agreements, guaranties and other contracts and agreements of whatever kind or character in respect thereof, now in existence or hereafter arising (the "Warranty Agreements"), (vi) all claims arising thereunder and all rights to compel performance of the terms of the Warranty Agreements, the Contracts and the Governmental Authorizations, all payments and refunds that any contractor may be required to make with respect to the Facility and any portion thereof under any Warranty Agreements, and all payments under the Contracts and the Governmental Authorizations; (vii) all names under or by which the Site or Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, (viii) all books, records, and other information in whatever form and however stored, relating to the ownership, use and operation of the Facility and the Site, and (ix) all goodwill in any way relating to the Site and Improvements.

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(l) All documents and instruments of Mortgagor, now owned or hereafter acquired by Mortgagor, including without limitation, documents of title, securities and all new, substituted and additional documents and instruments issued with respect thereto, all voting or other rights now or hereafter exercisable, all cash and noncash dividends, all goods repossessed or returned in connection therewith and all other property now or hereafter receivable with respect to any of the foregoing.

(m) All inventory of Mortgagor, including without limitation all fuel supplies, raw materials, work in progress and finished goods.

(n) All other property of Mortgagor now or hereafter in the possession, custody or control of Mortgagor.

(o) All receivables and proceeds of the property described in paragraphs (a) through (n) above. For purposes of this Mortgage, the term "proceeds" includes whatever is receivable or received when the property referred to above or proceeds is sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes without limitation all rights to payment, including return premiums with respect to any insurance relating thereto.

This Mortgage secures the following obligations (the "Obligations"):

All debts, obligations and liabilities of Mortgagor to Mortgagee arising out of or related to the Overall Transaction, including without limitation all obligations of Mortgagor under the Facility and Site Lease, this Mortgage, the Ground Lease and the Participation Agreement and any other Fundamental Agreement to which Mortgagor is a party or by which Mortgagor is bound, and all amendments or extensions or renewals thereof, whether now existing or hereafter arising, voluntary or involuntary, whether or not jointly owed with others, direct or indirect, absolute or contingent, liquidated or unliquidated, and whether or not from time to time decreased or extinguished and later increased, created, or incurred.

ARTICLE I

AGREEMENTS OF MORTGAGOR

To protect the security of this Mortgage, Mortgagor represents, warrants, covenants and agrees as follows:

1.1 Performance of Obligations Secured. Mortgagor covenants and agrees to pay promptly when due all sums due pursuant to the Obligations and to perform each and every agreement and condition of Mortgagor contained in the Obligations.

1.2 Title to Mortgaged Property. The Mortgagor is, and shall hereafter remain, the owner of the Mortgaged Property free and clear of all voluntary or involuntary liens, encumbrances, [illegible] security interests,

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purchase money security interests, assignments, mortgages, charges or other liens or encumbrances of any nature whatsoever, with the exceptions of (a) all interests in favor of Mortagee, (b) the mortgage and security interest created herein, and (c) liens for real estate taxes not yet due and payable and all Permitted Liens.

1.3 Condemnation and Insurance Proceeds. The proceeds of any award or claim for damages, direct or consequential, in connection with any requisition, condemnation or other taking of or damage or injury to the Mortgaged Property, or any part thereof, or for conveyance in lieu of requisition or condemnation, payable to Mortgagor and assigned to Mortgagee pursuant to this Mortgage, shall be paid and distributed as provided in Section 7(e) of the Facility and Site Lease.

1.4 Security Agreement. This Mortgage is also a security agreement pursuant to the Idaho Uniform Commercial Code for (i) any and all items of personal property specified above as part of the Mortgaged Property that may be subject to a security interest pursuant to the Idaho Uniform Commercial Code and that are not real property, and (ii) any and all items of property specified above as part of the Mortgaged Property that constitute fixtures and may be subject to a security interest under the Idaho Uniform Commercial Code. To the extent that Mortgagor has any right, title or interest in such property, Mortgagor hereby grants Mortgagee a security interest in said property, and in all additions thereto, substitutions therefor, and proceeds thereof, for the purpose of securing the Obligations, and this Mortgage constitutes a security agreement and financing statement, and is intended, when recorded, to create a perfected security interest in such property in favor of Mortgagee. Mortgagor agrees to execute and deliver on demand such security agreements, financing statements and other instruments as Mortgagee may reasonably request from time to time in order to impose a lien more specifically upon any of such property and to pay all recording and/or filing fees associated therewith. For purposes of treating this Mortgage as a security agreement and financing statement, Mortgagee shall be deemed the secured party and Mortgagor shall be deemed the debtor.

This Mortgage has been duly authorized, executed and delivered by the Mortgagor, and constitutes a valid and binding obligation of the Mortgagor. As of the date hereof, the Mortgagee will have a valid and perfected security interest in such of the Mortgaged Property as is subject to perfection recording under the Idaho Uniform Commercial Code, subject to no prior lien other than Permitted Liens, or liens in favor of Mortgagee. No registration, recordation or filing with any governmental body, agency or official is required in connection with the execution or delivery of this Mortgage, or is necessary for the validity or enforceability hereof or for the perfection of the security interests created hereby. The execution, delivery, performance and enforcement of this Mortgage do not and will not contravene, or constitute a default under, any provision of applicable law or regulation or of the Limited Partnership Agreement or of any agreement, judgment, injunction, order, decree or other instrument binding upon the Mortgagor or result in the creation or imposition of any lien (other than Permitted Liens) upon any asset of the Mortgagor. The Mortgagor has not performed any acts

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which might prevent the Mortgagee from enforcing any of the terms and conditions of this Mortgage or which would limit the Mortgagee in any such enforcement.

1.5 Further Sales or Encumbrances. Except as otherwise expressly provided in the Fundamental Agreements, without the prior written consent of Mortgagee being first had and obtained, Mortgagor shall not sell, contract to sell, lease with option to purchase, convey, alienate, transfer, encumber, mortgage or otherwise dispose of all or any portion of the Mortgaged Property or any interest therein, whether voluntarily or involuntarily, by operation of law or otherwise.

1.6 Protection of Security.

(a) If any action or proceeding is commenced that affects Mortgagee's interest in the Mortgaged Property or any part thereof, including without limitation (i) eminent domain actions or (ii) proceedings of any nature whatsoever under any federal, state or local law, whether now existing or hereafter enacted or amended, relating to bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, then Mortgagee may, but without obligation to do so and without notice to or demand upon Mortgagor, make such appearances, pay any such costs and take such action as Mortgagee deems reasonably necessary or appropriate to protect Mortgagee's interest, including without limitation payment of reasonable attorneys fees, entry upon the Facility or the Site to make repairs or take other action to protect the security hereof, and payment, purchase, contest or compromise of any lien that in the reasonable judgment of Mortgagee appears to be prior or superior hereto. Any amounts disbursed by Mortgagee pursuant to this Section 1.6(a) shall be part of the Obligations and secured by this Mortgage and shall bear interest at the Default Rate.

(b) Mortgagor hereby irrevocably appoints Mortgagee as its attorney in fact so to do, but Mortgagee shall not be obligated to and shall incur no liability to Mortgagor or any third party for failure so to do, any act that Mortgagor is obligated by this Mortgage to do, and to exercise such rights, powers, and remedies as Mortgagor might exercise with respect to the Mortgaged Property, including without limitation Mortgagor's rights under any lease related to the Mortgaged Property. Anything to the contrary set forth in this Section 1.6(b) notwithstanding, Mortgagee agrees that it shall not exercise any of the rights or powers granted to or conferred on it pursuant to this Section 1.6(b) except in connection with the exercise by Mortgagee of any of the rights and remedies of Mortgagee contained in Section 20 of the Facility and Site Lease.

(c) Nothing contained in this Mortgage shall be construed to require Mortgagee to incur any expense, make any appearance, or take any other action. Neither this Mortgage nor any action on the part of Mortgagee shall constitute an assumption by Mortgagee of any of the obligations of Mortgagor under any of the contracts or agreements constituting a part of the Mortgaged Property, and Mortgagor shall continue to be liable for all of its obligations thereunder.

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1.7 Mortgagor's and Mortgagee's Covenant Regarding the Ground Lease. Mortgagor agrees to promptly notify Mortgagee in writing of any Default under the Ground Lease as provided in the Ground Lease.

1.8 Anti-merger. There shall be no merger of the leasehold estate created by the Ground Lease with the fee estate in the Site by reason of any of those interests coming into common ownership, unless Mortgagee consents in writing. In the event of the exercise of any power of sale under this Mortgage, Mortgagee shall have the right to sell the leasehold estate and the fee interest of Mortgagor separately or together at the election of Mortgagee.

1.9 Compliance with Leases and Contracts. The Mortgagor is not in default under any terms and conditions of any Easement, Project Lease, Governmental Authorization or Contract necessary, in Mortgagee's discretion, for the operation of the Facility in the manner provided in the Facilty and Site Lease, and shall, during the term of this Mortgage, perform all of the obligations of the Mortgagor under any such Easement, Project Lease, Governmental Authorization or Contract within the period that such performance is required. During the term of this Mortgage, Mortgagor shall not commit, suffer or permit any breach of any statute, ordinance, rule or regulation relating to the Easements, the Project Leases, Governmental Authorizations or the Contracts.

The Mortgagor has entered into, and will maintain in full force and effect, all Easements, Project Leases, Governmental Authorizations, Contracts and other agreements, licenses or easements which are necessary for the use, maintenance, construction and operation of the Mortgaged Property. Mortgagor covenants that except as disclosed in writing to Mortgagee, Mortgagor has not assigned its rights under any of such documents except to Mortgagee hereunder. Except as disclosed to Mortgagee in writing, Mortgagor has obtained all necessary consents to the assignment of a security interest in such Governmental Authorizations, Easements, Project Leases and Contracts under this Mortgage. With regard to such consents which have not been obtained, Mortgagor will do all things and execute all such documents as the Mortgagee may request to assign the Mortgagor's rights therein to the Mortgagee and obtain the necessary consents thereto.

1.10 Modification of Lease and Contract. The Mortgagor will not modify or consent to the modification of any provision of, or cancel, terminate or accept the early cancellation or termination, of any such Easement, Project Lease, Governmental Authorization, Contract or other agreement included in the Mortgaged Property without the prior written consent of Mortgagee.

1.11 Leases. The Mortgagor shall not enter into any Project Lease without the prior written consent of the Mortgagee. Each such Project Lease shall be in form and substance satisfactory to the Mortgagee and, without limiting the generality of the foregoing, shall include a provision confirming that the Project Lease is subordinate to the lien of this Mortgage and consenting to the assignment provided for herein of the Project Lease to the

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Mortgagee. The Mortgagor shall furnish the Mortgagee, upon the request of the Mortgagee, with copies of each and every Project Lease and any other information relative to each such Project Lease and the tenant thereunder. The Mortgagor will take all action as may be requested by the Mortgagee in furtherance of the rights of the Mortgagee hereunder, including, without limitation, obtaining estoppel certificates and agreements (in form satisfactory to the Mortgagee) from each tenant subordinating the Project Lease to the lien of this Mortgage and consenting to the assignment of the Project Lease provided for herein.

1.12 No Financing Statements on File. Except for those to be terminated concurrently with the execution and delivery of the Lease, no effective financing statement or other instrument similar in effect covering all or any part of the Mortgagor's interest in the Mortgaged Property is on file in any recording office, except such as may have been filed pursuant to this Mortgage or pursuant to the documents evidencing Permitted Liens, or in favor of Mortgagee.

1.13 Notices, Etc. Mortgagor shall deliver to Mortgagee a copy of each demand, notice or document received or given by Mortgagor relating in any way to any Easement, Project Lease or Contract.

1.14 Place of Perfection; Records. The Mortgagor shall give the Mortgagee 30 days prior written notice before it changes the location of its chief place of business and chief executive office and shall at the expense of the Mortgagor execute and deliver such instruments and documents as required to maintain a prior perfected security interest and as requested by the Mortgagee. The Mortgagor will hold and preserve such records and will permit representatives of the Mortgagee at any time during normal business hours to inspect and make abstracts from such records.

1.15 Covenants of the Mortgagor. The Mortgagor shall pay, before the imposition of any fine, penalty, interest or cost attached thereto, all taxes, assessments and other governmental or non-governmental charges or levies now or hereafter assessed or levied against the Mortgaged Property or upon the security interest provided for herein (except for liens for taxes and assessments not then delinquent) as well as pay, or cause to be paid, all claims for labor, materials or supplies which, if unpaid, might become a prior lien (other than a Permitted Lien) on the Mortgaged Property, and will exhibit receipts showing payment of any of the foregoing.

1.16 Litigation. There is no suit, action, proceeding, or, to the knowledge of Mortgagor, any investigation presently pending or threatened against the Mortgagor, or any of the Mortgaged Property, which, if determined adversely, would have a material adverse effect upon the Mortgagor or the Mortgaged Property.

1.17 Further Assurances. The Mortgagor shall do all such things and execute all such documents from time to time hereafter as the Mortgagee may request in order to carry into effect the provisions and intent of this Mortgage and to protect, perfect, and maintain the Mortgagee's interest in and to the Mortgaged Property.

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1.18 Fixture Filing. This Mortgage constitutes a financing statement filed as fixture filing in the Official Records of the County Recorder of the county in which the Mortgaged Property is located with respect to any and all fixtures included within the term "Mortgaged Property" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

ARTICLE II

EVENTS OF DEFAULT

Any "Event of Default" under the Site and Facility Lease shall constitute an event of default ("Event of Default") hereunder (including, if Mortgagor consists of more than one person or entity, the occurrence of any of such events with respect to any one or more of such persons or entities) unless Mortgagee shall declare otherwise in writing.

ARTICLE III

REMEDIES

If any Event of Default shall have occurred hereunder and be continuing Mortgagee shall have all of the rights of a mortgagee under Idaho law, all the rights of a secured party under the Uniform Commercial Code as adopted by Idaho, and the following rights and remedies (to the extent permitted by and subject to compliance with any mandatory requirements of Idaho law then in effect):

3.1 Remedies Under the Agreements. Upon the occurrence of an Event of Default under any of the provisions of the Obligations, Mortgagee shall have any and all of the rights and remedies provided under the Site and Facility Lease and any other rights and remedies available to Mortgagee under any of the Obligations.

3.2 Judicial Action. Mortgagee may bring an action in any court of competent jurisdiction to foreclose this instrument in connection with the rights and remedies in the Event of Default under Section 3.1 hereof or to enforce any of the covenants and agreements hereof.

3.3 Power of Sale. Upon an Event of Default Mortgagee may sell, lease, or otherwise dispose of any or all of the Mortgaged Property in its then condition or following such preparation or processing as the Mortgagee deems advisable.

3.4 Appointment of Receiver. Mortgagee shall have the right in connection with the rights and remedies in the Event of Default under Section 3.1 hereof, with the irrevocable consent of Mortgagor hereby given and evidenced by the execution of this Mortgage, to obtain appointment of a

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receiver by any court of competent jurisdiction without further notice to Mortgagor, which receiver shall be authorized and empowered to enter upon and take possession of the Mortgaged Property, including all personal property used upon or in connection with the real property herein conveyed and all accounts encumbered by this Mortgage and containing funds associated with the Mortgaged Property, to let the Mortgaged Property, to receive all the Rents due or to become due to Mortgagor under any lease of the Mortgaged Property, and apply the Rents, after payment of all necessary charges and expenses, to the Obligations. At the option of Mortgagee, the receiver shall accomplish such entry and taking possession of the Mortgaged Property by actual entry and possession or by notice to Mortgagor. The receiver so appointed by a court of competent jurisdiction shall be empowered to issue receiver's certificates for funds advanced by Mortgagee for the purpose of protecting the value of the Mortgaged Property as security for the Obligations. The amounts evidenced by receiver's certificates shall bear interest at the Default Interest Rate and may be added to the cost of redemption if the Mortgaged Property, or any part thereof, is redeemed by any party entitled to do so.

3.5 Proceeds of Sale. The proceeds of any sale made under or by virtue of this Article III, together with all other sums that may be received and held by Mortgagee under this Mortgage, whether under the provisions of this Article III or otherwise, shall be applied first to pay all of the fees, costs, and expenses incurred by Mortgagee in conducting the sale or otherwise foreclosing on the Mortgaged Property, including without limitation reasonable attorneys fees, and then to the Obligations.

3.6 Power of Attorney. Upon the occurrence of any Event of Default, the Mortgagor hereby irrevocably constitutes and appoints the Mortgagee as the Mortgagor's true and lawful attorney, to take any action with respect to the Mortgaged Property to preserve, protect, or realize upon the Mortgagor's interest therein, each at the sole risk, cost and expense of the Mortgagor, but for the sole benefit of the Mortgagee. The rights and powers granted the Mortgagee by the within appointment include, but are not limited to, the right and power to: (i) prosecute, defend, compromise, settle, or release any action relating to the Mortgaged Property; (ii) endorse the name of the Mortgagor in favor of the Mortgagee upon any and all checks or other items constituting remittances or proceeds of the Mortgaged Property; (iii) sign and endorse the name of the Mortgagor on, and to receive as secured party, any of the Mortgaged Property; (iv) sign and file or record on behalf of the Mortgagor any financing or other statement in order to perfect or protect the Mortgagee's security interest in the Mortgaged Property; (v) enter into leases or subleases relative to all or a portion of the Mortgaged Property; (vi) enter into any contracts or agreements relative to, and to take all action deemed necessary in connection with, the construction of any improvements on the Mortgaged Property; (vii) exercise the rights of the Mortgagor under any Contract, Lease, Easement or Governmental Authorization; or (viii) manage, operate, maintain, or repair the Mortgaged Property. The Mortgagee shall not be obligated to perform any of such acts or to exercise any of such powers, but if the Mortgagee elects so to perform or exercise, the Mortgagee shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to Mortgagor

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except for the Mortgagee's wilful misconduct and actual bad faith. All powers conferred upon the Mortgagee by this Agreement, being coupled with an interest, shall be irrevocable until terminated by a written instrument executed by a duly authorized officer of the Mortgagee.

3.7 Remedies Cumulative. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any Event of Default or any acquiescence therein, and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. If there exists additional security for the performance of the obligations secured hereby, Mortgagee, at its sole option, and without limiting or affecting any of its rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever rights and remedies it may have in connection with such other security or in such order as it may determine. Any application of any amounts or any portion thereof held by Mortgagee at any time as additional security hereunder, whether pursuant to Section 3.2 hereof or otherwise, to any Obligation secured hereby shall not extend or postpone the due dates of any payments due from Mortgagor to Mortgagee, or change the amounts of any such payments or otherwise be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

ARTICLE IV

MISCELLANEOUS

4.1 Severability. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

4.2 Notices. All notices and other communications required under the terms and provisions of this Mortgage shall be in writing and shall become effective when delivered by hand or received by telex, telecopier, or registered or certified mail, postage prepaid, addressed as follows or to such other address of which all the parties hereto or their respective successors and assigns have been given notice;

Mortgagor: HDI ASSOCIATES IV
10394 West Chatfield Avenue, Suite 108
Littleton, Colorado 80127

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with a copy to: Hydroelectric Development, Inc.
10394 West Chatfield Avenue, Suite 108
Littleton, Colorado 80127

Mortgagee: Westinghouse Credit Corporation
One Oxford Centre
Pittsburgh, Pennsylvania 15219
Attention: Vice President of Specialized Finance

4.3 Mortgagor Not Released. Extension of the time for payment or modification of the terms of payment of any sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of the original Mortgagor. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify the terms of payment of the sums secured by the Mortgage by reason of any demand made by the original Mortgagor. Without affecting the liability of any person, including Mortgagor, for the payment of any Obligations secured hereby, or the lien of this Mortgage on the remainder of the Mortgaged Property for the full amount of any such Obligation and liability unpaid, Mortgagee is empowered as follows: Mortgagee may from time to time and without notice (a) release any person liable for the payment of any of the Obligations, (b) extend the time of payment of any of the Obligations, (c) accept additional real or personal property of any kind as security therefor, whether evidenced by deeds of trust, mortgages, security agreements, or any other instruments of security, (d) alter, substitute or release any property securing the Obligations, (e) consent to the making of any map or plat of the Mortgaged Property or any part thereof, (f) join in granting any easement or creating any restriction thereon, (g) join in any subordination or other agreement affecting this Mortgage or the lien or charge hereof, or (h) reconvey, without any warranty, all or part of the Mortgaged Property.

4.4 Inspection. Mortgagee may at any reasonable time or times make or cause to be made entry upon and inspection of the Mortgaged Property or any part thereof in person or by agent.

4.5 Statute of Limitations. The pleading of any statute of limitations as a defense to any and all Obligations secured by this Mortgage is hereby waived to the fullest extent permitted by law.

4.6 Interpretation. Wherever used in this Mortgage, unless the context otherwise indicates a contrary intent, or unless otherwise specifically provided herein, the word "Mortgagor" shall mean and include Mortgagor and any subsequent owner or owners of the Mortgaged Property, and the word "Mortgagee" shall mean and include not only the original Mortgagee hereunder but also any future assignees or transferees which are Lessor under the Site and Facility Lease. In this Mortgage, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other

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items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter. The captions and headings of the Articles and Sections of this Mortgage are for convenience only and are not to be used to interpret, define, or limit the provisions hereof.

4.7 Consent; Delegation to Sub-agents. The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions. Wherever a power of attorney is conferred upon Mortgagee hereunder, it is understood and agreed that such power is conferred with full power of substitution, and Mortgagee may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof, to one or more sub-agents.

4.8 Successors and Assigns. All of the grants, obligations, covenants, agreements, terms, provisions, and conditions herein shall run with the land and shall apply to, bind, and inure to the benefit of, the heirs, administrators, executors, legal representatives, successors, and assigns of Mortgagor and the endorsees, transferees, successors, and assigns of Mortgagee. In the event Mortgagor is composed of more than one party, the obligations, covenants, agreements, and warranties contained herein as well as the obligations arising therefrom are and shall be joint and several as to each such party.

4.9 Conflict with Facility and Site Lease. If there shall occur any conflict between the express provisions of this Mortgage and the express provisions of the Facility and Site Lease, the terms of the Facility and Site Lease shall govern.

4.10 Governing Law. This Mortgage shall be governed by and construed under the laws of the State of Idaho.

IN WITNESS WHEREOF, the undersigned has executed this Mortgage the day and year first hereinabove written.

Mortgagor:

HDI ASSOCIATES IV, LIMITED PARTNERSHIP,
an Idaho limited partnership

By HDI-IDAHO, INC.
General Partner

By:_____
Its:_____

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STATE OF _____)
) ss.
CITY AND COUNTY OF _____)

On this ____ day of _____, 198_, before me, a Notary Public in and for said State, duly commissioned and sworn, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ of _____ and the _____ of _____ officers executing the within instrument, and acknowledged to me that such general partners of the partnership executed the within instrument pursuant to partnership authorization, and acknowledged to me that they subscribed their names on the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date in this certificate first above written.

_____

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GROUND LEASE

1. PARTIES AND FACTS

1.1 Names. This Ground Lease ("Lease") is entered into this _____ day of _____, 1988 between HDI ASSOCIATES IV, LIMITED PARTNERSHIP, an [Idaho] limited partnership ("Landlord"), and WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation ("Tenant").

1.2 Site. Landlord is the owner of real property (the "Site") located in eastern Idaho along Dry Creek approximately fifty-five miles north of the town of Arco and described in Exhibit A attached to this Lease.

1.3 Facility. Tenant is the owner of a hydroelectric facility ("the "Facility") located on the Site. The Facility consists of the matters set forth in Exhibit B.

1.4 Premises. The term "Premises" as used in this Lease means the Site together with all rights and entitlements appurtenant thereto.

2. LEASE OF SITE

2.1 Lease. Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, the Premises on the terms and conditions set out in this lease.

2.2 Title to the Site. Landlord shall obtain, at its sole cost and expense, a policy of title insurance showing Landlord as the owner of fee simple title to the Site subject only to such liens, easements, rights of way, exceptions, reservations, restrictions, covenants and encumbrances as set forth in that certain Preliminary Title Report No. _____ issued by _____ Title Company. Subject to such exceptions to title, Landlord throughout the term of this Lease shall hold harmless, indemnify and defend Tenant from and against any and all claims, demands, actions, causes of action, damages, liabilities, costs and expenses (including reasonable attorneys' fees) based upon or arising from any liens and encumbrances not described in such policy which were created prior to the date of recordation of a memorandum of this Lease, except for those liens and encumbrances arising from the conduct of Tenant or Tenant's agents, employees, or independent contractors.

3. TERM

3.1 ____ Years. The term of this Lease shall commence upon the execution of this Lease and shall terminate ____ years from the date hereof.

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4. RENT

4.1 Amount and Payment. On the first day of each calendar year during the term of this Lease, Tenant shall pay to Landlord as rent for the Site, without deduction, setoff or prior notice or demand, the sum of One Hundred Twenty Dollars ($120.00).

4.2 Place of Payment. All payments of rent or other sums which are payable to Landlord under this Lease shall be personally delivered or sent to Landlord at the address set forth below, or at such other place as may be from time to time designated by Landlord in writing.

5. TAXES AND UTILITIES

5.1 Taxes and Assessments. Landlord and Tenant hereby acknowledge that lessee ("Lessee") under that certain Site and Facility Lease of even date herewith between Tenant (as lessor) and Landlord (as lessee), shall pay all ad valorem real and personal property taxes, general and special assessments, and other governmental charges of every description (whether ordinary or extraordinary) levied on or assessed against the Premises, any leasehold estate or subleasehold estate in the premises or any portion thereof, any license fee, gross receipts tax or other tax imposed by reason of the making of this Lease, to the full extent of installments due during the term of this Lease, whether belonging to or chargeable against Landlord or Tenant. Property tax shall also include any tax, fee, levy, assessment or charge (i) in substitution of any tax, fee, levy, assessment or charge specified herein, or (ii) which is imposed as a result of a transfer, either partial or total, of Landlord's interest in the Premises (excluding, however, any documentary transfer tax or any other tax imposed upon the act of transferring an interest in the Premises) or which is added to a tax or charge specified herein by reason of such transfer, or (iii) which is imposed by reason of this transaction, any modification or changes hereto, or any transfers hereof. If Lessee shall fail to pay any payments under this Section 5 prior to delinquency and before any fine, interest or penalty shall become due for their nonpayment, then Landlord, within thirty days of Notice from Tenant that such Lessee has failed to pay such taxes when due, shall pay all such taxes and any late charges, fees or penalties which may be assessed. Upon the termination of Lessee's obligations to pay all taxes referred to herein under the Site and Facility Lease, Landlord shall pay such taxes prior to delinquency, and shall pay all penalties, fines or fees imposed for any late payments.

If Landlord shall fail or refuse to meet any of its obligations under this paragraph 5.1 to pay taxes, then Tenant shall have the right, upon seven days written notice to Landlord, to make such payments on behalf of Landlord. Any such amounts paid by Tenant shall be due from and payable by Landlord immediately and shall bear interest at __%. No payments by Tenant shall constitute a waiver of any default of Landlord, and Tenant shall have the right to deduct such amounts from any rental payments due under this Lease regardless of whether such amounts are disputed.

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5.2 Utilities. Landlord and Tenant further acknowledge that the Lessee under the Site and Facility Lease shall be obligated thereunder to pay prior to delinquency all charges for water, electricity, gas, telephone and communication service, sewers, heat and all other utility services furnished to the Premises during the term of such Site and Facility Lease, and all charges for bringing such utilities to the Premises ("Utility Charges"). If such Lessee fails to make any such payments when due, then landlord shall pay all such Utility Charges promptly upon notice of Lessee's failure to meet its obligations to pay such charges. Upon the termination of Lessee's obligations under the Site and Facility Lease, Landlord shall pay, prior to delinquency, all Utility Charges including any fines, fees or penalties for late payment or otherwise. If Landlord fails to meet its obligations to pay Utility Charges under this paragraph 5.2, then Tenant shall have the right, without waiving any such default by Landlord, to pay such Utility Charges on behalf of Landlord. Any such amounts paid by Tenant immediately shall be due from and payable by Landlord, and shall bear interest at __%. Tenant shall have the right to deduct such amounts from any rental payments due under this Lease regardless of whether such amounts are disputed.

6. TENANT'S RIGHT TO GRANT EASEMENTS. Landlord hereby grants to Tenant the right to grant rights of way or easements on or over the Premises for such purposes as become necessary or convenient to the use of the Site and the Facility.

7. USE, MAINTENANCE AND ALTERATION

7.1 Use. During the term of this Lease, Tenant shall have the right to use the Site for any lawful purpose.

7.2 Maintenance and Repair. Landlord shall, at its sole cost and expense, cause all portions of the Premises to be kept in neat and sanitary order and repair, and in compliance with all applicable Legal Requirements therefore.

7.3 Alterations. Tenant shall have the right to make repairs, alterations, additions and improvements to the Facility (the "New Construction") without Landlord's prior approval.

8. [Reserved]

9. ASSIGNMENTS AND SUBLEASES

Tenant shall have the right to assign, sell, mortgage or otherwise transfer its interest in this Lease in whole or in part or sublet all or any part of the Premises.

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10. DEFAULT

10.1 Tenant's Default. Each of the following events shall constitute an event of default by Tenant and a breach of this Lease:

(a) Failure to Pay Rent. Tenant's failure to pay rent or any other sums payable to Landlord as provided in this Lease.

(b) Failure to Perform. Tenant's failure to observe, keep or perform any of the material terms, covenants and agreements of this Lease on Tenant's part to be observed, kept or performed.

(c) Vacating or Abandonment. Tenant's vacating or abandonment of the Premises.

10.2 Notice of Default. As a condition to the right to pursue any remedies for any alleged default under this Lease, the party not in default shall deliver written notice to the party believed to be in default. Such notice of default shall specify the alleged event of default and the intended remedy.

10.3 Tenant's Right to Cure Default. If the alleged event of default by Tenant is the nonpayment of rent, taxes, loans secured by a leasehold mortgage or any other sums payable by Tenant to Landlord or is otherwise curable by the payment of money, Tenant shall have thirty (30) days after receipt of Landlord's notice of default in which to cure the default. In the event of any other default, Tenant shall have ninety (90) days after receipt of Landlord's notice of default to correct such default; provided, however, that if the nature of Tenant's default is such that it cannot, in the exercise of reasonable diligence, be cured in ninety (90) days, then Tenant shall have such longer period as is reasonably required to cure such default so long as Tenant commences acts to effect such cure within said ninety (90) day period and thereafter diligently and continuously prosecutes such acts to completion.

10.4 Landlord's Remedies. If any default by Tenant shall continue uncured following Landlord's notice of default for the period applicable to such default under the provisions of this Section 10, Landlord shall have the right to cure such default, but in no event shall Tenant be liable to Landlord for Landlord's costs and expenses in curing such default. Notwithstanding any other provisions of this Lease, Landlord shall not have the right to terminate this Lease without the prior written consent of Tenant.

10.5 Landlord's Default. Landlord's failure to observe, keep or perform any of the terms, conditions, covenants and agreements of this Lease on the Landlord's part to be observed, kept or performed shall constitute an event of default by Landlord hereunder and a breach of this Lease. Landlord shall not be considered to be in default under this Lease unless Tenant has given Landlord a written notice specifying the default and Landlord has failed for 30 days to cure the default, if it is curable within such period, or to institute and diligently pursue reasonable corrective or ameliorative acts for

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any default which cannot be cured within 30 days. If Landlord shall fail to issue or institute a cure for the default within such 30-day period, then Tenant shall have the right to cure such default and Landlord shall be liable to Tenant for Tenant's costs and expenses in curing such default, and for any damages suffered by Tenant as a result of the default. All such amounts , once disbursed or incurred by Tenant, shall be immediately due and payable by Landlord and shall bear interest at a rate of __%.

10.6 Waiver and Voluntary Acts. No waiver of any breach or default shall constitute a waiver of any other breach or default, whether of the same or any other terms, agreement or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel or otherwise.

11. TENANT'S RIGHT TO MORTGAGE LEASEHOLD ESTATE

11.1 Tenant's Right. Tenant shall have the right at any time and from time to time, without Landlord's consent, to mortgage this Lease and the leasehold evidenced hereby or any undivided interest therein, together with the facility or other improvements constructed on the site pursuant to this Lease, or any interest therein (herein referred to as "leasehold mortgage") by one or more leasehold mortgages at any one time and to supplement or replace any one or more of such leasehold mortgages as many times as Tenant deems appropriate. As used in this Lease, the term "mortgage" shall include conveyance by deed of trust, all obligations secured by the mortgage, and all documents evidencing the mortgage. The term "mortgagee" shall include the trustee and beneficiary under a deed of trust.

(a) Subject to Lease. Each leasehold mortgage and all rights acquired thereunder shall be subject to the provisions of this Lease and to all rights and interests of Landlord except as otherwise specifically provided herein.

(b) Notice of Landlord. Tenant shall give Landlord notice of each leasehold mortgage within ninety (90) days after its execution and shall accompany the notice with true copies of the leasehold mortgage.

(c) No Amendments to Lease. So long as this Lease shall be encumbered by a leasehold mortgage, neither Landlord nor Tenant shall consent or permit the amendment of any provisions of this lease without the prior written consent of the leasehold mortgagee.

11.2 Foreclosure by Leasehold Mortgagees. In the event of any default under the provisions of this Lease, Landlord shall accept performance or payment by a leasehold mortgagee of any term, covenant, condition, agreement or payment on Tenant's part herein provided to be performed or paid by Tenant. The holder of any leasehold mortgage may enforce such leasehold mortgage and acquire title to the leasehold estate in any lawful way (the term "leasehold estate" as used in this Lease includes Tenant's leasehold interest created hereby, together with Tenant's interest in the Facility). The

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leasehold mortgagee shall be liable to perform the obligations imposed on Tenant by this Lease only during the period commencing on the date such person acquires title to such leasehold estate or possession of the Premises, whichever first occurs, and ending upon the date of termination of this Lease. As used in this Lease, the terms "foreclose" and "foreclosure" shall be construed to mean the acquisition of the leasehold estate by judicial proceedings and any other lawful means, including without limitation the exercise of a power of sale contained in such leasehold mortgage.

11.3 Additional Rights of Leasehold Mortgagees. Each leasehold mortgagee shall have the following additional rights:

(a) New Lease. If this Lease shall terminate prior to the expiration of the term for any reason, including, without limitation, operation of law, Landlord shall enter into a new lease and memorandum thereof, each in recordable form, with the leasehold mortgagee which holds the lien against Tenant's leasehold estate of the highest priority of all leasehold mortgagees and demands such new lease by giving written notice to Landlord within 30 days after receiving Landlord's notice of termination of this Lease and for the remainder of the term of this Lease, and at the same rent and upon the same terms, covenants and conditions of this Lease.

(b) Rent Under New Lease. Upon the execution of such new lease, the tenant thereunder shall pay to Landlord any and all rent and all other sums payable to Landlord by Tenant through this Lease which accrued during the period from the date of termination of this Lease to the date of execution and delivery of such new lease.

(c) Improvements. Notwithstanding any termination of this Lease prior to the completion of its term, Landlord shall not alter or in any way demolish any improvements on the Premises until [the scheduled term completion date] without the prior written consent of the leasehold mortgagee, if any. Landlord during that same period shall not remove, replace or change any furnishings, fixtures or equipment located on the Premises, except to the extent required for the preservation or protection thereof.

12. ESTOPPEL CERTIFICATE

Tenant and Landlord, at no charge, at any time and from time to time during the term of this Lease and within ten days after prior request by the other party, shall execute, acknowledge and deliver to the requesting party a statement in writing certifying that this lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications. The statement shall also state the dates on which rent and any other charges have been paid, that there are no defaults existing or that defaults exist and the nature of such defaults, and such other information as Tenant or Landlord shall reasonably request. The parties acknowledge that any such statement is intended to be delivered and relied upon by any prospective purchaser, encumbrancer or assignee of the Premises or all or any part or parts of Tenant's or Landlord's interest under this [illegible] party's failure to

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execute, acknowledge and deliver on request the certified statement described above within the specified time shall constitute acknowledgment by such party to all persons entitled to rely on the statement that this Lease is unmodified and in full force and effect, and that rent and other charges have been duly and fully paid to and including the respective due dates immediately preceding the date of the notice of request.

13. NOTICE

All notices, requests, demands, consents, approvals and other communications required or permitted to be given or delivered hereunder shall be in writing and shall be considered given and received either when delivered in person to the recipient as named below, or on the third day after deposit in the United States Postal Service in a sealed envelope, either registered or certified mail, return receipt requested, postage prepaid, addressed to the party, or on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the party at the following address:

Landlord: Hydroelectric Development, Inc.
_____
_____
Attn:_____

Tenant: Westinghouse Credit Corporation
_____
_____
Attn:_____

The addresses set out above may be changed from time to time by written notice in compliance with this section.

14. RECORDING

Upon the execution of this Lease, at the time of any material amendment hereto, and from time to time Landlord and Tenant shall, within ten days after written request therefor, execute, acknowledge and deliver a memorandum of lease for recordation by either party.

15. ATTORNEY'S FEES

If either party shall institute any legal action or proceeding to enforce, protect or establish any right or remedy arising out of this Lease, the prevailing party shall be entitled to recover from the other party all expenses of litigation, including reasonable attorneys' fees and costs incurred in such action or proceeding, and costs of appeal.

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16. MISCELLANEOUS

19.1 Governing Law; Captions and Headings. This Lease shall be governed by, and interpreted and construed in accordance with the laws of Idaho. The captions and headings in this Lease are for convenience of reference only and shall not be used to define, limit or construe the meaning hereof.

19.2 Nonmerger of Estates. If both Landlord's and Tenant's estates in the Site and the Facility become vested in the same owner, this Lease shall nevertheless not be terminated by application of any doctrine of merger or other similar rule except upon the prior written consent of Tenant.

19.3 Successors. Subject to the provisions of this Lease on assignment and subletting, each and all the terms, agreements and conditions of this Lease shall be binding on and shall inure to the benefit of the successors and assigns of the respective parties.

19.4 Lawful Money and Interest. All amounts payable hereunder shall be paid in lawful money of the United States of America. Any amount of interest required to be paid to Landlord not otherwise expressly provided for herein shall be at a fixed rate of interest, established as of the date any amount owed commences to bear interest, equal to the lesser of two percent (2%) above the reference rate established by Bank of America, San Francisco, California, Main Office, or the maximum rate permitted by Law.

19.5 Exhibits. All exhibits attached to this Lease are hereby incorporated herein by this reference.

Dated: _____ __, 1988.

Landlord: Hydroelectric Development, Inc.,
a _____ corporation

By_____

Its_____

Tenant: Westinghouse Credit Corporation
a Delaware corporation

By_____

Its_____

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EXHIBIT A

TO

GROUND LEASE

Description of the Site

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EXHIBIT B

TO

GROUND LEASE

Description of Facility

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EXHIBIT C

TO

GROUND LEASE

Memorandum of Lease

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Department of Water Resources

DRAFT #3
03/03/88

FACILITY AND SITE LEASE

Dated as of March 1, 1988

Between

WESTINGHOUSE CREDIT CORPORATION

Lessor,

and

HDI ASSOCIATES IV,
LIMITED PARTNERSHIP

Lessee

Dry Creek Hydroelectric Project

Note: This Facility and Site Lease Agreement been executed in four (4) counterparts of which this is Counterpart Number __. See Section 27 hereof for information concerning the distinction between various counterparts hereof.

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FACILITY AND SITE LEASE

This FACILITY AND SITE LEASE dated as of March 1, 1988, by and between WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation ("Lessor"), and HDI ASSOCIATES IV, LIMITED PARTNERSHIP, an Idaho limited partnership ("Lessee"),

WITNESSETH:

Section 1. Definitions:

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

Section 2. Lease:

Subject to the satisfaction or waiver of the conditions precedent set forth in Section 3 of the Participation Agreement, Lessor hereby subleases all of its right, title and interest in and to the Site, and all easements, rights, and appurtenances relating thereto, and leases all of its right, title and interest in the Facility (such interest of Lessor under the Ground Lease and in and to the Facility is sometimes referred to herein as the "Leased Property") to Lessee, and Lessee hereby leases all of Lessor's right, title and interest in and to the Facility and subleases all of Lessor's right, title and interest in the Site from Lessor, all for the Rent and the Term hereinafter stipulated and upon the terms and conditions herein set forth. The leasing of the Leased Property shall be conclusively evidenced by the execution and delivery by Lessee to Lessor of a Certificate of Delivery and Acceptance, substantially in the form of Exhibit A attached hereto, which Certificate shall be acknowledged by Lessor.

Section 3. Term of Lease:

The Initial Term of this Lease shall commence on the Closing Date and shall terminate on the Expiration Date, subject to earlier termination pursuant to Section 11, 12 or 20 hereof and renewal pursuant to Section 6 hereof.

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Section 4. Payments of Rent:

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

(b) Supplemental Rent. Lessee shall also pay, as Supplemental Rent, any and all amounts, liabilities and obligations which Lessee assumes or agrees to pay hereunder to Lessor or others, including, without limitation, the Casualty Payment payable under Section 11(c), any payment pursuant to a Special Casualty Occurrence payable under Section 12, and the indemnities provided for in Sections 14 and 21, promptly as the same shall become due and owing. In the event of any failure on the part of Lessee to pay any Supplemental Rent, Lessor or its assigns shall have all rights, powers and remedies provided for herein or by law or equity or otherwise as in the case of nonpayment of Basic Rent. Lessee shall also pay to Lessor on demand, as Supplemental Rent, to the extent permitted by applicable law, interest at the Default Interest Rate on any part of any installment of Basic Rent, Casualty Payment and Special Casualty Payment not paid when due for the period for which the same shall be overdue and on any other payment of Supplemental Rent not paid when demanded by Lessor for the period until the same shall be paid.

(c) Obligation to Pay Rent. Each payment of Rent shall be in immediately available funds. This Lease is a net lease and Lessee's obligation to pay all Rent payable hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation: (i) any setoff, counterclaim, recoupment, deduction, defense or other right which Lessee may have against Lessor, any manufacturer or any one else for any reason whatsoever; (ii) any defect in the title, condition, design, operation, merchantability or fitness for use of any part of the Facility; (iii) the existence of any liens, encumbrances or rights of others whatsoever with respect to the Leased Property, whether or not resulting from claims against Lessor not related to the ownership of the Leased Property; (iv) subject to Section 11, any loss or destruction of, or damage to, any part of the Facility or any interruption or cessation in the use or possession thereof for any reason whatsoever and of whatever duration; (v) the invalidity or unenforceability of this Lease or any other infirmity therein or any lack of power or authority of Lessor or Lessee to enter into this Lease; (vi) any insolvency, bankruptcy, reorganization or similar proceeding by or against Lessee or Lessor; or (vii) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If for any reason whatsoever (other than pursuant to Section 11(b) or Section 12) this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, Lessee nonetheless agrees to pay an amount equal to each payment of Rent at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease, except in accordance with the express terms hereof. This provision, however, shall not be construed to waive Lessee's right of action [illegible] against Lessor or any

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other person for damages incurred by Lessee on account of any breach by Lessor or such other person of any provision of this Lease or any other agreement relating or not relating hereto.

Section 5. Sublease:

Lessee shall not sublease the Leased Property without Lessor's written consent, which consent will not be unreasonably withheld. Each sublease, whether or not consented to by Lessor, shall be expressly subject and subordinate to all the terms and conditions of this Lease and shall in no way relieve Lessee from any obligations under this Lease (it being understood and agreed that Lessee shall remain primarily liable for such obligations notwithstanding any such sublease), and Lessee hereby waives any rights it may now have or hereafter acquire to avoid any such obligations by reason of such sublease or any circumstances arising from such sublease. Lessee agrees to indemnify and hold harmless Lessor against any and all out-of-pocket expenses, claims, demands and liabilities, of whatever nature, relating to or in any way arising out of such sublease, including, without limitation, out-of-pocket expenses incurred in evaluating any proposed sublease, and all out-of-pocket costs, damages, charges, attorneys' fees and expenses arising out of or necessitated by assertion of any such claim or demand with regard to such sublease. Any sublease entered into in violation of this Section 5 shall be void.

Section 6. Purchase and Renewal Options:

(a) Option to Purchase or Renew. In order to exercise any option under this Section 6, (i) no Event of Default shall have occurred and be continuing at the time of the notice provided hereunder or at the expiration of the applicable Basic Term or Renewal Term, and (ii) Lessee shall give Lessor notice of its irrevocable election to purchase the Facility under Section 6(b) hereof not less than twelve (12) months before the end of the applicable ~~Basic~~ Term or Renewal Term, or Lessee shall give Lessor notice of its irrevocable election to lease the Leased Property under Section 6(c) hereof not less than nine (9) months before the end of the Initial Term or the first Renewal Term (as the case may be) ~~the Leased Property~~ on the date of expiration of such Initial Term or Renewal Term, accompanied or promptly followed by evidence reasonably satisfactory to Lessor of Lessee's ability to exercise such option.

(b) Option to Purchase. If Lessee shall have given notice of its irrevocable election to purchase the Facility in accordance with Section 6(a) hereof, such notice shall include Lessee's good faith estimate of the Fair Market Value of the Facility on the date of the expiration of the Term (which in no event shall be less than ~~thirty~~ percent (30%) of the Total Project Cost), and Lessee shall purchase the Facility on the date of the expiration of the Initial Term or any Renewal Term at a purchase price equal to the greater of 30% of the Total Project Cost or the Fair Market Value of the Facility determined as provided in Section 6(d) hereof as of the expiration date. In the event the Fair Market Value as determined by the appraisal exceeds one hundred ten percent (110%) of Lessee's estimate, then Lessee may, by written

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notice sent to Lessor within ten (10) days after receipt of such appraisal, irrevocably ~~elect to~~ lease the Leased Property under Section 6(c) hereof on the date of expiration of such Initial Term or Renewal Term, provided, however, that no such election may be made during the second Renewal Term. Such purchase price shall be payable in cash. Such purchase and payment shall take place on the later of (i) such expiration date or (ii) thirty days after such Fair Market Value has been determined. In the event the purchase described in this Section 6(b) occurs on a date after such expiration date, Lessee shall also pay to Lessor on such payment date Rent in an amount equal to one three-hundred-sixty-fifth (1/365th) of the average annual Basic Rent during the prior three (3) years of the applicable Term for ~~each day after~~ such expiration date to and including the purchase date.

(c) Lessee Renewal Options. If Lessee shall have given notice of its irrevocable election in accordance with Section 6(a) hereof to renew this Lease, such notice shall include Lessee's good faith estimate of the Fair Market Rental Value of the Facility on the date of expiration of the Term (which in no event shall be less than fifty percent (50%) of the average annual Basic Rent during the final three (3) years of the Initial Term), and then, as stated in such notice, the Initial Term of this Lease shall be renewed at the end of the Initial Term, for a Renewal Term specified by Lessee of not less than five years ending on an annual anniversary of the Closing Date, provided, however, that in the event the Fair Market Rental Value as determined herein exceed one hundred ten percent (110%) of Lessee's estimate, then Lessee may, by written notice sent to Lessor within ~~10~~ days after receipt of such appraisal, modify its prior election and lease the Leased Property for a final term of one year on the expiration of such Initial Term or Renewal Term, as the case may be. If this Lease shall have been so renewed and if Lessee shall once again have given a notice of its irrevocable election in accordance with Section 6(a) hereof further to renew this Lease, then, as stated in such notice, the Term of this Lease shall be further renewed at the end of such first Renewal Term for a further Renewal Term of not less than five years ending on an annual anniversary of the Closing Date. The Basic Rent for each Renewal Term shall be an amount equal to the Fair Market Rental Value of the Facility at the time of such renewal payable monthly in arrears, with a Casualty Loss Value equal to the Fair Market Value of the Facility as of the first day of such Renewal Term and otherwise on the same terms and conditions as provided herein.

(d) Valuation. In no event shall the Facility be sold or leased pursuant to this Section 6 at the end of any Renewal Term for less than its Fair Market Value or Fair Market Rental Value, as the case may be. Lessee and Lessor agree to negotiate in good faith the Fair Market Value or Fair Market Rental Value, as the case may be, and, in the event such agreement cannot be reached at least two hundred seventy (270) days in the case of a purchase option, and one hundred eighty (180) days in the case of a renewal option, prior to the last day of the applicable Initial Term or Renewal Term, shall, at Lessee's or Lessor's option, submit the question of value to an independent certified appraiser in the manner specified in Section 16. Lessor and Lessee agree to be bound by the determination of such independent certified appraiser.

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Section 7. Insurance:

(a) Generally. Lessee shall, at all times prior to the Expiration Date, at its own expense, carry and maintain or cause to be carried and maintained (i) property insurance with respect to the Facility, (ii) machinery and equipment insurance covering the turbines, generators and all other machinery and equipment used in or in connection with the operation of the Facility (including coverage for damage by foreign objects or by explosion of any machinery or pressure vessel), (iii) public liability insurance with respect to third party personal and property damage, and (iv) business interruption insurance, in each case with such deductibles, in such amounts, against such risks, in such form and with such insurance companies of recognized responsibility (which insurance company shall have a Best rating of "A" or greater) as is usually carried by businesses of established reputation engaged in the same or a similar business as Lessee and similarly situated and owning, leasing or operating equipment similar to the Facility, provided that property insurance with respect to the Facility shall in any event be in an amount at least equal to the replacement cost of the Facility, and further provided that the machinery and equipment insurance shall in any event be in an amount at least equal to the replacement cost ~~or Casualty Loss Value~~ of all such machinery and equipment. All such insurance carried and maintained pursuant to this Section 7 shall be in form and substance satisfactory to Lessor. The proceeds of liability insurance shall be payable to Lessee and Lessor as their interests may appear.

- the Casualty Loss Value on the closing Date

(b) Policies. All policies of insurance required to be carried in accordance with this Section 7 shall, if such endorsement can be obtained on commercially reasonable terms, (i) require thirty (30) days' prior notice to Lessor of cancellation or material change in coverage, (ii) name Lessor as an additional insured or loss payee, (iii) provide that, in respect of the interest of Lessor in such policies, the insurance shall not be invalidated by any action or inaction of Lessee or any other person (other than Lessor), (iv) insure Lessor regardless of any breach or violation of any warranty, declaration or condition contained in such violation of policies (or in the application therefor or in any other document submitted to the insurer in connection therewith) by Lessee or by any other person (other than Lessor), (v) provide that such insurance is primary without right of contribution from any other insurance which might otherwise be available to the insured party, (vi) provide that, in the event of any loss payment under a policy, the insurer shall waive any rights of subrogation against the insured party and shall waive any setoff or counterclaim or any other deduction, whether by attachment or otherwise, and (vii) include a cross-liability endorsement providing that inasmuch as the policies are written to cover more than one insured, all terms and conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(c) Certificate. On or prior to the Closing Date, and thereafter not less than five (5) days prior to the expiration dates of the expiring policies required pursuant to this Section 7, Lessee shall deliver to Lessor certificates of insurance issued by the insurers thereunder or by an insurance

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broker authorized to bind such insurers evidencing the insurance maintained pursuant to this Section 7; provided, however, that if the delivery of any certificate is delayed, Lessee shall deliver an executed binder with respect thereto and shall deliver the formal certificate upon receipt thereof.

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

(e) Proceeds.

(i) Application of Insurance Proceeds on an Event of Loss. If no Event of Default shall have occurred and be continuing, any insurance proceeds received at any time by Lessor or by Lessee as a result of any loss or damage to the Leased Property or any part ~~hereof~~ thereof shall be applied as follows:

(A) Unless Lessee has already paid all amounts due pursuant to Section 4, all such payments received at any time by the Lessee shall be promptly paid to Lessor for application to all amounts due Lessor as set forth in Section 4, except that Lessee may retain any amounts that Lessor would at the time be obligated to pay to Lessee as reimbursement under the provisions of Subsection (iii) of this Section 7(e);

(B) If Lessee has already paid all amounts due pursuant to Section 4, any such payments shall be retained by or paid to Lessee, to reimburse the Lessee for its payment of such amount; and

(C) The balance, if any, of such payments remaining thereafter shall be retained by or paid over to the Lessee.

(ii) Application of Other Proceeds on an Event of Loss. If no Event of Default shall have occurred and be continuing, any payment received at any time by Lessor or by Lessee from any governmental authority or other person ~~other than as provided in subsection (i) of this Section 7(e)~~ as a result of any loss, condemnation, confiscation, theft or seizure of or requisition of title to or use of, or damage to, the Leased Property or any part thereof (an "Event of Loss") shall be applied to Lessor and to Lessee in proportion to their respective interests in the Leased Property, provided that in no event shall Lessor receive less than the casualty loss value at the time of such Event of Loss. In the event that any payment received pursuant to this Section 12(e)(ii) is insufficient to pay Lessor such casualty loss value, Lessee shall pay to Lessor any deficiency between the casualty loss value at the time of the Event of Loss and the payment received pursuant to this section 12(e)(ii).

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(iii) Application of Proceeds Not Relating to an Event of Loss. Unless an Event of Default shall have occurred and be continuing, payments received at any time by Lessor or Lessee from any governmental authority ~~insurer~~ or other person with respect to any loss not constituting an Event of Loss shall be paid to or retained by Lessor and shall be applied as follows: first, directly in payment for repairs or replacement of the Leased Property if not already paid for by Lessee or, if already paid for by Lessee, to reimburse Lessee for such payments and second, the balance remaining, if any, shall be paid to Lessee.

(iv) Other Disposition. If an Event of Default shall have occurred and be continuing, any amount that would otherwise be payable to or for the account of, or that would otherwise be retained by, Lessee pursuant to this Section 12(e) shall be paid to Lessor as security for the obligations of Lessee under this Lease and, as such time thereafter as no Event of Default shall be continuing and Lessee has paid all amounts then due hereunder, such amount due to Lessee pursuant to this Section 12(e) shall be paid promptly to Lessee.

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

Section 8. Additions and Improvements:

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

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

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

(d) Nonseverable Additions. Should Lessee make to the Facility any addition or improvement which is not readily removable without causing material damage to the Facility, any such addition or improvement shall immediately and without further act become the property of Lessor.

Section 9. Maintenance and Operation:

(a) Generally. Lessee, at its own expense, shall maintain, service and repair the Facility and from time to time make or cause to be made all necessary restorations thereto as are consistent with prudent industry practice to the extent necessary to maintain the Facility in the same condition as on the Closing Date (ordinary wear and tear excepted), in good working order and operating condition, in compliance with Section 9(b) and all applicable manufacturer service manuals and as may be necessary to comply with and keep in force any and all manufacturers' or sellers' guarantees or warranties. Any replacements made by Lessee to or upon the Facility shall be considered accessions to the Facility and title therein shall be immediately vested in Lessor, without cost or expense to Lessor, but Lessor shall no longer have any interest in the replaced parts, title to which shall vest in Lessee with no further act, provided the replacements have a Fair Market Value and utility at least equal to that of the replaced parts.

(b) Compliance with Law. Lessee shall comply with and observe all requirements under the Power Purchase Agreement and all statutes, ordinances, laws, rules, regulations, requirements, orders and decrees, whether now in force or which may in the future be promulgated, of all governmental authorities, including any federal, state and local governments or any departments, bureaus or agencies thereof, having jurisdiction with respect to or in any way affecting the use, maintenance, condition and operation of the Facility, or any machinery or equipment therein (regardless of upon which person such statutes, ordinances, laws, rules, regulations, requirements, orders or decrees shall, by their terms, be nominally imposed), including,

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without limitation, all requirements necessary to maintain FERC Exemption Number 9134, unless Lessee shall be contesting the validity thereof in good faith and by appropriate proceedings, but only so long as such proceedings (i) shall not involve any substantial danger of the sale, forfeiture or loss of the Facility or the Site or any part thereof or interest therein, and (ii) shall not result in, or involve any substantial probability of resulting in, the creation of any lien on or with respect to the Facility or the Site, or any part thereof or interest therein, which is not a Permitted Lien. Lessee shall maintain all records, logs and other materials required by any governmental authority having jurisdiction to be maintained in respect of the Facility (regardless of upon which person such requirements shall, by their terms, be nominally imposed). Lessee, at its own expense, shall procure and pay for all permits, franchises, inspections and licenses necessary or appropriate in connection with the Facility and any repair, restoration, replacement, renewal, addition or improvement thereof and thereto. Upon request of Lessor, Lessee shall furnish to Lessor copies of all such permits, franchises, inspections and licenses. Notwithstanding any provision contained herein, Lessee, its successors and assigns, have the right to perform any and all acts required by an order of the Federal Energy Regulatory Commission or its sucessor affecting the Leased Property without the prior approval of the Lessor.

Hazardous Wastes

(c) Lessee shall not, except in accordance with applicable laws or regulations, (A) store or dispose, or allow the storage or disposal, of any hazardous substance on or in the Site or Facility, or (B) transport or arrange for the transportation of any hazardous substance to or from the Site. If Lessor reasonably believes that there may be the presence or the possible presence of any hazardous substance on or in the Site or Facility, Lessee shall, upon the written request of Lessor and at Lessee's cost, take any and all actions necessary to reasonably assure Lessor that no hazardous substance is stored or disposed on or in the Site or Facility. Lessee shall promptly notify Lessor in writing of any release or threatened release of any hazardous substance at or from the Site or Facility, or of any notice of a release or threatened release of any hazardous substance, or for the costs incurred for the cleanup thereof (including, without limitation by assessment, containment or removal) received by Lessee or by any person for whose conduct Lessee is or may be responsible from any federal, state or other governmental authority.

Operations and Maintenance.

(d) Lessee shall enter into an operations and maintenance agreement with Myers Engineering Company or another engineering company satisfactory to Lessor, pursuant to which such engineering company shall agree to perform all operations and maintenance functions listed on Schedule D hereto.

Water Turbine Tests.

(e) Lessee shall perform and Myers Engineering Company shall review all water turbine tests outlined in that certain contract No. 56330 between Hydro and Gilbert Gilkes & Gordon Ltd. dated April 10, 1987, at a time when the water flow is sufficient to complete such tests, and if the Facility does not pass such tests, Lessee shall make such adjustments and repairs to the Facility as are necessary for such tests to be passed to Lessor's satisfaction.

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

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

Section 10. Title, Liens and Further Assurances:

(a) Title. Lessor and Lessee agree that this is an agreement of lease only and nothing herein contained shall be construed as conveying to Lessee any right, title or interest in or to the Leased Property except as a lessee. Lessor and Lessee intend that, as between lessor and Lessee, the Facility is and shall remain personal property and each of them agrees that it shall not take any action which would cause the Facility to lose such character. Lessor and Lessee agree that, to the extent permitted by applicable law, the Facility shall remain personal property regardless of the degree or manner of its attachment to realty and title thereto shall remain exclusively in Lessor.

(b) Liens. Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, attachment, charge, encumbrance or right of others whatsoever in or with respect to the Facility or the Site, title thereto or any interest therein except Permitted Liens. Lessee agrees to take such action (including the obtaining and recording of waivers), at its own expense, as may be necessary to prevent any third party from acquiring any right to or interest in the Facility by virtue of the Facility being deemed to be real property or part of any real property. Lessee shall promptly notify Lessor in writing of any mortgage, pledge, lien, attachment, charge, encumbrance or right of others which arises at any time on or with respect to the Facility or the Site, title thereto or any interest therein and shall promptly at Lessee's expense, cause any of the same which are not Permitted Liens to be duly discharged, dismissed or removed as soon as possible, but in any event within twenty (20) days after the existence of the same shall have first become known to Lessee.

(c) Further Assurances. At Lessor's request, Lessee shall execute any and all documents acknowledging Lessor's ownership of the Leased Property and as necessary or appropriate to perfect, confirm and protect the interest

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of Lessor in and to the Leased Property. Lessee shall execute and file or cause to be executed and filed, at its own expense, any and all financing statements and continuation statements submitted by Lessor to Lessee which are necessary or appropriate to perfect, confirm and protect the interests of Lessor in and to the Leased Property and this Lease. Lessor may file with the proper filing or recording officers any other papers or documents which they deem necessary or appropriate for the protection of their interests hereunder, and Lessee further agrees to execute and deliver to Lessor upon request any and all further documents and instruments submitted by Lessor to Lessee which Lessor may reasonably require to perfect, confirm and protect its interests in and to the Leased Property and this Lease.

Section 11. Risk of Loss and Payment of Casualty Loss Value:

(a) Generally. During the term of this Lease and prior to delivery by Lessee to Lessor of the Leased Property pursuant to Section 18, Lessee shall bear the risk of and all responsibility for loss or damage to the Facility and Site and shall replace such loss and repair such damage as provided in Section 9 except as specifically provided in this Section 11. Lessee agrees to indemnify and hold Lessor harmless against all risks to the Facility, including, without limitation, loss or damage caused by fire, lightning, sprinkler leakage, tornadoes, wind storm, water damage, explosion, smoke and smudge, aircraft and motor vehicle damage, strikes, riots, civil commotion, vandalism, malicious mischief, burglary and theft.

(b) Casualty Occurrence. In the event that the Facility shall be or become condemned or taken, requisitioned, confiscated or appropriated for a period in excess of six (6) months by any governmental board or agency, whether de facto or de jure, by exercise of eminent domain or otherwise, or be destroyed or damaged beyond economic repair for any cause whatsoever (any such event herein called a "Casualty Occurrence"), Lessee shall fully inform Lessor within twenty (20) days from the date of such Casualty Occurrence of the nature of the Casualty Occurrence and any other pertinent information regarding the Casualty Occurrence in the possession of Lessee.

(c) Payments. On the Casualty Loss Payment Date, Lessee shall pay to Lessor in immediately available funds an amount equal to (i) all accrued Basic Rent and Supplemental Rent through the Rental Payment Date to and including such Casualty Loss Payment Date and (ii) the Casualty Loss Value. Upon the making of such payment by Lessee, Basic Rent shall cease to accrue as of the date of such payment, this Lease shall terminate and Lessor shall, upon request of Lessee, execute and deliver to, or upon the order of, Lessee a bill of sale and such other documents reasonably necessary to transfer or to confirm the transfer of all of Lessor's interests in the Facility (without warranties other than warranties that Lessor is transferring all of the Leased Property it received from Lessee and that the interest being transferred is free of Lessor Liens and all interests of Lessor hereunder); provided, however, that Lessee may not acquire the Facility if the Fair Market Value of the Facility at such time is greater than the Casualty Loss Value unless Lessee shall pay Lessor the difference between said Fair Market Value and Casualty Loss Value. Until all payments provided hereinabove in this

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Section 11 shall have been made, Lessee shall not be released from its obligations hereunder in the event of any such Casualty Occurrence.

Section 12. Loss of Qualifying Facility Status:

(a) Loss of Status. In the event that the Facility loses or otherwise forfeits its status as a "qualifying facility" within the meaning of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and Part 292 of Title 18 of the Code of Federal Regulations, or the Facility becomes regulated as a public utility and Lessor is, or there is a substantial probability that Lessor will be, regulated as a public utility, or the Lessee or any corporation, association or person with which it is affiliated within the meaning of the Federal Power Act becomes subject to such Act, ~~or the Public Utility Holding Company Act~~ or any regulations promulgated thereunder as a public utility (any such event herein called a "Special Casualty Occurrence"), Lessor may, upon notice to Lessee, terminate this Lease. Lessee and Lessor agree to cooperate and use their reasonable best efforts (at Lessee's expense) to avoid a special casualty occurrence. Lessee shall promptly pay all accrued and unpaid rent (including any indemnities) due on or prior to the date of termination of the Lease as set forth herein.

(b) Lessor's Rights. Upon termination of the Lease pursuant to Section 12(a), Lessee shall, at Lessor's election pursuant to notice to Lessee within thirty (30) days from such termination, either (i) return the Leased Property to Lessor in the condition and otherwise in accordance with all of the terms of Section 9 and 18, or (ii) irrevocably elect, by notice to Lessor within twenty (20) days from receipt of Lessor's notice, to purchase the Facility pursuant to Section 12(c) or to sell the Leased Property on behalf of Lessor at a public or private sale pursuant to Section 12(d). In the event that Lessor elects to purchase the Leased Property, Lessee shall be obligated to certify to Lessor that the Leased Property is not subject to liability for contamination or cleanup within the meaning of the Comprehensive Environmental Responsibility, Cleanup and Liability Act of 1980, as amended, or any other statutes, regulations, laws or orders governing the transfer or cleanup of the Leased Property. Lessee shall agree to indemnify Lessor against any such liability for the Leased Property for which Lessee may be responsible.

(c) Purchase Election. If Lessee shall have given notice of its irrevocable election to purchase the Facility pursuant to Section 12(b) hereof, Lessee shall within ten (10) days of such notice pay to Lessor in immediately available funds (A) all accrued Basic Rent and Supplemental Rent to and including the date of the Special Casualty Occurrence, (B) rent in an amount equal to one three-hundred-sixty-fifth (1/365th) of the Basic Rent for each day after the last Rental Payment Date to and including the date of such payment and (C) the greater of Fair Market Value of the Leased Property or the Casualty Loss Value. Upon the making of such payment by Lessee, Lessor shall, upon request of Lessee, execute and deliver to, or upon the order of, Lessee a bill of sale and such other documents reasonably necessary to transfer or to confirm the transfer of all of Lessor's interest in the Leased Property (without warranties other than for warranties that Lessor is transferring all

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of the Leased Property it received from Lessee and that the interest being transferred is free of Lessor liens and all interests of Lessor hereunder).

(d) Sale Election. (i) If Lessee shall have given notice of its irrevocable election to sell the Leased Property pursuant to Section 12(b) hereof, Lessee shall within ten (10) days of such notice pay to Lessor in immediately available funds (A) all accrued Basic Rent and Supplemental Rent to and including the date of the Special Casualty Occurrence, (B) rent in an amount equal to one three-hundred-sixty-fifth (1/365th) of the Basic Rent for each day after the last Rental Payment Date to and including the date of such payment and (C) the Casualty Loss Value as of the last Rental Payment Date plus interest at the Default Interest Rate on such amount from such Rental Payment Date until the date of actual payment. Lessee shall have one hundred eighty (180) days from the date of such payment to sell the Leased Property at a private or public sale. Lessee shall within ten (10) days of such sale pay to Lessor an amount equal to the ~~difference~~ between the proceeds of the sale less reasonable costs and expenses directly related to such sale and the Casualty Loss Value paid to Lessor pursuant to this Section 12(d). Upon the making of such payment by Lessee or, if the proceeds of the sale less reasonable costs directly related to such sale are less than the Casualty Loss Value paid to Lessor, upon such sale, Lessor shall execute and deliver to Lessee or, upon the written request of Lessee, to the purchaser, a bill of sale and such other documents reasonably necessary to transfer or to confirm the transfer of all of Lessor's interest in the Leased Property (without warranties other than for warranties that Lessor is transferring all of the Leased Property it received from Lessee and that the interest being transferred is free of Lessor Liens and all interests of Lessor hereunder).

(ii) In the event Lessee has not completed the sale of the Leased Property within the period specified by Subsection (i) of this Section 12(d), Lessee shall within ten (10) days from such one hundred eighty (180) day period pay to Lessor in immediately available funds the amount of any deficiency between (1) the Fair Market Value of the Leased Property calculated as of the date of the Special Casualty Occurrence and (2) the Casualty Loss Value paid to Lessor pursuant to Subsection (i) of this section 12(d). Upon the making of such payment by Lessee, Lessor shall, upon request of Lessee, execute and deliver to, or upon the order of, Lessee a bill of sale and such other documents reasonably necessary to transfer or to confirm the transfer of all of Lessor's interest in the Leased Property (without warranties other than for warranties that Lessor is transferring all of the Leased Property it received from Lessee and that the interest being transferred is free of Lessor Liens and all interests of Lessor hereunder).

Section 13. Disclaimer of Guarantees, Warranties and Representations:

LESSEE EXPRESSLY ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER, DISTRIBUTOR, VENDOR OR SUPPLIER OF EQUIPMENT OR AN AGENT OF ANY MANUFACTURER, DISTRIBUTOR, VENDOR OR SUPPLIER OF ANY UNIT. LESSOR SHALL NOT BE DEEMED TO HAVE MADE OR GIVEN, AND LESSOR HEREBY EXPRESSLY DISCLAIMS, ANY GUARANTEE, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE FOR ANY

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REASON OF THE FACILITY OR ANY PART THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, except that Lessor hereby represents and warrants that on the Closing Date Lessor shall have received whatever title to the Leased Property was conveyed to it by Lessee and that the Leased Property shall be and remain free of Lessor Liens. Lessee agrees that the only other guarantees, representations or warranties made with respect to Facility or the Leased Property are those made by the seller or manufacturer thereof, and Lessor and Lessee agree that they shall cooperate to allow Lessee to enforce such guarantees and warranties when such action is necessary, which enforcement shall be at Lessee's expense. So long as no Event of Default shall have occurred and be continuing, Lessor hereby assigns to Lessee, for and during the term of this Lease, any applicable seller or manufacturer warranty issued on or applicable to the Facility or Leased Property, and Lessor hereby authorizes Lessee during the term of this Lease to obtain, at Lessee's sole expense, any and all services furnished in connection therewith by any seller or any manufacturer.

Section 14. Taxes:

(a) Indemnity. Lessee shall pay, indemnify and hold Lessor harmless from, and shall reimburse Lessor for, license and registration fees and all taxes and governmental charges, including, without limitation, income, gross receipts, sales, use, personal property and stamp taxes, levies, imposts, duties, charges or withholdings of any nature whatsoever (together with any penalties, fines or interest thereon) imposed against Lessor by any foreign, federal, state or local government or taxing authority or any subdivision thereof: (i) upon or with respect to the Facility, the Site or the Leased Property or any part thereof or any improvement or addition thereof made by Lessee pursuant to Section 8 of this Lease, (ii) upon the ordering, purchase, ownership, delivery, possession, maintenance, registration, titling, documentation, use, operation, sales, return or other disposition thereof or (iii) upon or with respect to this Lease (all such expenses, taxes, fees, charges, fines, penalties and additions to tax being hereinafter called "Impositions") unless and to the extent only that and only so long as, any such Imposition is not delinquent or is being contested or protested by Lessee in good faith and by appropriate proceedings diligently conducted so long as such proceedings shall stay the collection thereof from or against Lessor, the Facility, the Site, the Leased Property or any part thereof; provided that this Section 14(a) shall not apply to (A) Impositions included in Total Project Cost of the Leased Property, (B) Impositions imposed by the United States or any state or political subdivision thereof which are based upon or measured by Lessor's net income or which are in substitution for, or relieve Lessor from, any Imposition based upon or measured by Lessor's net income, in each case with the exception of increases in Impositions attributable to payments made by Lessee under this Section 14(a) as provided in Section 14(b), (C) business and occupation taxes and franchise taxes imposed by the United States or any state or political subdivision thereof or [(D) impositions which arise or to the extent they are increased as a result of business, assets, or activity of Lessor unrelated to the Leased Property].

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(b) After-Tax Basis. The indemnity amounts payable under Section 14(a) shall be computed on an "after-tax" basis, so that any such indemnity payment shall be in an amount which, when reduced by the increase in the federal, state and local income tax liability of Lessor as a result of such payment (after taking into account any present or future tax benefits such as offsets resulting from any additional deductions or credits due to increased tax liabilities to any taxing authorities), shall equal the amount of the tax in respect of which such indemnity is payable. [With respect to Impositions which result in a deduction of an equal amount in the same taxable year, such amounts shall be offset. With respect to Impositions which result in taxable losses or deductions in a taxable year other than the year of Imposition,] in determining whether and to what extent any Impositions are utilized as a deduction or credit in computing Lessor's tax liability, deductions and credits claimed by Lessor (whether or not arising from the transaction contemplated by this Lease), shall be deemed to be utilized by Lessor in the following order: first, those deductions and credits (whether or not arising from this transaction) attributable to all taxes, fees, charges, penalties and other expenses of the type described in Section 14(a) for which Lessor does not have a right to be indemnified, and second, those deductions and credits, on a pro rata basis, attributable to all taxes, fees, charges, penalties and other expenses of the type described in Section 14(a) for which Lessor has the right to be indemnified under all lease transactions of Lessor.

(c) Tax Filings and Payments. Lessee shall timely prepare and file all reports and returns which are required to be made with respect to any obligation of Lessee under, or arising out of, Section 14(a), and Lessor shall cooperate with Lessee to accomplish the same. Lessee shall, to the extent permitted by law, cause all billings of such Impositions to be made in the name of Lessee or to Lessor in care of Lessee, make payment thereof and, from time to time on written request of Lessor, submit written evidence of such payment. Lessor shall furnish Lessee, promptly after receipt, copies of all requests for information from any taxing authority relating to any obligation of Lessee under, or arising out of, Section 14(a), and shall request such taxing authority to contact Lessee regarding any such information; provided, however, that the failure of Lessor to give written notice to Lessee shall not (i) reduce Lessee's obligations under this Section 14 except to the extent Lessee is prejudiced thereby or (ii) release Lessee from its obligations under this Section 14, unless, to the extent that Lessee had a valid defense to such claim, such failure caused Lessee to be unable to contest such claim. The provisions of this Section 14 shall survive the expiration or earlier termination of this Lease.

Section 15. Location; Performance under Ground Lease; Performance Under Related Agreements:

(a) Location and Ground Lease. Lessee agrees that no part of the Facility shall be removed from the Site except as may be necessary for the purpose of maintenance or repair as required by the terms of this Lease. This Lease constitutes, with respect to the Site, a sublease to Lessee of Lessor's rights under the Ground Lease that accrue during the term hereof. Lessee

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hereby covenants and agrees to assume and perform all obligations of "Tenant" under the Ground Lease in addition to all of Lessee' obligations hereunder.

(b) Related Agreements. Lessee hereby covenants and agrees to perform all obligations of the contracting party under the Related Agreements.

Section 16. Valuation of Property:

(a) Valuation Pursuant to Purchase Option. For purposes of Sections 6(b), 12(c) and 12(d) of this Lease, the following procedure shall be followed for determining the Fair Market Value of the Facility: If either party hereto shall have given written notice to the other requesting determination of such value, the parties shall attempt to agree upon such value, and, failing such agreement within twenty (20) days after the giving of such notice, Lessee shall appoint one qualified independent appraiser (which shall not be a manufacturer of such property) within thirty (30) days after the giving of such notice, and if Lessee fails to so appoint an appraiser, Lessor may appoint an appraiser within forty (40) days after the giving of such notice or may apply to the American Arbitration Association (or any successor thereto) for the appointment of an appraiser and both parties shall be bound by any appointment made by such Association. The appraiser appointed shall be instructed to determine the Fair Market Value of the property in question within thirty (30) days after his or her appointment. Such appraiser's determination of value shall be final and binding as the Fair Market Value. Lessee shall bear all expenses of such appraiser.

(b) All Other Valuations. Except as provided in Section 16(a), the following procedure shall be followed for determining the Fair Market Value or Fair Market Rental Value of any property: If either party hereto shall have given written notice to the other requesting determination of such value, the parties shall attempt to agree upon such value, and, failing such agreement within twenty (20) days after the giving of such notice, Lessor shall appoint one qualified independent appraiser (which shall not be a manufacturer of such property) within thirty (30) days after the giving of such notice, and if Lessor fails to so appoint an appraiser, Lessee may appoint an appraiser within forty (40) days after the giving of such notice or may apply to the American Arbitration Association (or any successor thereto) for the appointment of an appraiser and both parties shall be bound by any appointment made by such Association. The appraiser so appointed shall be instructed to determine the Fair Market Value or the Fair Market Rental Value, as the case may be, of the property in question within thirty (30) days after his or her appointment. Such appraiser's determination of value shall be final and binding as the Fair Market Value or the Fair Market Rental Value, as the case may be. Lessee and Lessor shall equally bear all expenses of such appraiser, provided that if the appraisal is requested in connection with the exercise of the remedies described in Section 20, all expenses of such appraiser shall be borne by Lessee.

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Section 17. Notices; Reports:

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

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

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

(iii) Within ten (10) days from the date thereof, of any material claim or legal proceeding of which Lessee or Lessor has had notice arising from any accident in which the Facility is directly or indirectly involved.

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

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

(ii) Within ninety (90) days after the close of each fiscal year, a copy of the annual financial report for such year for Lessee, including (i) an income statement, (ii) a comparative balance sheet, (iii) a statement of sources and uses of cash, (iv) an explanation of any unusual material items, and (v) such other information as is reasonably required for such statements to fairly present the financial condition of Lessee in a consistent manner, ~~accompanied~~ by a Certificate of the Chief Financial Officer of Hydro certifying that such financial report accurately ~~reflects~~ the financial condition of Lessee;

(iii) Within forty-five (45) days of each fiscal semi-annual period, financial statements regarding the Facility in form and substance acceptable to Lessor, which financial statement shall include (A) the amount

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of kilowatt hours of electricity produced by the Facility and the sale price for such electricity received by Lessee, (B) a funds flow statement and a comparison between actual and budgeted operating results and (C) such other data as may be reasonably requested by Lessor;

(iv) Promptly after the same shall have come to the notice of a the general partner of Lessee, notice of the occurrence of any Default;

(v) At least sixty (60) days prior thereto, notice of any change in the location of the chief executive office or principal place of business of Lessee and any change in Lessee's name, identity or structure;

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

(vii) Promptly and in any event within five days of its being filed, a copy of Lessee's annual federal income tax returns;

(viii) All reports or notices sent to the partners of Lessee; and

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

Section 18. .Return of Leased Property:

(a) Condition of Facility. Lessee agrees that, upon the termination of this Lease, by expiration hereof or pursuant to Section 12(b) or Section 20, the Leased Property shall be free and clear of all liens and rights of others (other than Lessor Liens) and the Facility and the Site shall be in the condition and repair required to be maintained during the term hereof under Section 9 and Lessee shall deliver to Lessor all plans, specifications, operating manuals and other warranties and documents furnished by any manufacturer or seller of the Facility and all other documents relating to the maintenance and operation of the Facility. Lessee shall warrant and certify that up to the time of such delivery, the Leased Property is not subject to liability for contamination or cleanup within the meaning of the Comprehensive Environmental Responsibility, Cleanup and Liability Act of 1980, as amended, or any other statutes, regulations, laws or orders governing the transfer or cleanup of the Leased Property. Lessee shall agree to indemnify Lessor against any such liability for the Leased Property for which Lessee may be responsible.

(b) Return of Facility. If this Lease terminates and Lessee does not exercise its option, as provided in Section 6(b), to purchase the Leased Property upon the termination of this Lease, Lessee shall assign to Lessor all of Lessee's right, title and interest in and to the Power Purchase Agreement and all other Related Agreements and all other agreements, warranties, guaranties and other rights of Lessee relating to the operation and use of the Facility and, as directed by Lessor in writing, not more than 180 days after

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such termination, either (i) surrender the Leased Property to Lessor or (ii) at Lessee's expense and risk, (A) to the extent applicable, completely sever and disconnect the Facility from the Site, all without any liability of Lessor to Lessee, or to anyone claiming by, through or under Lessee, for damage or loss caused by such severance and/or disconnection; (B) to the extent applicable, disassemble and prepare the Facility for normal shipment; (C) marshall and store that portion of the Facility ready for shipment at Lessee's risk and expense for a period after the entire Facility is ready for shipment of up to (i) six (6) months provided there shall not have occurred an Event of Default or (ii) one (1) year in the event there shall have occurred an Event of Default; and (D) deliver possession of the Facility to Lessor, together with all plans, specifications, operating manuals and other warranties and documents furnished by any manufacturer or seller of the Facility and other documents reasonably accessible to Lessee relating to the maintenance and operation of the Facility, at the Site at a place providing truck-ready access to and from normal thoroughfares. Lessee shall indemnify Lessor against any and all liability Lessor may incur for environmental contamination or cleanup of the Leased Property by virtue of its exercise of its rights as set forth herein for which Lessee may be deemed responsible. Until the Facility is returned to Lessor pursuant to the terms of this Section 18, Lessee shall bear the risk of loss with respect to the Facility. In any event, Lessor has no right hereunder to abandon the Leased Property to Lessee.

(c) Survival of Provisions. The provisions of this Section 18 shall survive the expiration or earlier termination of this Lease, and the obligations under this Section 18 run with the land.

Section 19. Default:

The following events shall constitute Events of Default hereunder:

(a) Lessee shall fail to make any payment of Basic Rent within five (5) Business Days after the same shall become due;

(b) Lessee shall fail to make any payment of Supplemental Rent or Casualty Loss Value within ten (10) Business Days after notice that the same is due;

(c) The Occurrence (whether as a result of acts or ommissions by the Lessee or any other person) of an Event of Default under the Tax Indemnity Agreement, the Mortgage, the HDI-Idaho Pledge Agreement, the Guarantee or the Hydro Pledge Agreement;

(d) Lessee shall fail to carry and maintain insurance as provided by Section 7;

(e) Lessee shall fail to discharge any lien as provided in Section 10 and such failure shall continue unremedied for a period of ten (10) Business Days after notice specifying the failure and demanding that it be remedied;

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(f) Lessee shall fail to make any other payment or perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder, under the Participation Agreement, the Mortgage, the Tax Indemnity Agreement, or any other agreement, document or instrument delivered by Lessee pursuant hereto or thereto, and such failure shall continue unremedied for a period of thirty (30) days after notice thereof to Lessee by Lessor specifying the failure and demanding that it be remedied; provided, however, that if any such failure cannot with diligence be cured within such 30-day period, and if Lessee shall have proceeded with diligence and continuity and shall continue to proceed with diligence and continuity to cure any such failure, the time permitted hereunder shall be extended as required to cure such failure, but in no event shall such extension exceed an additional one hundred fifty (150) days without the consent of Lessor;

(g) Any representation or warranty made by Lessee herein or in the Participation Agreement, the Tax Indemnity Agreement, the Mortgage or in any certificate furnished to Lessor in connection herewith or therewith or pursuant hereto or thereto shall prove to be false or misleading in any material respect when made;

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

(i) An involuntary case under a chapter of the Bankruptcy Reform Act of 1978, as amended, shall be commenced, or any other proceeding shall be instituted without the application, approval or consent of Lessee seeking in respect of such party reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator, custodian or the like of Lessee or of all or any substantial part of its assets or other like relief or the issuance of a writ of attachment, execution or similar process in a material amount against any material part of the property of Lessee and Lessee shall either fail to contest such proceeding in good faith or such proceedings shall continue for any period of such sixty (60) consecutive days;

(j) The lease coverage ratio drops to less than one as reasonably determined by Lessor due to an inability of the Facility to divert water from Dry Creek because of (i) a reallocation of water rights pursuant to title 42 of the Idaho Code, (ii) a diversion of water by upstream users who obtained water rights subsequent to the Closing Date or (iii) any combination of (i) and (ii);

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(k) Hydro shall commence a voluntary case under a chapter of the Bankruptcy Reform Act of 1978, as amended, or file a petition or answer seeking reorganization or an agreement with creditors or to take advantage of any insolvency law or other law providing for the relief of debtors or an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding;

(l) An involuntary case under a chapter of the Bankruptcy Reform Act of 1978, as amended, shall be commenced, or any other proceeding shall be instituted without the application, approval or consent of Hydro seeking in respect of such party reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator, custodian or the like of Hydro or of all or any substantial part of its assets or other like relief or the issuance of a writ of attachment, execution or similar process in a material amount against any material part of the property of Hydro and Hydro shall either fail to contest such proceeding in good faith or such proceedings shall continue for any period of ~~thirty~~ (30) consecutive days; or

Section 20. Remedies:

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

(i) Recovery of Facility. Lessor may cause Lessee, upon the written demand of Lessor and at Lessee's expense, to deliver to Lessor the Leased Property, in the condition and otherwise in accordance with all of the terms of Sections 9 and 18, or Lessor, at its option, may enter upon the Site, if this can be done without breach of the peace (provided that entry on the Site without Lessee's consent shall not alone constitute a breach of the peace) and take immediate possession of and remove the Facility or any part thereof, by summary proceedings or otherwise, all without liability to Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by and reasonably necessary to such taking or otherwise. Lessee shall indemnify Lessor against any and all liability Lessor may incur for environmental contamination or cleanup of the Leased Property by virtue of its exercise of any such remedy as set forth herein for which Lessee may be deemed responsible.

(ii) Sale, Lease or Use of Facility. Lessor may sell the the Facility or the Ground Lease or any part thereof, at public or private sale, with notice to Lessee but with or without advertisement as Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Facility or the Ground Lease or any part thereof as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or

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inaction or for any proceeds with respect thereto except to the extent required by clause (iv) below in the event Lessor elects to exercise its rights under said clause in lieu of its rights under clause (iii) below. Lessee shall indemnify Lessor against any and all liability Lessor may incur for environmental contamination or cleanup of the Leased Property by virtue of its exercise of any such remedy as set forth herein for which Lessee may be deemed responsible.

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

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

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

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

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

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

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

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

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

(d) Election of Remedies. Except as otherwise expressly provided above, no remedy referred to in this Section 20 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity. The exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other remedies. To the extent permitted by applicable law, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to take any judicial proceedings in connection with the Leased Property or to give any notice or to sell, lease or otherwise use the Leased Property in mitigation of Lessor's damages as set forth in this Section 20 or which may otherwise limit or modify any of Lessor's rights or remedies under this Section 20. Lessee shall indemnify Lessor against any and all liability Lessor may incur for environmental contamination or cleanup of the Leased Property by virtue of its exercise of any such remedy as set forth herein for which Lessee may be deemed responsible.

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Section 21. Indemnity:

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

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

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

(iii) arising under the strict liability doctrine in tort or under the Comprehensive Environmental Response, Cleanup and Liability Act of 1980, as amended, or

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

but excluding for the purposes of this Section 21 claims arising from Lessor's willful misconduct or gross negligence and any Imposition described in Section 14(a) or in the proviso thereto. Lessor shall make available to Lessee all of Lessor's rights under any similar indemnification from any seller or manufacturer of any part of the Facility. The indemnities contained herein shall survive the expiration or other termination of this Lease with respect to all claims which arise during the Term hereof or which arise out of acts or omissions which occur during the Term hereof and prior to delivery of the Leased Property to Lessor pursuant to Section 19 hereof.

(b) After-Tax Basis. The indemnity amounts payable under Section 21(a) shall be computed on an "after-tax" basis, so that any such indemnity payment shall be an amount which, when reduced by the increase in the federal, state and local tax liability of Lessor based upon or measured by Lessor's net income as a result of such payment and after taking into account any present or future tax benefits (such as offsets resulting from any additional deductions or credits due to increased tax liabilities to any taxing authorities), shall equal the claim in respect of which such indemnity is payable.

(c) Control of Litigation, Subrogation. Provided no Default shall have occurred and be continuing, Lessee shall have the right to control litigation related to any claim against Lessor for which Lessee would be liable under this Section 21, using legal counsel reasonably acceptable to Lessor, and to determine the settlement of claims therein. To the extent that Lessee has made an indemnity payment to Lessor pursuant to this Section 21, Lessee shall be subrogated to Lessor's rights in the affected transaction.

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Section 22. Assignment:

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

(b) Assignment by Lessor. Lessor may not assign any interest under this Lease (i) if such assignment would constitute a breach under the Power Sales Agreement, (ii) in any manner that will cause the Facility to lose its status as a "qualifying facility" within the meaning of PURPA or (iii) subject the Facility or Lessee to regulation by any federal, state or local governmental authority or regulatory commission (including, without limitation, the Securities Exchange Commission, the Federal Energy Regulatory Commission and the Public Utilities Commission) as a "public utility," a "public utility holding company," an "electric utility," an "electric utility holding company" or an "electrical corporation" under any federal, state or local law rule or regulation (including, without limitation, the Public Utility Holding Company Act of 1935, the Federal Power Act and the Idaho Public Utilities Law, Title 61, Chapter 1, Idaho Code each as amended). Otherwise, Lessor may assign and reassign (whether as security or otherwise) all of its rights, title and interest in and to this Lease or the Leased Property or the Rent due or to become due to Lessor hereunder. Any such assignment shall be subject to the rights of Lessee under this Lease.

(c) Assignment by Lessee. Lessee shall not, without Lessor's prior written consent, assign to anyone its rights hereunder or any of its interest in the Facility or the Site. In connection with any such consent of Lessor, Lessee shall provide such information concerning the proposed assignee and the proposed assignment as Lessor shall reasonably request. Lessor may withhold such consent if such information is not provided by Lessee to Lessor's reasonable satisfaction or if the information provided indicates, in Lessor's judgment, that such assignment is likely to have such an adverse impact that is not insubstantial. Lessee may not assign any interest under this Lease (i) if such assignment would constitute a breach under the Power Sales Agreement, (ii) in any manner that will cause the Facility to lose its status as a "qualifying facility" within the meaning of PURPA or (iii) subject the Facility or Lessee to regulation by any federal, state or local governmental authority or regulatory commission (including, without limitation, the Securities Exchange Commission, the Federal Energy Regulatory Commission and the Public Utilities Commission) as a "public utility," a "public utility holding company," an "electric utility," an "electric utility holding company" or an "electrical corporation" under any federal, state or local law rule or regulation (including, without limitation, the Public Utility Holding Company Act of 1935, the Federal Power Act and the Idaho Public Utilities Law, Title 61, Chapter 1, Idaho Code each as amended). No assignment, whether or not consented to, shall in any way relieve Lessee from any obligation under this Lease, and Lessee hereby waives any rights it may now have or hereafter acquire to avoid any such obligation by reason of such assignment or any circumstances arising from such assignment. Lessee agrees to indemnify and hold harmless Lessor against any and all reasonable out-of-pocket expenses, claims, demands and liabilities, of whatever nature, relating to or in any way arising out of such assignment, including, without limitation, reasonable

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out-of-pocket expenses incurred in evaluating any proposed assignment, and all reasonable out-of-pocket costs, damages, charges, attorneys' fees and expenses arising out of or necessitated by assertion of any such claim or demand with regard to such assignment. Any assignment entered into in violation of this Section 22(c) shall be void.

Section 23. Addresses and Payments:

(a) Addresses. All notices or other communications required or permitted to be given hereunder shall be in writing, shall be addressed as provided below and shall be considered as properly given (i) if delivered in person, (ii) if sent by overnight delivery service (including, without limitation, Federal Express, ETA, Emery, Purolator, DHL, Air Borne and other similar overnight delivery services), (iii) in the event overnight delivery services are not readily available, if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested or (iv) if sent by prepaid telegram or by telex and confirmed. Notice so mailed shall be effective upon the expiration of five (5) business days after its deposit. Notice given in any other manner shall be effective upon receipt by the addressee; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. For the purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of thirty (30) days' notice to the other parties in the manner set forth hereinabove. The initial addresses of the parties hereto are as follows:

(1) Lessor: Westinghouse Credit Corporation
One Oxford Centre
Pittsburgh, Pennsylvania 15219
Attention: Vice President,
Specialized Finance

(2) Lessee: HDI Associates IV, Limited Partnership
c/o Hydroelectric Development, Inc.
10394 West Chatfield Ave., Suite 108
Littleton, Colorado 80127
Attention: President

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

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(1) Lessor: Lessor's account at

_____

_____

_____

Account No. _____

Attention: _____

(2) Lessee: Lessee's account at

_____

_____

_____

Account No. _____

Attention: _____

Section 24. Waivers:

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

Section 25. Quiet Enjoyment:

Lessor covenants that Lessee, so long as no Event of Default shall have occurred and be continuing, Lessor shall not take any action for which it is not indemnified by Lessee pursuant to this Lease which interferes with the peaceful and quiet enjoyment and the exclusive possession and control of the Leased Property by Lessee.

Section 26. Lessor's Right to Perform for Lessee:

If Lessee fails to make any payment of Rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, Lessor may itself, upon ten (10) days' prior written notice to Lessee, make such payment or perform or comply with such agreement, and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Default Interest Rate, shall be deemed Supplemental Rent, payable by Lessee upon demand. Lessee shall indemnify Lessor against any and all liability Lessor may incur for environmental contamination or cleanup of the Leased Property by virtue of its

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exercise of any such remedy as set forth herein for which Lessee may be deemed responsible.

Section 27. General:

This Lease shall be governed by the laws of the State of Idaho and constitutes the entire lease agreement between the parties. No other agreement, oral or written, express or implied, has been made between the parties, except as referred to herein. If any provision of this Lease or the application thereof to any party or circumstances is held invalid or unenforceable, the remainder of this Lease and the application of such provision to other parties or circumstances shall not be affected thereby, and to this end the provisions of this Lease are declared severable. Notwithstanding any provision hereof to the contrary, any payment required under this Lease which is due on a day which is not a business day may be paid on the next day which is a business day.

THIS LEASE WILL BE SIMULTANEOUSLY EXECUTED IN FOUR (4) COUNTERPARTS, EACH OF WHICH, WHEN SO EXECUTED AND DELIVERED, SHALL CONSTITUTE AN ORIGINAL, FULLY ENFORCEABLE COUNTERPART FOR ALL PURPOSES EXCEPT THAT ONLY THE COUNTERPART STAMPED OR MARKED "COUNTERPART NUMBER 1", THE RECEIPT OF WHICH HAS BEEN ACKNOWLEDGED BY LESSOR, SHALL CONSTITUTE "CHATTEL PAPER" OR OTHER "COLLATERAL" WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE IN EFFECT IN ANY JURISDICTION.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of the date first above written.

LESSOR: WESTINGHOUSE CREDIT CORPORATION
a Delaware corporation

By _____
Title:

LESSEE: HDI ASSOCIATES IV, LIMITED PARTNERSHIP
an Idaho limited partnership

by HDI-Idaho, Inc.
its general partner

By _____
Title: President

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ACKNOWLEDGMENT

Receipt of Counterpart Number 1 of the Lease is hereby acknowledged.

LESSOR: WESTINGHOUSE CREDIT CORPORATION

By _____

Title: _____.

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SCHEDULE A

FACILITY AND SITE LEASE

DEFINITIONS

The terms defined in the Participation Agreement when used herein shall have the same meanings as so defined unless otherwise defined.

"Basic Rent" shall mean, as of each Rental Payment Date, an amount equal to that percentage of the Total Project Cost set forth below opposite the applicable Rental Payment Date:

Monthly Rental Payment Date	Percentage of Total Project Cost
_____, 1988 to _____, 1998	.91049%
_____, 1998 to _____, 2008	.74691%

"Business Day" shall mean a day when commercial banks are open for business in Boise, Idaho.

"Casualty Loss Payment Date" shall mean the Rental Payment Date which next follows the date on which a Casualty Occurrence has occurred.

"Casualty Loss Value" shall mean an amount equal to that percentage of Total Project Cost of the Leased Property set forth as a casualty factor in Schedule C annexed hereto opposite the Casualty Loss Payment Date.

"Casualty Occurrence" shall have the meaning as defined in Section 11(b).

"Casualty Payment" shall mean the amounts payable by Lessee pursuant to Section 11(c).

"Certificate of Delivery and Acceptance" shall mean a Certificate of Delivery and Acceptance, substantially in the form of Exhibit A attached hereto.

"Closing Date" shall mean the date upon which Lessor shall pay the Total Project Cost of the Leased Property pursuant to the Participation Agreement. In no event shall the Closing Date occur after March 10, 1988.

"Default" shall mean any event which is an Event of Default or which, with the giving of notice or the passage of time, or both, would become an Event of Default.

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"Default Interest Rate" shall mean the greater of (a) a per annum rate equal to 3% plus the rate most recently announced by Mellon at its principal office in _____, Pennsylvania, as its "Prime Rate," and (b) 15% percent per annum (in each case computed on the basis of a 360-day year of twelve 30-day months), but in no event shall the Default Interest Rate be greater than the maximum contract rate permitted by law.

"Event of Default" shall mean any of the events referred to in Section 19.

"Event of Loss" shall have the meaning set forth in Section 12(e)(ii) hereof.

"Expiration Date" shall mean the twentieth (20th) anniversary of the Closing Date.

"Facility" shall mean the 4MW (gross) megawatt hydroelectric facility for the generation of electrical energy located on the Site including without limitation any and all alterations and components from time to time incorporated in or installed as part of such Facility.

"Fair Market Rental Value" shall mean an amount equal to the rental of the Facility and the Site which would be obtained in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease. For all purposes of Section 6(c), Fair Market Rental Value shall be determined on the basis that the Facility and the Site have been maintained in all respects in accordance with the provisions of this Lease (whether or not all or any part thereof is in fact in such condition); otherwise Fair Market Rental Value shall be determined on an "as is, where is" basis. Costs of removal from the location of current use shall not be a deduction from such value.

"Fair Market Value" shall mean an amount equal to the value of the Facility and the Site which would be obtained in an arm's-length transaction between an informed and willing buyer-user (other than a buyer currently in possession or a used equipment dealer) and an informed and willing seller under no compulsion to sell. For all purposes of Section 6(b), Fair Market Value shall be determined on the basis that the Facility and the Site have been maintained in all respects in accordance with the provisions of this Lease (whether or not all or any part thereof is in fact in such condition); otherwise Fair Market Value shall be determined on an "as is, where is" basis. Costs of removal from the location of current use shall not be a deduction from such value.

"Ground Lease" shall mean the Ground Lease dated as of the Closing Date, between Lessee and Lessor, as such Ground Lease may hereafter be amended, supplemented or modified from time to time in accordance with its terms and Section 10 of the Participation Agreement.

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"Guarantee" shall mean the Guarantee dated as of the Closing Date, delivered by Hydro in favor of Lessor, as such Guarantee may hereafter be amended, supplemented or modified from time to time in accordance with its terms and Section 10 of the Participation Agreement.

"Impositions" shall have the meaning as defined in Section 14(a).

"Initial Term" shall mean the period commencing on the Closing Date and ending on the Expiration Date.

"Lease", "herein", "hereunder" or other like words, unless the context otherwise requires, shall mean this Facility and Site Lease Agreement as such Lease may hereafter be amended, supplemented or modified from time to time in accordance with its terms and Section 10 of the Participation Agreement.

"Leased Property" shall mean the Facility and the Site.

"Lessee" shall mean HDI Associates IV, Limited Partnership, an Idaho limited partnership.

"Lessor" shall mean Westinghouse Credit Corporation, a Delaware corporation.

"Lessor Liens" shall mean any liens which (a) result from claims against Lessor not related or connected to the ownership, leasing, use or operation of any of the Facility or its status as Lessor under this Lease or (b) result from an affirmative act of Lessor to create a lien, which act is neither consented to by Lessee nor created in connection with an Event of Default.

"Mellon" shall mean Mellon Bank, N.A., a national banking association.

"Mortgage" shall mean the Mortgage, Assignment of Lease and Rents, Security Agreement and Fixture Filing dated as of the date hereof, by and between Lessee and Lessor.

"Overall Transaction" shall mean the actions and events described in the "whereas" clauses of the Participation Agreement as the Overall Transaction.

"Participation Agreement" shall mean the Participation Agreement dated as of the date hereof among Lessor, Lessee, Hydroelectric Development, Inc., a Colorado corporation, and HDI-Idaho, Inc. an Idaho corporation, as such Participation Agreement may hereafter be amended, supplemented or modified from time to time in accordance with its terms.

"Permitted Liens" shall mean (a) the respective rights of Lessor and a permitted sublessee or assignee as herein provided, (b) Lessor Liens, (c) liens for taxes either not yet due or being contested in good faith and by

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appropriate proceedings diligently conducted so long as such proceedings shall stay the enforcement thereof and the sale or forfeiture of the Facility, the Site or any part thereof or interest therein, (d) undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or employees' liens or other like liens arising in the ordinary course of business and securing obligations which are not delinquent or which shall have been bonded or the enforcement of which shall have been suspended (but only for the duration of such suspension) and (e) rights of way or easements appearing of record and shown on the Commitment for Title Insurance issued by _____ Company dated _____, 1988 (Commitment _____).

"Power Purchase Agreement" shall mean the Power Purchase Agreement between Lessee and Utah Power & Light Company dated May 2, 1986 and the Memorandum of Understanding between Lessee and Utah Power & Light Company dated August 13, 1986.

"PURPA" shall mean collectively the Public Utility Regulatory Policies Act of 1978 and shall include the regulations promulgated pursuant thereto at Part 292 of Title 18 of the Code of Federal Regulations.

"Renewal Term" shall mean each period during which Lessee renews this Lease pursuant to Section 6(c).

"Rent" shall mean Basic Rent and Supplemental Rent collectively.

"Rental Payment Date" shall mean the same day of the month as the Closing Date in every year, beginning in June, 1988, and continuing to and including the Expiration Date during the Initial Term, and to and including the last day of every Renewal Term. Rental Payment Dates may be designated by successive numbers, beginning with the first Rental Payment Date.

"Responsible Officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of Lessee contained in the Lease, any corporate officer of any general partner of Lessee who, in the normal performance of his or her operational responsibilities, would have knowledge of such matter and the requirements of the Lease with respect thereto.

"Site" shall mean the real property in Eastern Idaho approximately 55 miles north of the town of Arco on Dry Creek, more particularly described in Schedule B annexed hereto, which is the location of the Facility.

"Special Casualty Occurrence" shall have the meaning as defined in Section 12.

"Special Casualty Payment" shall mean any amount payable by Lessee pursuant to Section 12(b).

"Supplemental Rent" shall mean the amounts payable by Lessee pursuant to Section 4(b).

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"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement dated as of the date hereof, by and between Lessee and Lessor.

"Term" shall mean the Initial Term plus all Renewal Terms.

"Total Project Cost" shall mean $5,400,000.

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SCHEDULE B

FACILITY AND SITE LEASE

DESCRIPTION OF SITE

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SCHEDULE C

FACILITY AND SITE LEASE

CASUALTY LOSS

Date	Casualty Loss Factor
Jun. __, 1988	
Sep. __, 1988	
Dec. __, 1988	
Mar. __, 1989	
Jun. __, 1989	
Sep. __, 1989	
Dec. __, 1989	
Mar. __, 1990	
Jun. __, 1990	
Sep. __, 1990	
Dec. __, 1990	
Mar. __, 1991	
Jun. __, 1991	
Sep. __, 1991	
Dec. __, 1991	
Mar. __, 1992	
Jun. __, 1992	
Sep. __, 1992	
Dec. __, 1992	
Mar. __, 1993	
Jun. __, 1993	
Sep. __, 1993	
Dec. __, 1993	
Mar. __, 1994	
Jun. __, 1994	
Sep. __, 1994	
Dec. __, 1994	
Mar. __, 1995	
Jun. __, 1995	
Sep. __, 1995	
Dec. __, 1995	
Mar. __, 1996]	

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Date	Casualty Loss Factor
[Jun. __, 1996	
Sep. __, 1996	
Dec. __, 1996	
Mar. __, 1997	
Jun. __, 1997	
Sep. __, 1997	
Dec. __, 1997	
Mar. __, 1998	
Jun. __, 1998	
Sep. __, 1998	
Dec. __, 1998	
Mar. __, 1999	
Jun. __, 1999	
Sep. __, 1999	
Dec. __, 1999	
Mar. __, 2000	
Jun. __, 2000	
Sep. __, 2000	
Dec. __, 2000	
Mar. __, 2001	
Jun. __, 2001	
Sep. __, 2001	
Dec. __, 2001	
Mar. __, 2002	
Jun. __, 2002	
Sep. __, 2002	
Dec. __, 2002	
Mar. __, 2003	
Jun. __, 2003	
Sep. __, 2003	
Dec. __, 2003	
Mar. __, 2004	
Jun. __, 2004	
Sep. __, 2004	
Dec. __, 2004	
Mar. __, 2005]	

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Date	Casualty Loss Factor
[Jun. __, 2005	
Sep. __, 2005	
Dec. __, 2005	
Mar. __, 2006	
Jun. __, 2006	
Sep. __, 2006	
Dec. __, 2006	
Mar. __, 2007	
Jun. __, 2007	
Sep. __, 2007	
Dec. __, 2007	
Mar. __, 2008	
Jun. __, 2008	
Sep. __, 2008	
Dec. __, 2008]	

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SCHEDULE D
TO THE
FACILITY AND
SITE LEASE

OPERATIONS AND MAINTENANCE

- monitor the operations and maintenance of the Facility to ensure compliance with all permits licenses and laws in a manner consistent with standards and methods customary with the alternative power production and energy production industry

- generally, oversee and report on all operations and maintenance activities at the Facility. It is anticipated that eight (8) Site visits will be required the first year of operations before and after the winter freeze and summer melt seasons (4 total) and, during each season to monitor facility conditions and performance (4 total). After the first year of operations and depending on the results in Operations and Maintenance performance for the year, the frequency of Site visits will be reassessed and mutually agreed to by Lessee, Myers Engineering, Stauffer O&M and Lessor

  The anticipated facility inspection dates for the first year:

  November 15
  December 15
  February 15
  April 15
  May 15
  July 15
  August 15
  October 15

- on a monthly basis monitor and report to Lessor all routine plant operations including:

  - power output
  - water flow rates (at intake and Parshall flume)
  - control panel
  - batteries and charger
  - turbine lube oil system
  - generator lube oil system
  - hydraulic power pack
  - powerhouse temperatures
  - spare parts usage
  - planned and unplanned maintenance
  - any unusual plant occurrence (i.e., shutdown)

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- periodically monitor the cleaning and changeout of all screens, filters and rock traps and include this activity in the monthly report

- on a seasonal basis and as-required, examine the intake structure and spillway for cracking, leakage, blockage, strength/weakness, wear, erosion, sediment buildup, undermining, scouring and any other material change in the physical plant design and construction

- monitor sediment buildup at the intake structure and advise Lessor of sediment removal plans and the required frequency and costs of such. Additionally, inspect the sediment removal pipe for wear, effectiveness and ability to operate during flooding conditions. Report findings and observations to Lessor.

- monitor and prevent freezing conditions that may adversely affect the facility's performance at the intake structure and powerhouse discharge channel.

- monitor the effectiveness and make any necessary changes to the winter water disposal plan to remain in compliance with any applicable permits, licenses and O&M procedures.

- periodically inspect the vent pipe, the two air vacuum relief valves and cathodic monitoring system and report as-found conditions to Lessor.

- monitor all downstream erosion from the intake structure and spillway and the need for additional riprap at susceptible locations.

- review and recommend on a semi-annual basis inventory requirements and procurement of necessary spare and replacement parts, consumables, supplies and tools for the Facility.

- monitor and report all maintenance activities considered routine and normal. Assess the nature and impact of any equipment failure and mutually agree on a reasonable disposition of the matter.

- recommend any Facility modifications that may improve the level of performance of the Facility, and/or return the Facility to its original performance level.

- recommend, engage and supervise any independent/specialty contractors that may be required to perform unique and special maintenance work.

- forward to Lessor any correspondence from Utah Power & Light Company requiring Facility electrical and interconnection changes that may effect the Facility's operations, maintenance or performance.

- provide adequate training and supervision to new operations personnel on an as-needed basis.

- on a monthly basis provide a copy of Utah Power & Light Company's meter printout.

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EXHIBIT A
TO THE
FACILITY AND
SITE LEASE

CERTIFICATE OF DELIVERY AND ACCEPTANCE

HDI ASSOCIATES IV, LIMITED PARTNERSHIP (Lessee under that certain Facility and Site Lease ("Lease") dated as of March 1, 1988, between Lessee and WESTINGHOUSE CREDIT CORPORATION, ("Lessor")) hereby acknowledges and accepts delivery of the following Leased Property:

Facility: The 4 MW (Gross) megawatt hydroelectric facility for the generation of electrical energy located on the Site in Eastern Idaho, including without limitation any and all alterations and components from time incorporated in or installed as part of such Facility.

Site: A PARCEL OF LAND situate in:

Lessor hereby leases to Lessee, and Lessee hereby accepts and leases from Lessor, the Leased Property pursuant to the Lease.

HDI ASSOCIATES IV,
LIMITED PARTNERSHIP

Dated: _____, 1988

By: HDI-Idaho, Inc.
its general partner

By: _____
Title: President

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2422B

ACKNOWLEDGMENT

This Certificate of Delivery and Acceptance is hereby acknowledged and agreed to this ____ day of _____, 1986.

Lessor

WESTINGHOUSE CREDIT CORPORATION

By _____

Title: _____

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BayBank Boston, N.A.
175 Federal Street
Boston, MA [redacted]0
(617) 482-104[redacted]

RECEIVED
MAY 05 1987

BayBank Department of Water Resources

May 1, 1987

Director
Department of Water Resources
State of Idaho
450 West State Street
Boise, Idaho 83702

Re: Snake River Adjudication Process and Water
Permits Nos. 33-7089, 33-7154, and 33-7181

Dear Director:

I hereby request, pursuant to Idaho Code section 42-1408A(3), that you provide BayBank Boston, N.A., written notice of order, commencing the Snake River adjudication process in your state. Please send the notice of order to my attention at the address indicated above.

BayBank Boston has provided construction financing for the Dry Creek hydroelectric project, which utilizes the water appropriated under the above-referenced water permits. Consequently, the bank is interested in receiving all pertinent notices which are issued by the Department of Water Resources involving the Snake River adjudication process to the extent that they have any impact upon those permits.

Thank you for your assistance in this regard.

Very truly yours,

Michael M. Parker

Michael M. Parker
Vice President

MMP:ped

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EXHIBIT D
TO THE
PARTICIPATION
AGREEMENT

Recording Requested By And
When Recorded Mail to:

ORRICK, HERRINGTON & SUTCLIFFE
600 Montgomery Street,
San Francisco, California 94111
Attention: Daniel R. Bedford, Esq.

- -

(Space above this line for Recorder's Use)

MORTGAGE, ASSIGNMENT OF LEASE AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

This MORTGAGE, dated as of March 1, 1988, by HDI ASSOCIATES IV, LIMITED PARTNERSHIP, an Idaho limited partnership ("Mortgagor"), in favor of WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation ("Mortgagee"),

W I T N E S S E T H

Reference is hereby made to that certain Participation Agreement dated as of March 1, 1988 (the "Participation Agreement") among Mortgagee, Mortgagor, HDI Idaho, Inc., an Idaho corporation, and Hydroelectric Development, Inc., a Colorado corporation. Capitalized terms not otherwise defined herein are used as defined in Exhibit A to the Participation Agreement.

GRANT IN TRUST:

Mortgagor, in consideration of the indebtedness herein recited and the trust herein created, and subject to Section 1.4 hereof, hereby irrevocably grants, conveys, transfers, and assigns to Mortgagee, its successors and assigns, in trust forever, with power of sale and right of entry and possession as provided below, all of its present and future estate, right, title and interest in and to the following described property (the "Mortgaged Property"):

(a) That certain real property located in eastern Idaho along Dry Creek approximately fifty five miles north of the town of Arco, and more particularly described in Exhibit A attached hereto (the "Site"), which is the location of a four megawatt hydroelectric facility (the "Facility").

(b) That certain Ground Lease dated as of March 1, 1988 by and between Mortgagor and Mortgagee (the "Ground Lease"

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(c) All covenants, agreements, rights, appurtenances, tenements, hereditaments, privileges, franchises and appendages of or relating to the Site and all rights of Mortgagor in and to the Easements (Easements shall mean the easement interests vested in Trustor and described in exhibit A hereto) and any streets, roads or public places, easements or rights of way relating to the Site; and the diversion structure, the penstock and the transmission line associated with the Site and the Facility including, without limitation the following (to the extent that such may be assigned):

(i) United States Department of the Interior Bureau of Land Management Right of Way permit Serial Number I-23042;

(ii) State of Idaho Easement number 5300;

(iii) State of Idaho Temporary Permit number 1917;

(iv) Grant of Easement from Hatch Livestock dated November 6, 1986;

(v) Special Use Easement and Water Distribution and Containment Agreement From Alan J. Amy and Afton Louise Amy dated February 11, 1987;

(vi) Idaho Water Permit numbers 33-7089, 33-7154, and 33-7181; and

(vii) Grant of Easement by Robert Amy and Judy Amy dated February 13, 1987.

(d) All development rights, air rights, water, water rights, water stock, ditches or ditch rights and reservoirs or reservoir rights of Mortgagor relating to the Site, including without limitation Idaho Water Permits Nos. 33-7089, 33-7154 and 33-7181, and any licenses that the Idaho Department of Water Resources may issue in the future for the appropriation of water for the Facility.

(e) All present and future structures, buildings, improvements, appurtenances and fixtures of any kind on the Site, including without limitation the Facility (the "Improvements").

(f) All leases, subleases and subtenancies, occupancy agreements, and concessions (including the Ground Lease) affecting any of the Mortgaged Property, the Site or the Improvements (collectively, the "Project Leases"), and all rents, royalties, income and profits arising from the Site, the Improvements or the Project Leases and all production payments or other similar payments and all proceeds of the conversion, voluntary or involuntary, of the Mortgaged Property into cash or liquidated amounts or claims for the purposes and upon the terms and conditions hereinafter set forth. Mortgagee is hereby authorized to collect and receive the foregoing rents, issues, profits, royalties, production and other payments and proceeds, to give proper receipts and acquittances therefor and to apply the same to the payment of the obligations secured hereby, notwithstanding the fact that the same may not then be due and payable, however, Mortgagor may collect and receive such rents, issues, profits, royalties, production and other payments and proceeds

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until an Event of Default occurs pursuant to the terms hereof. The foregoing assignment shall not impose upon Mortgagee any duty to produce rents from the Mortgaged Property, and said assignment shall not cause Mortgagee to be a "mortgagee in possession" for any purpose.

(g) All proceeds and claims arising on account of any damage to or taking of the Site or Improvements or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Site or Improvements.

(h) All chattel paper of Mortgagor now existing or hereafter arising, and all present and future amendments thereto.

(i) All accounts of Mortgagor, now existing or hereafter arising, and all goods repossessed or returned in connection therewith.

(j) All goods, machinery, equipment, fittings and fixtures of Mortgagor of every kind and nature whatsoever, including without limitation; all machinery, dies, blueprints, catalogues, computer hardware and software, tools, motors, vehicles, furniture and furnishings, together with all additions and accessions thereto and replacements therefor, related to the development and use of the Site, Facility and the Improvements.

(k) All general intangibles of Mortgagor, including without limitation all right, title and interest of Mortgagor in, to or arising out of (i) all contracts and agreements with respect to the Facility, including, without limitation, the Power Purchase Agreement, and the Construction Contracts (the "Contracts"), (ii) all patents, copyrights, and deposit accounts now owned or hereafter acquired, (iii) all consents, rights, exemptions, concessions, permits, licenses, authorizations, certificates, orders, franchises, determinations and approvals of any federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality with respect to or in connection with the Facility or the Site, now existing or hereafter arising, including without limitation, the water permits listed in subsection (d) above, Federal Energy Regulatory Commission (FERC) Preliminary Permit No. 7623, and Final Permit No. 9134 (the "Governmental Authorizations") to the extent such Governmental Authorizations can be assigned or subjected to security interests under applicable law, and any other rights necessary to own, operate, and use the Facility, now held or hereafter acquired, (iv) all warranties, guaranties and obligations of each and every contractor under all construction contracts, purchase orders, installation or supply agreements, guaranties and other contracts and agreements of whatever kind or character in respect thereof, now in existence or hereafter arising (the "Warranty Agreements"), (v) all claims arising thereunder and all rights to compel performance of the terms of the Warranty Agreements, the Contracts and the Governmental Authorizations, all payments and refunds that any contractor may be required to make with respect to the Facility and any portion thereof under any Warranty Agreements, and all payments under the Contracts and the Governmental Authorizations; (vi) all names under or by which the Site or Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, (vii) all books, records and other information in whatever

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form and however stored, relating to the ownership, use and operation of the Facility and the Site, and (viii) all goodwill in any way relating to the Site and Improvements.

(l) All documents and instruments of Mortgagor, now owned or hereafter acquired by Mortgagor, including without limitation, documents of title, securities and all new, substituted and additional documents and instruments issued with respect thereto, all voting or other rights now or hereafter exercisable, all cash and noncash dividends, all goods repossessed or returned in connection therewith and all other property now or hereafter receivable with respect to any of the foregoing.

(m) All inventory of Mortgagor, including without limitation all fuel supplies, raw materials, work in progress and finished goods.

(n) All other property of Mortgagor now or hereafter in the possession, custody or control of Mortgagor.

(o) All receivables and proceeds of the property described in paragraphs (a) through (n) above. For purposes of this Mortgage, the term "proceeds" includes whatever is receivable or received when the property referred to above or proceeds is sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes without limitation all rights to payment, including return premiums with respect to any insurance relating thereto.

This Mortgage secures the following obligations (the "Obligations"):

All debts, obligations and liabilities of Mortgagor to Mortgagee arising out of or related to the Overall Transaction, including without limitation all obligations of Mortgagor under the Facility and Site Lease, this Mortgage, the Ground Lease and the Participation Agreement and any other Fundamental Agreement to which Mortgagor is a party or by which Mortgagor is bound, and all amendments or extensions or renewals thereof, whether now existing or hereafter arising, voluntary or involuntary, whether or not jointly owed with others, direct or indirect, absolute or contingent, liquidated or unliquidated, and whether or not from time to time decreased or extinguished and later increased, created, or incurred.

ARTICLE I

AGREEMENTS OF MORTGAGOR

To protect the security of this Mortgage, Mortgagor represents, warrants, covenants and agrees as follows:

1.1 Performance of Obligations Secured. Mortgagor covenants and agrees to pay promptly when due all sums due pursuant to the Obligations and to perform each and every agreement and condition of Mortgagor contained in the Obligations.

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1.2 Title to Mortgaged Property. The Mortgagor is, and shall hereafter remain, the owner of the Mortgaged Property free and clear of all voluntary or involuntary liens, encumbrances, attachments, security interests, purchase money security interests, assignments, mortgages, charges or other liens or encumbrances of any nature whatsoever, with the exceptions of (a) all interests in favor of Mortagee, (b) the mortgage and security interest created herein, and (c) liens for real estate taxes not yet due and payable and all Permitted Liens.

1.3 Condemnation and Insurance Proceeds. The proceeds of any award or claim for damages, direct or consequential, in connection with any requisition, condemnation or other taking of or damage or injury to the Mortgaged Property, or any part thereof, or for conveyance in lieu of requisition or condemnation, payable to Mortgagor and assigned to Mortgagee pursuant to this Mortgage, shall be paid and distributed as provided in Section 7(e) of the Facility and Site Lease.

1.4 Security Agreement. This Mortgage is also a security agreement pursuant to the Idaho Uniform Commercial Code for (i) any and all items of personal property specified above as part of the Mortgaged Property that may be subject to a security interest pursuant to the Idaho Uniform Commercial Code and that are not real property, and (ii) any and all items of property specified above as part of the Mortgaged Property that constitute fixtures and may be subject to a security interest under the Idaho Uniform Commercial Code. To the extent that Mortgagor has any right, title or interest in such property, Mortgagor hereby grants Mortgagee a security interest in said property, and in all additions thereto, substitutions therefor, and proceeds thereof, for the purpose of securing the Obligations, and this Mortgage constitutes a security agreement and financing statement, and is intended, when recorded, to create a perfected security interest in such property in favor of Mortgagee. Mortgagor agrees to execute and deliver on demand such security agreements, financing statements and other instruments as Mortgagee may reasonably request from time to time in order to impose a lien more specifically upon any of such property and to pay all recording and/or filing fees associated therewith. For purposes of treating this Mortgage as a security agreement and financing statement, Mortgagee shall be deemed the secured party and Mortgagor shall be deemed the debtor.

This Mortgage has been duly authorized, executed and delivered by the Mortgagor, and constitutes a valid and binding obligation of the Mortgagor. As of the date hereof, the Mortgagee will have a valid and perfected security interest in such of the Mortgaged Property as is subject to perfection recording under the Idaho Uniform Commercial Code, subject to no prior lien other than Permitted Liens, or liens in favor of Mortgagee. The execution, delivery, performance and enforcement of this Mortgage do not and will not contravene, or constitute a default under, any provision of applicable law or regulation or of the Mortgagor's constituent documents or of any agreement, judgment, injunction, order, decree or other instrument binding upon the Mortgagor or result in the creation or imposition of any lien (other than Permitted Liens, or liens in favor of Mortgagee) upon any asset of the Mortgagor. The Mortgagor has not performed any act which might prevent the

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Mortgagee from enforcing any of the terms and conditions of this Mortgage or which would limit the Mortgagee in any such enforcement.

1.5 Further Sales or Encumbrances. Except as otherwise expressly provided in the Fundamental Agreements, without the prior written consent of Mortgagee being first had and obtained, Mortgagor shall not sell, contract to sell, lease with option to purchase, convey, alienate, transfer, encumber, mortgage or otherwise dispose of all or any portion of the Mortgaged Property or any interest therein, whether voluntarily or involuntarily, by operation of law or otherwise.

1.6 Protection of Security.

(a) If any action or proceeding is commenced that affects Mortgagee's interest in the Mortgaged Property or any part thereof, including without limitation (i) eminent domain actions or (ii) proceedings of any nature whatsoever under any federal, state or local law, whether now existing or hereafter enacted or amended, relating to bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, then Mortgagee may, but without obligation to do so and without notice to or demand upon Mortgagor, make such appearances, pay any such costs and take such action as Mortgagee deems reasonably necessary or appropriate to protect Mortgagee's interest, including without limitation payment of reasonable attorneys fees, entry upon the Facility or the Site to make repairs or take other action to protect the security hereof, and payment, purchase, contest or compromise of any lien that in the reasonable judgment of Mortgagee appears to be prior or superior hereto. Any amounts disbursed by Mortgagee pursuant to this Section 1.6(a) shall be part of the Obligations and secured by this Mortgage and shall bear interest at the Default Rate.

(b) Mortgagor hereby irrevocably appoints Mortgagee as its attorney in fact so to do, but Mortgagee shall not be obligated to and shall incur no liability to Mortgagor or any third party for failure so to do, any act that Mortgagor is obligated by this Mortgage to do, and to exercise such rights, powers, and remedies as Mortgagor might exercise with respect to the Mortgaged Property, including without limitation Mortgagor's rights under any lease related to the Mortgaged Property. Anything to the contrary set forth in this Section 1.6(b) notwithstanding, Mortgagee agrees that it shall not exercise any of the rights or powers granted to or conferred on it pursuant to this Section 1.6(b) except in connection with the exercise by Mortgagee of any of the rights and remedies of Mortgagee contained in Section 20 of the Facility and Site Lease.

(c) Nothing contained in this Mortgage shall be construed to require Mortgagee to incur any expense, make any appearance, or take any other action. Neither this Mortgage nor any action on the part of Mortgagee shall constitute an assumption by Mortgagee of any of the obligations of Mortgagor under any of the contracts or agreements constituting a part of the Mortgaged Property, and Mortgagor shall continue to be liable for all of its obligations thereunder.

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1.7 Mortgagor's and Mortgagee's Covenant Regarding the Ground Lease. Mortgagor agrees to promptly notify Mortgagee in writing of any Default under the Ground Lease as provided in the Ground Lease.

1.8 Anti-merger. There shall be no merger of the leasehold estate created by the Ground Lease with the fee estate in the Site by reason of any of those interests coming into common ownership, unless Mortgagee consents in writing. In the event of the exercise of any power of sale under this Mortgage, Mortgagee shall have the right to sell the leasehold estate and the fee interest of Mortgagor separately or together at the election of Mortgagee.

1.9 Compliance with Leases and Contracts. The Mortgagor is not in default under any terms and conditions of any Easement, Project Lease, Governmental Authorization or Contract necessary, in Mortgagee's discretion, for the operation of the Facility in the manner provided in the Facilty and Site Lease, and shall, during the term of this Mortgage, perform all of the obligations of the Mortgagor under any such Easement, Project Lease, Governmental Authorization or Contract within the period that such performance is required. During the term of this Mortgage, Mortgagor shall not commit, suffer or permit any breach of any statute, ordinance, rule or regulation relating to the Easements, the Project Leases, Governmental Authorizations or the Contracts.

The Mortgagor has entered into, and will maintain in full force and effect, all Easements, Project Leases, Governmental Authorizations, Contracts and other agreements, licenses or easements which are necessary for the use, maintenance, construction and operation of the Mortgaged Property. Mortgagor covenants that except as disclosed in writing to Mortgagee, Mortgagor has not assigned its rights under any of such documents except to Mortgagee hereunder. Except as disclosed to Mortgagee in writing, Mortgagor has obtained all necessary consents to the assignment of a security interest in such Governmental Authorizations, Easements, Project Leases and Contracts under this Mortgage. With regard to such consents which have not been obtained, Mortgagor will do all things and execute all such documents as the Mortgagee may request to assign the Mortgagor's rights therein to the Mortgagee and obtain the necessary consents thereto.

1.10 Modification of Lease and Contract. The Mortgagor will not modify or consent to the modification of any provision of, or cancel, terminate or accept the early cancellation or termination, of any such Easement, Project Lease, Governmental Authorization, Contract or other agreement included in the Mortgaged Property without the prior written consent of Mortgagee.

1.11 Leases. The Mortgagor shall not enter into any Project Lease without the prior written consent of the Mortgagee. Each such Project Lease shall be in form and substance satisfactory to the Mortgagee and, without limiting the generality of the foregoing, shall include a provision confirming that the Project Lease is subordinate to the lien of this Mortgage and consenting to the assignment provided for herein of the Project Lease to the Mortgagee. The Mortgagor shall deliver to the Mortgagee, upon the request of the

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Mortgagee, with copies of each and every Project Lease and any other information relative to each such Project Lease and the tenant thereunder. The Mortgagor will take all action as may be requested by the Mortgagee in furtherance of the rights of the Mortgagee hereunder, including, without limitation, obtaining estoppel certificates and agreements (in form satisfactory to the Mortgagee) from each tenant subordinating the Project Lease to the lien of this Mortgage and consenting to the assignment of the Project Lease provided for herein.

1.12 No Financing Statements on File. Except for those to be terminated concurrently with the execution and delivery of the Lease, no effective financing statement or other instrument similar in effect covering all or any part of the Mortgagor's interest in the Mortgaged Property is on file in any recording office, except such as may have been filed pursuant to this Mortgage or pursuant to the documents evidencing Permitted Liens, or in favor of Mortgagee.

1.13 Notices, Etc. Mortgagor shall deliver to Mortgagee a copy of each demand, notice or document received or given by Mortgagor relating in any way to any Easement, Project Lease or Contract.

1.14 Place of Perfection; Records. The Mortgagor shall give the Mortgagee 30 days prior written notice before it changes the location of its chief place of business and chief executive office and shall at the expense of the Mortgagor execute and deliver such instruments and documents as required to maintain a prior perfected security interest and as requested by the Mortgagee. The Mortgagor will hold and preserve such records and will permit representatives of the Mortgagee at any time during normal business hours to inspect and make abstracts from such records.

1.15 Covenants of the Mortgagor. The Mortgagor shall pay, before the imposition of any fine, penalty, interest or cost attached thereto, all taxes, assessments and other governmental or non-governmental charges or levies now or hereafter assessed or levied against the Mortgaged Property or upon the security interest provided for herein (except for liens for taxes and assessments not then delinquent) as well as pay, or cause to be paid, all claims for labor, materials or supplies which, if unpaid, might become a prior lien (other than a Permitted Lien) on the Mortgaged Property, and will exhibit receipts showing payment of any of the foregoing.

1.16 Litigation. There is no suit, action, proceeding, or, to the knowledge of Mortgagor, any investigation presently pending or threatened against the Mortgagor, or any of the Mortgaged Property, which, if determined adversely, would have a material adverse effect upon the Mortgagor or the Mortgaged Property.

1.17 Further Assurances. The Mortgagor shall do all such things and execute all such documents from time to time hereafter as the Mortgagee may request in order to carry into effect the provisions and intent of this Mortgage and to protect, perfect, and maintain the Mortgagee's interest in and to the Mortgaged Prop

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1.18 Fixture Filing. This Mortgage constitutes a financing statement filed as fixture filing in the Official Records of the County Recorder of the county in which the Mortgaged Property is located with respect to any and all fixtures included within the term "Mortgaged Property" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

1.19 Hazardous Wastes. Mortgagor shall not, except in accordance with applicable laws or regulations (A) store or dispose, or allow the storage or disposal, of any hazardous substance on or in the Site or Facility, or (B) transport or arrange for the transportation of any hazardous substance to or from the Site. If Mortgagee reasonably believes that there may be the presence or the possible presence of any hazardous substance on or in the Site or Facility, Mortgagor shall, upon the written request of Mortgagee and at Mortgagor's cost, take any and all actions necessary to reasonably assure Mortgagee that no hazardous substance is stored or disposed on or in the Site or Facility. Mortgagor shall promptly notify Mortgagee in writing of any release or threatened release of any hazardous substance at or from the Site or Facility or of any notice of a release or threatened release of any hazardous substance, or for the costs incurred for the cleanup thereof (including, without limitation by assessment, containment or removal) received by Mortgagor or by any person for whose conduct Mortgagor is or may be responsible from any federal, state or other governmental authority.

ARTICLE II

EVENTS OF DEFAULT

Any "Event of Default" under the Site and Facility Lease shall constitute an event of default ("Event of Default") hereunder (including, if Mortgagor consists of more than one person or entity, the occurrence of any of such events with respect to any one or more of such persons or entities) unless Mortgagee shall declare otherwise in writing.

ARTICLE III

REMEDIES

If any Event of Default shall have occurred hereunder and be continuing Mortgagee shall have all of the rights of a mortgagee under Idaho law, all the rights of a secured party under the Uniform Commercial Code as adopted by Idaho, and the following rights and remedies (to the extent permitted by and subject to compliance with any mandatory requirements of Idaho law then in effect):

3.1 Remedies Under the Agreements. Upon the occurrence of an Event of Default under any of the provisions of the Obligations, Mortgagee shall have any and all of the rights and remedies provided under the Site and

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Facility Lease and any other rights and remedies available to Mortgagee under any of the Obligations.

3.2 Judicial Action. Mortgagee may bring an action in any court of competent jurisdiction to foreclose this instrument in connection with the rights and remedies in the Event of Default under Section 3.1 hereof or to enforce any of the covenants and agreements hereof.

3.3 Power of Sale. Upon an Event of Default Mortgagee may sell, lease, or otherwise dispose of any or all of the Mortgaged Property in its then condition or following such preparation or processing as the Mortgagee deems advisable.

3.4 Appointment of Receiver. Mortgagee shall have the right in connection with the rights and remedies in the Event of Default under Section 3.1 hereof, with the irrevocable consent of Mortgagor hereby given and evidenced by the execution of this Mortgage, to obtain appointment of a receiver by any court of competent jurisdiction without further notice to Mortgagor, which receiver shall be authorized and empowered to enter upon and take possession of the Mortgaged Property, including all personal property used upon or in connection with the real property herein conveyed and all accounts encumbered by this Mortgage and containing funds associated with the Mortgaged Property, to let the Mortgaged Property, to receive all the Rents due or to become due to Mortgagor under any lease of the Mortgaged Property, and apply the Rents, after payment of all necessary charges and expenses, to the Obligations. At the option of Mortgagee, the receiver shall accomplish such entry and taking possession of the Mortgaged Property by actual entry and possession or by notice to Mortgagor. The receiver so appointed by a court of competent jurisdiction shall be empowered to issue receiver's certificates for funds advanced by Mortgagee for the purpose of protecting the value of the Mortgaged Property as security for the Obligations. The amounts evidenced by receiver's certificates shall bear interest at the Default Interest Rate and may be added to the cost of redemption if the Mortgaged Property, or any part thereof, is redeemed by any party entitled to do so.

3.5 Proceeds of Sale. The proceeds of any sale made under or by virtue of this Article III, together with all other sums that may be received and held by Mortgagee under this Mortgage, whether under the provisions of this Article III or otherwise, shall be applied first to pay all of the fees, costs, and expenses incurred by Mortgagee in conducting the sale or otherwise foreclosing on the Mortgaged Property, including without limitation reasonable attorneys fees, and then to the Obligations.

3.6 Power of Attorney. Upon the occurrence of any Event of Default, the Mortgagor hereby irrevocably constitutes and appoints the Mortgagee as the Mortgagor's true and lawful attorney, to take any action with respect to the Mortgaged Property to preserve, protect, or realize upon the Mortgagor's interest therein, each at the sole risk, cost and expense of the Mortgagor, but for the sole benefit of the Mortgagee. The rights and powers granted the Mortgagee by the within appointment include, but are not limited to, the right and power to: (i) prosecute, defend, compromise, settle, or

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release any action relating to the Mortgaged Property; (ii) endorse the name of the Mortgagor in favor of the Mortgagee upon any and all checks or other items constituting remittances or proceeds of the Mortgaged Property; (iii) sign and endorse the name of the Mortgagor on, and to receive as secured party, any of the Mortgaged Property; (iv) sign and file or record on behalf of the Mortgagor any financing or other statement in order to perfect or protect the Mortgagee's security interest in the Mortgaged Property; (v) enter into leases or subleases relative to all or a portion of the Mortgaged Property; (vi) enter into any contracts or agreements relative to, and to take all action deemed necessary in connection with, the construction of any improvements on the Mortgaged Property; (vii) exercise the rights of the Mortgagor under any Contract, Lease, Easement or Governmental Authorization; or (viii) manage, operate, maintain, or repair the Mortgaged Property. The Mortgagee shall not be obligated to perform any of such acts or to exercise any of such powers, but if the Mortgagee elects so to perform or exercise, the Mortgagee shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to Mortgagor except for the Mortgagee's wilful misconduct and actual bad faith. All powers conferred upon the Mortgagee by this Agreement, being coupled with an interest, shall be irrevocable until terminated by a written instrument executed by a duly authorized officer of the Mortgagee.

3.7 Remedies Cumulative. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any Event of Default or any acquiescence therein, and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. If there exists additional security for the performance of the obligations secured hereby, Mortgagee, at its sole option, and without limiting or affecting any of its rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever rights and remedies it may have in connection with such other security or in such order as it may determine. Any application of any amounts or any portion thereof held by Mortgagee at any time as additional security hereunder, whether pursuant to Section 3.2 hereof or otherwise, to any Obligation secured hereby shall not extend or postpone the due dates of any payments due from Mortgagor to Mortgagee, or change the amounts of any such payments or otherwise be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

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ARTICLE IV

MISCELLANEOUS

4.1 Severability. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

4.2 Notices. All notices and other communications required under the terms and provisions of this Mortgage shall be in writing and shall become effective when delivered by hand or received by telex, telecopier, or registered or certified mail, postage prepaid, addressed as follows or to such other address of which all the parties hereto or their respective successors and assigns have been given notice;

Mortgagor: HDI ASSOCIATES IV, LIMITED PARTNERSHIP
c/o: Hydroelectric Development, Inc.
10394 West Chatfield Avenue, Suite 108
Littleton, Colorado 80127

Mortgagee: WESTINGHOUSE CREDIT CORPORATION
One Oxford Centre
Pittsburgh, Pennsylvania 15219
Attention: Vice President of Specialized Finance

4.3 Mortgagor Not Released. Extension of the time for payment or modification of the terms of payment of any sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of the original Mortgagor. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify the terms of payment of the sums secured by the Mortgage by reason of any demand made by the original Mortgagor. Without affecting the liability of any person, including Mortgagor, for the payment of any Obligations secured hereby, or the lien of this Mortgage on the remainder of the Mortgaged Property for the full amount of any such Obligation and liability unpaid, Mortgagee is empowered as follows: Mortgagee may from time to time and without notice (a) release any person liable for the payment of any of the Obligations, (b) extend the time of payment of any of the Obligations, (c) accept additional real or personal property of any kind as security therefor, whether evidenced by deeds of trust, mortgages, security agreements, or any other instruments of security, (d) alter, substitute or release any property securing the Obligations, (e) consent to the making of any map or plat of the Mortgaged Property or any part thereof, (f) join in granting any easement or creating any restriction thereon, (g) join in any subordination or other agreement affecting this Mortgage or the lien or charge hereof, or (h) reconvey, without any warranty, all or part of the Mortgaged Property.

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4.4 Inspection. Mortgagee may at any reasonable time or times make or cause to be made entry upon and inspection of the Mortgaged Property or any part thereof in person or by agent.

4.5 Statute of Limitations. The pleading of any statute of limitations as a defense to any and all Obligations secured by this Mortgage is hereby waived to the fullest extent permitted by law.

4.6 Interpretation. Wherever used in this Mortgage, unless the context otherwise indicates a contrary intent, or unless otherwise specifically provided herein, the word "Mortgagor" shall mean and include Mortgagor and any subsequent owner or owners of the Mortgaged Property, and the word "Mortgagee" shall mean and include not only the original Mortgagee hereunder but also any future assignees or transferees which are Lessor under the Site and Facility Lease. In this Mortgage, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter. The captions and headings of the Articles and Sections of this Mortgage are for convenience only and are not to be used to interpret, define, or limit the provisions hereof.

4.7 Consent; Delegation to Sub-agents. The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions. Wherever a power of attorney is conferred upon Mortgagee hereunder, it is understood and agreed that such power is conferred with full power of substitution, and Mortgagee may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof, to one or more sub-agents.

4.8 Successors and Assigns. All of the grants, obligations, covenants, agreements, terms, provisions, and conditions herein shall run with the land and shall apply to, bind, and inure to the benefit of, the heirs, administrators, executors, legal representatives, successors, and assigns of Mortgagor and the endorsees, transferees, successors, and assigns of Mortgagee. In the event Mortgagor is composed of more than one party, the obligations, covenants, agreements, and warranties contained herein as well as the obligations arising therefrom are and shall be joint and several as to each such party.

4.9 Conflict with Facility and Site Lease. If there shall occur any conflict between the express provisions of this Mortgage and the express provisions of the Facility and Site Lease, the terms of the Facility and Site Lease shall govern.

4.10 Governing Law. This Mortgage shall be governed by and construed under the laws of the State of Idaho.

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IN WITNESS WHEREOF, the undersigned has executed this Mortgage the day and year first hereinabove written.

Mortgagor:

HDI ASSOCIATES IV, LIMITED PARTNERSHIP,
an Idaho limited partnership

By HDI-IDAHO, INC.
General Partner

By:_
Its:

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TRACT I: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

TRACT II: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

TRACT III: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
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TRACT IV: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
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TRACT V: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

TRACT VI: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

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TRACT VII: An easement interest created by State of Idaho Easement No. 5300 as granted to HDI, Associates IV, Limited Partnership, as to Tracts VII and IX, by Instrument recorded April 27, 1987, as Instrument No. 184399, records of Custer County, Idaho.

TRACT VIII: An easement interest created by Grant of Easement as granted to Hydroelectric Development, Inc., a Colorado corporation, and its successors and assigns, for a perpetual and exclusive easement over, across, and under Tracts X, VIII, and XIII, having a width of forty (40) feet, by Instrument recorded April 27, 1987, as Instrument No. 184400, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, an Idaho limited partnership, by Assignment of Grant of Easement recorded April 27, 1987, as Instrument No. 184401, records of Custer County, Idaho.

TRACT IX: An easement interest created by State of Idaho Easement No. 5300 as granted to HDI, Associates IV, Limited Partnership, as to Tracts VII and IX, by Instrument recorded April 27, 1987, as Instrument No. 184399, records of Custer County, Idaho.

TRACT X: An easement interest created by Grant of Easement as granted to Hydroelectric Development, Inc., a Colorado corporation, and its successors and assigns, for a perpetual and exclusive easement over, across, and under Tracts X, VIII, and XIII, having a width of forty (40) feet, by Instrument recorded April 27, 1987, as Instrument No. 184400, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, an Idaho limited partnership, by Assignment of Grant of Easement recorded April 27, 1987, as Instrument No. 184401, records of Custer County, Idaho.

TRACT XI: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

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TRACT XII: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

TRACT XIII: An easement interest created by Grant of Easement as granted to Hydroelectric Development, Inc., a Colorado corporation, and its successors and assigns, for a perpetual and exclusive easement over, across, and under Tracts X, VIII, and XIII, having a width of forty (40) feet, by Instrument recorded April 27, 1987, as Instrument No. 184400, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, an Idaho limited partnership, by Assignment of Grant of Easement recorded April 27, 1987, as Instrument No. 184401, records of Custer County, Idaho.

TRACT XIV: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

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TRACT XV: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

TRACT XVI: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

TRACT XVII: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

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TRACT XVIII: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

TRACT XIX: An easement interest created by Special Use Easement and Water Distribution and Containment Agreement upon the terms, conditions, and provisions contained therein:

Dated: February 11, 1987

Parties: Alan J. Amy and Afton Louise Amy, husand and wife, Grantors, and HDI Associates IV, Limited Partnership, an Idaho limited partnership, and its successors and assigns forever, Grantee

Recorded: April 27, 1987, as Instrument No. M-19501, records of Butte County, Idaho.

TRACT XX: An interest created by State of Idaho Temporary Permit No. 1917 as granted to HDI, Associates IV, Limited Partnership, a limited partnership, by Instrument recorded April 27, 1987, as Instrument No. M-19499, records of Butte County, Idaho; and an easement interest created by Grant of Easement as granted to HDI Associates IV, Limited Partnership, for a perpetual and exclusive easement over, across, and under Tract XX, by Instrument recorded April 27, 1987, as Instrument No. M-19500, records of Butte County, Idaho.

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TRACT XXI: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

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ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

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TRACT XXIV: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

TRACT XXV: An easement interest created by United States Department of the Interior Bureau of Land Management Right-Of-Way Grant as granted to Hydroelectric Development, Inc., to construct, operate, maintain and terminate a hydroelectric diversion, pipeline and 25 KV powerline on public lands by Instrument recorded April 27, 1987, as Instrument No. M-19498, records of Butte County, Idaho, and recorded April 27, 1987, as Instrument No. 184396, records of Custer County, Idaho.
ASSIGNED TO HDI Associates IV, Limited Partnership, by Assignment of Right-Of-Way Grant recorded June 26, 1987, as Instrument No. M-19788, records of Butte County, Idaho; and recorded April 27, 1987, as Instrument No. 184397, records of Custer County, Idaho.

TRACT XXVI: HDI ASSOCIATES IV, Limited Partnership
TRACT XXVII: HDI ASSOCIATES IV, Limited Partnership

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TRACT I:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 31: $NE\frac{1}{4}NW\frac{1}{4}$

TRACT II:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 30: $SE\frac{1}{4}SW\frac{1}{4}$; $NE\frac{1}{4}NE\frac{1}{4}$; $S\frac{1}{2}NE\frac{1}{4}$; $W\frac{1}{2}SE\frac{1}{4}$

TRACT III:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 19: $SE\frac{1}{4}SE\frac{1}{4}$

TRACT IV:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 20: $SE\frac{1}{4}NW\frac{1}{4}$; $N\frac{1}{2}SW\frac{1}{4}$; $SW\frac{1}{4}SW\frac{1}{4}$; $SW\frac{1}{4}NE\frac{1}{4}$; $N\frac{1}{2}NE\frac{1}{4}$

TRACT V:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 21: $NW\frac{1}{4}NW\frac{1}{4}$

TRACT VI:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 24: $N\frac{1}{2}NE\frac{1}{4}$; $SE\frac{1}{4}NE\frac{1}{4}$; $NE\frac{1}{4}NW\frac{1}{4}$

TRACT VII:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 16: $NE\frac{1}{4}SW\frac{1}{4}$; $S\frac{1}{2}SW\frac{1}{4}$; $N\frac{1}{2}SE\frac{1}{4}$; $SW\frac{1}{4}SE\frac{1}{4}$

TRACT VIII:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 15: From a point of beginning on the West line of Section 15, Township 10 North, Range 25 E.B.M. that is 1884.84 feet N. 0°16'08" W. of the corner that is common to Sections 15, 16, 21 and 22, Township 10 North, Range 26 E.B.M., a line centered in a strip 40 feet wide, described as follows: S. 86°08'17" E. 1324.13 feet to a point on the East line of the $NW\frac{1}{4}SW\frac{1}{4}$ Section 15, Township 10 North, Range 25 E.B.M., marked Station 433+83.50.

TRACT IX:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 15: $NE\frac{1}{4}SW\frac{1}{4}$; $N\frac{1}{2}SE\frac{1}{4}$

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TRACT X:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 14: From a point of beginning on the West line of Section 14, Township 10 North, Range 25 E.B.M., that is 4135.7 feet S. 0°05'52" E. of the corner common to Sections 10, 11, 14, and 15, Township 10 North, Range 25 E.B.M., a line centered in a strip 40 feet wide, described as follows: S. 82°58'04" E. 1110.16 feet to a point on the North line of the SW¼SW¼ Section 14, Township 10 North, Range 25 E.B.M., marked Station 382+93.66.

TRACT XI:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 14: S½SW¼; S½SE¼

TRACT XII:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 13: SW¼SW¼

TRACT XIII:
Township 10 North, Range 25 E.B.M., Custer County, Idaho
Section 13: From a point of beginning in the South line of Section 13, Township 10 North, Range 25 E.B.M. that is 2135.39 feet S. 89°54'25" E. of the corner common to Sections 13, 14, 23, and 24, a line centered in a strip 40 feet wide, described as follows: N. 59°36'12" W. a distance of 448.47 feet; thence N. 74°45'02" W. a distance of 443.04 feet to a point on the West line of the SE¼SW¼ Section 13, Township 10 North, Range 25 E.B.M., marked Station 326+97.64.

TRACT XIV:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 19: Lot 2; SE¼; NE¼SW¼; SE¼NW¼

TRACT XV:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 29: N½NW¼; NW¼NE¼; S½NE¼

TRACT XVI:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 28: S½NW¼; N½SE¼; NE¼SW¼

TRACT XVII:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 27: S½SE¼; E½SW¼; NW¼SW¼

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TRACT XVIII:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 35: NE¼NW¼; N½NE¼

TRACT XIX:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 36: N½, EXCEPTING THEREFROM: Commencing at the SW corner of the NW¼ of said Section 36, thence due N. 1,500 feet; thence due E. 240 feet; thence due S. 1,500 feet; thence due W. 240 feet to the point of beginning, ALSO EXCEPTING THEREFROM: Commencing at a point on the West line of said Section 36 that is 1500 feet N. of the SW corner of the NW¼ of said Section 36, and running thence N. 100 feet; thence E. 240 feet; thence S. 100 feet; thence W. 240 feet to the point of beginning.

TRACT XX:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 36: A portion of the N½SW¼, N½SE¼, SE¼SE¼ of said Section 36, described as: A strip of land 100.00 feet in width, being 50.00 feet on each side of the following described survey line: Commencing at the W¼ corner of said Section 36, thence E. 50.00 feet to the REAL POINT OF BEGINNIN, thence S. 600.00 feet; thence E. 450.00 feet; thence S. 80°30' E. 1,230.00 feet; thence S. 76°30' E. 3,615.00 feet to a point on the East Section line of said Section 36, said point being 985.00 feet N. of the SE corner of said Section 36, said point being the point of terminus of said survey line.

TRACT XXI:
Township 9 North, Range 27 E.B.M., Butte County, Idaho
Section 5: Lots 3 and 4

TRACT XXII:
Township 9 North, Range 27 E.B.M., Butte County, Idaho
Section 6: Lot 1

TRACT XXIII:
Township 10 North, Range 27 E.B.M., Butte County, Idaho
Section 31: S½SE¼; SE¼SW¼; Lot 4

TRACT XXIV:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 20: SW¼SW¼

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TRACT XXV:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 26: S½SW¼

TRACT XXVI:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 36: Commencing at the SW corner of the NW¼ of said Section 36, thence due N. 1,500 feet; thence due E. 240 feet; thence due S. 1,500 feet; thence due W. 240 feet to the point of beginning.

TRACT XXVII:
Township 10 North, Range 26 E.B.M., Butte County, Idaho
Section 36: Commencing at a point on the West line of said Section 36 that is 1500 feet N. of the SW corner of the NW¼ of said Section 36, and running thence N. 100 feet; thence E. 240 feet; thence S. 100 feet; thence W. 240 feet to the point of beginning.

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APR 01 1988

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On March 4, 1988, before me, the undersigned, a Notary Public in and for said State of California, personally appeared Darrie R. Pope, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Vice president of HDI-Idaho, Inc. on behalf of the HDI-Idaho,Inc., and acknowledged to me that said corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors, said corporation being known to me or proved to me on the basis of satisfactory evidence to be a general partner of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

JANET LEE BURKLEY
NOTARY PUBLIC - CALIFORNIA
SAN FRANCISCO COUNTY
My comm. expires MAR 8, 1991

Janet Lee Burkley
Notary Public in and for
said County and State

MICROFILMED
APR 01 1988

March 16, 1987

HDI, Associates IV
10394 W. Chatfield Avenue, #108
Littleton, CO 80127

Gentlemen:

Re: Permit No. 33-7089

Enclosed is a copy of the approved request for extension of time. The time within which to submit proof of beneficial use is extended to October 1, 1989.

Permit No. 33-7089 is not presently limited to a term of years. The department anticipates imposing a term of years at the time of licensing. It appears that water appropriated under this permit will be used in conjunction with water appropriated under Permit Nos. 33-7154 and 33-7181 to supply water to the Dry Creek hydropower facility. If the rights are used at the same site, the term of years will be issued for the same duration.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

cc: Scott Campbell

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MAR 20 1987

STAFF REVIEW SHEET - EXTENSION OF TIME

Permit No. 33-7089 Reviewed by [signature] Date 3-16-1987

BASIC INFORMATION

Y Date stamp received
Y Extension received timely
(not prior to 6 month before proof due date or after reinstatement period)
Y Fee received and receipted
Y Name and signature same as permit
N Address change (indicate on coding sheet)

BASIS FOR EXTENSION REQUEST

Y Has adequate work been completed to demonstrate due diligence?
Y Has the cost incurred been adequate to demonstrate an intent to complete the project?
Yes Has the permit been involved in litigation?
a. Swan Falls _____ Dismissed from Swan Falls Dropped Listed in 1st Complaint Dropped in amended Complaint
Other _____ Identify _____
b. Is supporting documentation needed to complete the file? _____
Requested _____
c. Calculate the period of delay

Date litigation completed _____

Date litigation began - _____

Total period of delay = _____

Present proof due date + _____

NEW PROOF DUE DATE = _____

Y Is delay by a government agency?
Is supporting documentation needed to complete the file? _____
Requested? _____

ACTION TAKEN - Recommend approval based on ~~delay~~ due diligence for 2 years.

Special conditions or remarks:

N/A Reinstate Date extention received _____

Proof due date _____ = -

No. of days late _____ = _____

Priority date _____ = +

ADJUSTED PRIORITY DATE _____ = _____

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MAR 20 1987

_____ Prepare coding sheet
_____ Change rolodex card

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

EXTENSION OF TIME

March 9, 1987

Elam, Burke and Boyd
P. O. Box 1559
Boise, ID 83701

PERMIT NO. 33-7089, HDI, Associates IV, Limited Partnership

We are in receipt of the $15 extension fee for Extension(s) of Time to provide additional time in which to submit proof of beneficial use on a water right permit.

Your request for extension(s) of time is being reviewed by staff. You will be informed of our decision when review has been completed.

Enclosed is our receipt No. 41539.

Roberta Garrett
Records Supervisor

Enclosure

cc HDI, Associates IV

MICROFILMED
MAR 20 1987

ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

FIRST INTERSTATE BUILDING
702 WEST IDAHO
POST OFFICE BOX 1559
BOISE, IDAHO 83701
TELEPHONE 208-343-5454
TELECOPIER 208-343-5454

LAUREL E. ELAM (1888-1974)
CARL A. BURKE (1898-1961)
CARL P. BURKE
PETER J. BOYD
J. RAY DURTSCHI
M. ALLYN DINGEL, JR.
JACK S. GJORDING
JOHN MAGEL
DAVID B. LINCOLN
RICHARD C. MELLON, JR.
ROBERT M. TYLER, JR.
JAMES D. LaRUE
RANDALL A. PETERMAN
WILLIAM J. RUSSELL
KAYE L. O'RIORDAN
RYAN P. ARMBRUSTER
DAVID E. COMSTOCK

MELVILLE W. FISHER II
WILLIAM G. DRYDEN
TODD J. WILCOX
PETER C. K. MARSHALL
KENNETH M. SEBBY
TRUDY HANSON FOUSER
D. ALAN KOFOED
SCOTT L. CAMPBELL
BOBBI KILLIAN DOMINICK
W. DALLAS BURKHALTER
ALAN CONILOGUE
ELAINE D. HANSON
JEFFERY J. VENTRELLA
BRENDA G. MEIER
JOHN J. JANIS
WENDY E.D. SMITH*
*PENN. & D.C. BARS ONLY

March 6, 1987

RECEIVED
MAR 06 1987
Hand delivered 11:47
Department of Water Resources

VIA HAND DELIVERY

Mr. Jim Johnson
Water Rights Supervisor
Department of Water Resources
State of Idaho
450 W. State Street
Boise, ID 83702

Re: Permit No. 33-7089

Dear Jim:

Thank you for your correspondence of March 2, 1987, regarding the above-referenced permit.

I have enclosed a completed Request for Extension of Time on the Department of Water Resources' form, provided by you. Please note that I have enclosed a number of attachments with the form which clarify the statements made in support of the request.

As I indicated in my prior correspondence, my client desires to close the financing arrangements for this project as rapidly as possible in order to preserve certain materials prices under existing bids from suppliers. Consequently, not only is your previous expedited treatment of my requests on behalf of this client appreciated, but I also would appreciate a prompt review of this request.

Needless to say, if you desire any additional documentation or information regarding this request, I will provide it to you as rapidly as possible.

Thank you again for all of your assistance with respect to this matter.

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MAR 20 1987

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

Scott L. Campbell

SLC:ls
Enclosures
cc: Mr. Donnie R. Pope
Mr. Matthew Berk

RECEIVED
MAR 06 1987

STATE OF IDAHO EASEMENT Department of Water Resources
No. 5300

THIS INDENTURE, made this 23rd day of February, 1987, by and between the STATE OF IDAHO, acting by and through the State Board of Land Commissioners, hereinafter the Grantor, and HDI, ASSOCIATES IV, LIMITED PARTNERSHIP of 10394 W. Chatfield Ave., Suite 108, Littleton, CO 80127, hereinafter the Grantee.

In consideration of the mutual covenants and agreements of the parties hereto, the Grantor hereby grants to the Grantee an easement upon, over, and across the lands hereinafter described and for the purposes and in accord with the provisions hereinafter set forth.

I. PROPERTY DESCRIPTION: The Grantor grants this easement upon, over, and across the following described lands, situated in the COUNTY OF CUSTER;

NE1/4SW1/4, S1/2SW1/4, N1/2SE1/4, SW1/4SE1/4 of Section 16 and NE1/4SW1/4 and N1/2SE1/4 of Section 15, Township 10 North, Range 25 East, B.M.

II. PURPOSE. This easement is granted for the following purpose: Construction, operating, and maintaining a buried 41" outside diameter penstock for hydroelectric and irrigation purposes. Construction and installation and/or alterations may commence only after Grantor has approved plans and specifications submitted by a licensed engineer.

III. FEES. Grantee shall pay to the Grantor a one-time fee of Three Hundred Dollars ($300). In addition, once the project

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MAR 20 1987

EXHIBIT B

is producing hydroelectric power, the Grantee shall pay to the Grantor an annual fee based on the following formula:

> Annual fee = ANG (annual net generation) x 2 mills (2/10 of a cent) x 11.83% (percentage of the hydroelectric project on State land and its contributing factor).

WHERE

Annual net generation means the energy output in kilowatt hours that the Grantee received payment for in the previous calendar year,

AND

Hydroelectric project means the dam, diversion, penstock, transmission lines, water storage area, powerhouse, and other related facilities but does not include any access roads.

The fee formula contained within this provision shall remain in effect for the term of the power purchase contract that the Grantee has with a power utility or for the term of the FERC exemption, whichever expires first. At the expiration of said contract or exemption or at any time during the contract period that the power contract is re-negotiated, the Grantor reserves the right to alter, with due and proper notice to the Grantee, the fee formula. Any new fee formula shall be based on the then current Land Board policy governing hydroelectric projects.

IV. REPORTING. The Grantee shall submit to the Grantor a verified copy of the annual net generation along with the annual fee, both of which shall be due and payable on or before February 1st of the following year. If the annual fee is not paid on or before February 1st, the Grantor shall give written notice of default to the Grantee that if the payment of the

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MAR 20 1987

annual fee and interest thereon, accruing from February 1st at the prevailing interest rate of the Grantor's transactions, is not received within sixty (60) days of notice thereof, the Grantor may cancel the easement without further notice.

V. ADDITIONAL RIGHTS RESERVED TO THE GRANTOR. The Grantor expressly reserves the following rights:

A. Oil and gas, geothermal, and all other mineral rights.

B. To grant easements over or leases, permits, or licenses upon the easement area, provided that such easement, lease, license, or other use shall not unreasonably interfere with the Grantee's use of this easement.

C. The Grantor, its agents, contractors, lessees, permittees, and other authorized individuals and entities may enter upon and across the easement area to inspect the improvements to harvest timber and for other lawful uses, so long as such use does not unreasonably interfere with Grantee's use of this easement. Provided however, prior to any timber harvest authorization by Grantor, Grantee shall be provided written notice of such proposed authorization, together with a proposed harvest plan. Grantee shall be provided with an opportunity to comment on such proposed harvest plan and present its concerns, if any, to the Grantor prior to authorization of the timber harvest by the Grantee.

D. The Grantor will endeavor to notify its agents, contractors, lessees, permittees, and other authorized individuals and entities of the existence of the easement and right-of-way

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MAR 20 1981

for the pipeline, whether above or underground, but shall bear no liability in the event of failure to so notify.

E. To sell the lands subject to the terms of this easement.

VI. PERFORMANCE. Grantee shall complete construction and commence operations and the generation of electricity in accord with the terms herein within three (3) years after the granting of this easement; otherwise, this easement shall automatically be extinguished on such date unless an extension is granted by the Grantor.

VII. MAINTENANCE. Grantee shall bear the sole and complete responsibility for all improvements (pipeline) constructed upon the easement.

VIII. RESPONSIBILITY - HOLD HARMLESS CLAUSE. Grantee shall indemnify and hold harmless the State of Idaho, the Board, the Director, the Department, or other State agency, their officers, agents, contractors, and employees and individuals or entities authorized to enter upon, over, or across the easement area from all liabilities, charges, expenses, including without limitation attorney fees, claims, suits, or losses caused by a negligent or otherwise wrongful act or omission of Grantee, its assigns, its agents, operators, employees, or contractors. Grantee shall not be considered an agent of the Grantor in the construction, operation, maintenance, or use of the easement area, facilities, structures, or improvements situated thereon.

MICROFILMED
MAR 20 1987

IX. ASSIGNMENT.

A. The Grantee shall not sublet all or any part of the easement or assign or transfer this easement or any interest therein, except as follows:

(i) Subject to the approval of the Grantor which shall not be unreasonably delayed or denied, the Grantee may assign this easement to an assignee who agrees to perform all of Grantee's obligations under this agreement.

(ii) The Grantee may mortgage or otherwise create a security interest in the Grantee's interest in this easement to secure indebtedness incurred by the Grantee to finance the construction of the Project, or to secure the Grantee's obligations to a third party under a lease to the Grantee of the improvements constituting the Project in the event that any or all of the improvements are constructed or acquired by the third party and leased by it to the Grantee.

X. MORTGAGES. In the event that the Grantee shall mortgage or otherwise create a security interest in its interest in the easement as permitted in Article IX and the holder of the mortgage or security interest (the "Secured Party") shall notify the Grantor of the creation of such mortgage or security interest and the name and address for the service of notice upon the Secured Party, the Grantor hereby agrees for the benefit of the Secured Party that:

A. Upon serving the Grantee with any notice of default, Grantor shall simultaneously serve a copy of such notice upon the

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Secured Party. No notice to the Grantee shall be effective unless a copy is also served upon the Secured Party.

B. In the event of any default by the Grantee hereunder or under the terms of the mortgage or other security interest, the Secured Party shall at its option have the right to perform any of the Grantee's covenants, to cure any defaults by the Grantee, and/or to exercise any election, option, or right conferred upon the Grantee by the terms of this easement.

C. The Grantor will not terminate this easement or the Grantee's right of possession for any default of the Grantee if within a period of thirty (30) days after the expiration of the period of time within which the Grantee might cure said default under the provisions of this easement, Secured Party cures the default or causes the default to be cured, or if within a period of thirty (30) days after the expiration of the period of time within which the Grantee might commence to eliminate the cause of such default under the provisions of this easement, the Secured Party commences to eliminate the cause of such default and proceeds therewith diligently and with reasonable dispatch.

D. The Grantor will not terminate this easement if the Secured Party takes possession of the easement upon default by the Grantee under the terms of the mortgage, provided that the fees due and payable under this easement shall continue to be paid and the other covenants, conditions, and agreements of this easement on the Grantee's part to be kept and performed shall continue to be kept and performed. Secured Party shall have a

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period of thirty (30) days after taking possession within which to commence performance.

E. No right, privilege, or option available to the Grantee to cancel or terminate this easement shall have been exercised effectively unless joined in by the Secured Party.

F. No modification or amendment to this easement shall be effective without the written consent of the Secured Party.

G. Notwithstanding anything to the contrary upon the occurrence of an event of default, other than a default in the payment of money, the Grantor shall take no action to effect a termination of this easement without first giving to the Secured Party a reasonable time within which either (i) to obtain possession of the easement (including possession by a receiver) or (ii) to institute, prosecute, and complete foreclosure by proceedings or otherwise acquire the Grantee's interest under this easement with diligence. The Secured Party, upon obtaining possession or acquiring the Grantee's interest under this easement, shall be required promptly to cure all defaults then reasonably susceptible of being cured by the Secured Party.

H. In the event of the termination of this easement as a result of the bankruptcy or insolvency of the Grantee, the Grantor shall serve upon the Secured Party written notice that the easement has been terminated. The notice shall include a statement of any and all sums which would be due under this easement but for such termination and of all other defaults, if any, under this easement then known to the Grantor. If within thirty (30) days after Grantor's notice, the Secured Party shall

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request a new easement, the Grantor shall enter into a new easement with the Secured Party, or its designee, in accordance with and upon the following terms and conditions: (1) the new easement shall be at the reasonable cost of the Grantee; (2) the new easement shall be effective as of the date of termination of this easement; (3) the new easement shall be for the same term of this easement and at its same rent, agreements, terms, covenants, and conditions; and (4) the new easement shall require the Grantee to perform any unfulfilled obligation of the Grantee under this easement which is reasonably susceptible of being performed by such Grantee. Upon the execution of such new easement, the Grantee named therein shall pay any and all sums which would at the time of its execution be due under this easement but for such termination and shall pay all expenses, including reasonable attorney fees, court costs, and disbursements incurred by the Grantor in connection with such default and termination, the recovery of possession of the easement, and the preparation, execution, and delivery of the new easement.

XI. BONDS. Grantee shall secure and maintain during the entire term of this easement, a performance bond in the amount of Five Thousand Dollars ($5,000) to guarantee compliance with the terms herein set forth including without limitation construction, safety, performance, maintenance, reclamation, and, if required by the Grantor, the prompt removal of all equipment and improvements from the easement area upon Grantee's default or extinguishment of the easement for any reason.

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XII. INSURANCE. Grantee shall secure and maintain during the terms of this easement public liability, property damage, and products liability insurance at least in the sum of Fifty Thousand Dollars ($50,000) for injury or death for each occurrence; and the aggregate sum of One Hundred Thousand Dollars ($100,000) for injury or death; and in the sum of Fifty Thousand Dollars ($50,000) for damages to property and products damage caused by any occupancy, use, operations, or any other activity upon the easement area carried on by the Grantee, its assigns, its agents, operators, or contractors. The Grantor shall be an additional named insured in all instances. A signed, completed certificate of insurance shall be submitted to the Director of the Department of Lands prior to execution of this easement.

XIII. WASTE. Grantee shall not commit waste nor allow waste to be committed upon the easement area. Grantee shall at all times keep the premises free from abandoned machinery, motor vehicles, refuse, and other unsightly materials.

XIV. RECLAMATION. Upon relinquishment, termination, or extinguishment for any reason, Grantee shall reclaim all lands disturbed by its construction and use of the easement at least consistent with previous use by the surface owner, including segregating and protecting topsoil and regrading to approximate previous contour. If substantial removal of topsoil has occurred as determined by the Grantor, the Grantee shall replace the topsoil and revegetate to the extent necessary to minimize erosion. In the event that Grantee fails to commence and continue reclamation within thirty (30) days after relinquishment, termination,

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or extinguishment, the Grantor may declare the performance bond forfeited and use these monies to reclaim the land and exercise all other remedies at law in this easement.

XV. REVERSION FOR NON-USE. In the event that the easement hereinabove described is not used for the purpose herein specified for any five (5) year period, the easement is presumed abandoned and shall automatically terminate. The Grantor shall notify the Grantee and the Secured Party in writing of the termination. The Grantee and the Secured Party shall have thirty (30) days from the date of notification to reply in writing to the Grantor to show cause why the easement should be reinstated. Within sixty (60) days of receipt of the statement to show cause, the Grantor shall notify the Grantee and the Secured Party in writing as to the Grantor's decision concerning reinstatement. The Grantee or the Secured Party shall have thirty (30) days from the receipt of the Grantor's decision to appeal an adverse decision to the State Board of Land Commissioners.

XVI. RELINQUISHMENT. The Grantee may relinquish this easement by filing a written relinquishment with the Grantor. Thirty (30) days thereafter, the Grantee shall be relieved of liability under this easement except for the continued obligation to make payments of all accrued fees; the reclamation of the premises; and compliance with all other duties and payments of all liabilities required by this easement or by law or regulation which accrued prior to the filing of the relinquishment.

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XVII. COVENANT. It is mutually understood and agreed by the parties that all of the terms, covenants, conditions, and obligations in this easement contained are of the essence and shall be binding upon the heirs, executors, and assigns of this easement.

XVIII. COMPLIANCE WITH APPLICABLE LAWS. All applicable laws and regulations of the United States and the State of Idaho and its political subdivisions are incorporated herein by reference, except as lawfully varied by the contractual terms of this easement. Grantee shall comply with all such applicable laws and regulations.

XIX. TERMINATION. Except as provided in paragraphs IV and VI above, the Grantor may terminate this easement for any material breach of its terms ninety (90) days after written notice of default has been given to the Grantee, unless the breach has been cured to the Grantor's satisfaction before the ninety (90) day period has expired.

In the event the Grantor declares a termination of the easement, thereafter the easement shall be completely and finally extinguished and all right and title thereto shall automatically revert to the Grantor or to the record owner of the Grantor's interest in the lands subject to this easement; provided that the Grantee shall remain bound to comply with all duties and liabilities required by this easement or by law which accrued prior to the date of extinguishment; the Grantee shall quietly and peaceably surrender possession of the easement to the Grantor; and the Grantor may pursue all other remedies at law and in this easement.

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XX. TRANSFER OF EASEMENT. Upon relinquishment, termination, reversion, or extinguishment of this easement for any reason, the Grantor reserves the right to transfer the easement with improvements to Dry Creek Development, Inc., in accordance with the water service contract between Grantee and Dry Creek Development, Inc., a copy of which is attached hereto as Exhibit A. The Grantor may declare the performance bond forfeited and use these monies to reclaim the land and exercise all other remedies at law and in this easement.

NOTICE. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in hand to such party or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed:

If to the Grantee:
HDI Associates IV,
Limited Partnership
10394 W. Chatfield Avenue
Suite 108
Littleton, CO 80127

If to the Grantor:
Director
Department of Lands
Statehouse
Boise, ID 83720

or in each case to such other address as may be specified in a written notice delivered in compliance with the foregoing requirements.

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STATE BOARD OF LAND COMMISSIONERS

Countersigned:

Governor of the State of Idaho and
President of the State Board of
Land Commissioners

Secretary of State

Director, Department of Lands

STATE OF IDAHO)
) ss.
County of Ada)

On this 23rd day of February, 1987, before me, a Notary Public in and for said State, personally appeared CECIL D. ANDRUS, known to me to be the Governor of the State of Idaho and President of the State Board of Land Commissioners; PETE T. CENARRUSA, known to me to be the Secretary of State of the State of Idaho; and STANLEY F. HAMILTON, known to me to be the Director of the Department of Lands of the State of Idaho, that executed the said instrument and acknowledged to me that such State of Idaho and State Board of Land Commissioners executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last written above.

Notary Public of Idaho
Residing at Idaho City, Idaho
Commission Expires August 25, 1992

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HDI ASSOCIATES IV, LIMITED PARTNERSHIP

By: Donnie R. Pope
Vice President - HDI Idaho, Inc.
Corporate General Partner HDI Associates IV

STATE OF ~~IDAHO~~ Colorado)
) ss.
County of ~~Ada~~ Jefferson)

On this 29th day of January, 1987, before me, a Notary Public in and for said State, personally appeared Donnie R. Pope, known to me to be the Vice President of the said HDI ASSOCIATES IV, LIMITED PARTNERSHIP, whose name is subscribed to the within and foregoing instrument, and acknowledged to me that such Partnership executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first written above.

Notary Public of ~~Idaho~~ Colorado
Residing at Littleton, Colorado
Commission Expires 9/4/90

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TRANSFER AGREEMENT AND WATER SERVICE CONTRACT

THIS AGREEMENT, Made this 29th day of January, 1987, between HDI, Associates IV, Limited Partnership, a limited partnership, and Dry Creek Development, Incorporated, an Idaho corporation;

WITNESSETH:

WHEREAS, HDI, Associates IV, Limited Partnership, has acquired the rights, permits, licenses, exemptions, and other governmental authorizations necessary to develop a hydroelectric project which will utilize waters of Dry Creek, a stream located in Custer and Butte Counties, Idaho; and

WHEREAS, Dry Creek Development, Inc., constructed a diversion structure on Dry Creek and an attached concrete canal in 1965, which improvements are utilized to divert and convey the waters of Dry Creek for irrigation purposes; and

WHEREAS, Dry Creek Development, Inc., financed the construction costs of said diversion structure and concrete canal with a loan obtained from the Farmer's Home Administration, which loan has an outstanding balance of $59,535.82 and is secured by a mortgage encumbering said diversion structure and concrete canal; and

WHEREAS, Dry Creek Development, Inc., possesses a right-of-way (easement) for the construction, operation, and maintenance of said diversion structure and concrete canal, which was granted by the Bureau of Land Management on behalf of the fee owner of the real property, the United States Government; and

WHEREAS, Dry Creek Development, Inc., possesses a right-of-way (easement) for the construction, operation, and maintenance of said

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concerete canal, which was granted by the fee owner of the real property, the State of Idaho, and

WHEREAS, The diversion structure and concrete canal, which was constructed by Dry Creek Development, Inc., are in need of substantial repair or complete replacement in order to properly divert and transport the waters of Dry Creek; and

WHEREAS, HDI, Associates IV, Limited Partnership, desires to utilize the existing Dry Creek diversion structure and make substantial improvements thereto as part of its Dry Creek hydroelectric project; and

WHEREAS, HDI, Associates IV, Limited Partnership, desires to construct a buried steel pipeline, which will be connected to the diversion structure and will convey the waters of Dry Creek for irrigation and hydroelectric purposes; and

WHEREAS, HDI, Associates IV, Limited Partnership, desires to utilize the rights-of-way (easements), previously granted to Dry Creek Development, Inc., by the Bureau of Land Management and the State of Idaho, for the construction, operation, and maintenance of the diversion structure improvements and the buried steel pipeline; and

WHEREAS, The Bureau of Land Management has required HDI, Associates IV, Limited Partnership, to cover the existing Dry Creek concrete canal as a condition of the assignment of the said right-of-way (easement) from Dry Creek Development, Inc., to HDI, Associates IV, Limited Partnership, which condition has been incorporated as part of the Federal Energy Regulatory Commission exemption from licensing for the Dry Creek hydroelectric project; and

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WHEREAS, The Farmer's Home Administration has refused to release the mortgage encumbering the Dry Creek diversion structure and concrete canal unless HDI, Associates IV, Limited Partnership, and Dry Creek Development enter into a water delivery contract, which is acceptable to the Farmer's Home Administration; and

WHEREAS, Dry Creek Development, Inc., desires to enter into a water delivery contract with HDI, Associates IV, Limited Partnership, which is acceptable to the Farmer's Home Administration; and

WHEREAS, Dry Creek Development, Inc., desires to convey, transfer, and assign to HDI, Associates IV, Limited Partnership, the rights-of-way (easements), previously granted to Dry Creek Development, Inc., by the Bureau of Land Management and the State of Idaho; and

WHEREAS, Dry Creek Development, Inc., desires to convey the Dry Creek diversion structure and concrete canal to HDI, Associates IV, Limited Partnership;

NOW, THEREFORE, In consideration of the mutual and dependent stipulations and convenants herein contained, it is hereby mutually agreed by and between the parties as follows:

1. Dry Creek Development, Inc., hereby transfers, conveys, grants, and assigns to HDI, Associates IV, Limited Partnership, and its successors in interest, all of its right, title, and interest in the Dry Creek diversion structure and concrete canal owned by Dry Creek Development, Inc., and the rights-of-way (easements) for said structures, previously granted to Dry Creek Development, Inc., by the Bureau of Land Management and the State of Idaho, for which HDI,

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Associates IV, Limited Partnership, agrees to pay Dry Creek Development, Inc., $1.00 (one dollar) U.S. currency and other valuable consideration, which consideration is hereby acknowledged by the parties.

2. HDI, Associates IV, Limited Partnership, agrees to construct, operate, and maintain improvements to the Dry Creek diversion structure and a buried steel pipeline, which will convey the waters of Dry Creek to a discharge point in Wet Creek, after the waters have been used to generate hydroelectric power.

3. HDI, Associates IV, Limited Partnership, agrees to convey the waters of Dry Creek through the transferred diversion structure and buried steel pipeline and discharge said waters into Wet Creek from March 15 through November 15 of each year, so that said waters can be used for irrigation purposes by the shareholders of Dry Creek Development, Inc. This obligation shall commence only after the construction of the buried steel pipeline is complete. Prior to that event, HDI, Associates IV, Limited Partnership, agrees to convey the waters of Dry Creek through the transferred diversion structure and concrete canal, and discharge said waters into Wet Creek from March 15, 1987, until the buried steel pipeline is operational.

4. Dry Creek Development, Inc., in exchange for the water delivery described above in paragraph 3, agrees to pay a water delivery fee, payable on or before March 1 of each year. The fee shall be $13,515.00 for each of the years 1987-1990. The total water delivery fees shall not exceed the total of $59,535.82 plus any accrued interest owed to the Farmer's Home Administration by Dry Creek Development, Inc. The water delivery fee [illegible] 1991 shall be in

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the amount of the balance of the Farmer's Home Administration loan and shall be payable on or before January 1, 1991. In lieu of payment of such water delivery fees to HDI, Associates IV, Limited Partnership, such payments shall be made to the Farmer's Home Administration in said amounts to be applied as payments on said loan and upon receipt thereof by Farmer's Home Administration shall constitute satisfaction of the payment of water delivery fees hereunder to the extent of such payment amount. After the Farmer's Home Administration loan has been fully repaid, no further water delivery fees shall be required.

5. Dry Creek Development, Inc., agrees that HDI, Associates IV, Limited Partnership, shall have the right to terminate the delivery of water through the transferred diversion structure and concrete canal or the buried steel pipeline to the discharge point in Wet Creek, for the irrigation use of Dry Creek Development, Inc., or its shareholders, if the water delivery fees are not paid in the manner and in the amounts specified in paragraph 4 above.

6. Dry Creek Development, Inc., also agrees and consents to the assignment to the Farmer's Home Administration by HDI, Associates IV, Limited Partnership, of the rights of termination, contained in paragraph 5 of this contract, and of the water delivery fees, described in paragraph 4 of this contract.

7. Dry Creek Development, Inc., retains no responsibility or liability pertaining to the fencing which borders the sides of the concrete canal.

8. HDI, Associates IV, Limited Partnership, agrees to continue to discharge water into Wet Creek from Mich 15 through

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November 15 of each year during periods when the power-generating facilities are not in operation. This provision is subject to the water delivery fee payment requirements contained in paragraphs 4, 5, and 6 above.

9. Dry Creek Development, Inc., agrees and consents that HDI, Associates IV, Limited Partnership, may assign this agreement, as a collateral assignment, to a financial institution of its choice, for the purposes of financing the development costs of this project.

10. HDI, Associates IV, Limited Partnership, agrees that all right, title, and interest in the rights-of-way (easements) and the diversion structure, herein granted, conveyed, and transferred to it by Dry Creek Development, Inc., together with the buried steel pipeline to be constructed by HDI, Associates IV, Limited Partnership, shall automatically revert and vest in Dry Creek Development, Inc., if HDI, Associates IV, Limited Partnership, provides Dry Creek Development, Inc., with express written notice that it has permanently abandoned the Dry Creek hydroelectric project. In no event shall such reversion occur prior to the full repayment of the Farmer's Home Administration Loan as described in paragraphs 4 through 6 above.

IN WITNESS WHEREOF, The parties hereto have caused this Agreement to be executed the day and year first above written.

HDI, ASSOCIATES IV, LIMITED PARTNERSHIP
By HDI-Idaho, Inc., General Partner

By Donnie R. Pope
Donnie R. Pope, Vice President

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DRY CREEK DEVELOPMENT, INC.
BOARD OF DIRECTORS

William Stauffer
William Stauffer, President

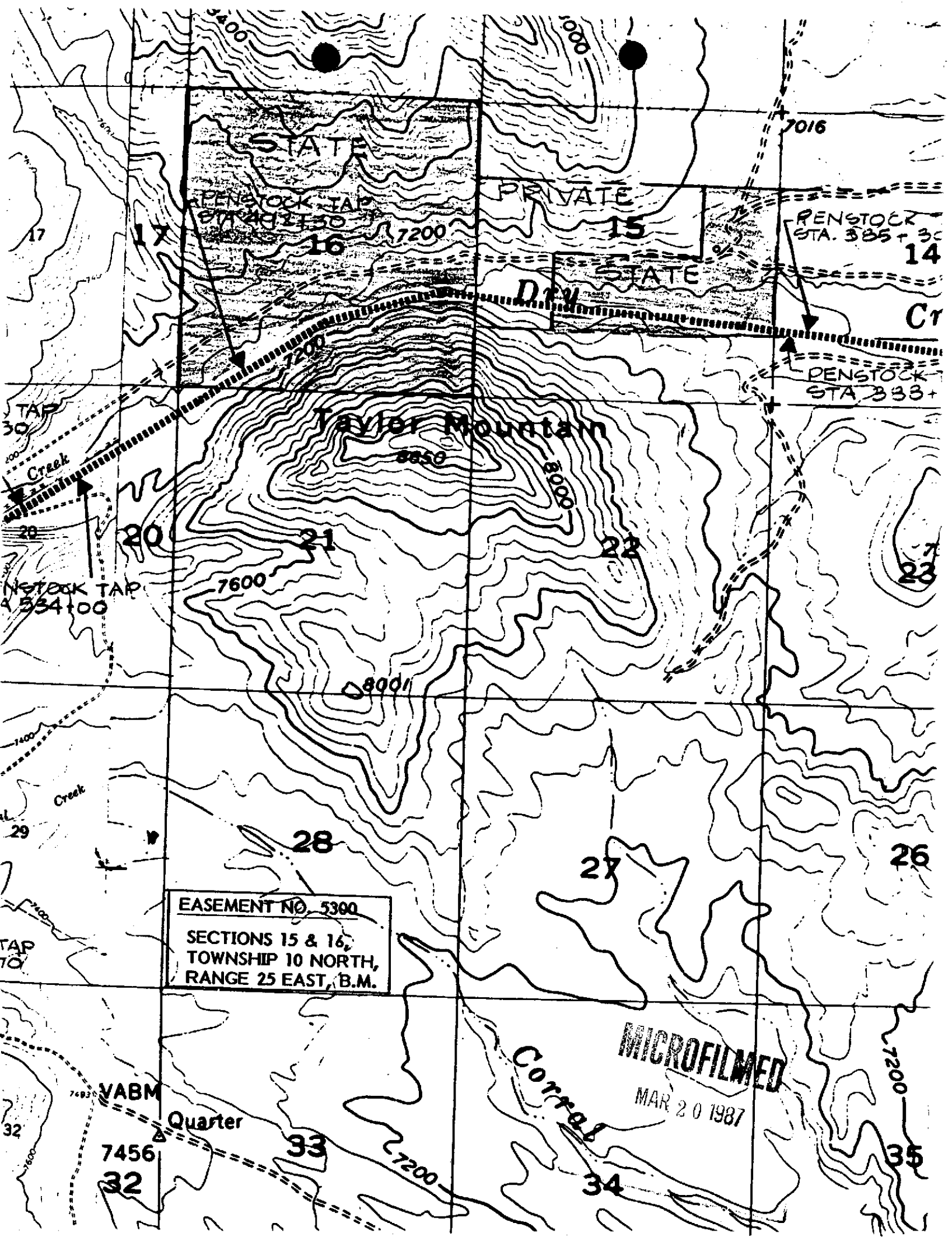
Robert Amy
Robert Amy, Vice President

Emlen Mays
Emlen Mays, Board Member

George Woodie
George Woodie, Board Member

Earl Wortley
Earl Wortley, Board Member

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PRIVATE
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Taylor Mountain
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PENSTOCK TAP
STA 401+30
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STA 333+
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EASEMENT NO. 5300
SECTIONS 15 & 16,
TOWNSHIP 10 NORTH,
RANGE 25 EAST, B.M.
VABM
Quarter
7456
Corral
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MAR 20 1987

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MAR 06 1987
Department of Water Resources

GRANT OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS, That Robert Amy and Judith E. Amy, husband and wife, hereinafter referred to as the "Grantors," for valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, transfer and convey to HDI Associates IV, Limited Partnership, of 10394 West Chatfield Avenue, Suite 108, Littleton, Colorado, 80127, hereinafter referred to as "Grantee," and its successors and assigns a perpetual and exclusive easement over, across, and under those certain parcels of real property owned by Grantors and more particularly described on Exhibit A attached hereto and by this reference made a part hereof, for the construction, location, and operation of electrical power lines and a road for motor vehicles and all necessary or desirable appurtenances, including towers, poles, props, guys and other supports and incidental equipment, including the right to clear said easement and keep the same clear of brush, trees, timber and structures; the right to clear and cut away all trees outside of said easement which might endanger said electric lines; the right to construct, operate and maintain said electric lines and appurtenances; the right in the future to reconstruct said line and road or to remove the same and install a new line or road and all necessary or desirable wires, poles, structures and appurtenances thereto.

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EXHIBIT C

Together with the right of ingress and egress over the real property subject to this easement for the purposes of constructing, reconstructing, stringing new wires or maintaining and removing such lines and appurtenances, and ingress and egress to real properties owned by Grantee and exercising all other rights hereby granted and rights incidental thereto.

Grantors, by execution hereof, agree that neither they nor their heirs, successors or assigns shall erect or place any building or structure within the boundaries of said easement nor shall they bring or permit to be brought any equipment or material of any kind or nature within fifteen (15) feet of any of Grantees electrical lines.

Grantors represent and warrant to Grantee that:

(i) Grantors are the sole and the exclusive owners of fee title to the real property herein described; and

(ii) No other person or entity has any right, title, claim or interest (including a security interest) in, against or to the said real property which would be prior to the interest of Grantee created by this instrument or to the extent any security interest exists as of the date of this instrument Grantors do hereby covenant and agree to promptly obtain a release of same as to the interests herein conveyed.

Grantors acknowledge that this easement is perpetual and that Grantors retain no right to terminate this easement under any circumstances. Grantors covenant that Grantee shall, in perpetuity, peaceably and quietly have, hold and enjoy this easement

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free of interference from Grantors or those claiming by, through or under Grantors.

Grantors and Grantee expressly agree that Grantee has the right from time to time, without notice to or further consent from Grantors, to improve, alter, maintain, repair, replace or demolish any and all facilities and improvements on the real property described herein and that title to all facilities and improvements, and all equipment, fixtures and personal property at any time kept or placed by Grantee on the said real property shall at all times be vested in Grantee.

In the event of damage to or destruction of any improvements on the said real property described herein, Grantee shall be entitled to the full amount of any insurance proceeds on account of such damage or destruction. In the case of any taking of all or any part of the real property described herein, or any interest therein, or right thereto, as a result of the exercise of the right of condemnation or eminent domain, or conveyance in lieu thereof, Grantee shall be entitled to any and all awards on account of such taking or conveyance to the full extent of Grantee's interest in the said real property.

Nothing contained in this easement shall be construed to limit or otherwise restrict Grantee's right, without the need for any consent or approval by Grantors, to grant any mortgage, deed

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of trust, security interest or other lien on its interest in the subject real property created by this instrument, and the holder of any such mortgage, deed of trust, security interest or other lien, and any other person or entity acquiring the interest of Grantee, whether by foreclosure or conveyance in lieu thereof, or by assignment from Grantee or any successor in interest of Grantee, shall be entitled to succeed to the interest of Grantee in the real property described herein and the benefits of this easement, without any interference by Grantors. Grantee, and each of its successors and assigns, shall have the unrestricted right to assign all or any portion of its interest created by this instrument.

Grantors retain the right to use the real property subject to this easement for any purpose not inconsistent with the rights herein granted including, without limitation, the right to use the said real property for cattle grazing and utilize the roadway thereon for ingress and egress.

This easement shall constitute a covenant running with the land and shall be binding upon the Grantors and their successors and assigns and inure to the benefit of the Grantee and its successors and assigns.

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IN WITNESS WHEREOF Grantors have executed this Grant of Easement this 13th day of February 1987.

Robert Amy
Robert Amy

Judith E Amy
Judith E. Amy

STATE OF IDAHO)
) ss.
County of Bannock)

On this 13th day of February, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT AMY and JUDITH E. AMY, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Sharon Reynolds
Notary Public for Idaho
Residing at: Bannock County
My commission expires: Life

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EXHIBIT A

A portion of the N 1/2 SW 1/4, N 1/2 SE 1/4, SE 1/4 SE 1/4 of Section 36, Township 10 North, Range 26 East, Boise Meridian, in BUTTE COUNTY, as described below:

A strip of land one hundred (100.00) feet in width, being fifty (50.00) feet on each side of the following described survey line:

Commencing at the West one-quarter (1/4) corner of Section 36, Township 10 North, Range 26 East, B.M., thence East, 50.00 feet to a point, said point being the REAL POINT OF BEGINNING;
thence South, 600.00 feet;
thence East, 450.00 feet;
thence South 80°30' East, 1,230.00 feet;
thence South 76°30' East, 3,615.00 feet to a point on the East section line of said Section 36, said point being 985.00 feet North of the SE corner of said Section 36, said point being the point of terminus of said survey line, the above described area containing 13.53 acres, more or less.

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MAR 06 1987
Department of Water Resources

SPECIAL USE EASEMENT AND WATER DISTRIBUTION AND CONTAINMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that ALAN J. AMY and AFTON LOUISE AMY, husband and wife, hereinafter referred to as the "Grantors," for valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, transfer, and convey to HDI ASSOCIATES IV, LIMITED PARTNERSHIP, an Idaho limited partnership, of 10394 West Chatfield Avenue, Suite 108, Littleton, Colorado 80127, hereinafter referred to "Grantee," and its successors and assigns forever: (a) a perpetual and exclusive easement to discharge water onto, over, through, and across that certain real property owned by Grantors and particularly described on Exhibit A attached hereto and by this reference made a part hereof; and (b) a perpetual easement to enter upon said real property for the purpose of the erection, location, and maintenance of such water dissipation and absorption facilities as are more fully described hereinafter, all being subject to the limitations hereinafter set forth.

It is understood and agreed that Grantee has purchased or has agreed to purchase from Grantors real property adjacent to the real property described on Exhibit A hereto for the purpose of the location and operation of a hydroelectric facility including water flow velocity dissipation structures, and Grantee may discharge therefrom water, in such amounts as are mutually agreeable to Grantors and Grantee, but not less than 10 cfs onto the real property described on Exhibit A hereto, primarily during the nonirrigation season, defined herein as the period commencing approximately ~~October~~ November 1, and terminating on March 31 of each year; provided, however, that

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A.J.A.

clw
A.J.A.

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EXHIBIT C

discharged onto the real property described on Exhibit A in such amounts and at such additional times as is mutually agreeable to the Grantors and Grantee. The water discharged from the Grantee's hydroelectric facility onto the Grantors' real property described on Exhibit A hereto will be distributed by means of diversion structures, ditches, dikes, shallow ponds, berms, and levees.

Grantors, by execution hereof, do hereby forever release and discharge the Grantee, its successors and assigns from all causes of action, damages, claims, and demands whatsoever, in law or in equity, that Grantors now have or may have against Grantee by reason of the discharge, release, and emptying of waters from the hydroelectric facility of Grantee, resulting in such waters flowing onto and across Grantors' land, described on Exhibit A hereto, or any adjoining lands owned by Grantors. Grantors do further release and discharge Grantee, its successors and assigns, and Grantee's employees, officers, or agents, from all claims arising by reason of any other acts of whatsoever kind of Grantee, directly or indirectly relating to the operation by Grantee of such hydroelectric facility, except for negligent acts of Grantee's employees, agents, or officers which result in harm, damage, or injury to Grantors' real property, livestock, or other personal property.

Grantors acknowledge that the Grantee's right and authority to operate its hydroelectric facility is conditioned on surface runoff water from Grantors' real property, which may result from the water discharge from the hydroelectric facility, not entering Wet Creek at any time during the nonirrigation season, and the Grantors and

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MAR 20 1987

the Grantee anticipate that the real property described on Exhibit A hereto shall fully absorb and accommodate the entire flow of water discharged from the Grantee's hydroelectric facility, and that no portion of such discharged water shall flow or seep into Wet Creek during such nonirrigation season.

In the event that Grantee determines that any portion of surface runoff water from Grantors' real property, which may result from the water discharge from the hydroelectric facility, may flow or seep into Wet Creek during the nonirrigation season, the easement rights of Grantee hereby created shall include the right of Grantee to enter upon the real property described on Exhibit A, attached hereto, and erect, locate, and thereafter maintain such water dissipation and absorption facilities as are reasonably necessary to prevent such surface runoff water from entering Wet Creek including, without limitation, pumping water to higher elevations on Grantors' real property, ~~the installation of subterranean, perforated pipelines for the injection of all or any portion of such discharged water into the subterranean aquifer~~. Grantee shall bear the full expense of the installation and maintenance costs of any such water dissipation and absorption facilities and all of such facilities shall be constructed only after approval of and under the supervision of Grantors, and in consultation with the Soil Conservation Service. Grantors shall not unreasonably withhold such approval and shall not impose unreasonable requirements for such construction; and such requirements shall not, in any event, exceed Soil Conservation Service specifications. No excavation work of any nature will

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be performed on Grantors' real property without prior notice to Grantors and prior approval of same by Grantors.

Grantors are not prohibited from conveying the water discharged from the Grantee's hydro facility onto the Grantors' real property described on Exhibit A hereto to other lands, so long as surface runoff from such water does not flow into Wet Creek.

Grantee's employees, officers, or agents will have no authority to permit the removal of water from Grantors' property after it has been discharged from the hydroelectric facility onto the property.

Grantors represent and warrant to Grantee that:

(i) Grantors are the sole and the exclusive owners of fee title to the real property described; and

(ii) No other person or entity has any right, title, claim, or interest (including a security interest) in, against, or to the said real property which would be prior to the interest of Grantee created by this instrument or to the extent any security interest exists as of the date of this instrument Grantors do hereby covenant and agree to promptly obtain a release of same as to the interests herein conveyed.

Grantors AND GRANTEES acknowledge that this easement is perpetual, and that the Grantors AND GRANTEES retain no rights to terminate this easement. Grantors covenant that Grantee shall, in perpetuity, peaceably and quietly have, hold, and enjoy this easement free of interference from Grantors or those claiming by, through, or under Grantors.

cem AJA. cem AJA.

Nothing contained in this easement shall be construed to limit or otherwise restrict Grantee's right, without the need for any consent or approval by Grantors, to grant any mortgage, deed of trust, security interest, or other lien on its interest in the subject real property created by this instrument, and the holder

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MAR 20 1987

of any such mortgage, deed of trust, security interest, or other lien, and any other person or entity acquiring the interest of Grantee, whether by foreclosure or conveyance in lieu thereof, or by assignment from Grantee or any successor in interest of Grantee, shall be entitled to succeed to the interest of Grantee in the real property described herein and the benefits of this easement, without any interference by Grantors. Grantee, and each of its successors and assigns, shall have the unrestricted right to assign all or any portion of its interest created by this instrument.

This easement shall constitute a covenant running with the land and shall be binding upon the Grantors AND GRANTEES and their successors and assigns and inure to the benefit of the GRANTORS & Grantees and ~~its~~ their successors and assigns.

IN WITNESS WHEREOF Grantors and Grantee have executed this easement agreement this 11 day of Feb., 1987.

Grantors:

Alan J. Amy

Afton Louise Amy

Grantee:

HDI ASSOCIATES IV, LIMITED PARTNERSHIP
By HDI, Idaho, Inc., General Partner

By Donnie R. Pope

MICROFILMED
MAR 20 1987

STATE OF IDAHO)
) ss.
County of Butte)

On this 11 day of Feb, 1987, before me, a Notary Public in and for said State, personally appeared ALAN J. AMY and AFTON LOUISE AMY, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for Idaho
Residing at Moore
My commission expires Life time

STATE OF ~~IDAHO~~ Colorado)
) ss.
County of Jefferson)

On February 23rd, 1987, before me, Charles Peterson, a notary public in and for said county and state, personally appeared Donnie R. Pope, known or identified to me to be the Vice President of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same, which corporation is known or identified to me to be the general partner in the limited partnership of HDI Associates IV, Limited Partnership, and the

MICROFILMED
MAR 20 1987

partner or one of the partners who subscribed said limited partnership name to the foregoing instrument, and acknowledged to me that he executed the same in said limited partnership named.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Charles Abt

Notary Public for ~~Idaho~~ Colorado
Residing at 10394 W. Chatfield, Littleton, CO 80127
Commission Expires 9/4/90

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MAR 20 1981

EXHIBIT A

A tract of land located in Township 10 North, Range 26 E.B.M., Butte County, Idaho described as follows:

Section 36: All of the North one-half (N 1/2) except a tract more particularly described as follows: commencing at the Southwest corner of the Northwest quarter of said Section 36 thence due North 1,500 feet, thence due East 240 feet, thence due South 1,500 feet, thence due West 240 feet to the point of beginning.

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MAR 20 1987

WARRANTY DEED

RECEIVED
MAR 06 1987
Department of Water Resources

COPY

For Value Received Alan J. Amy and Afton Louise Amy, husband and wife,

the grantors, do hereby grant, bargain, sell and convey unto

HDI Associates IV, Limited Partnership,

the grantee, whose current address is, 10394 West Chatfield Avenue, Suite 108, Littleton, Colorado 80127 the following described premises, to-wit:

A tract of land located in Township 10 North, Range 26 E.B.M., Butte County, Idaho described as follows:

Section 36: Commencing at the Southwest corner of the Northwest quarter of said Section 36 thence due North 1,500 feet, thence due East 240 feet, thence due South 1,500 feet, thence due West 240 feet to the point of beginning.

Excepting and reserving unto the Grantor an easement and right of way twenty (20) feet in width for the construction, maintenance and operation of an irrigation ditch or irrigation pipeline over, under or across such portion of the herein described real property as is mutually agreeable to Grantor and Grantee, proposed to be located approximately one thousand (1,000) feet north of the southwest corner of the North West quarter of Section 36, Township 10 North, Range 26 East, B.M., Butte County, Idaho; PROVIDED, HOWEVER, that such ditch or pipeline shall be constructed, located and operated only if it does not unreasonably interfere with the use and operation of a hydroelectric generating facility by Grantee on the real property described herein.

Grantee by acceptance hereof agrees that the real property described herein shall be fenced around the perimeter thereof at Grantee's expense and that no residential structure shall be constructed on or located on the said real property described herein.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its ~~heirs and~~ assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that said premises are free from all incumbrances

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MAR 20 1987

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: February 11, 1987.

Alan J. Amy

Afton Louise Amy

Entered . . .
Compared . . .
Indexed

STATE OF IDAHO, COUNTY OF

On this 11 day of Feb, 1987, before me, a notary public in and for said State, personally appeared Alan J. Amy and Afton Louise Amy,

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Notary Public
Residing at moore, Idaho
Comm. Expires Lifetime

STATE OF IDAHO, COUNTY OF BUTTE

I hereby certify that this instrument was filed for record at the request of ALAN J. AMY

at 30 minutes past 3 o'clock P. m., this 11 day of FEBRUARY, 19 87, in my office, and duly recorded in Book of Deeds at page 19282

Ex-Officio Recorder

By Deputy.

Fees $ 2.00 pd

Mail to: ALAN J. AMY

INSTRUMENT No. 19282

Warranty Deed 203-A

EXHIBIT C

Printed and For Sale By Syms-York Company, Boise

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

March 2, 1987

RE: Permit No. 33-7089

Scott L. Campbell
Elam, Burke & Boyd
P.O. Box 1559
Boise, ID 83701

Dear Scott:

Per your request of 2/20/87 regarding the above referenced permit, Dry Creek Hydroelectric Project, I have reviewed the file and offer the following:

1. Normally the Department would request that the permit holders not submit requests for extension of time prior to 60 days before proof is due, or in this case October 1, 1987. The reason for this is because the time allowed for extending the beneficial use date is limited to 5 years or less. If the Department were to grant an extension for 5 years, the new beneficial use date would be related to the date on which the extension was approved. In other words, if the Department approved the extension request on 3/15/87, the new beneficial use date would be set at 3/15/92. Since in most cases it is to the permit holder's advantage to be allowed the maximum period to develop, it isn't normally logical to submit the request for extension until the Department asks for it.

2. The above consideration may not be a factor in your situation, however, because you had stated that the project was hopefully going to be in operation near the original beneficial use due date and that you only needed a one year extension. This being the case, I do not see much risk in submitting the extension request early. However, I would caution you not to short yourself in case you need additional time in the event of unforeseen delays.

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MAR 20 1987

My recommendation would be to request the full 5 years' extension. You can always submit proof of beneficial use early, so I don't see any problems on this matter.

Enclosed is the Request for Extension of Time form with instructions. If you have any questions, please let me know.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosures

MICROFILMED
MAR 20 1987

ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

FIRST INTERSTATE BUILDING
702 WEST IDAHO
POST OFFICE BOX 1559
BOISE, IDAHO 83701
TELEPHONE 208-343-5454
TELECOPIER 208-343-5454

RECEIVED
FEB 20 1987
Department of Water Resources

LAUREL E. ELAM (1888-1974)
CARL A. BURKE (1898-1961)
CARL P. BURKE
PETER J. BOYD
J. RAY DURTSCHI
M. ALLYN DINGEL, JR.
JACK S. GJORDING
JOHN MAGEL
DAVID B. LINCOLN
RICHARD C. MELLON, JR.
ROBERT M. TYLER, JR.
JAMES D. LaRUE
RANDALL A. PETERMAN
WILLIAM J. RUSSELL
KAYE L. O'RIORDAN
RYAN P. ARMBRUSTER
DAVID E. COMSTOCK
MELVILLE W. FISHER II
WILLIAM G. DRYDEN
TODD J. WILCOX
PETER C. K. MARSHALL
KENNETH M. SEBBY
TRUDY HANSON FOUSER
D. ALAN KOFOED
SCOTT L. CAMPBELL
BOBBI KILLIAN DOMINICK
W. DALLAS BURKHALTER
ALAN CONILOGUE
ELAINE D. HANSON
JEFFERY J. VENTRELLA
BRENDA G. MEIER
JOHN J. JANIS
WENDY E.D. SMITH*
*PENN. & D.C. BARS ONLY

February 20, 1987

VIA HAND DELIVERY

Mr. Jim Johnson
Water Rights Supervisor
Department of Water Resources
State of Idaho
450 W. State Street
Boise, ID 83702

Re: Water Permit No. 33-7089/Dry Creek Hydroelectric Project

Dear Jim:

Thank you for your correspondence, dated February 18, 1987, addressed to HDI Associates IV, Limited Partnership, wherein you have indicated that the assignment of permits for the Dry Creek hydroelectric project have been processed by the Department.

I am now writing concerning Water Permit No. 33-7089. As you will note from a review of the conditions of the permit, subsection 1.B. of the conditions requires that proof of instructions of works and application of water to beneficial use must be submitted on or before October 1, 1987. I have been requested by HDI Associates IV, Limited Partnership, to request an extension of time to satisfy this condition of the permit. This request is made pursuant to Idaho Code section 42-204(1) and (5).

As I believe you are aware, the FERC exemption for the Dry Creek hydroelectric project was not issued until February 28, 1986. Because of this substantial delay, the project construction and financial approval have been unavoidably delayed. While our client hopes to have the project completed by October 1, 1987, additional delays regarding delivery of turbines and generating equipment may prevent compliance with the October 1, 1987, date.

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MAR 20 1987

Accordingly, we believe that a one-year extension of time for proof of completion of construction of the works and application of the water to beneficial use would be appropriate.

I appreciate your consideration of this request.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

SLC:ls
cc: Mr. Donnie R. Pope
Mr. Matthew Berk

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MAR 20 1987

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

February 18, 1987

RE: Permit Nos. 33-7089/7154/7181

HDI Associates IV
10394 W. Chatfield Ave., #108
Littleton, CO 80127

Dear Permit Holder:

This office acknowledges receipt of the Assignment of the above referenced permits to you.

Enclosed for your records are copies of the permits. Be sure to note the special conditions of approval on the fourth pages that identify requirements necessary for developing the permits into licensed water rights.

If you have any questions on this matter, please feel free to contact us.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc
Enclosures

cc: Scott Campbell

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MAR 20 1987

Permit No. 33-7089
33-7181
33-7154

ASSIGNMENT REVIEW CHECK LIST

1. Signature of Permit Holder? Yes
2. Notary? Yes
3. a. Full Assignment? Yes
   b. Partial Assignment?
4. "No assignment" condition on permit? NO
5. Commencement of Works received? — N/A
   a. Commencement of works requested?
   b. Show Cause Order drafted & sent?
   c. Cancellation necessary?
6. Affidavit of residency required? Yes - Rec'd
7. Extension granted due to litigation?
   (If yes, commencement of works is not required.)

1. Type permit summary sheet. ✓ Sharla ____
2. Coding sheet ✓ Sharla ____
3. Acknowledgement letter type. # 1 P
4. Copy to region. ✓ C.C. Scott Campbell

sharla ____

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MAR 20 1987

Date 2-17-87

Employee Jani

ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

FIRST INTERSTATE BUILDING
702 WEST IDAHO
POST OFFICE BOX 1559
BOISE, IDAHO 83701
TELEPHONE 208-343-5454
TELECOPIER 208-343-5454

LAUREL E. ELAM (1888-1974)
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JEFFERY J. VENTRELLA
BRENDA G. MEIER
JOHN J. JANIS
WENDY E.D. SMITH*
*PENN. & D.C. BARS ONLY

February 3, 1987

RECEIVED
FEB 03 1987
hand delivered
Department of Water Resources

VIA HAND DELIVERY

Mr. Jim Johnson
Senior Water Rights Analyst
Department of Water Resources
450 West State
Boise, ID 83720

Re: Dry Creek Hydroelectric Project
Permits Nos. 33-7089, 33-7181, and 33-7154

Dear Jim:

I have enclosed a set of executed originals and a set of copies of the following documents regarding the above-referenced water permits:

1. Affidavit for Water Rights to be Used for Power Purposes;
2. Certificate of Limited Partnership, Secretary of State, State of Idaho;
3. Assignment of Permit forms executed by Rick Stauffer, dba D & D Stauffer, and Coleen Stauffer, his wife; and
4. Assignment of Permit forms executed by Rob Stauffer, dba D & D Stauffer, and Pennie Stauffer, his wife.

I believe that these documents satisfy the requirements of Idaho Code sections 42-207 and 42-206. If this is not the case, please notify me as soon as possible, and I will provide any additional documentation which is required by the Department.

If the documentation which I have presented does satisfy the Department's requirements with respect to assignment of the water permits referred to above, please stamp the copies of the documents which I have enclosed and return them to me in the enclosed self-addressed, stamped envelope. I would also appreciate a short cover letter indicating that the Department has reviewed and approved the assignment of these water permits.

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MAR 20 1987

The loan agreements and other necessary documentation for bank financing of the construction of the project will hopefully be completed within the next ten days. Consequently, it will be necessary to finalize the assignment of permits aspect of this transaction prior to that time. Therefore, any special attention that you can devote to this assignment process would be greatly appreciated.

Thank you for your anticipated cooperation. If you have any questions, please do not hesitate to contact me.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

SLC:ls
Enclosures
cc: Mr. Donnie R. Pope

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MAR 20 1987

RECEIVED
MAR 12 1986
Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

D & D Stauffer, Inc.) Project No. 9134-000

ORDER GRANTING EXEMPTION FROM LICENSING FOR
A CONDUIT HYDROELECTRIC PROJECT

(Issued February 28, 1986)

The Applicant 1/ filed an application for exemption from all or part of Part I of the Federal Power Act pursuant to 18 C.F.R. Part 4 Subpart J (1980) implementing Section 30 of the Federal Power Act (Act) for a project as described in the attached public notice.

Notice of the application was published and comments were requested from interested Federal and State agencies including the U.S. Fish and Wildlife Service and the State Fish and Wildlife Agency. All comments, protests and motions to intervene that were filed have been considered. No agency has any objection relevant to issuance of this exemption.

Standard Article 2, included in this exemption, requires compliance with any terms and conditions that Federal or State fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources. The terms and conditions referred to in Article 2 are contained in any letters of comment by these agencies which have been forwarded to the Applicant in conjunction with this exemption. 2/

1/ D & D Stauffer, Inc., Project No. 9134, filed on April 26, 1985.

2/ An exemption from licensing granted by this Commission does not serve as any basis for restricting hunting and fishing access to the waterway involved except to the extent required for public safety purposes.

Should the Applicant contest any terms or conditions that were proposed by Federal or State agencies in their letters of comment as being outside the scope of Article 2, the Commission shall determine whether the disputed terms or conditions are outside the scope of Article 2.

Based on the terms and conditions required by Federal and State fish and wildlife agencies, the environmental information in the application for exemption, other public comments, and staff's independent analysis, issuance of this order is not a major Federal action significantly affecting the quality of the human environment. 3/

The Director orders:

(A) Dry Creek Project No. 9134 as described and designated in D & D Stauffer, Inc.'s application filed on April 26, 1985, is exempted from all of the requirements of Part I of the Federal Power Act, including licensing, subject to the standard articles in §4.94 of the Commission's regulations attached hereto as Form E-1, 18 C.F.R. §4.94 (1985).

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

Don Gaber

for Kenneth M. Pusateri
Acting Director, Office of
Hydropower Licensing

3/ Environmental Assessment, D & D Stauffer, Inc., FERC Project No. 9134-000, Division of Environmental Analysis, Office of Hydropower Licensing, Federal Energy Regulatory Commission, February 19, 1986. This document is available in the Division of Public Information and in the Commission's public file associated with the proceeding.

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MAR 20 1987

MAR 20 1986

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

MICROFILMED

Notice of Application Filed with the Commission

(December 12, 1985)

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Conduit Exemption

b. Project No.: P-9134-000

c. Date Filed: April 26, 1985

d. Applicant: D & D Stauffer

e. Name of Project: Dry Creek

f. Location: On an irrigation conduit between Dry and Wet Creeks in Butte County, Idaho

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. §§2705 and 2708 as Amended)

h. Contact Persons: Bruce R. Gravette
Forgren - Perkins Engineering
350 North 2nd East
Rexburg, ID 83440

i. Comment Date: JAN 21, 1986

j. Description of Project: The proposed project would utilize an irrigation conduit that is under construction and would consist of a powerhouse containing one generating unit having a capacity of 3.6 MW and an average annual generation of 17.7 GWh.

k. Purpose of Exemption - An exemption, if issued, gives an exemption priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b

DC-A-6

D3b. Agency Comments - The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kenneth F. Plumb
Secretary

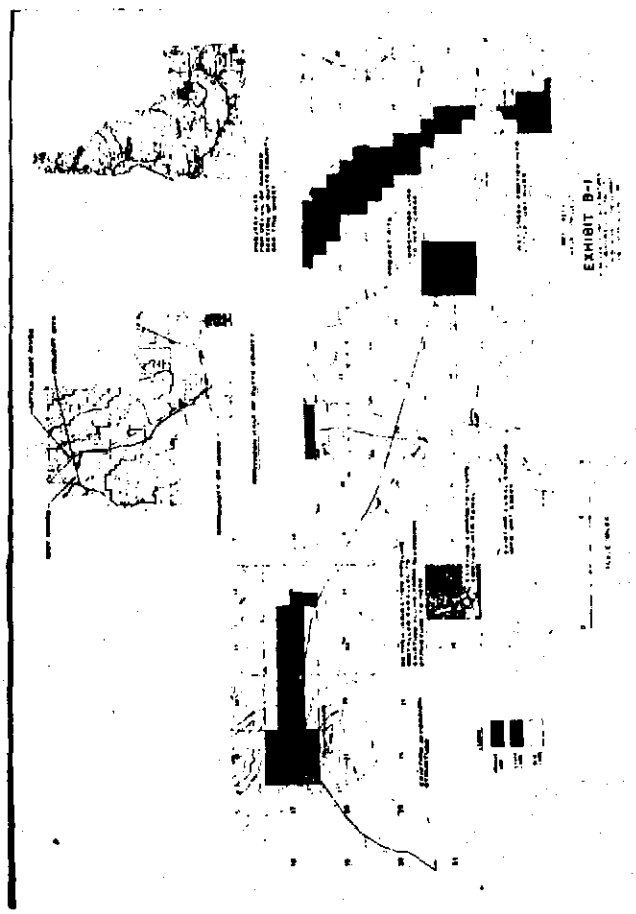


EXHIBIT B-I

ATTACHMENT
E-1 Form

§ 4.94 Standard terms and conditions of exemption

Any exemption granted under §4.93 for a small conduit hydroelectric facility is subject to the following standard terms and conditions:

(a) Article 1. The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt facility. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(b) Article 2. The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

(c) Article 3. The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the effective date of this exemption. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

(d) Article 4. In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

(e) Article 5. The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

(f) Article 6. Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the indentity and address of the transferee.

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MAR 20 1987

N.R. 12-19-85 mg

33-7089
33-7154

P-9134-000

RECEIVED
DEC 19 1985
Department of Water Resources

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission

(December 12, 1985)

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Conduit Exemption

b. Project No.: P-9134-000

c. Date Filed: April 26, 1985

d. Applicant: D & D Stauffer

e. Name of Project: Dry Creek

f. Location: On an irrigation conduit between Dry and Wet Creeks in Butte County, Idaho

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. §§2705 and 2708 as amended)

h. Contact Person: Bruce R. Gravette
Forgren - Perkins Engineering
350 North 2nd East
Rexburg, ID 83440

i. Comment Date: JAN 21, 1986

j. Description of Project: The proposed project would utilize an irrigation conduit that is under construction and would consist of a powerhouse containing one generating unit having a capacity of 3.6 MW and an average annual generation of 17.7 GWh.

k. Purpose of Exemption - An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b

MICROFILMED
MAR 20 1987

A3. Development Application -- Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A9. Notice of intent -- A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

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MAR 20 1981

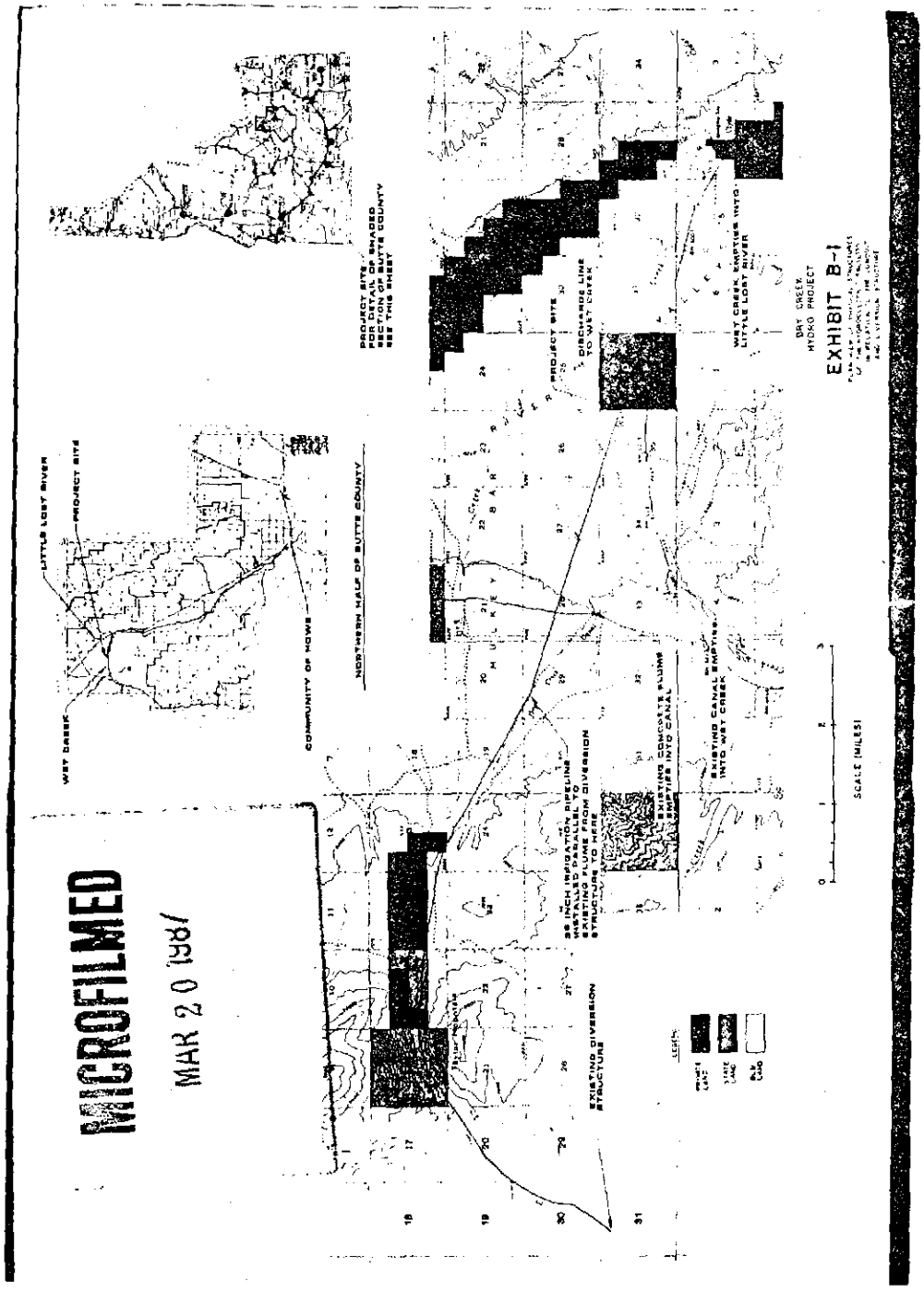
B. Comments, Protests, or Motions to Intervene - Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

MICROFILMED
MAR 20 1981

D3b. Agency Comments - The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kenneth F. Plumb
Secretary



MICROFILMED
MAR 20 1981

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

SEPTEMBER 1, 1985

DEAR PERMIT HOLDER:

ACCORDING TO OUR RECORDS, YOU ARE THE HOLDER OF A WATER PERMIT ON WHICH PROOF OF BENEFICIAL USE OF WATER WAS NOT SUBMITTED BEFORE JULY 1, 1985, WHICH INDICATES YOUR PROJECT IS NOT COMPLETE. THEREFORE, YOU NEED TO BE AWARE OF CHANGES IN IDAHO LAW, EFFECTIVE JULY 1, 1985, WHICH IMPACT ALL WATER PERMITS ISSUED BY THIS DEPARTMENT.

SPECIFICALLY, PURSUANT TO SECTION 42-203D, IDAHO CODE, THE DEPARTMENT MUST REVIEW ALL PERMITS FOR WHICH DEVELOPMENT OF WATER USE WAS NO COMPLETED ON OR BEFORE JULY 1, 1985, TO DETERMINE IF THEY MEET THE NEW REQUIREMENTS OF CHAPTER 2, TITLE 42, IDAHO CODE. RULES AND REGULATIONS GOVERNING THE RE-EVALUATION OF PERMITS ARE NOT YET FINALIZED. HOWEVER, IF YOU COMPLETED THE DEVELOPMENT UNDER YOUR PERMIT BEFORE JULY 1, 1985, YOU SHOULD SUBMIT A PROOF OF BENEFICIAL USE STATEMENT, STATING THAT THE PROJECT WAS COMPLETED BEFORE JULY 1, 1985 SO THAT YOUR PERMIT WILL NOT BE SUBJECT TO THE REVIEW REQUIREMENTS OF SECTION 42-203D, WHICH READS AS FOLLOWS:

> 42-203D. REVIEW OF PERMITS - OPPORTUNITY FOR HEARING. - (1)THE DEPARTMENT SHALL REVIEW ALL PERMITS ISSUED PRIOR TO THE EFFECTIVE DATE [JULY 1, 1985] OF THIS SECTION, EXCEPT TO THE EXTENT A PERMIT HAS BEEN PUT TO BENEFICIAL USE PRIOR TO JULY 1, 1985, TO DETERMINE WHETHER THEY COMPLY WITH THE PROVISIONS OF CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PROPOSED USE DOES NOT SATISFY THE CRITERIA OF CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL EITHER CANCEL THE PERMIT OR IMPOSE THE CONDITIONS REQUIRED TO BRING THE PERMIT INTO COMPLIANCE WITH CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PERMIT SATISFIES THE CRITERIA ESTABLISHED IN CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL ENTER AN ORDER CONTINUING THE PERMIT.
> (2)THE DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR HEARING IN ACCORDANCE WITH SECTION 42-1701A, IDAHO CODE, AND SECTIONS 67-5209 THROUGH 67-5215, IDAHO CODE, FOR EACH HOLDER OF A PERMIT THAT IS PROPOSED EITHER TO BE CANCELLED OR MADE SUBJECT TO NEW CONDITIONS.

YOU MAY OBTAIN PROOF OF BENEFICIAL USE FORMS FROM THE DEPARTMENT. IF YOU HAVE ANY QUESTIONS, PLEASE LET US KNOW.

SINCERELY,

L. Glen Saxton

L. GLEN SAXTON
CHIEF, OPERATIONS BUREAU

MICROFILMED
MAR 20 1987

PHH

WATER RIGHT NUMBER 33-7089

OWNER LAST NAME - DRY CREEK DEVELOPMENT INC. FIRST NAME - ORIG OWNER - D
OWNER LAST NAME - STAUFFER FIRST NAME - RICK ORIG OWNER -
OWNER LAST NAME - STAUFFER FIRST NAME - ROB ORIG OWNER -
ADDRESS LINE 1 - ADDRESS LINE 2 -
ADDRESS LINE 3 - CITY - HOWE STATE - ID ZIP CODE - 83244
SOURCE - DRY CREEK TRIBUTARY OF - LITTLE LOST RIVER
STAGE - PERMIT STATUS - PRIORITY - 02-06-1981 COUNTY - CUSTER TOTAL DIV. RATE - 18.0000 -CFS
TOTAL DIV. VOLUME - .00 AFA TRFR/AMEND - WATER DIST. - 33 DLE/CAREY ACT - RIGHT BASIS -
DIVERSION POINT - NENW 31 10N 25E LOT REDIV - 33.0 22.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 15.4
FROM - 06-01 TO - 10-31 USE - POWER USE DIV. RATE - 18.0000 CFS USE DIV. VOLUME - .00 AFA
USE - POWER PLACE OF USE - TWN 10N RNG 26E SEC 19 TRACT SWNW LOT AC
USE - POWER PLACE OF USE - TWN 10N RNG 26E SEC 28 TRACT SESW LOT AC
USE - POWER PLACE OF USE - TWN 10N RNG 25E SEC 20 TRACT NWSW LOT AC
USE - POWER PLACE OF USE - TWN 10N RNG 25E SEC 15 TRACT NWSW LOT AC
USE - POWER PLACE OF USE - TWN 10N RNG 25E SEC 13 TRACT SWSW LOT AC
USE - POWER PLACE OF USE - TWN 10N RNG 26E SEC 33 TRACT SESE LOT AC
DECREE NAME - DATE - TOTAL ACRES 0
REMARKS -
NON IRRIG USE -
OTHER RIGHTS FOR SAME USE -
PROOF DUE - 10-01-1987 PERMIT/DENIED - 10-26-1982 PROTESTED - HEARING - OLD NO. -
PROOF MADE - FLD EXAM - COND. OF APPROVAL - 01C 04 05 08A 17 25 26
DIVERSION MEANS - DITCH & PELTON WHEELS.

VERIFIED DHH

December 28, 1983

RE: Permit No. 33-7089

Rick & Rob Stauffer
Howe, Idaho 83244

Dear Permit Holder:

This office acknowledges receipt of the Assignment of the above referenced permit to you.

Enclosed for your records is a copy of the permit. Be sure to note the conditions of approval on the fourth page that identify requirements necessary for developing the permit into a licensed water right.

If you have any questions on this matter, please feel free to contact us.

Sincerely,

KAY WALKER
Chief Clerk

KW:sc
Enclosure

RECEIVED
DEC 9 1983
Department of Water Resources

DRY CREEK DEVELOPMENT, INC.
Howe, Idaho
December 7, 1983

State of Idaho
Department of Water Resources
Statehouse
Boise, Idaho 83720

Attn: David R. Tuthill, Jr., P.E.
Supervisor, Water Allocation Section

RE: Permit 33-7089 (Dry Creek Development, Inc.)

Dear Sir:

Reference is made to your letter of November 2, 1983. Work on the diversion works was awarded to T. C. Mitchell of Terreton, Idaho, prior to September 15, 1983 and was finished by October 15, 1983. This job consisted of gravel excavation from the settling pond to the amount of $9000.00.

It was decided the project would serve us better to be enlarged to use more water, therefore, we relinquished our permit rights to Rick and Rob Stauffer who are now working on the project. The Stauffers are residents and property owners in Butte County, Idaho.

Sincerely,

Emlen G. Mays

Emlen G. Mays
Chairman, Dry Creek Development, Inc.

EGM:pew

cc: Rick & Rob Stauffer

Enclosure

RECEIVED

T. C. MITCHELL

LASER PLANE LAND LEVELING

MONTEVIEW, IDAHO

No 285

DATE 15 Oct, 1983

SOLD TO Dry Creek Development Inc.
Howe, Idaho

THE FOLLOWING: TERMS AS INDICATED

TIME		DOLLARS	CENTS
87 hrs	Wabco D pull 11 yd Elevating Scraper at $40.00 per hr	$3,480	00
135 hrs	450 C Bantam Excavator at $40.00 per hr	5,400	00
	$2.00 per loaded mile trucking hoe	280	00
	total	$9,160	00

T.C. Mitchell

Pd. 10/31/83 #738

SIGNED BY _____

RECEIVED
DEC 9 1983

ORR Department of Water Resources

Dear Mr. Luthill

we had a meeting with Dry creek Boared members on Aug 10-83 it was agreed by them that their energy permit of 700 inches be transfered to Rick and Rob Stauffer. we had filed on 2.000 inches July 2-83. they filed on their 900 inches sometime in 1981 - but had done nothing with it. since transfer to us. we have done a quite a bit on this project. waiting for our ferc permit to come back and will soon start on our power sale contract. I hope this clears things up for you.

thanks

Rob Stauffer

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

November 2, 1983

RE: Permit 33-7089 (Dry Creek Development, Inc.).

Dry Creek Development, Inc.
Attn: George Woodie
Howe, ID 83244

Gentlemen:

This office acknowledges receipt of several documents indicating that Dry Creek Development, Inc. (Dry Creek) has conveyed its interest of the above referenced permit to Rick & Rob Stauffer. The documents apparently were submitted to comply with the permit condition concerning sale, transfer, assignment or mortgage of the permit (42-207 I.C.).

While the information which was submitted appears to be satisfactory, this office requests evidence to show that you have complied with the permit condition requiring commencement of project construction within one year from the date the permit was issued (i.e. construction started on or before October 26, 1983). Enclosed are the applicable provisions of the Idaho Code relative to start of construction (42-204 I.C.).

MICROFILMED

Upon submittal of the information, the Department can then determine compliance with sec. 42-207 Idaho Code and hence the validity of the permit. (copy 42-207 enclosed)

If you have questions, please feel free to contact this office.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Supervisor, Water Allocation Section

DRT:ns

cc: Rick & Rob Stauffer Enclosures

DRY CREEK DEVELOPMENT, INC.

August 22, 1983

On August 10, 1983, the Board of Directors* of Dry Creek Development, Inc., met with Rick Stauffer and Rob Stauffer to discuss a proposed hydro project to be constructed on Dry Creek by the Stauffers. The Stauffers have asked Dry Creek Development, Inc., to transfer their existing energy permit for 18 cfs (permit #33-708) to them. It was agreed upon by the Board of Directors to transfer the energy permit to the Stauffers if the following conditions were agreed upon. Namely:

1. Richard and Robert Stauffer would install large enough pipe to carry 4000 inches of water.

2. Any water that would be saved as a result of the hydro project would remain in the Blaine County Canal.

3. The energy permit (#33-708) for 900 inches (18 cfs) would be returned to Dry Creek if the proposed hydro project has not reasonably progressed by October 1, 1985.

Richard Stauffer
Richard Stauffer

Robert Stauffer
Robert Stauffer

STATE OF)
County of Butte)

On this 22 day of August in the year 1983 before me personally appeared Richard Stauffer and Robert Stauffer known to me to be the persons who is described in and who executed the within and foregoing instrument and acknowledge to me that they executed the same.

My commission expires 3-6-85 Notary Public, Butte County

*Board Members in attendance at said meeting were: Emlem Mays, Robert Amy, Bill Stauffer, George Woodie, Earl Wortley and Pat Woodie

October 26, 1982

RE: Permit No. 33-7089

Dry Creek Development Inc.
Howe,
Idaho 83244

Gentlemen:

Enclosed is a copy of your approved Application for Permit. We direct your attention to the conditions of approval on the fourth page.

Please be advised that your application for permit has been approved because we no longer wait for approval from the Federal Energy Regulatory Commission (FERC) or the Idaho Public Utilities Commission (PUC) when the flow is less than 25 cfs and the power to be generated is less than 500 HP. However, you may still need to obtain approval from FERC and/or PUC.

Be sure to note the special condition requiring you to install a measuring device, or an access port to provide for the installation of measuring equipment by the Department. Enclosed please find a list of measuring device options, and specifications for the installation of the access port.

The 1982 Idaho Legislature added a requirement that as a permit holder you must commence the excavation or construction of diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The enclosed blue card must be completed and returned to this office as soon as you commence construction, no later than one year from the date the permit was approved.

We have enclosed instructions entitled "Making Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit into a license.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Supervisor, Water Allocation Section

DRT:kw
Enclosures

Overlap Review for 33-7089

No Overlap at P/D

No Overlap at P/U 33-2003 Cancelled

No rights bypassed

RC 10/8/82

June 16, 1982

RE: Application for Permit No. 33-7089

Dry Creek Development Inc.
Howe, ID 83244

Gentlemen:

On February 6, 1981 you submitted the above referenced application to appropriate the public waters of the State of Idaho for power generation purposes.

In our correspondence dated June 1, 1981 we advised that the continued validity of the application is contingent on your proceeding with due diligence in obtaining necessary approvals including authorizations which may be required from the Federal Energy Regulatory Commission (FERC) and/or the Idaho Public Utilities Commission (PUC).

Since our letter we have not received correspondence from you in this regard. Please advise this office of progress in this matter on or before July 16, 1982 in order to keep this application in good standing.

If you have any questions, please contact this office.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:kw

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

copy

33-7089

July 24, 1981

RE: Application for Permit No.

Dear Applicant:

The 1981 Idaho Legislature made a change in Section 42-205, Idaho Code, that may affect the above referenced application. The change requires that if a proposed hydropower project will use existing irrigation facilities, the approval of the owner of the facilities must be obtained before an application for permit to develop a water right can be approved.

Please find enclosed an affidavit which we must receive before we can complete the review of your application. Please complete the affidavit, sign it before a notary, and return it to this office at your earliest convenience, no later than August 15, 1981.

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL JR., P. E.
Supervisor, Water Allocation Section

DRT:jg

Enclosure

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

June 1, 1981

Dry Creek Development Inc.
Howe,
Idaho 83244

Dear Sirs,

RE: Permit No. 33-7089

We have completed a preliminary review of the above referenced application. This review has included advertising by the regional office and a verification that all required preliminary information has been provided.

At this time we see no reason that the application will not be approved with certain conditions of approval. However, for power projects that are under the jurisdiction of the Federal Energy Regulatory Commission (FERC), we withhold final action on the application pending (1) approval of a preliminary permit by FERC, or (2) FERC granting an exemption. If you have not yet contacted FERC, the address below is a good starting point:

Federal Energy Regulatory Commission
Regional Engineer's Office
Attn: Mr. Jerry Leach
6th Floor, 333 Market Street
San Francisco, CA 94105
(Tel. No. (415) 764-7150)

The continued validity of this application is contingent on your proceeding with due diligence toward obtaining an approval or an exemption from FERC. Please keep this office informed of progress in this regard.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

ACTION REQUIRED

FROM: Ernest

TO: File

Applicant needs to provide project approval by F.E.R.C. & easement or right-of-way from B.L.M.

MICROFILMED

Power Calculations for 33-7089

P = kw
Q = cfs
H = ft
e = efficiency

proposed
171.1 hp x .74 = 126.614 kw
18.0 cfs
750 ft
70% & 50%

Based on 70%

$$P = \frac{QHe}{11.8} = \frac{18.0 \times 750 \times .7}{11.8} = \frac{9450}{11.8} \quad 800.8 \text{ kw}$$

$$Q = \frac{P(11.8)}{He} = \frac{126.614(11.8)}{750 \times .7} = \frac{1494.0452}{525} = 2.85 \text{ cfs}$$

Based on 50%

$$P = \frac{QHe}{11.8} = \frac{18.0 \times 750 \times .5}{11.8} = \frac{6750}{11.8} = 572.0 \text{ kw}$$

$$Q = \frac{P(11.8)}{He} = \frac{126.614(11.8)}{750 \times .5} = \frac{1494.0452}{375} = 3.98 \text{ cfs}$$

RN 4/2/81

Form No. 202a
3/79

State of Idaho
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET 33 7089

INITIAL REVIEW BY: HWJ APPLICATION NUMBER: Dry C. Dev. 33-7089

CHECK:
- ☑ Source.
- ☑ Point of diversion.
- ☑ County.
- ☑ Quantity of water and period of use.
- ☑ Description of diverting works.
- ☑ Time required for beneficial use of water.
- ☑ Place of use or acres irrigated.
- ☑ Map.
- ☑ Signature.
- ☑ Fee.

Field check by: _____
Date: _____
Comments: _____

- ☐ Yes ☑ No Field check required.
- ☐ Yes ☑ No Critical groundwater area.
- ☐ Yes ☑ No Request dam safety information. Sent by: _____ Date: _____
- ☑ Yes ☐ No* In form to receipt.

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT:
Need to send Copy to FERC. No Final action will be taken by Dept. until application okayed by FERC.
Ferc letter to applicant ✓

SEND COPIES TO:
- ☐ Idaho State Health Department. Copies sent by: _____ Date: _____
- ☐ Idaho Fish and Game Department.
- ☐ Idaho Department of Lands.
- ☑ U.S. Bureau of Land Management. KW 2/17
- ☐ U.S. Forest Service.
- ☑ Other W. District 33 ~~Oscar Johnson~~ KW 2/17
- ☑ Ferc KW 2/17

PROCESSING:
- ☐ Yes ☑ No Platted by: _____ Map No. _____
- ☐ Yes ☑ No Other rights on same place of use. _____
- ☑ Yes ☐ No* In form for advertising.
  Final date for protests: March 9 ✓
- ☐ Yes ☑ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:
- ☑ Affidavit of publication received. Date: March 23, 1981. ✓
- ☑ Application published correctly. If not, record action taken: _____
- ☑ Fee amount, receipt date & number, recorded on application.
- ☑ Publication dates and paper, recorded on application.
- ☑ Protests, dates, withdrawal, etc., recorded on application.
- ☑ Recommendation & initial, recorded on application.
- ☑ Yes ☐ No Measuring device required. O/E
- ☐ Yes ☑ No Access port required.
- ☑ Yes ☐ No Will water be delivered by watermaster? If yes, what district? 33
- Feb 6, 1981. Date of priority recommended.
- ✓ Special conditions of approval or cover letter. _____

Ord. 04, 08A, 17

This permit does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required

By: Ernest Carlson Date: March 26, 1981.

STATE OFFICE REVIEW: 26 25
SL W/L03, 17 01, 04, 05 (Little Lost R.) 08A, 17 2 Special Cond

☐ See attached sheet for more information.
By: _____ Date: _____

Do not approve at this time
send FERC letter 6/1/81

NEGOTIATED

3/79

IDENT. NO. 33 7089

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT DATA ENTRY LOG

Initials	Date	Item
tw	2/12/81	Original form entered
		Edit Report Correct
		Date Protested
		Date of Hearing
		Date Approved/Denied (Proof due date, stage and/or status, conditions of approval, water district)
		Record Verified
		Amendment Approved
		Extension Approved
		Partial Proof
		Proof Complete
		Field Exam Received
		Field Exam Accepted and changes entered
		License Signed
		Transfer Approved
		Keypunched by State Office

March 11, 1981

RE: Application for Permit No. 33-7089 DRY CREEK DEVELOPMENT

Custer Publishing Company
P.O. Box 405
Challis, Idaho 83226

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application(s). The legal notice was to have been published in your paper on February 19 and 26, 1981.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

KAY WALKER
Secretary

CW:kw

IN REPLY REFER TO

7250.4

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Idaho Falls District
940 Lincoln Road
Idaho Falls, Idaho 83401

February 26, 1981

Ernest Carlsen
Sr. Resource Analyst
Idaho Department of Water Resources
150 Shoup Ave.
Idaho Falls, Idaho 83401

Re: Application for Permit
No. 33-7089 Dry Creek Dev.

Dear Mr. Carlsen

We have no objection to this application. A right-of-way amendment would be necessary however, for the Pelton Wheel Works and any powerlines on public lands.

We would work with Dry Creek Development, Inc. to make the necessary amendments.

Thank you for the opportunity to comment.

Sincerely,

O'dell A. Frandsen
Distrit Manager

RECEIVED
FEB 27 1981
Department of Water Resources
Eastern District Office

February 17, 1981

RE: Application for Permit No. 33-7089 DRY CREEK DEVELOPMENT

Mr. Kirk Smith, Watermaster
Water District No. 33
Howe, Idaho 83244

Dear Mr. Smith:

We are enclosing a copy of an application that may be of interest to your water district. Please review the application and submit any comments you may have to our Department as soon as possible. The last date of protest is March 9, 1981, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,

ERNEST CARLSEN
Sr. Resource Analyst

EC:cw:kw

Enclosure

February 17, 1981

RE: Application for Permit No. 33-7089 DRY CREEK DEVELOPMENT

Bureau of Land Management
940 Lincoln Road
Idaho Falls, Idaho 83401

Gentlemen:

We are enclosing a copy of an application that may be of interest to your agency. Please review the application and submit any comments you may have to our Department as soon as possible. The last date of protest is March 9, 1981, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,

ERNEST CARLSEN
Sr. Resource Analyst

EC:cw:kw

Enclosure

February 17, 1981

RE: Application for Permit No. 33-7089 DRY CREEK DEVELOPMENT

Federal Energy Regulatory Commission
333 Market Street, 6th Floor
San Francisco, CA 94105

Gentlemen:

We are enclosing a copy of an application that may be of interest to your agency. Please review the application and submit any comments you may have to our Department as soon as possible. The last date of protest is March 9, 1981, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,

ERNEST CARLSEN
Sr. Resource Analyst

EC:cw:kw

Enclosure

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave.
Idaho Falls, Idaho 83401
(208) 525-7161

FEBRUARY 12, 1981

Custer County Publishing Co.
P. O. Box 405
Challis, Idaho 83226

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before MARCH 9, 1981.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

NOTICE OF APPLICATION FOR WATER RIGHT

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho:

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, Idaho 83401 on or before MARCH 9, 1981.

C. STEPHEN ALLRED

Director

Published 2/19 & 2/26/81.

33-7089.

DRY CREEK DEVELOPMENT INC.

HOWE, ID 83244

Source: DRY CREEK tributary to LITTLE LOST RIVER

Date Filed: 02/06/1981

Amount: 18.00 CFS

Diversion Point: NENW Sec 31 T 10N R 25E, CUSTER Co.

Use: POWER (18.00 CFS) from 06/01 to 10/31

Place of Use: SWNW Sec 19 T 10N R 26E SESW Sec 28 T 10N R 26E SESE
Sec 33 T 10N R 26E SWSW Sec 13 T 10N R 25E NWSW
Sec 15 T 10N R 25E NWSW Sec 20 T 10N R 25E

Diversion Means: DITCH & PELTON WHEELS.