

Affidavit of Publication

State of Idaho, County of Adams, ss:

I, Bert J. Rogers, being first duly sworn upon my Oath, depose and say that I am the publisher of The Adams County

Leader, a newspaper; that a copy of the "Notice of Appl

John W Forgy

as per clipping

hereto attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for

two (2) consecutive weeks, the first publication of the

same being made in the issue dated

August 17.1989

August 24.1989

and the last in the issue dated that said newspaper is of general circulation in Adams County Idaho, printed and published weekly at Council therein and that said newspaper has been continuously and uninterruptedly published in said county during a period of more than seventy-eight consecutive weeks prior to the first publication of

said

" Notice "

as aforesaid.

Subscribed and sworn to before me this 30th

day of August . 19 89

Notary Public for Idaho,
Residing at Council, Idaho

NOTICE OF APPLICATION FOR WATER RIGHT

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

78-07311

FORGY, JOHN W.
HC 75

NEW MEADOWS, ID 83654

Source: UNNAMED STREAM

Tributary: HILLMAN CREEK

Diversion Pt: NESE Sec 32 T

22N R 01E

Use: POWER (.040 CFS)

Date Filed: 7/20/1989

In: T22N R01E S33 NWSW

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before SEPTEMBER 5, 1989.

R. KEITH HIGGINSON,

Director

Published 8/17/1989 & 8/24/1989

8-07311

RECORDED
JUN 14 1995

CURVE NO. 5293C

DATE 11 MARCH 1988

6-1326 SH 4-00

CURVES ARE APPROXIMATE. PUMP GUARANTEED FOR ONE SET OF CONDITIONS CAPACITY, HEAD AND EFFICIENCY GUARANTEED ARE BASED ON SHOP TEST AND WHEN HANDLING CLEAR, COLD, FRESH WATER AT A TEMPERATURE OF NOT OVER 60°F AND NOT OVER 15 FEET SUCTION LIFT.

IMPELLER PART NO.
DIFFUSER PART NO.

DIA.

BRAKE HORSE POWER

HORSE POWER

EFFICIENCY

TOTAL HEAD

EXHIBIT NO. 3

CHARACTERISTIC CURVE

PUMP

NO. 24128 TYPE SVT 600 R.P.M.

PUMP NO. 0987040 ORDER NO. 4736008

INGERSOLL RAND COMPANY

CAMERON PUMP DIVISION

THIS WILL CERTIFY THAT CURVE 5293C REPRESENTS ACTUAL PERFORMANCE DATA FOR TURBINE NO. 0987040 I.P. ORDER DAY 360001 P.J. Bells

J.E. PROJ. ENG. 8/1/88

GALLONS PER MINUTE X 1000

(6) End

JUN 14 1995

RECEIVED

MAR 13 1997

FOR OFFICE USE ONLY
Amt. of Fee \$: 50-
Receipt No. W022026
Receipt By: OB
Date Received: 3.12.97

RECEIVED

MAR 12 1997

WATER RESOURCES
WESTERN REGION

Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

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

1. Permit No. 78-07311 Telephone No. 208-628-3136

2. Name(s) of Permit Holder(s): JOHN W. FORGY

3. Mailing Address: 2740 Hillman Basin Rd. New Meadows, ID. 83654

4. Source of Water: Unnamed Stream If **GROUNDWATER** (well), Date Drilled: mo. ____ / yr. ____

a. Well Driller: _____ Drilling Permit Number: _____

b. **OPTIONAL:**

Pump Horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft): _____

5. Use(s) (as authorized by the water right permit):

Domestic (No. of households): _____ Stockwater (No. and type of stock): _____

Irrigation (No. of acres): _____ Other: Power (Pelton wheel running 12 volt alternator)

6. Total rate of diversion and/or volume for which proof is submitted: 0.04 cfs OR _____ acre feet

7. Measuring Device Requirement: (refer to the approval conditions on your permit and respond accordingly)

(This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

Measuring Device: Is a measuring device required?

Yes _____ or No X

Has the measuring device been installed?

Yes _____ or No X

Flow Measurement Port: Is a flow measurement port required?

Yes _____ or No X

Has the measurement port been installed?

Yes _____ or No X

8. Fee Enclosed: \$ 50.- (See Fee Schedule on back of the instructions for filing proof of beneficial use)

9. Person to contact to accompany the Department representative during field examination of the water system.

Name: JOHN or Cynthia Fergy Telephone Number: 208-628-3136

Address: 2740 Hillman Basin Rd New Meadows, ID 83654

10. The information given on this form 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.

Signature of permit holder: John W. Fergy
(include your title, if on behalf of company or organization)

Date: 3/8/97

MAR 18 1997

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 78-07311

Proposed Priority: July 20, 1989

Maximum Diversion Rate:

0.04 CFS

This is to certify, that JOHN W FORGY

HC 75

NEW MEADOWS ID 83654

has applied for a permit to appropriate water from:

UNNAMED STREAM

tributary of HILLMAN CREEK

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

BENEFICIAL USE

PERIOD OF USE

RATE OF DIVERSION

POWER

01/01 to 12/31

0.04 CFS

LOCATION OF POINT(S) OF DIVERSION:

NESE , Sec. 32, Township 22N, Range 01E
ADAMS County

PLACE OF USE: POWER

TWN RGE SEC

22N 01E 33

NWSW

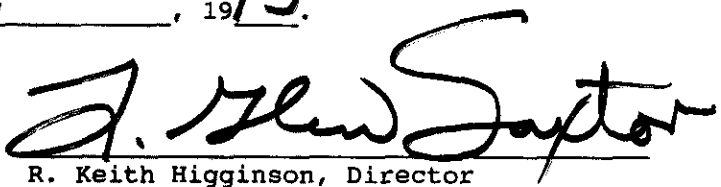
CONDITIONS/REMARKS:

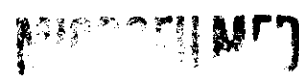
1. See Final Order for additional conditions of approval.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.

Witness the signature of the Director, affixed at Boise, this

19th day of April, 1995.

for

R. Keith Higginson, Director


JUN 14 1995

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 78-07311 IN THE NAME)
OF JOHN W. FORGY)
_____)

FINAL ORDER

On March 28, 1995, the hearing officer for the department of Water Resources (department) issued a Recommended Order in connection with Application for Permit No. 78-07311 in the name of John Forgy (applicant). Neither the applicant nor the protestant filed a Petition for Reconsideration in connection with the Recommended Order.

Based on his understanding of the Law, the Director makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On July 28, 1989, John W. Forgy (applicant) submitted Application for Permit No. 78-07311 to the department proposing the diversion of 0.04 cubic feet per second of water from an Unnamed Stream tributary to Hillman Creek in Adams County, Idaho to be used year-round for power generation purposes. The proposed point of diversion is upon land owned by the U. S. Forest Service.

2. The department published notice of the application which was protested by the U.S. Department of Agriculture, Forest Service (protestant).

3. On February 22, 1995, the department conducted a hearing in the matter. The applicant was present and represented himself. The protestant was present and was represented by Randy Zuniga.

4. Issues identified by the protestant include the following:

a. The applicant has not obtained approval from the Federal Energy Regulatory Commission (FERC) for the proposed hydro power project. Hence the Forest Service is prohibited from issuing a special use permit authorizing the applicant to use federally owned land in connection with the power project.

5. Exhibits offered and accepted as a part of the record include the following:

JUN 14 1995

a. Protestant's Exhibit No. 1. - Page 2 and page 4 of 18 CFR 4.302 dealing with Small Conduit Exemptions.

6. The applicant proposes to install a small Pelton wheel into an existing diversion system to generate from 150 to 350 watts of power. The system sought will operate with a head from 10 feet to 600 feet and with a flow rate from 2 gallons per minute to 250 gallons per minute. The existing system provides 400 feet of head and a flow rate of from 5 to 10 gallons per minute.

7. The applicant has applied to FERC for the needed exemption in connection with the proposed power facility but has not yet received approval from FERC.

8. On November 29, 1989 the department issued Permit No. 78-07309 to the applicant providing the following:

Priority: April 13, 1989
Rate of div: 0.04 cfs
Source: Unnamed Stream tributary to Hillman Creek
Uses: Irrigation - 10 acres
Domestic - 4 homes
Point of diversion and place of use: Same as Application
for Permit No. 78-07311.

On September 18, 1991, the applicant submitted proof of beneficial use of water for Permit No. 78-07309.

9. The applicant is the only water user on the source sought for appropriation.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in part as follows:

In all applications whether protested or not protested where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor...

JUN 14 1995

2. The application will not reduce the quantity of water under existing water rights.

3. The water supply available itself is sufficient for the purposes intended.

4. The application is made in good faith and not for delay or speculative purposes.

5. The applicant has sufficient financial resources with which to complete the project.

6. The application does not conflict with the local public interest.

7. The application is not contrary to the conservation of water within Idaho.

8. The department should approve the application with certain conditions and limitations.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit No. 78-07311 is **APPROVED** subject to the following conditions and limitations:

1. Use of water under the permit is subject to all prior water rights.

2. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before May 1, 1998.

3. Use of water under this right shall be non-consumptive.

4. The 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.

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

6. Prior to diversion and use of water for hydropower purposes, the permit holder shall comply with the permitting or exemption requirements of the Federal Energy Regulatory Commission.

JUN 14 1995

7. The issuance of this right does not grant any right-of-way or easement across the land of another.

8. This right when combined with right 78-07309 shall not exceed a total rate of diversion of 0.04 cfs.

Signed this 19th day of April, 1995.


R. KEITH HIGGINSON
Director

RECEIVED

JUN 14 1995

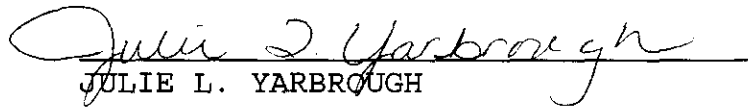
CERTIFICATE OF MAILING

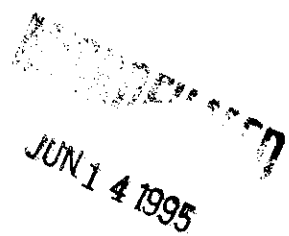
I HEREBY CERTIFY that on this 28th day of April, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing **FINAL ORDER** to the following:

John W. Forgy
HC 75
New Meadows, ID 83654

US Dept. of Agriculture
Forest Service
324 25th St.
Ogden, UT 84401

Randy Zuniga
US Forest Service
P.O. Box 1026
McCall, ID 83638


JULIE L. YARBROUGH
Senior Secretary


JUN 14 1995

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 78-07311 IN THE NAME)
OF JOHN W. FORGY)
_____)

RECOMMENDED ORDER

This matter having come before the Idaho Department of Water Resources (department) in the form of a protested application for permit, the department having held a conference and a hearing in the matter, the hearing officer recommends the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On July 28, 1989, John W. Forgy (applicant) submitted Application for Permit No. 78-07311 to the department proposing the diversion of 0.04 cubic feet per second of water from an Unnamed Stream tributary to Hillman Creek in Adams County, Idaho to be used year-round for power generation purposes. The proposed point of diversion is upon land owned by the U. S. Forest Service.

2. The department published notice of the application which was protested by the U.S. Department of Agriculture, Forest Service (protestant).

3. On February 22, 1995, the department conducted a hearing in the matter. The applicant was present and represented himself. The protestant was present and was represented by Randy Zuniga.

4. Issues identified by the protestant include the following:

a. The applicant has not obtained approval from the Federal Energy Regulatory Commission (FERC) for the proposed hydro power project. Hence the Forest Service is prohibited from issuing a special use permit authorizing the applicant to use federally owned land in connection with the power project.

5. Exhibits offered and accepted as a part of the record include the following:

a. Protestant's Exhibit No. 1. - Page 2 and page 4 of 18 CFR 4.302 dealing with Small Conduit Exemptions.

6. The applicant proposes to install a small Pelton wheel into an existing diversion system to generate from 150 to 350 watts of power. The system sought will operate with a head from 10 feet to 600 feet and with a flow rate from 2 gallons per minute to 250 gallons per minute. The existing system provides 400 feet of head and a flow rate of from 5 to 10 gallons per minute.

RECOMMENDED

JUN 14 1995

7. The applicant has applied to FERC for the needed exemption in connection with the proposed power facility but has not yet received approval from FERC.

8. On November 29, 1989 the department issued Permit No. 78-07309 to the applicant providing the following:

Priority: April 13, 1989
Rate of div: 0.04 cfs
Source: Unnamed Stream tributary to Hillman Creek
Uses: Irrigation - 10 acres
Domestic - 4 homes
Point of diversion and place of use: Same as Application
for Permit No. 78-07311.

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9. The applicant is the only water user on the source sought for appropriation.

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2. The application will not reduce the quantity of water under existing water rights.

3. The water supply available itself is sufficient for the purposes intended.

4. The application is made in good faith and not for delay or speculative purposes.

5. The applicant has sufficient financial resources with which to complete the project.

RECEIVED

JUN 14 1995

6. The application does not conflict with the local public interest.

7. The application is not contrary to the conservation of water within Idaho.

8. The department should approve the application with certain conditions and limitations.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit No. 78-07311 is **APPROVED** subject to the following conditions and limitations:

1. Use of water under the permit is subject to all prior water rights.

2. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before the date shown in the Final Order in this matter.

3. Use of water under this right shall be non-consumptive.

4. The 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.

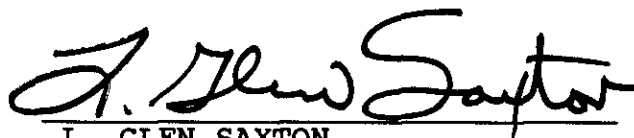
5. The water right acquired under this permit shall be junior and subordinate to all rights to the use of water, other than hydropower, within the state of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against future rights to the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

6. Prior to diversion and use of water for hydropower purposes, the permit holder shall comply with the permitting or exemption requirements of the Federal Energy Regulatory Commission.

7. The issuance of this right does not grant any right-of-way or easement across the land of another.

8. This right when combined with right 78-07311 shall not exceed a total rate of diversion of 0.04 cfs.

Signed this 28th day of March, 1995.


L. GLEN SAXTON
Hearing Officer

JUN 1 4 1995

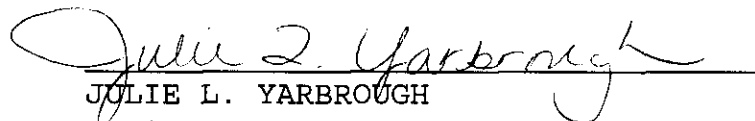
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of March, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing **RECOMMENDED ORDER** to the following:

John W. Forgy
HC 75
New Meadows, ID 83654

US Dept. of Agriculture
Forest Service
324 25th St.
Ogden, UT 84401

Randy Zuniga
US Forest Service
P.O. Box 1026
McCall, ID 83638


JULIE L. YARBROUGH
Senior Secretary

RECEIVED
JUN 14 1995

RECEIVED

JUL 20 1989

Ident. No. 78-07311

Department of Water Resources
Western Regional Office

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name: JOHN W. FORGY 208-628-3689
Address: HC 75
NEW MEADOWS, ID 83654

2. Source: UNNAMED STREAM Trib. to: HILLMAN CREEK

3. Location of point of diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
22N	01E	32	NE	SE			ADAMS

4. Water will be used for the following purposes:

Purpose	From	To	CFS	(or)	AFA
POWER	01/01	12/31	0.040		

5. Total quantity appropriated is:
0.040 CFS (and/or) AFA

6. Proposed diverting works:

- Description of ditches, flumes, pumps, headgates, etc.
PIPE AND GRAVITY FLOW
- Height of storage dam feet; active reservoir capacity
acre-feet; total reservoir capacity acre-feet; period of
year when water will be diverted to storage: to inclusive.
- Proposed well diameter is inches; proposed depth of well is
feet.
- Is groundwater with a temperature greater than 90F being sought? NO

7. Time required for the completion of the works and application of
the water to the proposed beneficial use is 2 years.

8. Description of proposed uses:
ADD A SMALL TURBINE AND GENERATOR TO IRRIGATION/DOMESTIC SYSTEM.

JUN 14 1995

9. Description of place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
22N	01E	33	NW SW		POWER	

10. Describe any other water rights used for the same purposes.
NONE

11. a. Who owns the property at the point of diversion?
U.S. FOREST SERVICE
b. Who owns the land to be irrigated or place of use?
APPLICANT
c. If the property is owned by a person other than the applicant,
describe the arrangement enabling the applicant to make this filing.

12. Remarks:

13. Map of proposed point of diversion and place of use attached? ☒

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.

John W. Forgy
Applicant

Received by YIS Date 7/20/89 Time 10:30am Preliminary check by RW

Fee \$ 30⁰⁰ Receipted by JH # W003749 Date 7-20-89

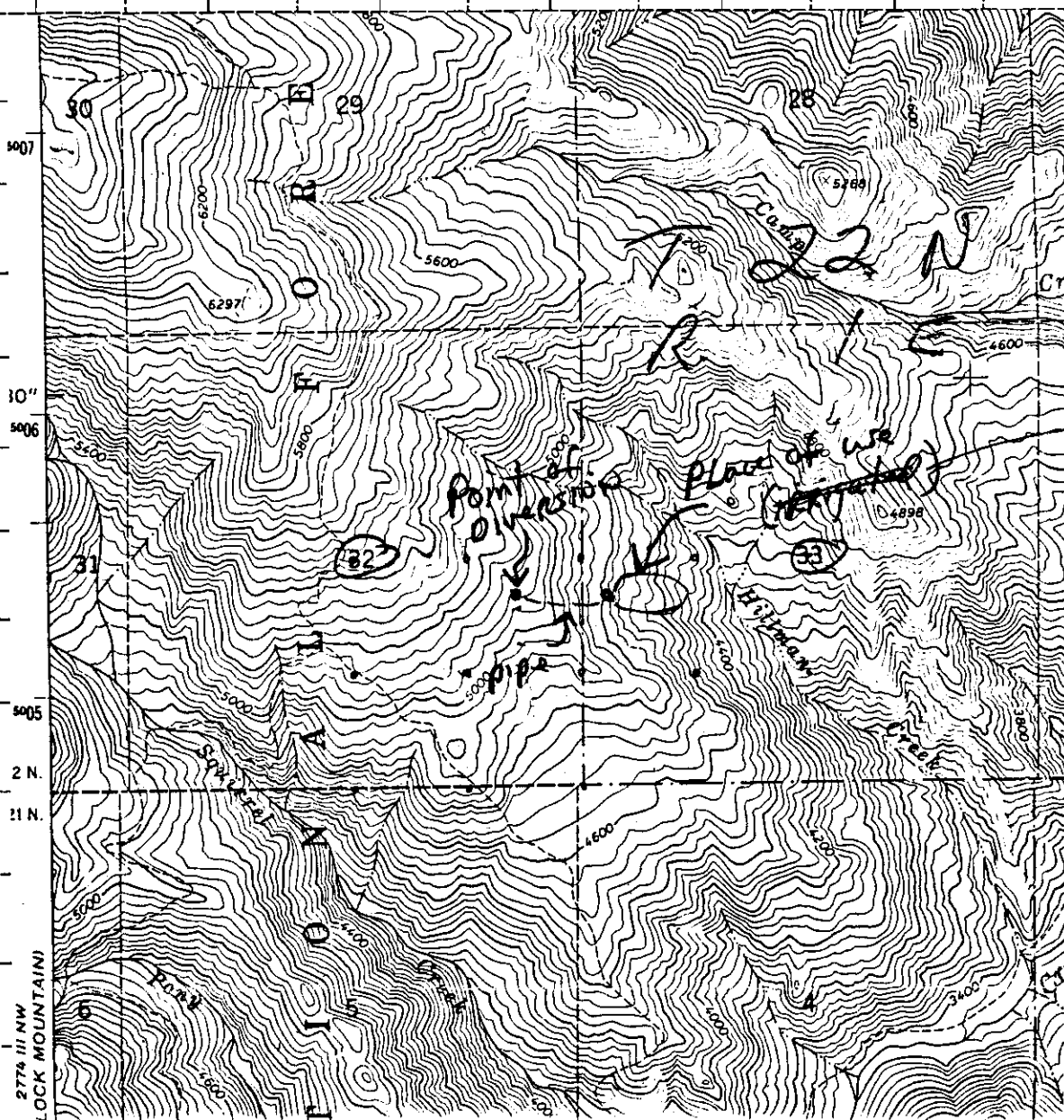
Publication prepared by GG Date 8-9-89 Published in Adams County Leader
8/16 & 8/23/89

Publication approved at Date 9-13-89

RECEIVED

JUN 14 1995

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



RECEIVED

JUN 14 1995

Affidavit of Publication

State of Idaho, County of Adams, ss:

I, Beri J. Rogers, being first duly sworn upon my Oath, depose and say that I am the publisher of The Adams County

Leader, a newspaper; that a copy of the "Notice of Appl

John W. Porgy as per clipping hereto attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for

two (2) consecutive weeks, the first publication of the same being made in the issue dated August 17, 1989

and the last in the issue dated August 24, 1989 that said newspaper is of general circulation in Adams County Idaho, printed and published weekly at Council therein and that said newspaper has been continuously and uninterruptedly published in said county during a period of more than seventy-eight consecutive weeks prior to the first publication of

said "Notice" as aforesaid.

Subscribed and sworn to before me this 30th

day of August, 1989

Patricia
Notary Public for Idaho,
Residing at Council, Idaho

NOTICE OF APPLICATION FOR WATER RIGHT

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

78-07311

FORGY, JOHN W.

HC 75

NEW MEADOWS, ID 83654

Source: UNNAMED STREAM

Tributary: HILLMAN CREEK

Divers. Pt: NONE Sec 32 T

22N R 01E

Use: POWER (400 CFS)

Date Filed: 7/20/89

In: IDEN 8325 S33 NWSW

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Western Region, 2750 Airport Way, Boise, Idaho 83705 on or before SEPTEMBER 8, 1989.

R. KEITH HIGGINSON,

Director

Published 8/17/1989 & 8/24/1989

RECORDED
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State of Idaho, County of Adams, ss:

I, Bert J. Rogers, being first duly sworn upon my Oath, depose and say that I am the publisher of The Adams County

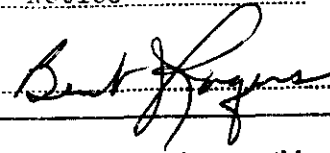
Leader, a newspaper; that a copy of the " Notice of Application for Water " No. 78-07311

John W. Porgy as per clipping
hereto attached, was published in the regular and entire issue
of said newspaper, and not in any supplement thereof, for

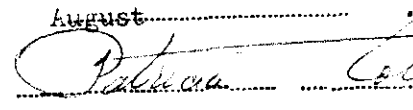
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Subscribed and sworn to before me this 30th

day of August . 19 89


Notary Public for Idaho,
Residing at Council, Idaho

JUN 14 1995

**ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE**

Permit No. 78-07311 Reviewed by [Signature] Date 3-27-97

GENERAL CONSIDERATIONS

TYPES OF USE

yes Name same as permit?
no Address same as permit?
yes Proof timely received?
If not, complete calculation below.

Power
Correct Uses? yes

SOURCE OF WATER

✓ Surface water source
 Ground water source
 Drilling permit required?
 Copy in the file? Drilling Permit No.
 Amount paid for permit Correct?
 Well log in the file?

LICENSE EXAMINATION FEE

yes Required?
50- Amount Submitted
yes Correct?

MEASURING DEVICE

no Required?
 Installed?
 Waiver requested?

PRIORITY CALCULATION

Date proof received	<u> </u>	<u> </u>
Date proof due	<u> </u>	<u> </u>
No. of days late	<u> </u>	<u> </u>
Priority Date	<u> </u>	<u> </u>
New Priority Date	<u> </u>	<u> </u>

DEFICIENCIES OR ACTION ITEMS

Proof Acceptable

DATA ENTRY

New Address 2740 Hillman Basin Rd. Proof Made 3-12-97



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 31, 1997

JOHN W FORGY
2740 HILLMAN BASIN RD
NEW MEADOWS ID 83654

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 78-07311

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. 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.

Please be advised that Section 42-248, Idaho Code, which became affective on July 1, 1996, requires you or the owner of this water right to maintain current ownership and address records on file with the department. Please contact any office of the department for the proper form to file a change of ownership of a water right and/or a change in the address of the owner. Failure to maintain current records with the department could result in the assessment of a monetary penalty.

If you have questions concerning the field examination, contact the **WESTERN** Regional Office in Boise, at (208)334-2190.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

C: IDWR - Region

1997-04-10
APR 10 1997

4447 02, 004

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

John Forgy

Project No. 11529-000
Idaho

78-7311

ORDER GRANTING EXEMPTION FROM LICENSING
(CONDUIT)

(Issued July 5, 1995)

On March 17, 1995, John Forgy filed an application to exempt the Forgy Project from the licensing requirements set forth in Part I of the Federal Power Act. The small hydropower project is described in the attached public notice. The comments of interested agencies and individuals, have been fully considered in determining whether to issue this exemption from licensing.

Article 2 of this exemption requires compliance with the terms and conditions prepared by federal or state fish and wildlife agencies to protect fish and wildlife resources. Fish and wildlife agencies did not file terms and conditions for this project.

Preparation of an environmental assessment or an environmental impact statement is not required for this project pursuant to § 380.4(a)(14) of the regulations. Nonetheless, we have considered the mandatory terms and conditions designed to protect fish and wildlife resources, the environmental information in the exemption application, and other public comments, and find that issuance of this order is not a major federal action significantly affecting the quality of the human environment.

The Director orders:

(A) The Forgy Project is exempted from the licensing requirements of Part I of the Federal Power Act, subject to the attached articles. See 18 CFR section 4.94.

(B) Article 6 of this exemption is amended as follows:

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 and the Regional Director of the identity and address of the transferee.

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

2

Commission.

(D) This order is issued under authority delegated to the Director and constitutes final agency action. Request for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR section 385.713.



John H. Clements
Director, Division of
Project Review

DC-A-6

APR 10 1997

RECEIVED
JUL 10 1995
Department of Water Resources

Project No. 11529-000

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Ready for Environmental Analysis

— (April 13, 1995)

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. Type of Application: Conduit Exemption
- b. Project No.: 11529-000
- c. Date filed: March 17, 1995
- d. Applicant: John Forgy
- e. Name of Project: Forgy Project
- f. Location: At Mr. Forgy's end of his 14-inch-diameter PVC domestic and irrigation water supply pipe that takes water from an unnamed spring, in Adams County, Idaho, at NW 1/4 of SW 1/4, Section 33 Township 22N Range 1E. The spring is within Payette National Forest.
- g. Filed Pursuant to: Federal Power Act 16 USC §5791 (a) - 825(r).
- h. Applicant Contact: Mr. John Forgy
2740 Hillman Basin Road
New Meadows, ID 83654
(208) 628-3136
- i. FERC Contact: Héctor M. Pérez at (202) 219-2843
- j. Status of Environmental Analysis: This application is ready for environmental analysis at this time - see attached paragraph D-4.
- k. Comment Date: Sixty days from the issuance of this notice.
- l. The existing project would consist of: a 180-watt unit at the end of Mr. Forgy's water supply pipeline.

DC-A-5

APR 17 1995

RECEIVED

RECEIVED

MAY 05 1995

Department of Water Resources

RECEIVED

APR 27 1995

WATER RESOURCES
WESTERN REGION

Project No. 11529-000

- 2 -

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D4

n. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at the address shown in item h above.

A2. Development Application -- Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline 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 deadline date for the particular application. Applications for preliminary permits 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, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions to Intervene -- Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D4. Filing and Service of Responsive Documents -- The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

2110
Forgy, John

FERC # 11529

CC D3
Hydrology

JUN 4 1995

Project No. 11529-000

- 3 -

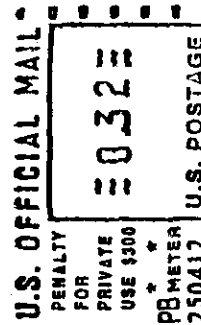
Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the applicant and the project number of the application; (3) furnish the name, address, a number of the person protesting or intervening; a copy with the requirements of 18 CFR 385.2001 and 385.2005. All comments, recommendations, terms and conditions prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Lois D. Cashell
Secretary

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

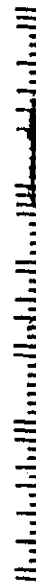


P-11529
REGIONAL DIRECTOR
U.S. FOREST SERVICE (UT)
324 25TH STREET, FEDERAL BUILDING

OGDEN, UT 84401

JUN 14 1995

A4401-2310 1A





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

R. KEITH HIGGINSON
DIRECTOR

April 28, 1995

RE: In the Matter of Application for Permit No. 78-07311 in the
name of John W. Forgy

Dear Interested Party:

The accompanying order is a "final order" issued by the
department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the
presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the
agency head shall issue a final order following review of that
recommended order.

(3) If the presiding officer issued a preliminary order, that
order becomes a final order unless it is reviewed as required in
section 67-5245, Idaho Code. If the preliminary order is reviewed,
the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party
may file a petition for reconsideration of any order issued by the
agency head within fourteen (14) days of the issuance of that
order. The agency head shall issue a written order disposing of
the petition. The petition is deemed denied if the agency head
does not dispose of it within twenty-one (21) days after the filing
of the petition.

(5) 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

RECORDED
JUN 14 1995

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.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order 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 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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 a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

JUN 14 1995



United States
Department of
Agriculture

Forest
Service

Intermountain
Region

324 25th Street
Ogden, UT 84401-2310

RA
GLEN

File Code: 2540-1

Date: March 28, 1995

Mr. R. Keith Higginson
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720

RECEIVED

MAR 30 1995

Department of Water Resources

Dear Mr. Higginson:

We protested Application for Permit No. 78-07311 filed by Mr. John Forgy on August 29, 1989. A formal hearing was held on February 22, 1995. Discussions with the applicant and the Department of Water Resources indicated that a conditional withdrawal of our protest might be appropriate if the following conditions are made a part of the permit:

1. The applicant will obtain a license or exemption from licensing from the Federal Energy Regulatory Commission.
2. The applicant will obtain the necessary Forest Service occupancy permit to include power production.
3. The applicant will not construct any part of the additional equipment needed to add power generating capacity to his existing facilities until the above two conditions are met.
4. No additional water will be used over what is currently approved.

If these conditions are made a part of the permit, we will withdraw our protest.

Sincerely,

Robert W. Hammer
DALE N. BOSWORTH
Regional Forester

cc:
Payette NF

NO. 00-12870

JUN 14 1995



Caring for the Land and Serving People

FS-6200-28b(4/88)



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

March 28, 1995

R. KEITH HIGGINSON
DIRECTOR

RE: In the matter of Application for Permit No. 78-07311 in the name of John W. Forgy

Dear Interested Party:

The accompanying order is a "**recommended order**" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer 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 this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have ~~twenty-one~~ (21) days to respond.

JUN 14 1995

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

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

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The agency 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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,



L. GLEN SAXTON

Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

JUN 14 1995

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES
2735 Airport Way, Boise, ID 83705

Re: Protested Application for Permit No. 78-7311 in the Name of John W. Forgy

Place: US Forest Service, 103 Park St., McCall, Idaho 83638

Date: Wednesday, February 22, 1995

Conducted by: David R. Tuthill, Jr., P.E.

NAME**ADDRESS**

Randy Zuniga

Box 1026 McCall, ID

Tom Ellison

Box 1026 Mc Cell ID

Cassidy

2740 Hillman Basin Rd. New Meadows ID

John W. Forgy

2740 Hillman Basin Rd New Meadows, ID

W Becken

Box 5 New Meadows, ID

CONCLUSIONS

JUN 14 1995

78-07311 John Forgy

Applicant - In attendance & representing himself

Protestant - U.S. Forest Service represented by Randy Zuniga

Issues

1. No, no other water rights on this spring.
2. The amount of water supply is sufficient - see below.
3. App was made in good faith, some of project (pipeline) is in place.
4. Yes, Pelton wheel costs \$700, will be charging batteries.
5. No neighbors, passed EIS with USFS.
6. Not contrary to conservation.

USFS Objects only to the need of the water user to obtain FERC approval.

John Forgy wants to install a pelton wheel.

Harris Pelton wheel

10-600 ft head 2 to 250 gpm

has 400' head and 5 to 10 gpm

will produce to 140 to 350 watts of Power

Has not rec'd a license or exemption for FERC
Has applied for exemption, but filing fee is \$6,000

RECORDED

JUN 14 1995

Randy Zuniga

Forest has issued a special use permit for domestic use,
and the only hangup for a power approval is a FERC^{approval} requirement.
See protestant's Exhibit No. 1 - admitted to record

P/d and a portion of the pipeline lie on USFS land.

10/14/03
10/14/03

admitted
2-22-95 NRS

2770

Page 2 of 9 ~~App~~

Protestant's
Exhibit No. 1

This chapter covers the reviewing of proposals and granting of special-use authorizations for those hydroelectric projects and primary transmission lines subject to licensing by the Federal Energy Regulatory Commission (FERC) that are partly or wholly on National Forest System land, and the Forest Service-Federal Energy Regulatory Commission relationship during project planning, construction, and operation. Refer to FSM 7500 for dam safety, FSM 2600 for fish and wildlife, FSM 2520 for riparian area, FSM 2320 for wilderness areas, FSM 2350 for wild and scenic river areas, and FSM 2540 for instream flow coordination requirements.

2770.1 - Authority

1. Section 501(a)(4) of the Federal Land Policy and Management Act (FLPMA) (authority to issue rights-of-way to hydroelectric projects).
2. Sections 7(a) and 7(b) of the Wild and Scenic Rivers Act (FSM 2354, 36 CFR 297) (responsibility for determining project acceptability in relation to Wild and Scenic Rivers).
3. Section 4(e) of the Federal Power Act (FSM 1233, 36 CFR 251) (authority to require conditions in a FERC license).
4. CFR 2.60(a)(22) (delegations of authority to the Chief on hydroelectric matters).

2770.2 - Objective. To encourage hydroelectric production where it is compatible with National Forest purposes. To ensure that planning, construction, and operation of hydroelectric projects are performed in such a manner to protect or effectively utilize National Forest System lands and resources.

2770.3 - Policy. Consider energy potential a National Forest resource in arriving at management decisions concerning proposed hydroelectric projects.

Respond to a notice of accepted application to FERC for license with a report pursuant to section 4(e) of the Federal Power Act (4(e) report) for any project that occupies National Forest System land. See FSH 2709.15, chapter 50, for instructions for responding to FERC under various situations.

Provide the appropriate environmental documentation, documentation of decision, and draft of the proposed special-use permit for any 4(e) reports that contain conditions to be included in the FERC license (FSH 2709.15, ch. 30 and ch. 50).

Provide FERC with a statement of the conclusions as to the project's consistency or interference with National Forest purposes. Use the implemented Forest Plan as a refinement of those purposes. Identify the nature and extent of any significant inconsistency or interference.

Issue special-use authorizations for all hydroelectric projects licensed by FERC. Only the Chief may decide to deny a special-use authorization for a FERC-licensed hydroelectric project. If there are compelling

JUN 14 1995

the Federal Power Act. This authority may not be redelegated. Regional Foresters in Regions 2, 3, 8, 9, and 10 shall transmit reports pursuant to Section 4(e) of the Federal Power Act to the Washington Office Director of Lands for forwarding to FERC (follow review and routing procedures in FSH 2709.15, section 52.2).

b. Establish Region-wide guidelines for analysis and coordination of hydroelectric projects on National Forest System lands.

c. Coordinate with FERC staff as necessary.

d. Maintain information base for use in managing Federal Power Act (FPA) project activities.

e. Coordinate review of applications, field investigations, and preparation of draft 4(e) reports for FERC licenses.

f. Respond directly to FERC in behalf of the Department of Agriculture on applications for preliminary permits and exemptions.

g. Establish procedures to contact licensees or special-use holders at least 5 years prior to license or special-use expiration to ascertain their intentions concerning continuation of the project.

h. Prepare, or assist FERC in preparing, for the Associate Deputy Chief's approval, the environmental impact statement necessary to recommend Presidential action on projects proposed in wilderness areas.

i. Sign and transmit through the Washington Office Director of Lands decisions relating to section 7 of the Wild and Scenic Rivers Act for hydroelectric projects (follow review and routing procedures in FSH 2709.15, section 54.72). This authority may not be redelegated.

j. As appropriate, authorize Forest Supervisors to correspond directly with FERC on all administrative and construction matters during construction and operation of a project.

k. Sign special-use authorizations for hydroelectric projects after the project has been licensed or exempted from licensing by FERC. The authority to sign special-use permits for these projects may be redelegated to the Forest Supervisor, but may not be redelegated by the Forest Supervisor.

2771 - SPECIAL-USE AUTHORIZATION. (FSH 2709.15, ch. 50, and FSH 2709.11). Applicants for Federal Energy Regulatory Commission (FERC) preliminary permits, exemptions, or licenses must also apply to the Forest Service for authorization when projects involve National Forest System land. Issue project special-use authorizations only after the project is licensed or exempted from licensing by FERC.

JUN 14 1995

FORGY PEL' WHEEL APPLICATION HISTORY

8/81 - Applied for SUP for power and irrigation use with us and State.

EA drafted and influx of multiple hydro applications with PURPA regulation published.

1983 - FERC's CIAP EIS, engineering concerns by specialist review, etc.

1985 - FERC's EIS done

1987-90 PNF EA done. Some adjoining landowner issues, power use, 3 personnel changes, water permit protest, hearing, etc.

4/06/88 - R-4 to FERC dilemma about small hydro for personal use.

9/12/88 - FERC to Forgy, response to application for Exemption, inadequate, etc. with current filing fee of \$16,430 needed.

7/12/89 - State/Forgy/Forest met, separate power use from application.

7/17/89 - PNF to R-4 - request micro-hydro authority

7/18/89 - R-4 to FERC, status of 4/06/88 letter?

9/30/92 - BA "not likely to affect" determination.

10/10/93 - D-3 to SO-RO-WO for ongoing revision of FERC/FS MOU to grant authority to FS for small hydro.

12/93 - verbal response, not discussed/priority

2/10/94 - Senator Craig to Forgy - cc of FERC to Craig - no authority to transfer jurisdiction to FS - suggest moving off Federal land if feasible. Also, suggested small conduit exemption. No fee, just Federal & State reimbursement.

4/20/94 - Personal visit from Mike Field, Senator Craig's office. requested copies of some correspondence, indicated he would followup with FS WO. (Suzanne Brown/Novak) for additional info.

10/15/94 - Field inspection, irrigation had been operational, full compliance, pelton wheel not installed. Cindy Forgy was using a 12 volt car battery to operate her food grinder.

14 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

FAX TRANSMITTAL COVER SHEET

FAX # (208) 334-2348

TO: Randy Zuniga
Payette Nat'l. Forest S.O.
McCall
Fax # 634-0281

FROM: Steve Lester

DOCUMENT DESCRIPTION: Copy of J. Furgy Appl. # 78-07311
As Requested on 2/2/95.

TOTAL PAGES SENT: 3 + COVER SHEET

CONTACT: _____

Sent 2/2/95 ✓
- SN
RECEIVED

JUN 14 1995

Z 418 316 495



US DEPT OF AGRICULTURE
FOREST SERVICE
324 25TH ST
OGDEN UT--84401

PS Form 3801

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$ 2.52
Postmark or Date	

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front).**

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

105000-35-000218

PS Form 3800, March 1993 (Reverse)

Z 418 316 494



Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail

JOHN W FORGY
HC 75
NEW MEADOWS ID 83654

PS Form 3800,

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$ 2.52
Postmark or Date	

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES (see front).**

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5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

105603-93-B-0218

PS Form 3800, March 1993 (Reverse)

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

JOHN W FORGY
HC 75

N. V MEADOWS ID 83654

4a. Article Number

~~2~~ 2 418 316 494

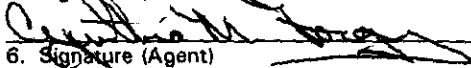
4b. Service Type

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

2-1-95

5. Signature (Addressee)



6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business



PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300

RECEIVED
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WATER RESOURCES
WESTERN REGION

JUN 14 1995

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Janet Horvath

PS Form 3811, December 1991

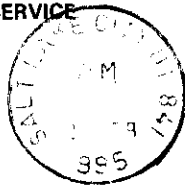
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WATER RESOURCES
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DEPARTMENT OF WATER RESOURCES

2735 AIRPORT WAY
BOISE, IDAHO 83705

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 Airport Way
Boise, Idaho 83705-5082

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 78-7311 IN THE)
NAME OF JOHN FORGY.)
_____)

NOTICE OF HEARING

On July 20, 1989, John W. Forgy filed with the Department of Water Resources (Department) application for permit no. 78-7311. The application was protested by the U.S. Department of Agriculture, Forest Service.

The Department has scheduled the matter for a hearing to be held on Wednesday, February 22, 1995, at 11:00 a.m. at the U.S. Department of Agriculture, Forest Service, 103 Park St., McCall, Idaho 83638. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the Department and Water Appropriation Rules 40 and 45. The presiding officer at the hearing will be Glen Saxton.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 30th day of January, 1995.

David R. Tuthill
DAVID R. TUTHILL, JR. P. E.
Manager, Western Regional Office

RECORDED
JUN 14 1995

I hereby certify that on the 31st day of January, 1995, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Sue Taylor
Secretary, Office Coordinator

Certified Mail

JOHN W FORGY
HC 75
NEW MEADOWS ID 83654

US DEPT OF AGRICULTURE
FOREST SERVICE
324 25TH ST
OGDEN UT 84401

Non-Certified Mail

RANDY ZUNIGA
US FOREST SERVICE
PO BOX 1026
MCCALL ID 83638

RECEIVED
JUN 14 1995

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

- 1) Will the proposed appropriation injure other water rights?
- 2) Is the proposed water supply sufficient for the purpose for which it is sought to be appropriated?
- 3) Was the application made in good faith or for delay or speculative purposes?
- 4) Does the applicant have sufficient financial resources with which to complete the proposed project?
- 5) Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?
- 6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The Applicant has the initial burden of proof on issues 1, 2, 3, 4, & 6 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant. the applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize

4/21/95

themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may be written stipulation waive their right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing please advise the department within ten (10) days prior to the hearing.

JUN 14 1986

Steve Tuthill, 1/10/95

I am John Forgy from New Meadows. I am the one you gave 2 permits for. 1 for water; 1 for power. Remember?

I have come up with this idea for my ~~pelton~~ pelton. What if I run the water ~~from~~ into my house? I already have it for 3 domestics on the water permit and what I do with the water in my house is my ^{business} ~~business~~ isn't it?

Would you still have to require me to get with FERC? JUN 14 1995

I believe it is a "diversion" on my own property and FERC has no jurisdiction on private land.

Sincerely John Forgy
Ph. # 208-628-3136

Address

John W. Forgy
2740 Hillman Basin Rd
New Meadows, ID 83654
208-628-3136

Sorry, I didn't get to see ya!
Catch ya later.
John

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JUN 14 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

September 22, 1994

RECEIVED

JOHN W FORGY
HC 75
NEW MEADOWS ID 83654

SEP 29 1994

WATER RESOURCES
WESTERN REGION

Re: Application for Permit No. 78-7311

Dear Mr. Forgy:

The purpose of this letter is to inquire as to the status of the above-referenced application.

Please bring us up to date on the progress of the hydropower project as soon as possible.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

9/27/94

Dear Mister Tuthill:

This is my latest effort with Senator Craig and the response he got with the info I sent him.

I found out this summer that the Forest Service has used my "delinima" to try and push for jurisdiction of 500 KW or less, which I thought was unfair to me at 5 gallons a minute and 400 WATTS which is less than 1/2 KW!

Truthfully I am disgusted that no one seems to understand me when I believe that my project shouldn't even register on the jurisdictional scale of FERC! Personally, I believe that 5 KW and under should not even be considered by FERC but should be handled as mine was by the local government agency... USFS.

JUN 14 1995

Why am I considered as 5 MEGAWATT?

My next attempt is to ask FERC: What is the minimum constant flow requirements for power production for a small hydroelectric power project? Surely, the

have figured out what is the end of the scale. wouldn't you?

How about FERC's example of Arlington, Texas? 250,000 + people!
The cost to them per person is pennies! Whereas for me and my family
total population: 4

I am running on a Govt Surplus propane generator because I
still believe in obeying the laws of the U.S. Govt. but my patience
is wearing real thin.

Let me ask you, Mr. Tuthill, what would YOU do if you were me?

Any suggestions would be appreciated. Thanks so much for letting me
get in the pipeline with the separate license. I have watered with it
all summer. It has certainly been a blessing. Did you issue me
a water license on the pipeline?

Well the business letters pretty much speak for themselves so I'll try 1
more time to talk to FERC by phone and ask FERC's engineers what they figure
is the bottom of the scale.

Thanks

John W Forgy

RECEIVED

JUN 14 1995

LARRY E. CRAIG
IDAHO

HART SENATE OFFICE BUILDING
(202) 224-2752

AGRICULTURE, NUTRITION,
AND FORESTRY
ENERGY AND NATURAL
RESOURCES
SPECIAL COMMITTEE
ON AGING

United States Senate

WASHINGTON, DC 20510-1203

February 10, 1994

RECEIVED

SEP 29 1994

WATER RESOURCES
WESTERN REGION

Mr. John Forgy
2740 Hillman Basin Rd.
New Meadows, ID 83654

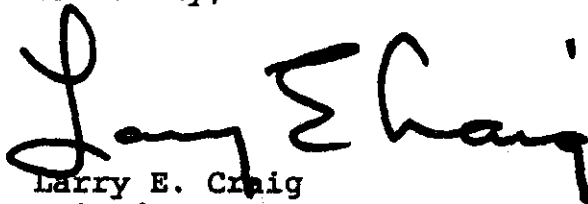
Dear Mr. Forgy:

Thank you for requesting my assistance with a problem you experienced with the Federal Energy Regulatory Commission. Enclosed is a response from that agency addressing your concerns.

I hope that this properly addresses some of your problems. Part of my job as a United States Senator is to assist Idahoans who are having problems with federal agencies. These cases can be simple or complex and as much as I'd like, I can't always tell an agency what to do, or always obtain the answers people want. However, I can make sure that your problems are considered promptly and you are dealt with in a fair manner.

Again, thank you for contacting my office, I am pleased to have been of service. I hope you found the information and assistance provided to be helpful.

Sincerely,



Larry E. Craig
United States Senator

LC:gg
enclosure

MICROFILMED

JUN 14 1995

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SEP 29 1994

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

WATER RESOURCES
WESTERN REGION

February 3, 1994

FEB 07 1994

The Honorable Larry Craig
United States Senator
304 N. 8th Street, Room 149
Boise, ID 83702

Dear Senator Craig:

Thank you for your letter dated December 29, 1993, concerning the efforts of Mr. John W. Forgy to obtain approval for a small hydroelectric generating facility.

On August 2, 1988, Mr. Forgy filed an application for a 5-megawatt (MW) exemption for the Hillman Creek Tributary Project (FERC No. 10650); the Commission rejected his application on September 12, 1988. In our rejection letter (referenced in Mr. Forgy's letter as item B), we explained to him that his application was rejected because it did not include copies of the most recent cost estimates from fish and wildlife agencies for setting terms and conditions to protect fish and wildlife resources. In addition, Mr. Forgy did not include a payment of at least 50 percent, or a bond for 100 percent of those cost estimates (18 CFR section 4.302). Also, Mr. Forgy did not include the filing fee (\$16,430 at the time he filed) required to accompany an application for exemption of a small hydroelectric project from all or part of Part I of the Federal Power Act (18 CFR section 381.601). Mr. Forgy could have applied for a waiver of the filing fee (18 CFR section 381.106) and appealed the rejection of his application within 30 days of issuance, but did not.

According to Mr. Forgy's application for exemption, some project lands would be located on federal lands (Forest Service) and therefore, under section 23(b) of the Federal Power Act (Act), would be subject to the Commission's jurisdiction. Under the Act and the Commission's rules and regulations, we would have no authority to transfer jurisdiction over the proposed project to the Forest Service.

If feasible, Mr. Forgy could consider relocating the point of diversion and the penstock outside the boundary of the Payette National Forest. This would remove the use of federal lands as a basis for jurisdiction. Mr. Forgy could file a Declaration of Intention (applicable regulations and example enclosed) to allow the Commission to review the project under section 23(b) of the Act to determine if the Commission would still have jurisdiction.

JUN 14 1995

It also appears that the water diversion and pipeline have already been constructed. Therefore, if the project is determined to be jurisdictional, it may qualify for a small conduit exemption (copy of 18 CFR section 4.90 enclosed). No filing fee is required, but federal and state fish and wildlife agencies must be reimbursed for any reasonable costs in setting terms and conditions to protect fish and wildlife resources (section 30 of the Act).

There is no fee for filing an application for minor license. Under Section 10(e) of the Act, however, if a license were issued for the project, the licensee would have to pay an administrative annual fee.

Mr. Forgy can obtain a copy of the Hydroelectric Project Licensing Handbook (also includes guidance for filing exemption applications) by calling the Commission's Public Reference Room on (202) 208-2326, or writing to: Federal Energy Regulatory Commission, Public Reference Room, 825 North Capitol Street, N.E., Washington, D.C. 20426.

The Commission recognizes that projects it licenses vary in size and capacity and has attempted to develop requirements and procedures that are fair to licensees and potential applicants. But we have found that size alone is not an indicator of the severity of potential effects. The importance of local resources and the proposed project's effect on those resources is more determinate of whether, and under what conditions, we should license (or exempt) a project. We must consider environmental values fully with power development in making our decisions on proposed projects.

I hope this information is helpful. If I can be of further assistance in this or any other Commission matter, please let me know.

Rebecca F. Schaffer

Rebecca F. Schaffer
Director
Office of External Affairs

Enclosure

OHL/Pierce, S:jgh 1/27/94
Control No. 94-40000
cc: PRO, CHR, CLD, OEA, RIMS, Files

JUN 14 1995

SAMPLE DI

CL 88-26

Dpr-ES

VESELKA ENGINEERING CONSULTANTS, INC.

HERMAN S. VESELKA, P.E.
A. WILLIAM VESELKA, P.E.

May 10, 1988

202 East Border Street
Border Centre, Suite 300
Arlington, Texas 76010

Metro (817) 469-1671
(817) 274-8755

Director, Office of Hydropower Licensing
Federal Energy Regulatory Commission
825 North Capitol N.E.
Washington, D.C. 20426

Re: Declaration of Intention
Southwest Water Treatment Plant Small Hydro Facilities
City of Arlington, Texas

Dear Sir:

Attached herewith is the original and ten conformed copies of the above-referenced Declaration of Intention which is being filed under the provisions of section 23(b) of the Act.

Hydropower facilities are being installed at the now under-construction Southwest Water Treatment Plant to utilize the flow and available head from a 60-inch raw water pipeline to produce a maximum of 280-kilowatts. The vertical turbine replaces conventional pressure reducing valves to dissipate energy prior to entering the treatment plant; and, coupled to an induction generator, offers an added project benefit by reducing the electrical energy requirements for water treatment by about 20 percent.

Construction of the water treatment plant is scheduled for completion on December 01, 1988, at which time field testing of the turbine/generator will be initiated.

Your prompt review of this Declaration of Intention will be sincerely appreciated. Please feel free to call me if there are any questions.

Very truly yours,

A. William Veselka, P.E.

A. William Veselka, P.E.

AWV/jv

Enclosure

86619

JUN 14 1988

Civil • Municipal • Planning

DECLARATION OF INTENTION

SOUTHWEST WATER TREATMENT PLANT

SMALL HYDRO FACILITIES

City of Arlington, Texas

May 10, 1988

Contact:

A. William Veselka, P.E.
Veselka Engineering Consultants, Inc.
202 East Border Street
Border Centre, Suite 300
Arlington, Texas 76010
(817) 274-8755

JUN 14 1988

(2)

DECLARATION OF INTENTION
City of Arlington, Texas
Southwest Water Treatment Plant
Small Hydro Facilities

Owner:

City of Arlington
P.O. Box 231
Arlington, Texas 76010

Correspondence To Be Addressed To:

A. William Veselka, P.E.
Veselka Engineering Consultants, Inc.
202 East Border Street
Border Centre, Suite 300
Arlington, Texas 76010
(817) 274-8755

Design Engineers:

John Carollo Engineers
Attn. Mr. Kenneth M. Martin, P.E.
3877 North Seventh Street, Suite 400
Phoenix, Arizona 85014-5005
(602) 263-9500

PROJECT DESCRIPTION AND PURPOSE

The City of Arlington, Tarrant County, Texas is the largest city between Dallas and Fort Worth; and, is the States's eighth largest city. The 1988 population of Arlington is 251,100; and, according to projections by the North Central Texas Council of Governments, the population is expected to increase to 322,060 by the year 2000.

To meet the future water supply demand for this rapidly expanding growth in population, the City has initiated construction of a second water treatment plant located in the southwest quadrant of the City. The plant will be served by a raw water pipeline; and, a small hydroelectric power generating station will be coupled to the pipeline to dissipate energy, with the added benefit of producing electrical power which would otherwise be wasted. All

JUN 14 1995

electrical power produced will be used within the water treatment plant to operate process equipment. The primary purpose of this project is water supply, with hydropower generation being an incidental project benefit.

Thus, this forward thinking community is promoting conservation of our natural resources by reducing the demand for electricity which would otherwise be obtained from an alternative fossil-fueled, thermal-electric, generating plant.

SOURCE OF WATER SUPPLY

No dams, diversion structures, or storage reservoirs are directly associated with the operation of Arlington's proposed hydroelectric facilities. Raw water for the new Southwest Water Treatment Plant will be purchased from the Tarrant County Water Control and Improvement District (TCWC & ID) via the District's existing Cedar Creek pipeline (72-inch) and Richland-Chambers Creek pipeline (90-inch). The Water District owns Cedar Creek Reservoir, located about 65-miles southeast of Fort Worth, Texas; and, pumps raw water from this reservoir to the City of Fort Worth, Texas for treatment and distribution. The Water District also currently has under construction the Richland-Chambers Creek Reservoir, located about 80-miles southeast of Fort Worth. Raw water will be pumped from this reservoir to Fort Worth via the aforementioned 90-inch pipeline at some future date. Other communities located along the route of the pipelines currently purchase, or will purchase at a future date, raw water from these two pipelines.

The City of Arlington has tapped these two parallel pipelines at a point located just east of the S.L. & P Railroad near Business Highway No. 287, and, has constructed approximately 11,400-feet of 60-inch concrete pressure pipe to the site of the new treatment plant located near U.S. Highway 287 and Eden Road (See Location Map-Exhibit 1).

The pipeline is located in a 40 foot wide easement located across lands under private ownership. Lands occupied by the Hydropower Building and Southwest Water Treatment Plant are owned by the City of Arlington.

The anticipated flow in Arlington's 60-inch raw waterline ranges from 25 million-gallons-per-day (25 mgd) initially, to over 100 mgd upon completion of all the planned phases of the water treatment plant. The plant is staged for enlargement in 25 mgd increments, with the ultimate capacity of 100 mgd tentatively scheduled for about the year 2012.

4-14-1995

DESCRIPTION OF HYDROPOWER FACILITIES

The plant, shown in Exhibit No. 2, will initially be equipped with one vertical turbine/generator with provisions for installation of a second identical unit in the future as the demand for water supply increases. Pertinent data on the generator/turbine is as follows:

Generator No. 1: Westinghouse Induction Generator.
260 kilowatt, 600 R.P.M.
480-volt, 92 percent efficiency

Turbine No. 1: Ingersoll-Rand, Vertical Type
180 kw at 65 feet net head
Flow range 38.75 to 40 cfs

Average Annual Energy: 1,576,000 kwh (One Unit)

Scheduled In-Service Date: December 01, 1988 (First Unit)

The Southwest Water Treatment Plant has been designed as a flow-through system, receiving raw water and delivering treated water at a constant rate of flow. The turbine and generator will, therefore, operate at a constant rate of flow with a uniform output of 180 kilowatts. It is estimated that hydrogeneration will provide about 20 percent of the electrical energy requirements of the water treatment plant. Additional power requirements will be purchased from Texas Electric Service Company. Provisions have been made for the installation of an automatic disconnect switch at the hydro-power station to insure that no power will be fed from the hydro station into the Texas Electric Service Company grid. Turbine performance curves are depicted on Exhibit 3.

GENERAL COMMENTS

- (1) No portion of this project is located on a navigable waterway;
- (2) The project does not occupy or affect public lands or reservations of the United States;
- (3) The project does not utilize surplus water or water power from a government dam; and,
- (4) The project does not affect interstate or foreign commerce.

(5)

JUN 4 1995

CURVE NO. 5293C

DATE 11 MARCH 1953

Curves are approximate. Pump guaranteed for one set of conditions capacity, head and efficiency guaranteed are based on shop test and when handling clear, cold, fresh water at a temperature of not over 60°F and not over 15 foot suction lift.

IMPELLER PAT. NO.

DIFFUSER PAT. NO.

B.M.

SHAKE HORSE POWER

HORSE POWER

EFFICIENCY

TOTAL HEAD

EXHIBIT NO. 1

CHARACTERISTIC CURVE

NO. 24-28 TYPE SVT PUMP

600 R.P.M.

PUMP NO. 0987043 ORDER NO. 4736003

INGERSOLL RAND COMPANY

CANERON PUMP DIVISION

THIS WILL CERTIFY THAT CURVE 5293C REPRESENTS ACTUAL PERFORMANCE FOR THE PUMP NO. 0987043, I.R. DESIGN DEP. 36000 23 B.M. 15 H.P. 51/53

PER MINUTE X 1000

(6) JUN 1 4 1995

section 5 of the Federal Power Act.) Each application for amendment of a permit must conform to any relevant requirements of § 4.81 (b), (c), (d), and (e).

(b) If an application for amendment of a preliminary permit requests any material change in the proposed project, public notice of the application will be issued as required in § 4.32(d)(2)(i).

(c) If an application to extend the term of a permit is submitted not less than 30 days prior to the termination of the permit, the permit term will be automatically extended (not to exceed a total term for the permit of three years) until the Commission acts on the application for an extension. The Commission will not accept extension requests that are filed less than 30 days prior to the termination of the permit.

(Order 413, 50 FR 11685, Mar. 25, 1985, as amended by Order 499, 53 FR 27002, July 12, 1988)

§ 4.83 Cancellation and loss of priority.

(a) The Commission may cancel a preliminary permit after notice and opportunity for hearing if the permittee fails to comply with the specific terms and conditions of the permit. The Commission may also cancel a permit for other good cause shown after notice and opportunity for hearing. Cancellation of a permit will result in loss of the permittee's priority of application for a license for the proposed project.

(b) Failure of a permittee to file an acceptable application for a license before the permit expires will result in loss of the permittee's priority of application for a license for the proposed project.

(Order 413, 50 FR 11686, Mar. 25, 1985)

§ 4.84 Surrender of permit.

A permittee must submit a petition to the Commission before the permittee may voluntarily surrender its permit. Unless the Commission issues an order to the contrary, the permit will remain in effect through the thirtieth day after the Commission issues public notice of receipt of the petition.

(Order 413, 50 FR 11686, Mar. 25, 1985)

Subpart J—Exemption of Small Conduit Hydroelectric Facilities

§ 4.90 Applicability and purpose.

This subpart implements section 30 of the Federal Power Act and provides procedures for obtaining an exemption for constructed or unconstructed small conduit hydroelectric facilities, as defined in § 4.30(b)(26), from all or part of the requirements of Part I of the Federal Power Act, including licensing, and the regulations issued under Part I.

(Order 74, 45 FR 29090, Apr. 28, 1980, as amended by Order 413, 50 FR 11686, Mar. 25, 1985)

§ 4.91 [Reserved]

§ 4.92 Contents of exemption application.

(a) An application for exemption for this subpart must include:

(1) An introductory statement, including a declaration that the facility for which application is made meets the requirements of § 4.30(b)(26), the facility qualifies but for the discharge requirement of § 4.30(b)(26)(v), the introductory statement must identify that fact and state that the application is accompanied by a petition for waiver of § 4.30(b)(26)(v), filed pursuant to § 385.207 of this chapter;

(2) Exhibits A, B, E, and G;

(3) An appendix containing documentary evidence showing that the applicant has the real property interests required under § 4.31(b); and

(4) Identification of all Indian tribes that may be affected by the project.

(b) *Introductory Statement.* The introductory statement must be set forth in the following format:

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Application for Exemption for Small Conduit Hydroelectric Facility

(Name of applicant) applies to the Federal Energy Regulatory Commission for an exemption for the (name of facility), a small conduit hydroelectric facility that meets the requirements of (insert the following language, as appropriate: "§ 4.30(b)(26) of this subpart," or "§ 4.30(b)(26)" from certain except paragraph (b)(26)(v)"), from certain

Federal Energy Regulatory Commission

provisions of Part I of the Federal Power Act.

The location of the facility is: _____
State or Territory: _____

County: _____

Township or nearby town: _____

The exact name and business address of each applicant is: _____

The exact name and business address of each person authorized to act as agent for the applicant in this application is: _____

(Name of applicant) is a citizen of the United States, an association of citizens of the United States, a municipality, State, or a corporation incorporated under the laws of (specify the United States or the state of incorporation, as appropriate), as appropriate.

The provisions of Part I of the Federal Power Act for which exemption is requested are:

(List here all sections or subsections for which exemption is requested.)

(If the facility does not meet the requirements of § 4.30(b)(26)(v), add the following sentence: "This application is accompanied by a petition for waiver of § 4.30(b)(26)(v), submitted pursuant to 18 CFR 385.207.")

(c) Exhibit A. Exhibit A must describe the small conduit hydroelectric facility and proposed mode of operation with appropriate references to Exhibits B and G. To the extent feasible the information in this exhibit may be submitted in tabular form. The following information must be included:

(1) A brief description of any conduits and associated consumptive water supply facilities, intake facilities, powerhouses, and any other structures associated with the facility.

(2) The proximate natural sources of water that supply the related conduit.

(3) The purposes for which the conduit is used.

(4) The number of generating units, including auxiliary units, the capacity of each unit, and provisions, if any, for future units.

(5) The type of each hydraulic turbine.

(6) A description of how the plant is to be operated, manually or automatically, and whether the plant is to be used for peaking.

(7) Estimations of:

(i) The average annual generation in kilowatt hours;

(ii) The average head of the plant;

(iii) The hydraulic capacity of the plant (flow through the plant) in cubic feet per second;

(iv) The average flow of the conduit at the plant or point of diversion (using best available data and explaining the sources of the data and the method of calculation); and

(v) The average amount of the flow described in paragraph (v)(iv) of this section available for power generation.

(8) The planned date for beginning construction of the facility.

(9) If the hydroelectric facility discharges directly into a natural body of water and a petition for waiver of § 4.30(b)(26)(v) has not been submitted, evidence that a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located.

(10) If the hydroelectric facility discharges directly to a point of agricultural, municipal, or industrial consumption, a description of the nature and location of that point of consumption.

(11) A description of the nature and extent of any construction of a dam that would occur in association with construction of the proposed small conduit hydroelectric facility, including a statement of the normal maximum surface area and normal maximum surface elevation of any existing impoundment before and after the construction; and any evidence that the construction would occur for agricultural, municipal, or industrial consumptive purposes even if hydroelectric generating facilities were not installed.

(d) Exhibit B. Exhibit B is a general location map that must show the following information:

(1) The physical structures of the small conduit hydroelectric facility in relation to the conduit and any dam to which any of these structures is attached;

(2) A proposed project boundary enclosing all project works to be exempted from licensing; and

(3) The ownership of the parcels of land within the proposed boundary for the small conduit hydroelectric facility.

NOTE. (6) This exhibit is an Environmental Report. It must be prepared pursuant to § 4.38 and must include the following information, commensurate with the scope and environmental impact of the facility's construction and operation:

(1) A description of the environmental setting in the vicinity of the facility, including vegetative cover, fish and wildlife resources, water quality and quantity, land and water uses, recreational use, socio-economic conditions, historical and archeological resources, and visual resources. The report must give special attention to endangered or threatened plant and animal species, all habitats, and sites eligible for inclusion on the National Register of Historic Places. The applicant may obtain assistance in the preparation of this information from State natural resources agencies, the State historic preservation officer, and from local offices of Federal natural resources agencies.

(2) A description of the expected environmental impacts resulting from the continued operation of an existing small conduit hydroelectric facility, or from the construction and operation of a proposed small conduit hydroelectric facility, including a discussion of the specific measures proposed by the applicant and others to protect and enhance environmental resources and to mitigate adverse impacts of the facility on them.

(3) A description of alternative means of obtaining an amount of power equivalent to that provided by the proposed or existing facility.

(4) Any additional information the applicant considers important.

(f) Exhibit G. Exhibit G is a set of drawings showing the structures and equipment of the small conduit hydroelectric facility. The drawings must include plan, elevation, profile, section views of the power plant, and any other principal facility structure and of any dam to which a facility structure is attached. Each drawing must be an ink drawing or a drawing of similar quality on a sheet no smaller

than eight and one-half inches by eleven inches, with a scale no smaller than one inch equals 50 feet for plans and profiles and one inch equals 10 feet for sections. Generating and auxiliary equipment must be clearly and simply depicted and described. For purposes of this subpart, these drawing specifications replace those required in § 4.39 of the Commission's regulations.

[Order 76, 45 FR 20090, Apr. 20, 1980, as amended by Order 413, 50 FR 11687, Mar. 25, 1985; Order 533, 56 FR 22153, May 20, 1991]

§ 4.93 Action on exemption applications.

(a) An application for exemption that does not meet the eligibility requirements of § 4.30(b)(2)(XV) may be accepted, provided the application has been accompanied by a request for waiver under § 4.92(a)(1) and the waiver request has not been denied. Acceptance of an application that has been accompanied by a request for waiver under § 4.92(a)(1) does not constitute a ruling on the waiver request, unless expressly stated in the acceptance.

(b) The Commission will circulate a notice of application for exemption to interested agencies and Indian tribes at the time the applicant is notified that the application is accepted for filing.

(c) In granting an exemption the Commission may prescribe terms or conditions in addition to those set forth in § 4.94, in order to:

(1) Protect the quality or quantity of the related water supply for agricultural, municipal, or industrial consumption;

(2) Otherwise protect life, health, or property;

(3) Avoid or mitigate adverse environmental impact; or

(4) Conserve, develop, or utilize in the public interest the water power resources of the region.

(d) Conversion to license application. (1) If an application for exemption under this subpart is denied by the Commission, the applicant may convert the exemption application into an application for license for the hydroelectric project.

(2) The applicant must provide the Commission with written notification, within 90 days after the date of issuance of the order denying exemption, that it intends to convert the exemption application into a license application. The applicant must submit to the Commission, no later than 90 days after the date of issuance of the order denying exemption, additional information that is necessary to conform the exemption application to the relevant regulations for a license application.

(3) If all the information timely submitted is found sufficient, together with the application for exemption, to conform to the relevant regulations for a license application, the converted application will be considered accepted for filing as of the date that the exemption application was accepted for filing.

[Order 76, 45 FR 20090, Apr. 20, 1980, as amended by Order 413, 50 FR 11687, Mar. 25, 1985; Order 533, 56 FR 22153, May 20, 1991]

§ 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 act, conspiracy, fact, 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, the National Marine Fisheries 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 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 identity and address of the transferee.

[Order 76, 45 FR 20090, Apr. 20, 1980, as amended by Order 413, 50 FR 11687, Mar. 25, 1985; Order 413-A, 50 FR 51331, July 10, 1991]

§ 4.95 Surrender of exemption.

(a) To voluntarily surrender its exemption, a holder of an exemption for a small conduit hydroelectric facility must file a petition with the Commission.

(b)(1) If construction has begun, prior to filing a petition with the Commission, the exemption holder must consult with the fish and wildlife agencies in accordance with § 4.38,

substituting for the information required under § 4.38(b)(1) information appropriate to the disposition and restoration of the project works and lands. The petition must set forth the exemption holder's plans with respect to disposition and restoration of the project works and lands.

(2) If construction has begun, public notice of the petition will be given, and, at least 30 days thereafter, the Commission will act upon the petition.

(c) If no construction has begun, unless the Commission issues an order to the contrary, the exemption will remain in effect through the thirtieth day after the Commission issues a public notice of receipt of the petition. New applications involving the site of the surrendered exemption may be filed on the next business day.

(d) Exemptions may be surrendered only upon fulfillment by the exemption holder of such obligations under the exemption as the Commission may prescribe and, if construction has begun, upon such conditions with respect to the disposition of project lands works and restoration of project lands as may be determined by the Commission and the Federal and state fish and wildlife agencies.

[Order 413, 50 FR 11687, Mar. 25, 1985]

§ 4.96 Amendment of exemption.

(a) An exemption holder must construct and operate its project as described in the exemption application approved by the Commission or its delegate.

(b) If an exemption holder desires to change the design, location, method of construction or operation of its project, it must first notify the appropriate Federal and state fish and wildlife agencies and inform them in writing of the changes it intends to implement. If these agencies determine that the changes would not cause the project to violate the terms and conditions imposed by the agencies, and if the changes would not materially alter the design, location, method of construction or operation of the project, the exemption holder may implement the changes. If any of these agencies determines that the changes would cause the project to violate the terms and conditions imposed by the agen-

cies, or if the changes would materially alter the design, location, method of construction or the operation of the project works, the exemption holder may not implement the changes without first acquiring authorization from the Commission to amend its exemption, or acquiring a license that authorizes the project, as changed.

(c) An application to amend an exemption may be filed only by the holder of the exemption. An application to amend an exemption will be governed by the Commission's regulations governing applications for exemption. The Commission will not accept applications in competition with an application to amend an exemption, unless the Director of the Office of Hydropower Licensing determines that it is in the public interest to do so.

[Order 413, 50 FR 11687, Mar. 25, 1985]

Subpart K—Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less

§ 4.101 Applicability.

This subpart provides procedures for exemption on a case-specific basis from all or part of Part I of the Federal Power Act (Act), including licensing, for small hydroelectric power projects as defined in § 4.30(b)(27).

(Energy Security Act of 1980, Pub. L. 96-294, 94 Stat. 611; Federal Power Act, as amended (16 U.S.C. 792-838c); Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601-2645); and the Department of Energy Organization Act (42 U.S.C. 7101-7352); E.O. 12009, 3 CFR 143 (1978))

[Order 202, 47 FR 4243, Jan. 29, 1982, as amended by Order 413, 50 FR 11687, Mar. 25, 1985; Order 482, 52 FR 39630, Oct. 23, 1987]

§ 4.102 Surrender of exemption.

(a) To voluntarily surrender its exemption, a holder of an exemption for a small hydroelectric power project must file a petition with the Commission.

(b)(1) If construction has begun, prior to filing a petition with the Commission, the exemption holder must consult with the fish and wildlife agencies in accordance with § 4.38,

substituting for the information required under § 4.38(b)(1) information appropriate to the disposition and restoration of the project works and lands. The petition must set forth the exemption holder's plans with respect to disposition and restoration of the project works and lands.

(2) If construction has begun, public notice of the petition will be given, and, at least 30 days thereafter, the Commission will act upon the petition. New applications involving the site may be filed on the next business day.

(c) If no construction has begun, unless the Commission issues an order to the contrary, the surrender will take effect at the close of the thirtieth day after the Commission issues a public notice of receipt of the petition. New applications involving the site may be filed on the next business day.

(d) Exemptions may be surrendered only upon fulfillment by the exemption holder of such obligations under the exemption as the Commission may prescribe and, if construction has begun, upon such conditions with respect to the disposition of project lands works and restoration of project lands as may be determined by the Commission and the Federal and state fish and wildlife agencies.

(e) Where occupancy of United States lands or reservations has been permitted by a Federal agency having supervision over such lands, the exemption holder must concurrently notify that agency of the petition to surrender and of the steps that will be taken to restore the affected U.S. lands or reservations.

[Order 413, 50 FR 11688, Mar. 25, 1985]

§ 4.103 General provisions for case-specific exemption.

(a) Exemptible projects. Subject to the provisions in paragraph (b) of this section, § 4.31(c), and §§ 4.105 and 4.106, the Commission may exempt on a case-specific basis any small hydroelectric power project from all or part of Part I of the Act, including licensing requirements. Any applications for exemption for a project shall conform to the requirements of §§ 4.107 or 4.108, as applicable.

(b) Limitation for licensed water power project. The Commission will

not accept for filing an application for exemption from licensing for any project that is only part of a licensed water power project.

(c) Water. In applying for case-specific exemption from licensing, a qualified exemption applicant may petition under § 385.207 of this chapter for a waiver of any specific provision of §§ 4.102 through 4.107. The Commission will grant a waiver only if consistent with section 408 of the Energy Security Act of 1980.

[Order 413, 50 FR 11688, Mar. 25, 1985, as amended by Order 503, 53 FR 26588, Sept. 21, 1988]

§ 4.104 Amendment of exemption.

(a) An exemption holder must construct and operate its project as described in the exemption application approved by the Commission or its delegate.

(b) If an exemption holder desires to change the design, location, method of construction or operation of its project, it must first notify the appropriate Federal and state fish and wildlife agencies and inform them in writing of the changes it intends to implement. If these agencies determine that the changes would not cause the project to violate the terms and conditions imposed by the agencies, and if the changes would not materially alter the design, location, method of construction or operation of the project, the exemption holder may implement the changes. If any of these agencies determines that the changes would cause the project to violate the terms and conditions imposed by the agency, or if the changes would materially alter the design, location, method of construction or the operation of the project works, the exemption holder may not implement the changes without first acquiring authorization from the Commission to amend its exemption or acquiring a license for the project works that authorizes the project, as changed.

(c) An application to amend an exemption may be filed only by the holder of an exemption. An application to amend an exemption will be governed by the Commission's regulations governing applications for ex-



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

September 22, 1994

JOHN W FORGY
HC 75
NEW MEADOWS ID 83654

Re: Application for Permit No. 78-7311

Dear Mr. Forgy:

The purpose of this letter is to inquire as to the status of the above-referenced application.

Please bring us up to date on the progress of the hydropower project as soon as possible.

Sincerely,

A handwritten signature in cursive script, reading 'David R. Tuthill, Jr.'.

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

RECEIVED

JUN 14 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

September 20, 1993

JOHN W FORGY
HC 75
NEW MEADOWS ID 83654

RE: Application for Permit No. 78-7311

Dear Mr. Forgy:

In reviewing the above-referenced protested application for permit to install a power plant on an unnamed stream tributary to Hillman Creek, we note that no documentation has been received for several years.

The purpose of this letter is to inquire as to your intent in this matter. Do you still plan to develop the hydropower project and if so has any further action taken place in this regard?

Please advise this office within the next three weeks so that we may update our file in this regard.

Sincerely,

A handwritten signature in cursive script that reads "David R. Tuthill, Jr.".

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

This is a copy of your letter, my reply is on back.

RECEIVED
JUN 14 1995

October 14, 1993

Dear David Tuthill, Jr.:

This is in reply to your inquire of # 78-7311. Enclosed is the latest data in the Forest Service attempt to regain authority to authorize projects like my own. It is dated July 18, 1989. Also I am enclosing a letter dated July 17, 1989. The Forest Service has not received a reply as of this date. FERC still requires me to send application fee of 16,000 + dollars as their reply to my attempt back in August of 1988. (See enclosed letter of FERC's dated September 12, 1988)

I am going to send my data to Senator Larry Craig in hopes he can accomplish something positive before my permit # 78-7311 runs out next year. Otherwise, I have no alternative but to sue FERC.

I want to take this opportunity to thank you for issuing me a permit separate from #78-7311. We have it in and working since 1991, but have not had it inspected by your office and so have not received an appropriate water right. I was also told it could take some years because of all the back log from the Jurication.

Thanks for all you have done.

Sincerely,

John Forgy
John Forgy

RECEIVED

OCT 18 1993

WATER RESOURCES
WESTERN REGION

JUN 14 1995

Al Becker

RECEIVED

OCT 18 1993

WATER RESOURCES
WESTERN REGION

Intermountain
Region

324 25th Street
Ogden, UT 84401

2770

JUL 18 1989

Mr. Fred Springer
Director
Office of Hydropower Licensing
Federal Energy Regulatory Commission
824 North Capitol Street, N.E.
Washington, DC 20426

Al -
At least there was
some response to Mr. Foght's
problem - J.

Dear Mr. Springer:

We continue to find ourselves in a dilemma concerning authorization for the occupancy of National Forest System lands by small hydroelectric projects for personal use. We assume you are still considering our letter of April 6, 1988, describing the existing situation. We are unable to issue a special use authorization for several existing projects until the Federal Energy Regulatory Commission (FERC) has acted on an application for a license/exemption. Technically, these projects are in trespass. This causes an uncomfortable situation for the owners of the improvements and the Forest Service.

The cost of licensing these small projects, both to the applicants and the Federal government, seems to be unnecessarily burdensome considering their minimal public benefits and environmental impacts. As we stated in our April 6 letter, we feel FERC's authority to authorize these projects could be redelegated to the Forest Service under mutually agreeable conditions without compromising your responsibilities under the Federal Power Act.

We would appreciate your advice on this matter and hope to find some solution in the near future.

Sincerely,

T. A. Roederer

for J. S. TIXIER
Regional Forester

cc:
WO (L) - Schmidt
Payette NF
Challis NF

Received
PAYETTE NF

JUL 21 1989

COPIES SENT

DISTRICTS

JUN 14 1995

(This is as far as it has gotten. As of 10/1/93 there has been no response from FERC on this letter. J. Foght)

Payette NF

NEW YORK RANGER DIST.
RECEIVED

JUL 26 '63

— **PROTE N. F.**

Reply to: 2770

Date: July 17, 1989

Subject: Forgy, John

To: Regional Forester

On July 12, Payette National Forest personnel met with Dave Tuthill, Idaho Department of Water Resources, and Mr. John Forgy. The purpose of the meeting was to resolve a protest filed by the Forest to Mr. Forgy's application for diversion of water. The basis for the protest was that Mr. Forgy had not obtained either a Forest Service special use permit or a FERC license or exemption from licensing.

Following the notice of protest, Mr. Forgy did file an application for special use. However, since his project included power production, and since Mr. Forgy had neither FERC license nor exemption, the requested permit was not issued.

Excepting the lack of the required FERC documents, the Payette National Forest is willing to issue the permit. The project consists of a small collection box, several hundred feet of 1.25" pressure pipe, and a Harris Hydroelectric pelton generator system (see enclosed brochure). The project differs from a domestic or agricultural supply system only in its use of a higher grade of pipe, the inclusion of one thrust block along the pipeline route, and the pelton generator.

The project would utilize less than 0.4 cfs and would not interfere with National Forest management or reserved rights. The pipe would be completely buried on a suitable route. The outfall from the project would become Mr. Forgy's domestic/agricultural water supply. Power from the project would be used on site to serve the Forgy household.

If the project diversion were not sited on National Forest System lands, neither a FERC license nor exemption would be required at all. However, since National Forest System lands are involved, the FERC licensing process comes into play and the project is treated the same as a commercial powerplant.

Enclosed is a letter that Mr. Forgy received from FERC in response to his attempts to obtain licensing or exemption. In order to even apply for an exemption, Mr. Forgy has been asked to pay a filing fee of \$16,430.00. In addition, he would be required to fully reimburse the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and State Fish and Game, for their costs in reviewing the project and setting terms and conditions to protect fish and wildlife.

We feel that in this instance the licensing process has become entirely unreasonable. Disregarding cost reimbursement, the filing fee is



JUN 14 1995

FS-6200-28(7-82)



several times the estimated cost of constructing the project. Yet, if the project could be built a few hundred feet further down the hill, there would be no filing requirement at all.

To resolve the matter, Mr. Forgy has agreed to file two water diversion applications with the State; one for power, and one for domestic and irrigation use. We have withdrawn our protest to the domestic and irrigation application and will proceed to issue a permit for the diversion and pipeline. Resolution of the power application will be deferred.

Although it resolves the immediate problem, we are not satisfied with this approach. Mr. Forgy has had to pay double filing fees to the State Department of Water Resources. The case will be left in limbo with no final resolution in sight. If Mr. Forgy wants electric power in his home, he must either lie to us and put the generator on line without the required permits, or swallow his environmental ethic and purchase a fossil fuel generator system. Since he lives several miles out on a little used road, the eventual outcome is not hard to guess.

The Payette National Forest has worked hard to get unauthorized uses under permit. Some of these are "micro" hydropower projects like Mr. Forgy's. The current situation threatens to undo the gains we have made. Those people who we convinced to apply before the process became so expensive will now be unwilling to follow through. With fees starting at \$16,000, it is cost effective for the owners of unpermitted facilities to make every effort at concealment and delay rather than obtaining permits. Those who have already obtained their permits will feel cheated when they see their neighbors operating unlicensed, unpermitted facilities. We would also anticipate an increase in new occupancy trespasses as people wishing to build this type of project choose to test the system rather than pay what surely must be viewed as an exorbitant fee.

I am sending this in the hope that you may be able to use Mr. Forgy's example in your negotiations with FERC. It is my feeling that the Forest Service environmental process would be the appropriate means of evaluating "micro" projects like Mr. Forgy's. Particularly, where the power is to be used on site and not sold to the public utilities.

VETO J. LaSALLE
Forest Supervisor

Enclosures

cc:

D3

Zuniga

SO Hydro Routing

JUN 14 1995



FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

SEP 12 1988

Project No. 10650-000 - Idaho
Hillman Creek
Tributary Project
John W. Forgy

Mr. John W. Forgy
HC 75, Box 3528
New Meadows, ID 83654

Dear Mr. Forgy:

Your application for exemption of the Hillman Creek Tributary Project, submitted on August 2, 1988, did not contain the necessary payment to cover the costs associated with review of your project, as required under Order No. 487, issued December 16, 1987. In addition, your application did not include copies of the most recent cost estimates provided by fish and wildlife agencies.

Your application is therefore rejected under section 4.32 of the Commission's regulations. The application must include the payments and copies of the cost estimates as discussed below.

Order No. 487, Fees for Hydroelectric Project Applications to Reimburse Fish and Wildlife Agencies, become effective January 21, 1988. The order requires hydroelectric license and exemption applicants, for projects that are required to meet the terms and conditions of fish and wildlife agencies under section 30(c) of the Federal Power Act (Act), to reimburse those agencies for any reasonable costs in setting terms and conditions to protect fish and wildlife resources. Fees will apply only to applications filed after January 21, 1988, for costs incurred after this date.

The fish and wildlife agencies to be reimbursed under Order No. 487 include the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and the state agencies responsible for fish and wildlife resources.

The types of projects in which the above agencies can be reimbursed for fish and wildlife reviews and studies include the following:

- (a) conduit exemptions;
- (b) 5-MW exemptions; and
- (c) licenses where applicants are seeking benefits under the Public Utilities Regulatory Policies Act (PURPA) for projects located at new dams or diversions and where the moratorium on such benefits has ended.

JUN 14 1995

Your application for the Hillman Creek Tributary Project must include a payment, submitted at the time of filing, consisting of 50 percent of the sum of the agencies' most current cost estimates of setting conditions, or a bond for 100 percent of the cost estimates. Your application must also include copies of the most recent cost estimates provided by fish and wildlife agencies.

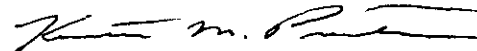
In addition to Order No. 487, the Commission recently issued Order No. 494, Filing Fees Under the Independent Offices Appropriations Act of 1952 (IOAA). Order No. 494, effective May 29, 1988, establishes a fee of \$16,430 for an application for exemption of a small hydroelectric power project from all or part of Part I of the Act. If you intend to refile, a check for \$16,430 should also be enclosed with your application. The Commission's regulations concerning this fee include a provision for the waiver of fees for applications that demonstrate severe economic hardship (18 C.F.R. Section 381.106 (1988)).

Furthermore, your application does not comply with the requirements of the Commission's regulations. If you intend to refile, I advise you to obtain Volume 1 of Title 18 of the Code of Federal Regulations, which contains Parts 1 through 149. Part 4, Subpart K of that volume contains guidance on the filing of exemption applications. This volume is available for sale from the Superintendent of Documents at a price of \$15.00. Payment may be made by sending a check or money order with your request to the following address: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

If you have any questions, please contact Mr. James Hunter of my staff at (202) 376-1943.

This rejection is issued under authority delegated to the Director and is final unless appealed to the Commission within 30 days from the date of this letter.

Sincerely,



Fred E. Springer
Director, Office of
Hydropower Licensing

JUN 14 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

September 6, 1989

John W. Forgy
HC 75
New Meadows, ID 83654

Re: Application for Permit No. 78-7311

Dear Applicant:

Enclosed is a copy of a protest(s) filed against the issuance of a permit pursuant to the above-referenced application. The Department suggests that you contact the protestant(s) and attempt to resolve the protest(s).

If this office has not been advised within twenty (20) days that the protest(s) has been resolved, the matter will be scheduled for a conference. At such a conference, the following are the principle items the Department will review (per Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?

Please contact this office if you have questions regarding this procedure.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

Enclosure: Copy of protest(s)

RECORDED

JUN 14 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

September 6, 1989

J. S. Tixier, Regional Forester
U. S. Dept. of Agriculture
Forest Service
324 25th St.
Ogden, UT 84401

Re: Application for Permit No. 78-7311 in the Name of John W. Forgy

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced application. The Department suggests you contact the applicant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference. At such a conference, the following are the principle items the Department can consider in either approving or denying an application or permit (Section 42-1203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?

If this office can be of further assistance, please contact us.

Sincerely,

DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

JUN 14 1995



United States
Department of
Agriculture

Forest
Service

Intermountain
Region

324 25th Street
Ogden, UT 84401

Reply to: 2540

Date:

Mr. R. Keith Higginson
Director
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

RECEIVED
SEP 05 1989

Department of Water Resources
Western Regional Office

Dear Mr. Higginson:

We are writing to protest Application for Permit No. 78-07311 filed by Mr. John Forgy to appropriate water from an unnamed tributary to Hillman Creek for power production. Mr. Forgy has an application for a special use permit in the final stages of preparation. However, it does not include power production. Before we can issue the special use permit, Mr. Forgy must obtain either an exemption or a license from the Federal Energy Regulatory Commission (FERC). Until we have evidence of action by FERC, the application should be denied.

Sincerely,

for *Randall R. Hall*
J. S. TIXIER
Regional Forester

SEP 01 1989



Caring for the Land and Serving People

FS-6200-28b(4/88)



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

September 20, 1993

JOHN W FORGY
HC 75
NEW MEADOWS ID 83654

RE: Application for Permit No. 78-7311

Dear Mr. Forgy:

In reviewing the above-referenced protested application for permit to install a power plant on an unnamed stream tributary to Hillman Creek, we note that no documentation has been received for several years.

The purpose of this letter is to inquire as to your intent in this matter. Do you still plan to develop the hydropower project and if so has any further action taken place in this regard?

Please advise this office within the next three weeks so that we may update our file in this regard.

Sincerely,

A handwritten signature in dark ink, appearing to read 'David R. Tuthill, Jr.'.

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

A rectangular filing stamp with the number '16' and some illegible text.

JUN 14 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

September 6, 1989

J. S. Tixier, Regional Forester
U. S. Dept. of Agriculture
Forest Service
324 25th St.
Ogden, UT 84401

Re: Application for Permit No. 78-7311 in the Name of John W. Forgy

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced application. The Department suggests you contact the applicant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If this office has not been advised within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference. At such a conference, the following are the principle items the Department can consider in either approving or denying an application or permit (Section 42-1203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?

If this office can be of further assistance, please contact us.

Sincerely,

DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

JUN 14 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

September 6, 1989

John W. Forgy
HC 75
New Meadows, ID 83654

Re: Application for Permit No. 78-7311

Dear Applicant:

Enclosed is a copy of a protest(s) filed against the issuance of a permit pursuant to the above-referenced application. The Department suggests that you contact the protestant(s) and attempt to resolve the protest(s).

If this office has not been advised within twenty (20) days that the protest(s) has been resolved, the matter will be scheduled for a conference. At such a conference, the following are the principle items the Department will review (per Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?

Please contact this office if you have questions regarding this procedure.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

Enclosure: Copy of protest(s)

SPECIAL NOTE: _____

PROTEST INFORMATION SHEET

Protestant - Name(s)

U.S. Dept. of Ag., Forest Service, J.S. Tixier

Address 324 25th St., Ogden, UT 84401

Attorney - Name & Address _____

Date Filed 9-1-89 Protest Date 9-5-89

Issues _____

Applicant - Attorney - Name & Address _____

Dates: _____

Acknowledgement letters: _____

Hearing Notice: _____

Hearing Date: _____

Other: _____

RECEIVED

JUN 14 1995



United States
Department of
Agriculture

Forest
Service

Intermountain
Region

324 25th Street
Ogden, UT 84401

Reply to: 2540

Date:

Mr. R. Keith Higginson
Director
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

RECEIVED
SEP 05 1989

Department of Water Resources
Western Regional Office

Dear Mr. Higginson:

We are writing to protest Application for Permit No. 78-07311 filed by Mr. John Forgy to appropriate water from an unnamed tributary to Hillman Creek for power production. Mr. Forgy has an application for a special use permit in the final stages of preparation. However, it does not include power production. Before we can issue the special use permit, Mr. Forgy must obtain either an exemption or a license from the Federal Energy Regulatory Commission (FERC). Until we have evidence of action by FERC, the application should be denied.

Sincerely,

for *Randall R. Stoll*
J. S. TIXIER
Regional Forester

RECEIVED
SEP 01 1989

Depot

RECEIVED
JUN 14 1995



Caring for the Land and Serving People

FS-6200-28b(4/88)

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D.C. 20426

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE: \$300

Mr. David R. Tuthill, Jr.
2735 Airport Way
Boise, ID 83705

JUN 14 1995

CERTIFIED

P 692 246 114

MAIL

Mr. David R. Tuthill, Jr.
Manager, Western Regional Office
Department of Water Resources
2735 Airport Way
Boise, ID 83705



POSTAGE AND FEES PAID
FEDERAL ENERGY REGULATORY
COMMISSION
FERC-351

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

Permit No. 78-07311
John W. Forgy

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David R. Tuthill, Jr.
Manager, Western Regional Office
Department of Water Resources
2735 Airport Way
Boise, ID 83705

AUG 30 1989

RECEIVED
SEP 05 1989

Department of Water Resources
Western Regional Office

Dear Mr. Tuthill:

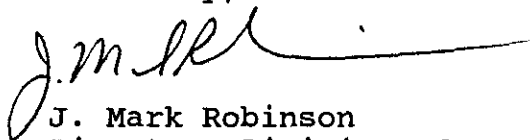
This refers to your letter of August 15, 1989, concerning an application for permit (78-07311) by John W. Forgy for appropriation of public waters for a proposed hydropower project. The Commission received an exemption application to construct and operate Mr. Forgy's proposed project in August 1988. The exemption application was rejected in September 1988. We have not received a new filing from Mr. Forgy.

According to Mr. Forgy's application for permit, the U.S. Forest Service owns property at the point of his diversion. If it is determined that part of the proposed project boundary is located on Federal lands, Mr. Forgy would not be able to commence construction of the project, under section 23(b) of the Federal Power Act (FPA), until he is issued a license by the Federal Energy Regulatory Commission.

In order for a determination to be made, Mr. Forgy needs to file a declaration of intention^{1/} under the provisions of section 23(b) of the FPA.

If you have any questions, please contact Diane Scire at (202) 376-1758.

Sincerely,



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

cc: John W. Forgy
HC 75
New Meadows, ID 83654

1/ See 18 CFR 24.1

RECEIVED
JUN 14 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

August 15, 1989

J. S. Tixier, Regional Forester
U. S. Dept. of Agriculture
Forest Service
324 25th St.
Ogden, UT 84401

Re: Application for Permit No. 78-07311 in the name of John W. Forgy

Dear Sir:

Enclosed is a copy(s) of the above-referenced application(s) for permit which may be of interest to your agency. Please review the application(s) and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter, however, if your agency desires to file a formal protest against the approval of this application(s), your written protest must be received in this office by September 5, 1989.

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

Sincerely,

For DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

DRT:st

Enclosure(s):

RECEIVED

JUN 14 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

August 15, 1989

State of Idaho
Department of Fish & Game
P.O. Box 25
Boise, ID 83720

Re: Application for Permit No. 78-07311 in the name of John W. Forgy

Dear Sir:

Enclosed is a copy(s) of the above-referenced application(s) for permit which may be of interest to your agency. Please review the application(s) and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter, however, if your agency desires to file a formal protest against the approval of this application(s), your written protest must be received in this office by September 5, 1989.

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

Sincerely,

A handwritten signature in cursive script, reading "David R. Tuthill, Jr.".

For
DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

DRT:st

Enclosure(s):

RECEIVED
JUN 14 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

August 15, 1989

Charles T. Brown
Federal Energy Regulatory Commission
Washington D.C. 20426

Re: Application for Permit No. 78-07311 in the name of John W. Forgy

Dear Sir:

Enclosed is a copy(s) of the above-referenced application(s) for permit which may be of interest to your agency. Please review the application(s) and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter, however, if your agency desires to file a formal protest against the approval of this application(s), your written protest must be received in this office by September 5, 1989.

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

Sincerely,

For
DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

DRT:st

Enclosure(s):

JUN 14 1995

Form No. 202a.
3/89

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

INITIAL REVIEW BY: RW DATE: 7/28/89 APPLICATION: 78-07311

REQUIRED INFORMATION

☒ Name: (If applicant is a corporation or partnership, names and addresses for the director, officers, and other partners must be included.)
☒ Address:
☒ Source: (See USGS Quad for names of water sources)
☒ Point of Diversion: (10 acres for spring, lot & block descriptions for Subdivisions, local name)
☒ County:
☒ Quantity: (flow and/or volume)
☒ Period of use: Gov't. Lots: N P/D
☒ Nature of proposed use: (Include description of use) N P/U
☒ Description of diverting works:
☒ Time required for beneficial use of water:
☒ Place of use or acres irrigated:
☒ Map:
☒ Signature: (If applicant is corp., partnership, or municipality, title of signatory is required)
☒ Fee:
☒ Yes ___ No* In form to receipt:

ADDITIONAL INFORMATION

YES	NO	
___	☒	Overlapping place of use: (Describe source & relationship to present application on the back.)
___	☒	Overlapping point of diversion:
___	☒	Field check required: Field check by: _____
___	☒	Field report attached:
___	☒	Critical groundwater area:
___	☒	Groundwater management area:
___	☒	Send dam safety information:
___	☒	Send power requirement letter:
___	☒	Send fish farm requirement letter:
☒	___	Power residency affidavit: <u>See File 78-7309</u>
___	☒	Power efficiency form:
___	☒	Within trust water boundary: (If yes, attach Trust Water Supplementary Analysis Sheet.)
___	☒	Diversion greater than 5 cfs or 500 af: (If yes, attach Large Diversion supplementary analysis sheet.)
___	☒	<u>*REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT</u>

DATE REQUESTED: _____

☒ Additional information on reverse side:

PROCESSING

YES NO

X
 X
X

In form for advertising:

Statewide advertising:

Fee amount, receipt number and date recorded on application:

SEND COPIES TO

YES NO

 X
X
 X
 X

I.D. Health and Welfare

I.D. Fish and Game

I.D. Lands

Adjudication Bureau

YES NO

 X
X
 X
X

U.S. BLM

U.S. Forest Svc.

Water Dist. #

Other FERC ?

FINAL REGIONAL PROCESSING REVIEW

YES NO

✓
✓

Affidavit of publication received:

Application published correctly: If not, record action taken.

✓

Publication dates and paper recorded on application:

Protests received. Final date for protest September 5, 1989

Protest dates, resolution of protest recorded on application:

Recommendations attached:

Measuring device required:

Measuring port required:

Water delivered by water master? District #

Special conditions of approval or cover letter:

See below for additional information

Recommended Date or Priority

Recommended by: Date

STATE OFFICE REVIEW

See below for additional information. By Date

ADDITIONAL INFORMATION

See Protested App. 78-7309

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Western Region
2735 AIRPORT WAY

Boise, Idaho 83705
(208) 334-2190

AUGUST 9, 1989

Adams County Leader
P.O. Box 23
Council, ID 83612

Dear Legal Dept.:

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. 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 SEPTEMBER 5, 1989.

Yours truly,

GAIL GARRETT
Secretary

Encl.

RECEIVED

JUN 14 1989

78-07311

FORGY, JOHN W.
HC 75
NEW MEADOWS, ID 83654

Source: UNNAMED STREAM

Tributary: HILLMAN CREEK

Diversion Pt: NESE Sec 32 T 22N R 01E

Use: POWER (.040 CFS)

Date Filed: 7/20/1989

In: T22N R01E S33 NWSW

JUN 14 1985