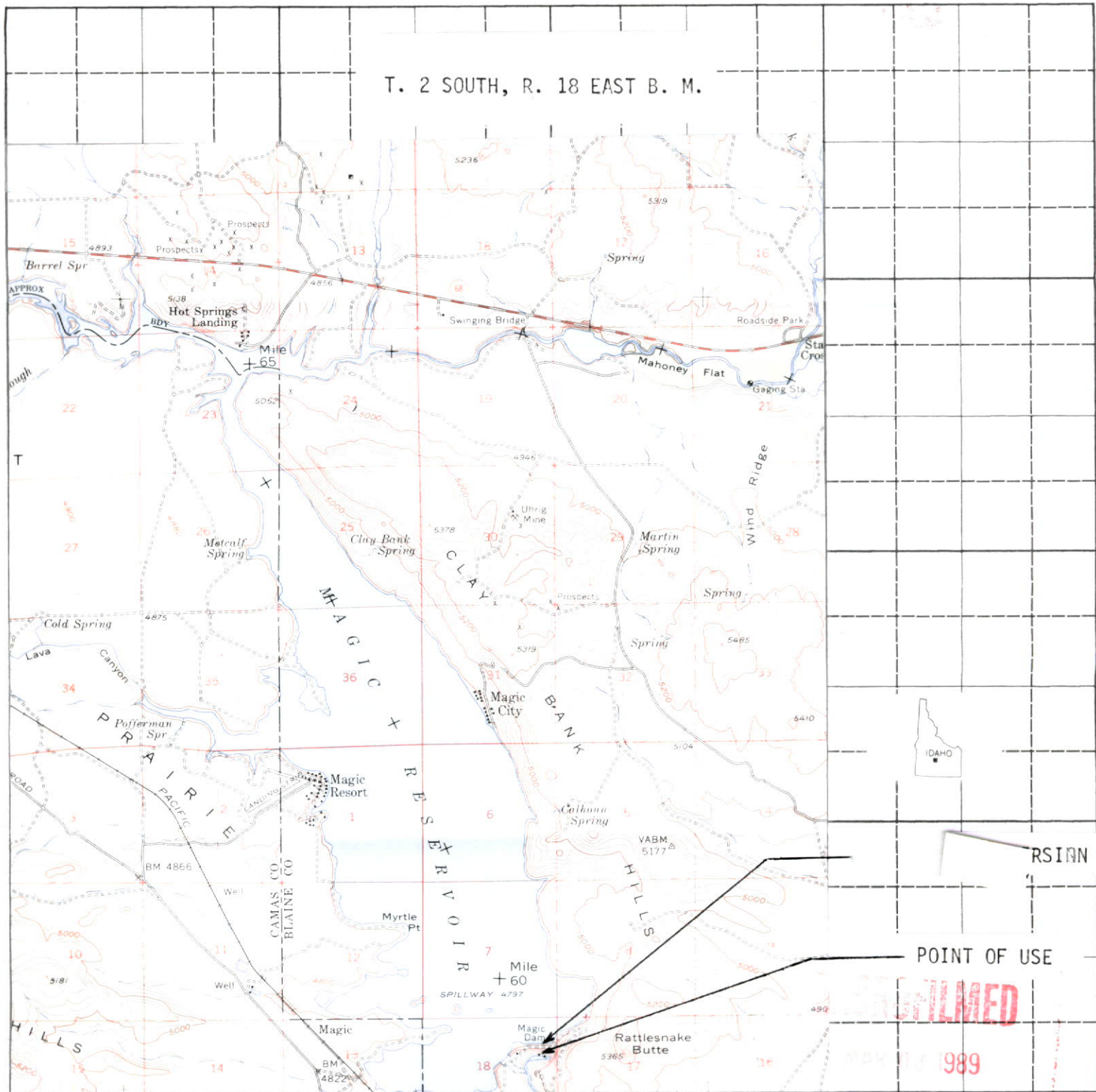


13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



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.

Jay R. Jackson, President

Jay R. Jackson

(Applicant)

NOTICE OF APPLICATION FOR WATER RIGHT

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

37-08389

Magic Reservoir
Hydroelectric, Inc.
c/o Jay R. Jackson,
pres.
2399 S. Orchard St, STE,
201

Boise, ID 83705

Source: Big Wood River
Tributary: Snake River
Diversion Pt: NENE Sec
18 T 02S R 18E; at Magic
Dam

Use: Power (300.000
CFS)

Date Filed: 10/28/1988

In: T02S R18E S18 NENE

The permit(s) will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code and/or the new public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 2148 4th Avenue East, Twin Falls, Idaho 83301 on or before December 12, 1988.

R. Keith Higginson,
Director
PUBLISH: Thursday,
November 24 and
December 1, 1988.

Affidavit of Publication

STATE OF IDAHO,

COUNTY OF TWIN FALLS

ss.

DEC 19 1988

Nº 19260

I, Linda Capps McShane, Department of Water Resources
Southern Region Office, being first duly sworn upon
oath, depose and say that I am Quinn Clerk of the TIMES-NEWS,
published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of
the notice of advertisement, as per clipping attached, was published in the regular and
entire issue of said newspaper, and not in any supplement thereof, for Two
consecutive Weeks, commencing with the issue dated
November 24, 1988, and ending with the issue dated
December 1, 1988.

STATE OF IDAHO

COUNTY OF

On this 9 day of December in the year of 1988, before me,

a Notary Public, personally appeared Linda Capps McShane
known or identified to me to be the person whose name subscribed to the within instru-
ment, and being by me first duly sworn, declared that the statements therein are true,
and acknowledged to me that he executed the same.

Dorinda Kruse
Notary Public for Idaho

Residing at

My commission expires:

Twin Falls
8-19-91

effective February 16,
Sunday, and the Twin
ch newspapers prior to
ounty continuously and
nths, and said TIMES-
paper except Saturday,
cation under said name

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

Linda
9 day of

Kruse
ounty of Twin Falls,
in Falls, Idaho

Proof of Publication

The Post-Register

State of Idaho, }
County of Bonneville } ss

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

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for two consecutive weeks, first publication having been made on the 24th day of November, 1988, last publication having been made on the 1st day of December, 1988, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Subscribed and sworn to before me, this 5th day of December, 1988

J. Robb Brady
Leon R. Napier
Notary Public

My commission expires September 30, 1994.

NOTICE OF APPLICATION FOR WATER RIGHT

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

37-08389

MAGIC RESERVOIR

HYDROELECTRIC, INC.

C/O JAY R. JACKSON, PRES.

2399 S. ORCHARD ST. STE. 201

BOISE, ID 83705

Source: BIG WOOD RIVER; Tributary:
SNAKE RIVER

Diversion Pt: NENE Sec 18 T 02S R 18E; at
Magic Dam

Use: POWER (300,000 CFS)

Date Filed: 10/28/1988

In: T02S R18E S18 NENE

The permit(s) will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code and/or the new public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 2148 4th Avenue East, Twin Falls, Idaho 83301 on or before DECEMBER 12, 1988.

R. Keith Higginson, Director

Published: November 24, December 1, 1988

OK
MB
12/14/88

MICROFILMED

MAR 03 1989

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707

LEGAL ADVERTISING INVOICE

Amount Due

40.44

Account Name Idaho Department of Water Resources (Southern)			Account Number #100632	
Address 2148 4th Avenue East		City/State Twin Falls, ID		Zip 83301
Ordered By Mary Baldwin	P.O. Number	Rate NT	Run Dates 1988 Nov. 24, Dec. 1	
Identification Application for Water Right: 37-08389			Estimated Inches	Real Inches
1 Number of Affidavits Requested				Legal Number #1253

NOTICE OF APPLICATION FOR WATER RIGHT

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

37-08389

Magic Reservoir Hydroelectric, Inc.
c/o Jay R. Jackson, Pres.
2399 S. Orchard St. Ste. 201
Boise, ID 83705

Source: Big Wood River
Tributary: Snake River
Diversion Pt: NENE Sec 18 T
02S R 18E; at Magic Dam
Use: Power (300,000 CFS)
Date Filed: 10/28/1988
In: T02S R18E S18 NENE

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R. KEITH HIGGINSON
Director

Pub. Nov. 24
Dec. 1, 1988

1253

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Debbie Richards, being duly

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

☒ consecutive weekly ☐ consecutive daily ☐ single ☐ odd skip

insertion(s) beginning with the issue of November 24, 19 88

and ending with the issue of December 1, 19 88

Debbie Richards

Subscribed and sworn to before me this 1st

day of December, 19 88

John Rice 12/88
Notary Public for Idaho, Residing at Boise, Idaho

MICROFILMED

MAR 03 1989

AFFIDAVIT of PUBLICATION

State of Idaho, }
County of Blaine } SS.

DANIEL J. GORHAM

, being first duly sworn,
deposes and says that he is the printer (publisher) of the Wood River Journal, a newspaper published every week in Hailey, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the

annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first

publication of said advertisement was on the 28th day of Nov, 1988, and

the date of the last publication was on the 30th day of Nov, 1988.

Daniel J. Gorham

Subscribed and sworn to before me this 30th day of Nov, 1988.
(SEAL)

Roberta McKeecher

NOTARY PUBLIC

WOOD RIVER JOURNAL
Hailey, Idaho

COST OF PUBLICATION

Number of Picas per Line 11
Number of Lines in Notice 38
Number of Insertions 2
Lines tabular at 5¢/Pica
38 Lines straight at 18.81 4¢/Pica
38 Subsequent lines at 14.63 3¢/Pica
TOTAL COST 33.44

COPY OF NOTICE

(Paste Here)

Not. of Application #37-08389
TITLE OF NOTICE Magic Reservoir

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept. of Water Resources
BILL TO

Water permit sought by Magic

NOTICE OF APPLICATION FOR WATER RIGHT

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

37-08389

MAGIC RESERVOIR
HYDROELECTRIC, INC.
C/O JAY R. JACKSON, PRES.
2399 S. ORCHARD ST. STE. 201
BOISE, ID 83705

Source: BIG WOOD RIVER

Tributary: SNAKE RIVER

Diversion Pt: NENE Sec 18 T 02S
R 18E; at Magic Dam

Use: POWER (300,000 CFS)

Date Filed: 10/28/1988

In: T02S R18E S18 NENE

The permit(s) will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code, and/or the new public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 2148 4th Avenue East, Twin Falls, Idaho 83301, on or before DECEMBER 12, 1988.

R. Keith Higginson, Director

Publish: Wood River Journal—
November 23 & 30, 1988.

7-8 pt. per line straight.....4.5/pica
7-8 pt. per line tabular.....5.5/pica
7-8 pt. per line successive insertion.....3.5/pica

MICROFILMED
No 6242

MAR 03 1989

TRIBUNE PUBLISHING COMPANY, INC.

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

Date 120188INVOICE No. LOO151160Account No. 44662MAGIC RESRDescription 51160THEFOTimes 2 Lines 28

Tab Lines _____

**LEGAL ADVERTISING
INVOICE**

SOLD TO:

STATE OF IDAHO
DEPT. OF WATER RESOURCES
2148 4TH AVE. E.
TWIN FALLS
ID 83301

\$ 28.00

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

AFFIDAVIT OF PUBLICATION

OK mb 12/8/88
STATE OF IDAHO, ss.
County of Nez Perce

Lori Andersen

being duly sworn,

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

NOTICE OF APPLICATION FOR

attached hereto and which is made a part of this affidavit was published in
the said Lewiston Morning Tribune, 2 time(s). Publication be-
ing on 112488, or once a

WEEK for 2 consecutive WEEKS, the first
publication thereof being on the 112488, and the last pub-
lication thereof being on the 120188, and said

NOTICE OF APPLICATION FOR

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

SUBSCRIBED AND SWORN BEFORE ME THIS THE 1stday of December 1988

Lori Andersen
Gerald M. Lantz

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

51160
The Following application(s) have
been filed to appropriate the public
waters of the State of Idaho:
37-08389

**MAGIC RESERVOIR HYDRO-
ELECTRIC, INC.**

C/O JAY R. JACKSON, PRES.
2399 S. ORCHARD ST. STE. 201
BOISE, ID 83705

Source: BIG WOOD RIVER

Tributary: SNAKE RIVER

Diversion Pt: NENE Sec 18 T 02S

R 18E; at Magic Dam

Use: POWER (300.000 CFS)

Date Filed: 10/28/1988

In: T02S R18E S18 NENE

The permit(s) will be subject to
all prior water rights. Protests may
be submitted based on the criteria of
Sec. 42-203A, Idaho Code and/or the
new public interest criteria of Sec.
42-203C, Idaho Code. Protests must
be filed with the Director, Dept. of
Water Resources, 2148 4th Avenue
East, Twin Falls, Idaho 83301 on or
before DECEMBER 12, 1988.

R. Keith Higginson, Director

MICROFILMED**MAR 03 1989**

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 37-08389 IN THE)
NAME OF MAGIC RESERVOIR HYDROELECTRIC, INC.) ORDER OF REINSTATEMENT
_____)

WHEREAS, the Department issued the above-captioned permit with the condition that proof of construction of works and application of water to beneficial use (proof of beneficial use) be submitted on or before February 1, 1990; and,

WHEREAS, the Department notified the permit holder by certified mail that proof was due and instructed the permit holder of the steps to be taken to submit the proof of beneficial use; and,

WHEREAS, on January 30, 1990, the Department received the proof of beneficial use form with a partial fee; and,

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

WHEREAS, the permit holder has provided a reasonable showing why the permit should be reinstated by submitting the additional fee on February 16, 1990;

IT IS, THEREFORE, HEREBY ORDERED that Permit No. 37-08389 be REINSTATED and the priority advanced to November 12, 1988.

Dated this 23rd day of February, 1990.

MICROFILMED

MAR 22 1990

L. Glen Saxton
L. GLEN SAXTON, Chief
Water Allocation Bureau

RECEIVED

OCT 28 1988

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Ident. No. 37-08389

APPROVED

Department of Water Resources
Southern Region Office

To appropriate the public waters of the State of Idaho

1. Name of applicant Magic Reservoir Hydroelectric, Inc. Phone (208) 336-3000
Post office address 2399 S. Orchard St. Suite 201 Boise, Idaho 83705

2. Source of water supply Big Wood River which is a tributary of Snake River

3. Location of point of diversion is NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Govt. Lot
Sec. 18 Township 2 South Range 18 East B.M. Blaine County; additional
points of diversion if any: none / / / / / / / / / / / / / / / /

4. Water will be used for the following purposes:

Amount 300 cfs for Power purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)

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

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

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

5. Total quantity to be appropriated is (a) 300. cubic feet per second and/or (b) acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Existing Magic Dam together with existing intake structure and outlet works.

b. Height of storage dam 135 feet; active reservoir capacity 190,000 acre-feet; total reservoir capacity 191,500 acre-feet; period of year when water will be diverted to storage: Jan. 1 to Dec. 31 inclusive.

c. Proposed well diameter is n/a inches; proposed depth of well is n/a feet.

d. Is ground water with a temperature of greater than 90°F being sought? n/a

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

MICROFILMED

MAR 03 1989

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

- Hydropower; show total feet of head and proposed capacity in KW. 121 ft.; FERC-licensed cap.=9MW
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. _____

9. Description of place of use:

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
2S	18E	18	P																

Total number of acres to be irrigated _____

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

Water Permits #37-7848 and #37-8178 currently held by this Applicant

11. a. Who owns the property at the point of diversion? Big Wood Canal Company

b. Who owns the land to be irrigated or place of use? Big Wood Canal Company

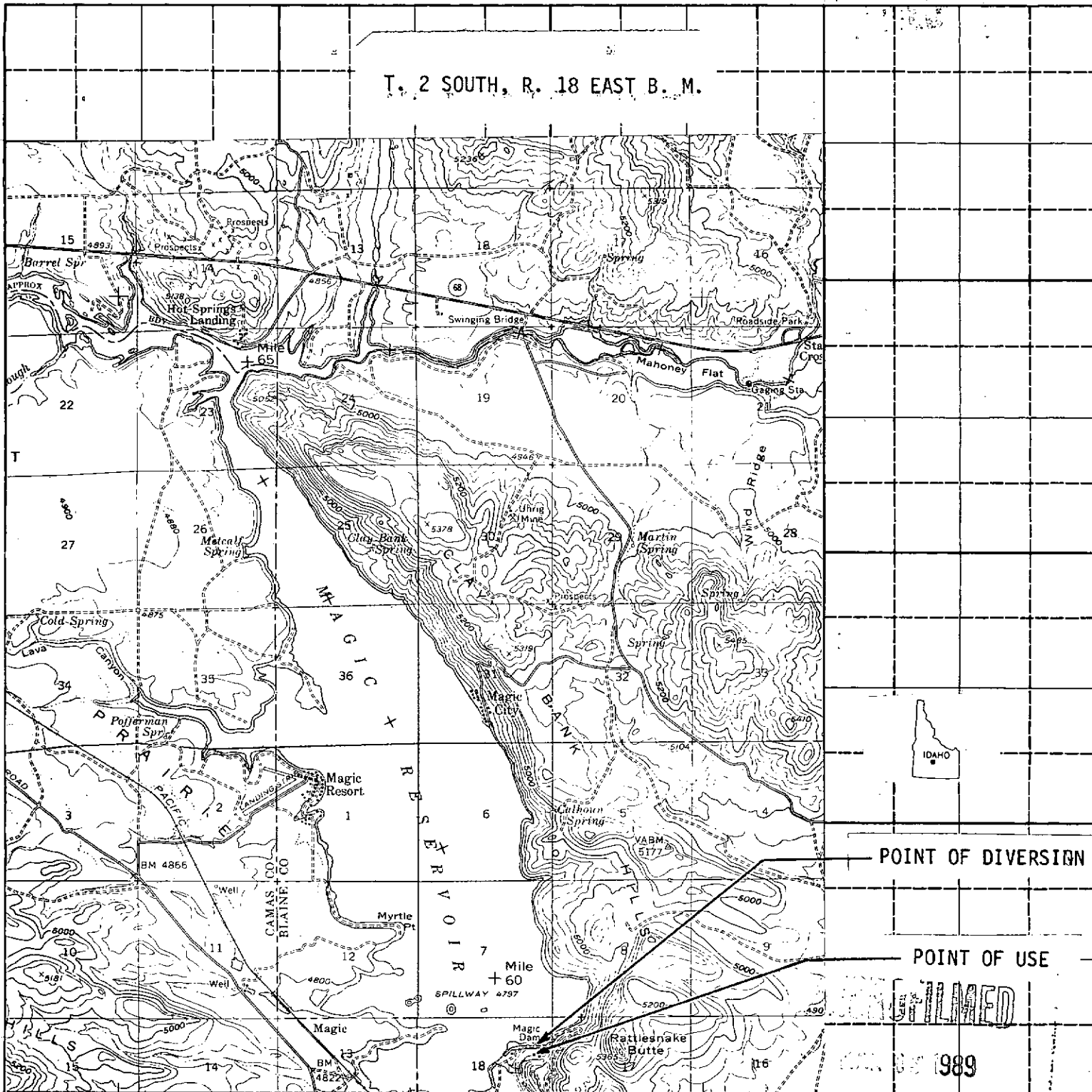
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. Pursuant to 3/22/88 Agreement (on file with IDWR under above-referenced Permits) between Big Wood Canal Company and Applicant.

12. Remarks: This application is filed as an addendum to the above-referenced Permits.

in order to best coordinate flood control and irrigation flow release regimes with power production. Per agreement with Big Wood Canal Company, releases for power will be subordinate to prior established uses. With approval of this permit, the aggregate of all permitted power flows will match power plant turbine capacity.

MICROFILMED

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



Scale: 1 inch = 1 mile

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

Jay R. Jackson, President

Jay R. Jackson

(Applicant)

Proposed Priority 10/28/88

Received by T. Gasper Date 10/28/88 Time 4:25 p.m. Preliminary check by LH

Fee \$ 2225.00 Receipted by T. Gasper # 5003864 Date 11/12/88

Publication prepared by M. Baldwin Date 11/17/88 Published in Wood River Journal
Id. Statesman, Post Register
Lewiston A.M. Tribune, Times News

Publication approved M. Baldwin Date 12/8/88, 12/14/88

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 37-8389, and said application is hereby APPROVED.

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

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before February 1, 1990.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- e. Other: Please see attached page for other conditions of approval.

Witness my hand this 23rd day of January, 1989.

J. Glen Saxton

MICROFILMED

MAR 03 1989

ATTACHMENT TO CONDITIONS OF APPROVAL
For Permit No. 37-8389

- e. The issuance of this permit in no way grants any right-of-way or easement across the land of another.
- f. The permit holder shall either install a measuring device or a flow measurement port or provide a certified measurement or computation of flow based upon system design to be prepared by a professional engineer.
- g. Permanent measuring devices must be installed in such a manner that the amount of water entering the reservoir and the amount of water released from the reservoir can be measured.
- h. This permit is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this permit. Failure to comply with these provisions is cause for immediate cancellation of this permit.
- i. Water used under this permit if discharged into a natural channel or subsurface system shall meet Idaho Water Quality Standards.
- j. The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director on the date(s) of expiration of any license issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
- k. The water right acquired under this permit for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- l. This permit does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
- m. Use of water under this permit shall be non-consumptive.
- n. A separate stream alteration permit from the IDWR is required for any activity in the stream channel other than construction and/or maintenance of the diversion structure. If your proposed construction or operation involves construction of an outfall or any other work in the stream channel other than a water diversion, you must contact the Department and obtain a Stream Channel Alteration permit prior to the start of construction.
- o. Prior to placing water to beneficial use under this permit, the permit holder must determine the rate of loss within his facilities using a procedure approved by the Director of the Department of Water Resources, and provide a source of augmentation water to mitigate all losses.

MICROFILMED

MAR 03 1989

Page 2

Conditions of Approval (37-8389)

- p. Use of water under this permit is subject to control by the watermaster of State Water District No. 37, Big Wood River.
- q. The permittee cannot demand release of water from Magic Reservoir for hydropower production and is only authorized to use water released in traditional patterns for distribution to prior right holders.

Witness my hand this 23rd day of January, 1989.

J. New Saylor
Chief, Operations Bureau

MICROFILMED

MAR 03 1989

MAGIC RESERVOIR HYDROELECTRIC, INC.

2399 SOUTH ORCHARD STREET, SUITE 201

BOISE, ID 83705

(208) 336-3000

November 4, 1988

RECEIVED

NOV - 8 1988

Department of Water Resources
Southern Region Office

Mr. Loren Holmes, Supervisor
Southern Region
Idaho Dept. of Water Resources
2148 Fourth Avenue East
Twin Falls, ID 83301

Re: Magic Dam Hydroelectric Project

Dear Mr. Holmes:

Per our telephone discussion on November 4, 1988, I am enclosing the additional information you requested in order that the Regional Office may continue processing and advertisement of the Application for Water Appropriation Permit filed under my letter of October 27, 1988, on behalf of Magic Reservoir Hydroelectric, Inc. (MRH).

Particularly, the information you requested included 1) Order Issuing License (issued January 15, 1987) for the Magic Dam Hydroelectric Project (FERC No. 3407); and 2) a list of the names and addresses of the Directors of Magic Reservoir Hydroelectric, Inc.

The Federal Energy Regulatory Commission (FERC) Order Issuing License is enclosed.

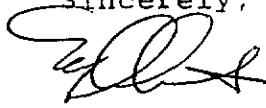
The names and addresses of MRH Directors are:

Jay R. Jackson
2399 S Orchard St., Ste. 201
Boise, ID 83705

Maureen Jackson
2399 S Orchard St., Ste. 201
Boise, ID 83705

If you have any further needs or requests, please let me know at your first opportunity; meanwhile, we appreciate your continued timely processing efforts.

Sincerely,


MARC A. AUTH

MAA/lj

cc: Jay Jackson

MICROFILMED

MAR 03 1989

AUG 30 1988

State of Idaho
Department of Water Resources

37-7848
37-8178
Water Right No.

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

Department of Water Resources

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

*COPY - see original
in file 37-7848.
KW*

1. Individual Applicant or Individual Members of a Partnership:

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

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

2. Corporation:

I, Jay R. Jackson of Homedale,
(name) (city).

County of Owyhee, State of Idaho, being duly sworn, depose
and say: That I am the designated registered agent of the Magic Reservoir Hydroelectric, Inc.

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

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

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

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

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

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

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

Magic Reservoir Hydroelectric, Inc.

Applicant Jay R. Jackson, President

State of Idaho)
County of Ada) ss.

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

Quincy A. Moss
Notary Public residing at _____

seal

My commission expires:

1/28/92

MICROFILMED
MAR 03 1989
SEP 28 1988

NOTICE OF APPLICATION FOR WATER RIGHT

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37-08389
Magic Reservoir
Hydroelectric, Inc.
c/o Jay R. Jackson,
pres.
2399 S. Orchard St, STE,
201

Boise, ID 83705
Source: Big Wood River
Tributary: Snake River
Diversion Pt: NENE Sec
18 T 02S R 18E; at Magic
Dam
Use: Power (300,000
CFS)

Date Filed: 10/28/1988
In: T02S R18E S18 NENE

The permit(s) will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code and/or the new public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 2148 4th Avenue East, Twin Falls, Idaho 83301 on or before December 12, 1988.

R. Keith Higginson,
Director
PUBLISH: Thursday,
November 24 and
December 1, 1988.

Affidavit of Publication

STATE OF IDAHO,
COUNTY OF TWIN FALLS }

ss.

DEC 25 1988 N^o 19260

I, Linda Copps McSwain, Department of Water Resources
Southern Region Office, duly sworn upon
oath, depose and say that I am Print Clerk of the TIMES-NEWS,
published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of
the notice of advertisement, as per clipping attached, was published in the regular and
entire issue of said newspaper, and not in any supplement thereof, for Two
consecutive Weeks, commencing with the issue dated
November 24, 1988, and ending with the issue dated
December 1, 1988.

STATE OF IDAHO
COUNTY OF }

On this 9 day of December in the year of 1988, before me,
a Notary Public, personally appeared Linda Copps McSwain
known or identified to me to be the person whose name subscribed to the within instru-
ment, and being by me first duly sworn, declared that the statements therein are true,
and acknowledged to me that he executed the same.

Dorinda Thruce
Notary Public for Idaho

Residing at Twin Falls

My commission expires: 8-19-91

effective February 16,
Sunday, and the Twin
ch newspapers prior to
ounty continuously and
nths, and said TIMES-
paper except Saturday,
cation under said name

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

Thruce
9 day of

Thruce
ounty of Twin Falls,
in Falls, Idaho

Proof of Publication

The Post-Register

State of Idaho,
County of Bonneville } ss

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

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for two consecutive weeks, first publication having been made on the 24th day of November, 1988, last publication having been made on the 1st day of December, 1988, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Subscribed and sworn to before me, this 5th day of December, 1988.

J. Robb Brady
Leon R. Napier
Notary Public

My commission expires September 30, 1994.

NOTICE OF APPLICATION FOR WATER RIGHT

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

37-08389

MAGIC RESERVOIR
HYDROELECTRIC, INC.
C/O JAY R. JACKSON, PRES.
2399 S. ORCHARD ST. STE. 201
BOISE, ID 83705

Source: BIG WOOD RIVER; Tributary:
SNAKE RIVER

Diversion Pt: NENE Sec 18 T 02S R 18E; at
Magic Dam

Use: POWER (300,000 CFS)

Date Filed: 10/28/1988

In: T02S R18E S18 NENE

The permit(s) will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code and/or the new public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 2148 4th Avenue East, Twin Falls, Idaho 83301 on or before DECEMBER 12, 1988.

R. Keith Higginson, Director
Published: November 24, December 1, 1988

OK
MB
12/14/88

MICROFILMED

MAR 03 1989

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707

LEGAL ADVERTISING INVOICE

Amount Due

40.44

Account Name Idaho Department of Water Resources (Southern)				Account Number #100632	
Address 2148 4th Avenue East		City/State Twin Falls, ID		Zip 83301	
Ordered By Mary Baldwin	P.O. Number	Rate NT	Run Dates 1988 Nov. 24, Dec. 1		
Identification Application for Water Right: 37-08389			Estimated Inches	Real Inches	
Number of Affidavits Requested 1				Legal Number #1253	

NOTICE OF APPLICATION FOR WATER RIGHT

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

37-08389

Magic Reservoir Hydroelectric, Inc.
c/o Jay R. Jackson, Pres.
2399 S. Orchard St. Ste. 201
Boise, ID 83705

Source: Big Wood River
Tributary: Snake River
Diversion Pt: NENE Sec 18 T
02S R 18E; at Magic Dam
Use: Power (300,000 CFS)
Date Filed: 10/28/1988
In: T02S R18E S18 NENE

The permit(s) will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code and/or the new public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 2148 4th Avenue East, Twin Falls, Idaho 83301 on or before December 12, 1988.

R. KEITH HIGGINSON
Director

Pub. Nov. 24
Dec. 1, 1988

1253

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Debbie Richards, being duly

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

☒ consecutive weekly ☐ consecutive daily ☐ single ☐ odd skip

insertion(s) beginning with the issue of November 24, 19 88

and ending with the issue of December 1, 19 88

Debbie Richards

Subscribed and sworn to before me this

day of December

1st

88

MICROFILMED

MAR 03 1989

Notary Public for Idaho, Residing at Boise, Idaho

AFFIDAVIT of PUBLICATION

State of Idaho, }
County of Blaine } SS.

DANIEL J. GORHAM

, being first duly sworn,
deposes and says that he is the printer (publisher) of the Wood River Journal, a
newspaper published every week in Hailey, County of Blaine, State of Idaho; that
said newspaper has been continuously and uninterruptedly published for a period of
seventy-eight consecutive weeks prior to the first publication of the annexed notice,
and is a newspaper qualified to publish legal notices as provided by act of the 1919
session of the legislature of the State of Idaho, known as House Bill 145; that the

annexed advertisement was published once each week for 2 consecutive
issues in said newspaper proper and not in a supplement; that the date of the first

publication of said advertisement was on the 23rd day of Nov., 1988, and

the date of the last publication was on the 30th day of Nov., 1988.

David J. Gorham

Subscribed and sworn to before me this 30th day of Nov., 1988.
(SEAL)

Roberta McKeecher

NOTARY PUBLIC

WOOD RIVER JOURNAL
Hailey, Idaho

COST OF PUBLICATION

Number of Picas per Line 11
Number of Lines in Notice 38
Number of Insertions 2
Lines tabular at 5¢/Pica
38 Lines straight at 18.81 45¢ Pica
38 Subsequent lines at 14.63 38¢ Pica
TOTAL COST 33.44

COPY OF NOTICE

(Paste Here)

Not. of Application #37-08389
TITLE OF NOTICE Magic Reservoir

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept. of Water Resources
BILL TO

Water permit sought by Magic

NOTICE OF APPLICATION FOR WATER RIGHT

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

37-08389

MAGIC RESERVOIR
HYDROELECTRIC, INC.
C/O JAY R. JACKSON, PRES.
2399 S. ORCHARD ST. STE. 201
BOISE, ID 83705

Source: BIG WOOD RIVER

Tributary: SNAKE RIVER

Diversion Pt: NENE Sec 18 T 02S
R 18E; at Magic Dam

Use: POWER (300,000 CFS)

Date Filed: 10/28/1988

In: T02S R18E S18 NENE

The permit(s) will be subject to all
prior water rights. Protests may
be submitted based on the criteria
of Sec. 42-203A, Idaho Code,
and/or the new public interest
criteria of Sec. 42-203C, Idaho
Code. Protests must be filed with
the Director, Dept. of Water
Resources, 2148 4th Avenue
East, Twin Falls, Idaho 83301, on
or before DECEMBER 12, 1988.

R. Keith Higginson, Director

Publish: Wood River Journal-
November 23 & 30, 1988.

7-8 pt. per line straight.....4.5/pica
7-8 pt. per line tabular.....5.5/pica
7-8 pt. per line successive insertion.....3.5/pica

MICROFILMED 6242

MAR 03 1989

TRIBUNE PUBLISHING COMPANY, INC.

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

Date 120188 INVOICE No. L00151160Account No. 44662 MAGIC RESRDescription 51160THEFOTimes 2 Lines 28

Tab Lines _____

**LEGAL ADVERTISING
INVOICE**

SOLD TO:

STATE OF IDAHO
DEPT. OF WATER RESOURCES
2148 4TH AVE. E.
TWIN FALLS
ID 83301

\$ 28.00

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

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

Lori Andersen, being duly sworn,

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

NOTICE OF APPLICATION FOR

attached hereto and which is made a part of this affidavit was published in
the said **Lewiston Morning Tribune**, 2 time(s). Publication be-
ing on 112488, or once a
WEEK for 2 consecutive WEEKS, the first
publication thereof being on the 112488, and the last pub-
lication thereof being on the 120188, and said

NOTICE OF APPLICATION FOR

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

SUBSCRIBED AND SWORN BEFORE ME THIS THE 1st
day of December 1988

Gerald M. Lantz

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

The Following application(s) have
been filed to appropriate the public
waters of the State of Idaho:
37-08389

MAGIC RESERVOIR HYDRO-
ELECTRIC, INC.
C/O JAY R. JACKSON, PRES.
2399 S. ORCHARD ST. STE. 201
BOISE, ID 83705

Source: BIG WOOD RIVER
Tributary: SNAKE RIVER
Diversion Pt: NENE Sec 18 T 02S
R 18E; at Magic Dam

Use: POWER (300,000 CFS)

Date Filed: 10/28/1988

In: T02S R18E S18 NENE

The permit(s) will be subject to
all prior water rights. Protests may
be submitted based on the criteria of
Sec. 42-203A, Idaho Code and/or the
new public interest criteria of Sec.
42-203C, Idaho Code. Protests must
be filed with the Director, Dept. of
Water Resources, 2148 4th Avenue
East, Twin Falls, Idaho 83301 on or
before DECEMBER 12, 1988.

R. Keith Higginson, Director

MICROFILMED

MAR 03 1989

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSIONMagic Reservoir
Hydroelectric, Inc.

)

Project No. 3407-073

ORDER APPROVING DISSOLVED OXYGEN REQUIREMENTS

(Issued September 10, 1997)

On January 24, 1997, Magic Reservoir Hydroelectric, Inc. (licensee) filed an application for permanent modification of the dissolved oxygen (DO) requirements for the Magic Dam Project. The project is located in Blaine County, Idaho, on the Big Wood River.

BACKGROUND

Article 403 of the Magic Dam license, issued on January 15, 1987, requires maintenance of minimum DO levels in the project tailrace at 90 percent saturation from April 1 through July 31 and 5 milligrams per liter (mg/L) for the rest of the year. 1/

On November 13, 1990, the licensee filed an application for amendment of license for the project, which it subsequently amended on December 20, 1990. The licensee requested that the DO levels required by article 403 be revised for the 1991 operating year to reflect an agreement between the licensee and Idaho Department of Fish and Game (IDFG). Under the agreement, article 403 would be revised for the 1991 operating year as follows:

Dissolved Oxygen Limit (mg/L)

Time Period	30-Day Mean	7-Day Minimum	Instantaneous Minimum
April 1-June 30	6.0	5.0	4.5
July 1-October 15	6.0	4.7	3.5

After the 1991 operating year, the licensee would consult with the IDFG for the purpose of either modifying the above DO standards or making them permanent. Additional material, dated April 25, 1991, was provided by the licensee to support its request.

1/ 36 FERC ¶ 62,034

DC-A-3

Project No. 3407-073

-2-

On May 8, 1991, the Commission issued the Order Approving Temporary Modification of Dissolved Oxygen Requirement, which revised article 403 for the 1991 operating year as requested by the licensee. 2/ The order also required the licensee to monitor the large pool at the base of Magic Dam with respect to DO levels and fish resources. Based on the results of the monitoring, the licensee could request a permanent amendment of the original DO requirements of the license, provided the state and federal resource agencies concur.

Since the 1991 operating year, the licensee has been given additional time to monitor DO levels in order to amass a sufficient record of monitoring DO levels under varying operating conditions to support its request for permanent modification of project DO standards.

LICENSEE'S PROPOSAL

The licensee requests that article 403 be revised to require maintenance of DO levels consistent with the temporary standards set in the Commission's May 8, 1991 order. The licensee states it has developed an operating plan for DO with the IDFG, U.S. Fish and Wildlife Service (FWS), and the Idaho Department of Environmental Quality (IDEQ). The operating plan includes constant monitoring of DO levels and the wherewithal to effectuate rapid response to low DO levels. When the DO levels approach the allowable limits, flow, or some portion of the flow, is passed through the Howell-Bunger valves to raise DO levels in the pool below Magic Dam. Additionally, the licensee proposes that, should a problem related to the subject DO standards occur in the future, it would, at the request of the Commission or the resource agencies, investigate the concern and modify project operations temporarily or permanently, if necessary.

AGENCY COMMENTS AND LICENSEE'S RESPONSE

By letter dated February 24, 1997, we requested the licensee provide comments on its proposal from the IDEQ, FWS, IDFG, and the U.S. Bureau of Land Management (BLM).

The IDEQ, by letter dated March 12, 1997, stated that the licensee's monitoring verifies that the temporary DO standards protect water quality and approves their being made permanent. The IDEQ also requests that the operating plan developed with IDEQ, IDFG, and the FWS be included in a revised article 403 license condition, along with provisions for monitoring quality control to ensure monitoring and recording equipment operational integrity. The IDEQ also requested that monthly monitoring data

2/ 55 FERC ¶ 62,122

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SEP 20 1997
Department of Water Resources

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-8178
8389

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

37-8389

Magic Reservoir Hydroelectric, Inc.) Project No. 3407-040

NOTICE GRANTING EXTENSION OF
TIME TO SUPPLEMENT APPEAL

(March 5, 1991)

On March 13, 1990, the Director, Division of Project Compliance (Director), issued a compliance order 1/ informing Magic Reservoir Hydroelectric, Inc. (Magic Reservoir), licensee for the Magic Dam Project No. 3407, located on the Big Wood River in Blaine and Camas Counties, Idaho, that it had failed to maintain the dissolved oxygen (DO) levels in the project discharge, as required by Article 403 of its license, 2/ and to record the DO levels, as specified by the Commission's September 22, 1988 order approving and modifying in part the DO monitoring plan for the project. 3/ The Director ordered Magic Reservoir to provide monthly reports detailing compliance with Article 403. On April 12, 1990, Magic Reservoir filed a timely appeal of the Director's action.

On December 3, 1990, the Commission issued a final rule in Docket No. RM90-11-000, 55 Fed. Reg. 50,677 (December 10, 1990), which amended Section 385.1902 of the Commission's regulations to provide that all appeals of staff action that were pending on that date are deemed to be requests for rehearing. The rule provided a 30-day period following the rule's issuance date, ending January 2, 1991, for persons who, prior to December 3, 1990, had timely filed appeals which were pending on that date, to file pleadings updating or supplementing those appeals.

On January 22, 1991, Magic Reservoir filed comments supplementing its April 12 appeal and a motion requesting an extension of time to file the comments. Pursuant to Rule 2008 of

Project No. 3407-040

-2-

the Commission's Rules of Practice and Procedure, 4/ a motion for extension of time made after the expiration of a specified period may be granted if the movant shows extraordinary circumstances sufficient to justify its failure to act in a timely manner. In support of its request, Magic Reservoir states that it was not aware of the January 2, 1991 deadline until it contacted the Commission to inquire about the status of its appeal, that the supplementary pleading is being filed only several weeks after the prescribed deadline, and that the late filing will not delay or disrupt the proceeding or prejudice any party to the proceeding.

In view of the apparent relevance of the comments submitted, the extension should be granted. Magic Reservoir is granted an extension of time for the purpose of supplementing its appeal with the material filed in this proceeding on January 22, 1991.

Lois D. Cashell
Secretary

RECEIVED
MAR 11 1991

Department of Water Resources

1/ 50 FERC ¶ 62,168 (1990).

2/ The license for Project No. 3407 was originally issued to Cook Electric, Inc. on January 15, 1987. 38 FERC ¶ 62,034 (1987). By order issued August 17, 1988, the license was transferred to Magic Reservoir. 44 FERC ¶ 62,144 (1988).

3/ 44 FERC ¶ 62,287 (1988).

4/ 18 C.F.R. § 385.2008(b) (1990).

37-8389

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MAR 18 1991

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Department of Water Resources

Magic Reservoir Hydroelectric, Inc.) Project No. 3407-031

ERRATA NOTICE

(March 11, 1991)

NOTICE GRANTING EXTENSION OF TIME
TO SUPPLEMENT APPEAL

(March 5, 1991)

On March 5, 1991, a Notice Granting Extension of Time To Supplement Appeal was issued under Project No. 3407-040. The notice should have been issued under Project No. 3407-031.

Lois D. Cashell
Secretary

RECEIVED

FEB - 6 1991

UNITED STATES OF AMERICA

Department of Water Resources
Southern Region Office

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D.C.

MAGIC RESERVOIR	)	
HYDROELECTRIC, INC.	)	Project No. 3407-031
	)	Idaho
	)	
	)	

COMMENTS TO SUPPLEMENT APPEAL

On March 13, 1990 the Director of the Commission's Division of Project Compliance and Administration issued a Compliance Order in this docket. That Order put Magic Reservoir on notice of violations of Article 403 of the license pertaining to "Dissolved Oxygen Standards." On April 12, 1990, Magic Reservoir appealed the March 13, 1990 Compliance Order. On May 9, 1990, the Commission entered its Notice of Intent To Act. To date the Commission has taken no further action on Magic Reservoir's appeal.

Magic Reservoir operated during the 1990 season (shortened by drought conditions) for 65 days with the Dissolved Oxygen equipment working and reports submitted as required.

In the meantime an important development has occurred which Magic Reservoir would like to share with the Commission. Magic Reservoir and the pertinent state and federal agencies have consulted and negotiated with each other regarding a modification of the dissolved oxygen standards contained in License Article 403. Specifically, subject to approval by the Commission, the parties have reached an agreement to modify the Dissolved Oxygen Plan and License Article 403 for the 1991 operating year. A copy of

the Agreement and the letters in support are attached hereto as Exhibits "A", "B", and "C".

Under the Agreement, License Article 403 and the Dissolved Oxygen Monitoring Plan would be revised for the 1991 operating year as follows:

Dissolved Oxygen Limits (in mg/l)

<u>Time Period</u>	<u>30-Day Mean</u>	<u>7-Day Mean Minimum</u>	<u>Instantaneous Minimum</u>
April 1-June 30	6.0	5.0	4.5
July 1-October 15	6.0	4.7	3.5

The 90% saturation standard shall be deleted and shall no longer be in effect.

The 1991 operating year will be starting in a few short months and it is in the best interests of all concerned that the new dissolved oxygen standards be approved and be in effect prior to commencement of the 1991 operating year. Therefore, Magic Reservoir respectfully requests the Commission to expedite the review and approval of Magic Reservoir's Application for Amendment of License Article 403

Dated this 21st day of January, 1991.

Respectfully submitted,

MAGIC RESERVOIR HYDOELECTRIC, INC.

By David H. Hawk
DAVID H. HAWK

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

DATED at Boise, Idaho, this 21st day of January, 1991.



R. Scott Pasley
Attorney for Magic Reservoir
Hydroelectric, Inc.

00071R

AGREEMENT TO AMEND LICENSE

FERC PROJECT 3407

THIS AGREEMENT, made and entered into this 6th day of December, 1990, by and between MAGIC RESERVOIR HYDROELECTRIC, INC., ("Licensee"), and the IDAHO DEPARTMENT OF FISH AND GAME ("DFG");

WITNESSETH:

WHEREAS, on November 13th, 1990, Licensee filed an Application for Amendment of License Project No. 3407, and

WHEREAS, subsequently the above parties have consulted and negotiated with each other regarding a modification of the dissolved oxygen standards contained in License Article 403, and

WHEREAS, the parties have reached an agreement to modify the Dissolved Oxygen Monitoring Plan and License Article 403 for the 1991 operating year, and

WHEREAS, the parties wish to reduce the agreement to written form for submission to the Federal Energy Regulatory Commission for its approval.

NOW, THEREFORE, the parties agree to amend the Dissolved Oxygen Monitoring Plan and License Article 403 subject to the approval by FERC as follows:

1. Amendment. License Article 403 and the Dissolved Oxygen Monitoring Plan shall be revised for the 1991 operating year as follows:

Dissolved Oxygen Limits (in mg/l)

<u>Time Period</u>	<u>30-Day Mean</u>	<u>7-Day Mean Minimum</u>	<u>Instantaneous Minimum</u>
April 1-June 30	6.0	5.0	4.5
July 1-October 15	6.0	4.7	3.5

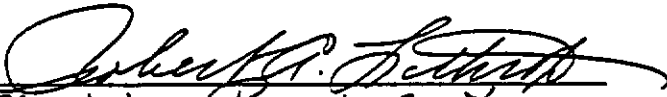
The 90% saturation standard shall be deleted and shall no longer be in effect.

2. Effect. Subject to FERC approval, the above standards apply for the 1991 operating year. Following completion of the 1991 operating year, the parties will

review and consult with each other for the purpose of either modifying the above DO standards or making them permanent. If the parties are unable to reach an agreement, the parties reserve the right to petition FERC for a modification or approval of the plan. Nothing herein shall be construed to abrogate the rights of any party to bring before FERC those items that are within its jurisdiction and regulatory purview.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date and year first above written.

MAGIC RESERVOIR HYDROELECTRIC, INC.

By 
Its: Vice President

IDAHO DEPARTMENT OF FISH & GAME

By 
Its: Act. Director

33072



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Boise Field Station
4696 Overland Road, Room 576
Boise, Idaho 83705

December 7, 1990

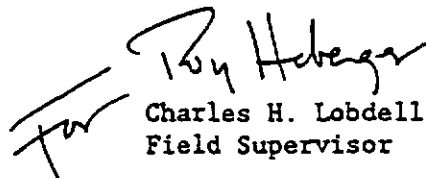
Mr. David Hawk, Agent
Magic Reservoir Hydroelectric, Inc.
P.O. Box 27
Boise, Idaho 83707

Re: Magic Dam Hydroelectric
FERC No. 3407

Dear Mr. Hawk:

The U. S. Fish and Wildlife Service has reviewed the proposal to amend the license issued for the subject project by the Federal Energy Regulatory Commission. As we understand it, the amendment involves the dissolved oxygen (DO) monitoring plan (Article 403). The changes are those proposed in the material hand delivered to our office by Mr. Bill Wendell. Based on our understanding of the material we have received thusfar, we have no objection to the revised DO plan.

Sincerely,


Charles H. Lobdell
Field Supervisor

cc: FERC, Portland
FERC, DC, OHL
IDFG, HQ, Program Coordination
IDHW, Boise
IDHW, Twin Falls



State of Idaho
DEPARTMENT OF HEALTH AND WELFARE
Division of Environmental Quality

P.O. Box 1626
Twin Falls, ID 83303-1626
(208) 734-9520

CECIL D. ANDRUS
Governor
RICHARD P. DONOVAN
Director

December 6, 1990

Dave Hawk
J. R. Simplot Company
P. O. Box 27
Boise, Idaho 83707

Re: Amendment to FERC License for Magic Reservoir Hydroelectric,
Inc. Project - No. 3407

Dear Mr. Hawk:

We have reviewed the proposed amendment to Article 403 of the license which includes the following changes in the Dissolved Oxygen Monitoring Plan for the 1991 operating year.

DISSOLVED OXYGEN LIMIT (mg/l)

<u>Time Period</u>	<u>30 Day Mean</u>	<u>7 Day Mean Minimum</u>	<u>Instantaneous Minimum</u>
4/1-6/30	6.0	5.0	4.5
7/1-10/15	6.0	4.7	3.5

We have determined the changes will be consistent with requirements in Section 01.2276 of the Idaho Water Quality Standards and Wastewater Treatment Requirements.

The 90% saturation requirement was established to protect fishery resources in the river below Magic Dam. It is our understanding that the Idaho Department of Fish and Game agrees with the proposed changes including the deletion of the 90% saturation requirement for the one year operating period.

Following completion of the 1992 operating year, IDHW-DEQ, IFG, and Magic Reservoir Hydroelectric Inc. will review monitoring data and consult with each other for the purpose of determining the adequacy of the D.O. standards and determining whether a modification is required.



Printed on Recycled Paper

EXHIBIT

C

Should you have any questions, please contact our office.

Sincerely,

Michael J. McMaster

Michael J. McMaster
Water Quality Field Supervisor

MJM/ta

cc: Al E. Murrey
Susan Martin
Doug Conde
Jerry Yoder
Chip Corsi

RECEIVED

FEB - 6 1991

Department of Water Resources
Southern Region Office

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D.C.

MAGIC RESERVOIR	)	
HYDROELECTRIC, INC.	)	Project No. 3407-031
	)	Idaho
	)	
	)	

MOTION FOR LEAVE TO FILE SUPPLEMENT
TO APPEAL OUT OF TIME

Pursuant to Rule 2008 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.2008, Magic Reservoir Hydroelectric, Inc. ("Magic Reservoir"), hereby moves for leave to file the accompanying Comments to Supplement to Appeal Out Of Time. In support of this Motion, Magic Reservoir represents as follows:

1. Magic Reservoir is an Idaho corporation with its principal place of business located at Boise, Idaho. Magic Reservoir was unaware that on December 3, 1990, the Federal Energy Regulatory Commission ("Commission") amended its regulations to streamline its procedures for review of staff actions (18 C.F.R. §385.1902).

2. Specifically, as amended, 18 C.F.R. §385.1902 (Rule 1902) provides in subpart (c) that "No later than January 2, 1991, persons who had timely filed appeals of staff action prior to December 3, 1990, which were pending before the Commission on that date may file additional pleadings to update or supplement those appeals."

MOTION FOR LEAVE TO FILE SUPPLEMENT
TO APPEAL OUT OF TIME - 1

3. Magic Reservoir never received any actual notice from FERC or from any other source of the January 2, 1991 deadline for filing additional comments or pleadings in this pending appeal. Magic Reservoir only learned of the January 2, 1991, deadline when it telephoned FERC officials on January 18, 1991, to inquire as to the status of the appeal.

4. The accompanying Comments to Supplement Appeal is being filed only several weeks later than the date prescribed by Rule 1902.

5. Magic Reservoir submits that the circumstances recited above are extraordinary and sufficient to justify its failure to file its Comments to Supplement Appeal by the prescribed date. See, Rule 2008(b), 18 C.F.R. §385.2008(b) (1989). Simply put, Magic Reservoir was wholly unaware of the amendment to 18 C.F.R. §385.1902 and its prescribed deadline for filing additional comments.

6. Magic Reservoir further submits that neither the Commission, its staff nor any party to these proceedings will be prejudiced by Magic Reservoir's filing its Comments to Supplement Appeal out of time. Nor will Magic Reservoir's late filing delay or disrupt this proceeding in any way.

WHEREFORE, for the reasons set forth above, Magic Reservoir respectfully moves for leave to file the accompanying Comments to Supplement Appeal in the captioned proceedings out of time.

Respectfully Submitted,

MAGIC RESERVOIR HYDROELECTRIC, INC.

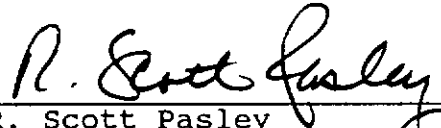
By R. Scott Pasley
R. Scott Pasley
Assistant General Counsel
P. O. Box 27
Boise, Idaho 83707

DATED: January 21, 1991

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

DATED at Boise, Idaho, this 21st day of January, 1991.



R. Scott Pasley
Attorney for Magic Reservoir
Hydroelectric, Inc.

3392z

50 FERC 162, 168

Bel, Please file

57-8301
-7848
-8178

-2-

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Magie Reservoir Hydroelectric, Inc.

Project No. 3407-028
Idaho

COMPLIANCE ORDER

(Issued March 13, 1990)

Magie Reservoir Hydroelectric, Inc. (licensee) has violated article 403 of the January 15, 1987, license issued for the Magie Dam Project and the Commission's September 22, 1988 order approving and modifying in part a dissolved oxygen (DO) monitoring plan and revising article 403.

Pursuant to the aforementioned documents, the licensee is required to monitor DO levels in the project's tailrace, measure water temperature concurrent with DO, maintain a 90 percent DO saturation level during April 1 through July 31 to protect rainbow trout spawning and egg incubation, maintain DO levels of 5 milligrams per liter the remainder of the year, effect rapid alteration of project operation if DO levels fall below those required, and report any violations of these requirements within 10 days of the violation.

By letter dated September 19, 1989, the Commission's Portland Regional Office noted that the project's DO monitoring and recording system had been inoperable since the start of project operation. By letter dated September 22, 1989, the licensee stated that radiation from the transmission line disrupts the DO probe signal and that an alternate communication method would be implemented next operating season. Spot checks of DO levels were made that resulted in periodic releases from the bypass valve to increase DO levels. The power plant DO and temperature log for the period July 6 through September 1, 1989, shows that the DO concentrations were not recorded until July 6, 1989, and that the recorded levels were well below the 90 percent DO saturation level requirement of article 403 from July 6 through July 31, 1989.

The licensee failed to maintain the required DO levels in the project discharge and to notify the Commission of the violations.

To protect the fishery downstream from the project, the licensee must maintain the required DO concentrations. The licensee must also ensure that DO levels are recorded as required by the Commission's September 22, 1988 order. To ensure such, the licensee should be required to notify the Commission on the operational status of the DO and temperature monitoring and recording equipment within 10 days of the start of project operation in 1990. The licensee should also be required to

provide monthly reports to the Commission that detail compliance with article 403.

By the Director's October 20, 1989 letter, the licensee was put on notice of the penalty and enforcement provisions of section 31 of the Federal Power Act (Act). Section 31 of the Act provides for assessment of civil penalties of up to \$10,000 per day for each day of violation. This order is issued under section 31(a).

The Director orders:

(A) The licensee shall file a report with the Director, Division of Project Compliance and Administration, within 10 days of the start of project operation in 1990, on the operational status of the dissolved oxygen (DO) and temperature monitoring equipment. Based on the report, the Commission reserves the right to require changes in project design or operation, to include cessation of project generation, to ensure maintenance of the required DO concentrations below the project.

(B) The licensee shall file with the Director, Division of Project Compliance and Administration, monthly reports that detail compliance with article 403. The reports shall include minimum and maximum daily DO levels recorded, concurrent temperature readings, average daily DO levels, and, if DO levels are observed to fall below those concentrations required by article 403, the duration of the observance. The report shall be filed by the 10th of the month for data recorded in the preceding month. Should data provided in the reports show that DO concentrations required by article 403 are not being maintained, the Commission reserves the right to require changes in project design or operation, to include cessation of project generation, to ensure maintenance of the required DO concentrations below the project.

(C) This order issued under authority delegated to the Director (section 375.314, 18 C.F.R.). Section 385.1902 of the Commission's regulations (18 C.F.R.) provides 30 days from the date of this order for an appeal to the Commission of this action. Filing an appeal does not stay the effective date of this order or any date specified therein.

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

DC-A-10

RECEIVED
MAR 20 1990

Department of the Interior

February 23, 1990

R. Scott Pasley
Magic Reservoir Hydroelectric, Inc.
P. O. Box 27
Boise, ID 83707

Dear Mr. Pasley:

Re: Permit No. 37-7848, 37-8178, and 37-8389

PROOF ACKNOWLEDGEMENT LETTER

The department received the additional fees to complete the proof of beneficial use submittals. For Permit Nos. 37-7848 and 37-8178, the additional fees are timely. However, for Permit No. 37-8389, the permit lapsed and is reinstated with an advance in priority. See the enclosed order.

The next step is for the department to conduct the field inspections and to confirm and determine the extent of beneficial use. An agent from the department's Southern Regional office will contact and schedule a convenient time for David Hawks to accompany him.

If you have any questions, please contact me.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosure

MAILED

MAR 22 1990

1/00

PROOF OF BENEFICIAL USE

ANALYSIS SHEET

Permit No. 378389

Date: 2-23-90

General Considerations:

Y Name same as permit
Y Signature the same as permit holder
N Address change If yes, prepare a data entry
Y Proof received timely
Y Reinstated

Source of Water:

Y Surface water
Y Groundwater
Y 1. well log in file
N 2. drilling permit
A. amount of drilling fee paid for proposed uses

Extent of Use and Rate of Diversion:

Y Rate of diversion appropriate for uses
Y Is rate or volume and fee appropriate?
Y Has permit holder indicated when water was first put to a beneficial use?

Measuring Device:

Y Is a measuring device or access port required?
Y Has one been installed?
N/A Waiver or modification of measuring device requested

Remarks:

*Reinstated for late fee
Proof acceptable*

2

Priority Calculation:

Date proof received Feb. 16, 90 47

Date proof due Feb. 1 -32

No. of days late = 15

Priority date Oct. 28 '88 +301

NEW PRIORITY DATE

Nov. 12 '88 = 316

SEND FILES TO DATA ENTRY AND THEN TO MICROFILM

MAGIC RESERVOIR HYDROELECTRIC, INC.

P.O. BOX 27
BOISE, IDAHO 83707
TELEPHONE 208-336-2110

February 12, 1990

Ms. Rita I. Fleck
State of Idaho
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

RECEIVED
FEB 15 1990

Department of Water Resources

RE: Permit Nos. 37-7848, 37-8178, 37-8389

Dear Ms. Fleck:

As you know, Magic Reservoir Hydroelectric, Inc. recently submitted three Proofs of Beneficial Use forms with reference to the permits identified above. Included with the Proofs were certain examination fees as required by the Idaho Code.

You have called to our attention that the examination fees were insufficient for the cfs involved -- unfortunately this was a result of our misreading of the License Examination Fee Schedule. We acknowledge our mistake and apologize for any inconvenience.

Below is a summary of the amounts previously paid and the difference now owing for each permit.

Permit No.	Amount Submitted	Actual Fee	Difference
37-7848	\$300.00	\$ 600.00	\$ 300.00
37-8178	150.00	600.00	450.00
37-8389	175.00	600.00	425.00
	<u>\$625.00</u>	<u>\$1,800.00</u>	<u>\$1,175.00</u>

Accordingly, please find enclosed Magic Reservoir Hydroelectric, Inc.'s check in the sum of \$1,175.00 in payment of the additional fees due and owing. Again, we regret any inconvenience this error may have caused the Department of Water Resources. Thank you for your assistance in this matter.

Sincerely,

R. Scott Pasley
R. SCOTT PASLEY
Assistant General Counsel

MICROFILMED

3378v

Enclosure

MAR 22 1990

RECEIVED
JAN 29 1990

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Department of Water Resources

PROOF OF BENEFICIAL USE

For Office Use Only

Fee Received 175.00

Date 1/29/90

Receipt # C014295

Receipt by C. Wong

Reviewed by _____

Sent to region _____

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

Permit No. 37-8389

Name(s) of Permit Holder: Magic Reservoir Hydroelectric, Inc.

Post Office Address: P.O. Box 27 Boise, ID 83707

Telephone No. 208-336-2110

Source of Water: Big Wood River

Extent of Use:

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

Irrigation _____ (acres) Other/Remark Power Purposes

Total rate and/or volume for which proof is submitted 300 cfs _____ acre-feet

Show the date water was first diverted and beneficially used under this permit: May 17, 1989

Measuring Device: Required? ☒ Yes ☐ No
Installed? ☒ Yes ☐ No
Fee enclosed \$ 175.00
(See License Examination Fee Schedule)

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

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

David Hawk 208-389-7306

(Name) (Telephone Number)

P.O. Box 27 Boise, ID 83707

(Address)

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

MICROFILMED

MAR 22 1990

1/29/90 [Signature]
Date Signature of Permit Holder (and title, if appropriate)

February 6, 1990

Magic Reservoir Hydroelectric Inc.
P. O. Box 27
Boise, ID 83707

Gentlemen:

Re: Permit No. 37-8389 and 37-8178

On January 29, 1990, the department received the proof of beneficial use forms for the above referenced permits.

For Permit No. 37-8389, I find that you submitted proof for the diversion of 300 cfs, but submitted only \$175.00 as the fee. For the diversion of 300 cfs, the filing fee is \$600.00 (see enclosed instruction sheet). With the submittal of \$175.00, the maximum the department could issue a water right license is 3 to 4 cfs.

For Permit No. 37-8278, I find that you submitted proof for the diversion of 250 cfs, but submitted only \$150.00 as the fee. For the diversion of 250 cfs, the filing fee is \$600.00 (see enclosed instruction sheet). With the submittal of \$150.00, the maximum the department could issue a water right license is 2 to 3 cfs.

Please advise the department what action you wish to take by either submitting the additional fee or, by letter, indicating you wish the rate of diversion reduced to the smaller cfs rate.

If you have questions, please contact this office.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosure

REPROFILMED

MAR 22 1990

138927

November 30, 1989

MAGIC RESERVOIR HYDROELECTRIC INC.
C/O JAY R. JACKSON, PRES.
2399 S. ORCHARD ST. #201
BOISE, ID 83705

PROOF DUE NOTICE

RE: PERMIT NO. 37-08389

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before February 1, 1990. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

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

SINCERELY,

Rita Fleck
Secretary/Records Manager

Enclosures

MICROFILMED

MAR 22 1990

37-08178
37-08389

44 ENC 162 144

Dam & Res

RECEIVED
AUG 26 1988

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Cook Electric, Inc.
Magic Reservoir Hydroelectric, Inc.
Project No. 3407-010
Idaho

ORDER APPROVING TRANSFER OF LICENSE
(Issued August 17, 1988)

Cook Electric Inc. seeks Commission approval to transfer its license for the Magic Dam Project to Magic Reservoir Hydroelectric, Inc. The project is located on the Big Wood River in Blaine and Camas Counties, Idaho. The purpose of the transfer is to facilitate financing of the project.

Cook Electric Inc. has fully complied with the terms of the license and agrees to pay annual charges that have accrued to the date of the transfer. Magic Reservoir Hydroelectric, Inc. is qualified to hold the license and operate the property under license and agrees to accept all of the terms and conditions of the license and to be bound by the license as if it were the original licensee.

No motions to intervene were filed in response to the public notice of the application to transfer the license. One letter in protest was filed, but subsequently withdrawn. Comments filed by agencies have been fully considered in determining whether to issue this order. Transfer of the license for this project is consistent with the Commission's regulations and is in the public interest.

The Director orders:

- (A) Transfer of the license for this project is approved.
- (B) Approval of the transfer is contingent upon transfer of title of the properties under license and delivery of all license instruments to Magic Reservoir Hydroelectric, Inc., which shall be subject to all terms and conditions of the license as though it were the original licensee. Magic Reservoir Hydroelectric Inc. shall submit certified copies of all instruments of conveyance within 60 days from the date of this order.

(C) This order is issued under authority delegated to the Director and is final unless appealed to the Commission within 30 days from the date of this order. Magic Reservoir Hydroelectric Inc. shall acknowledge acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet within 60 days from the date of this order.

-2- Department of Water Resources

Dean L. Shumway
Dean L. Shumway
Director, Division
of Project Review

Cook Electric
37-7848

47 FERCI 61.364

JUN 20 1989

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Department of Water Resources
Project No. 3407-006
Project No. 8908-002

-2-

Before Commissioners: Martha O. Hesse, Chairman;
Charles G. Stalon, Charles A. Tribandt,
Elizabeth Anne Moler and Jerry J. Langdon.

Magic Reservoir Hydroelectric, Inc.) Project No. 3407-006
Idaho Renewable Resources,)
Bonneville Pacific Corp.,) Project No. 8909-002
and Big Wood Canal Company)

ORDER DENYING AND DISMISSING APPEALS

(Issued June 9, 1989)

By orders issued January 15, 1987, 2/ and May 22, 1987, 2/ respectively, the Director, Office of Hydropower Licensing (Director), issued licenses to Cook Electric, Inc. for the Magic Dam Project No. 3407, 2/ and jointly to Idaho Renewable Resources, Bonneville Pacific Corp., and Big Wood Canal Company for the Dietrich Drop Water Project No. 8909. Project No. 3407 is located on the Big Wood River in Blaine County, Idaho. Project No. 8909 is located in Lincoln County, Idaho, on the U.S. Bureau of Reclamation's (Bureau) Milner Gooding Canal, which takes flows diverted from the Bureau's Milner Dam on the Snake River. Intervenor Idaho Department of Water Resources (Department) and Idaho Power Company (Company) filed timely appeals of both orders issuing license. For the reasons discussed below, we are denying the Department's appeals and dismissing the Company's appeals.

Discussion

A. Department's Appeals

Section 10(a)(2)(A) of the Federal Power Act (FPA), 16 U.S.C. § 803(a)(2)(A), as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99-495 (Oct. 16, 1986),

- 1/ 38 FERCI ¶ 62,034 (1987).
- 2/ 39 FERCI ¶ 62,210 (1987).
- 3/ By order issued August 17, 1988, the Commission approved the transfer of the license for Project No. 3407 from Cook Electric, Inc. to Magic Reservoir Hydroelectric, Inc. See 44 FERCI ¶ 62,144 (1988).

DC-A-54

requires the Commission to consider the extent to which a project proposed for licensing is consistent with comprehensive plans (where they exist) for improving, developing, or conserving a waterway or waterways affected by the project. The Commission will treat as a comprehensive plan under Section 10(a)(2)(A) of the FPA a plan that: (1) is prepared by an agency established by federal law that has the authority to prepare such a plan, or by a state; (2) is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; (3) articulates the standard applied, the data relied upon, and the methodology used; and (4) is filed with the Secretary of the Commission. 4/

The orders issuing licenses for Project Nos. 3407 and 8909 did not indicate that the 1986 Idaho State Water Plan (Water Plan) developed by the Department is a Section 10(a)(2)(A) comprehensive plan. In addition, the orders rejected requests made by the Department in its motions to intervene that each license include provisions subordinating project operations to upstream depletionary uses as specified in the Water Plan. 5/ The orders concluded that inclusion of such subordination provisions in the licenses would cloud the financial and operational future of the projects and, contrary to the intent of the FPA, would vest in the Department rather than in the Commission ultimate control over operation and viability of the projects. 5/

The Department contends on appeal that the Water Plan is a state comprehensive plan under Section 10(a)(2)(A) and that the failure of the orders to either recognize this or specifically consider the consistency of the projects with the Water Plan and its subordination provisions was arbitrary and capricious. The Department also contends that the license orders impermissibly failed to consider the subordination requests under the provisions of Section 10(a)(2)(B) of the FPA, 16 U.S.C. § 803(a)(2)(B), which requires the Commission to consider the recommendations of federal and state agencies exercising jurisdiction over, inter alia, flood control, navigation, and irrigation. Finally, the Department contends that inclusion of the requested water subordination provisions in the licenses is fully consistent with Section 27 of the FPA's recognition of

- 4/ See Order No. 481-A, 43 FERCI ¶ 61,120 (April 27, 1988), 53 Fed. Reg. 15802 (May 4, 1988), III FERCI Stats. & Regs. ¶ 30,811.
- 5/ See 38 FERCI at 63,067-68 (Project No. 3407) and 39 FERCI at 63,497 (Project No. 8909).
- 6/ Id.

MAR 22 1990

- LISTER

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS REPORT

DATE: 07/11/89
PAGE: 1

WR-NUMBER: 37-07848

CURRENT OWNER:
COOK ELECTRIC INC.
P.O. BOX 1071
TWIN FALLS, ID 83301

PRIORITY DATE:
08-14-1980

STAGE:
PERMIT

COUNTY: BLAINE

TRIBUTARY: SNAKE RIVER

WATER-DIST: 37

SOURCE: BIG WOOD RIVER
WATER USE:
POWER

DIVERSION RATE:
800.000
TOTAL: 800.000

PERIOD FROM: 04/01
PERIOD TO: 10/01

REMARKS: THE DESIGN & CONSTRUCTION OF THE HYDRO FACILITY TO BE
INSTALLED AT MAGIC DAM SHALL BE APPROVED BY THE DEPT.
PURSUANT TO THE SAFETY OF DAMS STATUTES, IDAHO CODE.
FEET OF HEAD = 70. HORSEPOWER = 5405.

POINT OF DIVERSION:		Twp		Rge	Sec	Tract	Lot
		02S	18E	18		NE NE	
PLACE OF USE:		Twp	Rge	Sec	Tract	Lot	Acres
		02S	18E	18	NE NE		

WR-NUMBER: 37-07881

CURRENT OWNER:
BIG WOOD CANAL CO.
AMERICAN FALLS RESERVOIR DISTRICT NO. 2
112 SOUTH APPLE
SHOSHONE, ID 83352

PRIORITY DATE:
02-20-1981

STAGE:
APPLICATION

COUNTY: BLAINE
SOURCE: BIG WOOD RIVER
WATER USE:
POWER

TRIBUTARY: MALAD RIVER
DIVERSION RATE:
2000.000
TOTAL: 2000.000

WATER-DIST: 37
PERIOD FROM: 01/01
PERIOD TO: 12/31

REMARKS: (175 DROP) SESE, S19, T4S, R18E: 160 CFS, 345 HP @ 22'.
(PENDLETON DROP) SWSE, S15, T4S, R17E: 155 CFS, 380 HP @ 25'.
(498 DROP) SENW, S34, T4S, R17E: 150 CFS, 200 HP @ 14'.
(GUTHERIES DROP) NWNW, S34, T4S, R17E: 150 CFS, 145 HP @ 145'.
(702 LATERAL) SWNE, S9, T6S, R19E: 80 CFS, 130 HP @ 17'.
(#11 CUT DIETRICH MAIN) SWSE, S25, T4S, R19E: 132 CFS, 75 HP @ 6'.
(J.B. SLOUGH MOUTH) SESE, S13, T4S, R19E: 132 CFS, 75 HP @ 6'.
(END WEST MAIN) SENW, S9, T4S, R19E: 90 CFS, 420 HP @ 48'.
(HEAD J.B. SLOUGH) NENE, S19, T3S, R18E: 94 CFS, 300 HP @ 33'.
(#513) NWNE, S27, T3S, R19E: 30 CFS, 425 HP @ 146'.
(OLD HIGHWAY) SESE, S4, T3S, R18E: 237 CFS, 1850 HP @ 80'.
(#7 END OF BYPASS) NESW, S15, T4S, R18E: 184 CFS, 2300 HP @ 128'.

POINT OF DIVERSION:		Twp	Rge	Sec	Tract	Lot
		02S	18E	18	NE NE	
		02S	18E	30	SE NE	
		03S	18E	4	SE SE	
		04S	18E	15	NE SW	
		03S	19E	19	NE NE	
		03S	19E	23	SE SE	

RECEIVED
MAR 22 1990

WR-NUMBER: 37-07881 (cont'd)

PLACE OF USE:

TWP	Rge	Sec	Tract	Lot	Acres
04S	18E	15	NE SW		
03S	18E	4	SE SE		
03S	19E	27	NW NE		
03S	19E	19	NE NE		
04S	19E	9	SE NW		
04S	19E	13	SE SE		
04S	19E	25	SW SE		
06S	19E	9	SW NE		
04S	17E	34	SE NW		
04S	17E	34	NW NW		
04S	17E	35	SW SE		
04S	18E	19	SE SE		
02S	18E	18	NE NE		

WR-NUMBER: 37-07916

CURRENT OWNER:

BONNEVILLE PACIFIC CORP.
C/O DAVID P. HIRSCHI
PARSONS BEBLE & LATIMER
P.O. BOX 11898
SALT LAKE CITY, UT 84147

PRIORITY DATE:
06-15-1981

STAGE:
PERMIT

COUNTY: GOODING
SOURCE: BIG WOOD RIVER

TRIBUTARY: MALAD RIVER

WATER-DIST: 37

WATER USE: LITTLE WOOD RIVER

DIVERSION RATE: MALAD RIVER

PERIOD FROM: 01/01

PERIOD TO: 12/31

TOTAL: 280.000

REMARKS:

HEAD = 50 FT.
SOURCES ARE BIG WOOD RIVER, TRIB. MALAD RIVER, LITTLE WOOD RIVER,
TRIB. MALAD RIVER.
WATER DIST. 37 & 37M.

POINT OF DIVERSION:

TWP	Rge	Sec	Tract	Lot
05S	14E	33	SW NE	
05S	14E	33	SE NE	

PLACE OF USE:

TWP	Rge	Sec	Tract	Lot	Acres
05S	14E	33	NE SE		

WR-NUMBER: 37-08178

CURRENT OWNER:

MAGIC RESERVOIR HYDROELECTRIC INC.
2399 S. ORCHARD ST.
SUITE 201
BOISE, ID 83705

PRIORITY DATE:
07-02-1984

STAGE:
PERMIT

COUNTY: BLAINE
SOURCE: BIG WOOD RIVER

TRIBUTARY: SNAKE RIVER

WATER-DIST:

RECEIVED
MAR 22 1990

LISTER
(RMG)

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS REPORT

DATE: 07/11/89
PAGE: 3

WR-NUMBER: 37-08178 (cont'd)

WATER USE: DIVERSION RATE: DIVERSION VOLUME: PERIOD FROM: PERIOD TO:
POWER 250.000 01/01 12/31
TOTAL: 250.000

REMARKS: FEET OF HEAD = 85 HORSEPOWER = 1800
THE DESIGN & CONSTRUCTION OF THE HYDRO FACILITY TO BE
INSTALLED AT MAGIC DAM SHALL BE APPROVED BY THE DEPT.,
PURSUANT TO THE SAFETY OF DAMS STATUTES, IDAHO CODE.

POINT OF DIVERSION: TWP Rge Sec Tract Lot
02S 18E 18 NE NE
PLACE OF USE: TWP Rge Sec Tract Lot Acres
02S 18E 18 NE NE

WR-NUMBER: 37-08389 CURRENT OWNER: MAGIC RESERVOIR HYDROELECTRIC, INC.
C/O JAY R. JACKSON, PRES.
2399 S. ORCHARD ST. STE. 201
BOISE, ID 83705
PRIORITY DATE: 10-28-1988
STAGE: PERMIT

COUNTY: BLAINE
SOURCE: BIG WOOD RIVER
WATER USE: DIVERSION RATE: DIVERSION VOLUME: PERIOD FROM: PERIOD TO:
POWER 300.000 01/01 12/31
TOTAL: 300.000

POINT OF DIVERSION: TWP Rge Sec Tract Lot
02S 18E 18 NE NE
PLACE OF USE: TWP Rge Sec Tract Lot Acres
02S 18E 18 NE NE

END OF REPORT

RECEIVED
MAR 22 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

January 23, 1989

RE: Permit No. 37-8389

Magic Reservoir Hydroelectric Inc.
2399 S. Orchard St.
Suite 201
Boise, ID 83705

Dear Permit Holder(s):

Enclosed is a copy of your approved Application for Permit. We direct your attention to the conditions of approval on the final page.

If the diversion dam is 10 feet or more in height, or has an impounding capacity of 50 acre-feet or more, certain dam safety requirements must be met. Please contact the regional office nearest you for details.

Be sure to note the special condition requiring you to install a measuring device, or a flow measurement port, or to provide a certified measurement or computation of flow based upon the design of the system to be prepared by a professional engineer.

We have enclosed a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit. Also enclosed for your convenience is the statement of beneficial use that must be submitted when your project is completed.

Sincerely,

GARY SPACKMAN, Supervisor
Water Rights Permits Section

GS:sc
Enclosures

MICROFILMED

MAR 03 1989

MEMORANDUM

TO: Norm Young
FROM: Gary Spackman *Gary*
DATE: January 18, 1989
RE: Magic Reservoir Hydroelectric, Inc. application no. 37-8389

You returned this application with three requests: (1) An affidavit (presumably from Big Wood Canal Co.) authorizing use of the irrigation facility; (2) The name of the applicant must match ownership of the other rights; and (3) A condition must be imposed that the hydropower operation cannot change established releases from the reservoir for irrigation.

Although the department files do not contain a written consent for Magic Reservoir Hydroelectric, Inc. to operate the hydropower facility, I have attached an agreement between Cook Electric and Big Wood Canal Company which authorizes use of the Magic Dam and the waters released therefrom for hydroelectric generation by the Cook Electric Facility. Cook Electric assigned the permits to Magic Reservoir Hydroelectric, Inc. and I presume also assigned their rights for use of water under the contract.

There are many hydropower filings that are assigned and reassigned. Another filing that I have worked closely with is the Deitrich Drop Site. The permit has been assigned to Bonneville Pacific Corporation, Stewart Title, and also to Idaho Power. We have not required a written consent from Big Wood Canal Company or American Falls Reservoir District No. 2 every time an assignment is submitted. We can start requesting written consents if you desire.

Four water right filings appear to be appurtenant to the Magic Reservoir Site. The numbers are 37-7848, 37-7881, 37-8178, and 37-8389. All of the filings were either filed by or have been assigned to Magic Reservoir Hydroelectric, Inc. In addition, we have received an affidavit of authorization to do business in the State of Idaho from Magic Reservoir Hydroelectric, Inc. It appears that it has satisfied the requirements of the statutes governing assignment of hydropower filings. If there is any defect in the file, it is that we have not acknowledged the submittal of the necessary information, and have not held specifically that the assignment was not for the purpose of speculation.

I also believe that we should not be particularly concerned. The hydropower plant is already constructed. While the contract between Cook Electric and Big Wood Canal expressly states that the hydropower plant cannot demand water from the reservoir, but must operate on releases for irrigation, we have imposed a

MAR 03 1989

condition as you requested to insure that the hydropower facility is not entitled to demand water for power production.

MICROFILMED

MAR 03 1989

MEMORANDUM

TO: Glen Saxton
FROM: Gary Spackman *Gary*
DATE: January 12, 1989
RE: Application for permit to appropriate water no. 37-8389 in the name of Magic Reservoir Hydroelectric, Inc.

I have reviewed application no. 37-8389 and have determined that sufficient information has been submitted in related filings to justify approval of application 37-8389 without additional extensive review.

The application proposes diversion of water for hydropower purposes in conjunction with Magic Dam and water releases for irrigation therefrom. The application seeks an additional 300 cfs to be diverted through the power site from January 1 through December 31.

I asked Mark Auth about several uncertainties:

1. What is the total flow sought under water right nos. 37-7848, 37-7881 and 37-8178?
The flows sought in the filings are cumulative. The additional flows have been sought as a result of studies which show that additional water is available. The cumulative flows will be: April 1-October 1, 1350 cfs; October 2-March 31, 650 cfs.
2. Will the additional flow change the facility sufficiently to require additional FERC action?
No.
3. Is the facility already constructed?
Yes. The hydropower plant is not operating, however, because Magic Reservoir is filling.
4. What is the anticipated season of use?
Primarily the irrigation season, although decreased flows could be released depending on water availability predictions.

Based on my past reviews, I feel that we have received sufficient information, and that application no. 37-8389 should be approved.

MICROFILMED

MAR 03 1989

37-8389
37-1848
37-8178

RECEIVED
MAY 09 1989

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION Department of Water Resources

Magic Reservoir Hydroelectric, Inc.

Project No. 3407-018
Idaho

ORDER GRANTING AN EXTENSION OF TIME

(Issued May 2, 1989)

On August 17, 1988, the Magic Reservoir Hydroelectric, Inc., licensee for the Magic Dam Project (FERC No. 3407) filed a Report on Recreational Resources (Plan) as required by article 407 of the project license. The plan includes a proposal to purchase 40 acres of land that is suitable for recreational use and then transfer this land to the Bureau of Land Management.

By letter dated March 24, 1989, the licensee notified the Commission that the owner of the 40 acres is no longer willing to sell the land. The licensee requests an extension of time to pursue alternative ways to meet the article 407 requirements.

The reasons advanced by the licensee in support of the requested extension of time are reasonable and justify the extension. As a result the August 17, 1988 plan, should be dismissed.

The Director orders:

(A) The deadline for filing the Report on Recreational Resources, as required by article 407 of the license, is extended to June 30, 1989. The Report on Recreational Resources filed on August 17, 1988, is dismissed.

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

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

MICROFILMED

MAR 22 1990

DC-A-1

Form No. 202a
4/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Magic Reservoir Hydro Inc

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY *LH* DATE *11/8/88* APPLICATION NUMBER *37-*

REQUIRED INFORMATION

- ☒ Name (If applicant is a corporation or partnership, names must be provided for the director, officers, & other partners.) *Requested by Phone to Mark Muth 11/4/88*
☒ Address
☒ Source (See USGS Quad for names of water sources)
☒ Point of Diversion (10 acres for spring, lot & block descriptions for subdivisions, local name, flow and/or volume)
☒ County
☒ Quantity (flow and/or volume)
☒ Period of Use
☒ Nature of proposed use (Include description of use.)
☒ Description of diverting works
☒ Time required for beneficial use of water
☒ Place of use or acres irrigated
☒ Map
☒ Signature (If applicant is corp. partnership, or municipality, title of signator is required)
☒ Fee
☒ Yes ☐ No* In form to receipt

ADDITIONAL INFORMATION

- ☒ Overlapping place of use (Describe source & relationship to present application on the back.) *37-7848 37-8/87*
☒ Overlapping point of diversion
☐ Yes ☒ No Field check required
Field check by _____
☐ Yes ☒ No Field report attached
☐ Yes ☒ No Critical groundwater area
☐ Yes ☒ No Groundwater management area
☐ Yes ☒ No Send dam safety information
☐ Yes ☒ No Send power requirement letter
☐ Yes ☒ No Send fish farm requirement letter
☐ Yes ☒ No Power residency affidavit
☒ Yes ☐ No Power efficiency form
☐ Yes ☒ No Within trustwater boundary (If yes, attach trust water supplementary analysis sheet.)
☒ Yes ☐ No Diversion greater than 5 cfs or 500 acre ft. (If yes, attach large diversion supplementary analysis sheet.)
☐ See reverse side for additional information

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT

Date Requested

RECEIVED
DEC 21 1988

Department of Water Resources

PROCESSING

☒ Yes ☐ No I Form for advertising
☒ Yes ☐ No Statewide advertising
☒ Yes ☐ No Fee amount, receipt date & No. recorded on application

SEND COPIES TO

None

☐ Idaho Dept. of Health & Welfare ☐ U.S. BLM, District _____
☐ Idaho Dept. of Fish & Game, Region _____ ☐ U.S. Forest Service, Forest _____
☐ Idaho Dept. of Lands ☐ Water District # _____
☐ Adjudication Bureau Unit ☐ Other _____

FINAL REGIONAL PROCESSING REVIEW

☒ Yes ☐ No Affidavit of publication received
☒ Yes ☐ No Application published correctly. If not, record action taken.

☒ Yes ☐ No Publication dates & paper, recorded on application
☐ Yes ☒ No Protests received
Final date for protest _____
☒ Yes ☐ No Protests, dates, resolution of protest, recorded on application
☐ Yes ☒ No Recommendations attached
☒ Yes ☐ No Measuring device required
☐ Yes ☒ No Access port required
☒ Yes ☐ No Will water be delivered by watermaster? If yes, what Dist. 37
☒ Yes ☐ No Special conditions of approval or cover letter below.

01E, 17K, 08A, 05(37, Big Wood R.), 27

Date of priority recommended 10/28/88 ☐ See below for additional information
By Larry D. Hahn Date 12/15/88

STATE OFFICE REVIEW

P09, P19, P16

05(37, Big Wood River) 04 01F

By KW ☐ See below for additional information
Date 12/29/88

ADDITIONAL INFORMATION

18A 08A 09E 17G 17K
25 27 30 45

Form No.
7/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CHECKLIST OF REQUIREMENTS
LARGE DIVERSION SUPPLEMENTARY
ANALYSIS SHEET*

EFFECT ON EXISTING RIGHTS

- ☐ Yes ☒ No Springs/surface streams with 5 or less existing users
☐ Identify number of impacted rights
☐ Name and address of users
☐ Location of points of diversion
☐ Nature of use of the existing rights
- ☐ Yes ☒ No Groundwater
☐ Plat showing proposed well and any other wells &/or
springs within $\frac{1}{2}$ mile radius
- ☐ Yes ☐ No Statement of design construction, or operation techniques
which will be used to reduce impact on existing rights

SUFFICIENCY OF WATER SUPPLY

- Water Requirements of Proposed Project
☐ Required diversion rate during peak use (Maximum rate)
☐ Required diversion rate during average use period
☐ Annual volume
☐ Season of use
☐ Volume to be consumptively used/year
- Quantity of Water Available from Source
☐ Flow rates for surface water sources available during peak
and average water demand period
☐ Properties of aquifers
☐ Other sources available for supplementation

GOOD FAITH, DELAY OR SPECULATION

- ☐ Copies of deeds, leases, easements, and right-of-ways from _____
- ☒ Power applications affidavit form 205/206 is required
☒ Yes ☐ No Other needed permits, licenses, or approvals required. If
yes, FERC Project License 3407

FINANCIAL RESOURCES

- ☐ Current certified financial statement
☐ Financial commitment letter/financial statement from
committed party
☐ Project design/plans along with cost estimation to
complete project

*For applications of more than 5 cfs. or more than 500 AF.

Rule 4, 5, 3 Requirement
Consistent with FERC License

Engineering Program approved
under Dam
safety

LOCAL PUBLIC INTEREST

Comments received from:

- | | | |
|---------------------------------------|---|--|
| ☐ City | ☐ Idaho Fish & Game | ☐ Irrigation District |
| ☐ County | ☐ Idaho Health & Welfare | ☐ Canal Company |
| ☐ Reservations | Division of Environment | ☐ Other _____ |

Project impacts/implications report

COMMENTS

POWER CALCULATIONS FOR APPLICATION NO. 37-8389

P = Kilowatts .74 X hp

Q = cfs

H = feet

e = efficiency

*For Documentation
see file
37-7848.*

- ✓ 1.) Affidavit of Residency
 - ✓ 2.) Ownership of Facilities
 - ✓ 3.) *Financial Ability
 - ✓ 4.) Feasibility of Project
 - a. Plans, drawings
 - b. Economic analysis
 - ✓ 5.) *Compliance w/FERC
- *only for projects of more than 25 cfs
or more than 500 horsepower.

$$e = \frac{P(11.8)}{QH} = \underline{\hspace{2cm}} = \underline{\hspace{2cm}} = \underline{\hspace{2cm}}$$

Based on the above calculations the proposed project
must have an % efficiency.

OVERLAP REVIEW

P/D 37-0895
37-8178
37-7848 { same system
37-7881 - App.

P/U 37-7848
37-7881 } all power
37-8189 }

BYPASSED AREA

MAR 03 1989

18-Nov-1988

Magic Reservoir Hydroelectric, Inc.
c/o Jay R. Jackson, President
2399 S. Orchard St., Suite 201
Boise, ID 83705

Re: Application for Permit No. 37-08389

Dear Mr. Jackson:

The Department of Water Resources acknowledges receipt of your water right application for permit. The application has been assigned the above referenced identification number. Please refer to this number in all further correspondence.

This office will be advertising the application in the Wood River Journal on 11/23 & 11/30/88 and Idaho Statesman, Post Register, Lewiston Morning Tribune, Times News on 11/24 & 12/1/88. A period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our State Office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

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

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

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MAR 03 1989

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Southern Region
2148 4th Avenue East
Twin Falls, ID 83301
(208)734-3578

NOVEMBER 17, 1988

LEWISTON MORNING TRIBUNE
505 C STREET
LEWISTON, ID 83501

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. 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 DECEMBER 19, 1988.

Yours truly,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

MICROFILMED

MAR 03 1989

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Southern Region
2148 4th Avenue East
Twin Falls, ID 83301
(208)734-3578

NOVEMBER 17, 1988

IDAHO STATESMAN
BOX 40
BOISE, ID 83707

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. 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.

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Yours truly,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

MICROFILMED

MAR 03 1989

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Southern Region
2148 4th Avenue East
Twin Falls, ID 83301
(208)734-3578

NOVEMBER 17, 1988

WOOD RIVER JOURNAL
P.O. BOX 988
HAILEY, ID 83333

Gentlemen:

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

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Yours truly,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

MICROFILMED

MAR 03 1989

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Southern Region
2148 4th Avenue East
Twin Falls, ID 83301
(208)734-3578

NOVEMBER 17, 1988

TIMES NEWS
P.O. BOX 548
TWIN FALLS, ID 83303-548

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. 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.

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Yours truly,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

MICROFILMED

MAR 03 1989

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Southern Region
2148 4th Avenue East
Twin Falls, ID 83301
(208)734-3578

NOVEMBER 17, 1988

POST REGISTER
P.O. BOX 1800
IDAHO FALLS, ID 83402

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. 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 DECEMBER 19, 1988.

Yours truly,

Mary Baldwin

Mary Baldwin
Secretary/Office Coordinator

Enclosure

MICROFILMED

MAR 03 1989

NOTICE OF APPLICATION FOR WATER RIGHT

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

MAR 03 1989

37-08389

MAGIC RESERVOIR HYDROELECTRIC, INC.
C/O JAY R. JACKSON, PRES.
2399 S. ORCHARD ST. STE. 201
BOISE, ID 83705

Source: BIG WOOD RIVER

Tributary: SNAKE RIVER

Diversion Pt: NENE Sec 18 T 02S R 18E; at Magic Dam

Use: POWER (300.000 CFS)

Date Filed: 10/28/1988

In: T02S R18E S18 NENE

The permit(s) will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code and/or the new public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 2148 4th Avenue East, Twin Falls, Idaho 83301 on or before DECEMBER 12, 1988.

R. Keith Higginson, Director

Published 11/24 & 12/1/88

MICROFILMED

MAR 03 1989

181-2760
~4~NOTICE OF APPLICA~
~TION FOR WATER~
~RICH~

OK
11/25/88
MB

The following applica-
tion(s) have been filed to
appropriate the public
waters of the State of
Idaho:~

37-08389~

Magic Reservoir
Hydroelectric, Inc.~
c/o Jay R. Jackson,
pres ~

2399 S. Orchard St, STE,
201~

Boise, ID 83705~

Source: Big Wood River~

Tributary: Snake River~

Diversion Pt: NENE Sec

18 T 02S R 18E; at Magic
Dam~

Use: Power (300.000
CFS)~

Date Filed: 10/28/1988~

In: T02S R18E S18 NENE~

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criteria of Sec. 42-203A,
Idaho Code and/or the
new public interest
criteria of Sec. 42-203C,
Idaho Code. Protests
must be filed with the
Director, Dept. of Water
Resources, 2148 4th
Avenue East, Twin Falls,
Idaho 83301 on or before
December 12, 1988.~

R. Keith Higginson,
Director~

PUBLISH: Thursday,
November 24 and
December 1, 1988.~

MICROFILMED

MAR 03 1989

NOTICE OF APPLICATION FOR WATER RIGHT

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

37-08389

MAGIC RESERVOIR HYDROELECTRIC, INC.
C/O JAY R. JACKSON, PRES.
2399 S. ORCHARD ST. STE. 201
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Source: BIG WOOD RIVER

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R. Keith Higginson, Director

Published 11/23 & 11/30/88

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MAR 03 1989

DATE 11/16/88

FROM Mary Baldwin, Secretary/Office Coordinator
Southern Region

TO File 37-08389

SUBJECT Deviation from regular publication schedule.

Per telephone instructions from Glen Saxton, State Office, publication of this application will appear as soon as possible. Consequently, the regular publication schedule is waived due to circumstances.

MICROFILMED

MAR 03 1989

Mary Baldwin
SIGNATURE

37-08389

MAGIC RESERVOIR HYDROELECTRIC, INC.

2399 SOUTH ORCHARD STREET, SUITE 201

BOISE, ID 83705

(208) 336-3000

RECEIVED

NOV 10 1988

Department of Water Resources
Southern Region Office

TRANSMITTAL

11/8/88

TO: LOREN HOLMES, IDWR
FM: MARC A. LUTZ
RE: MAGIC DAM HYDRO

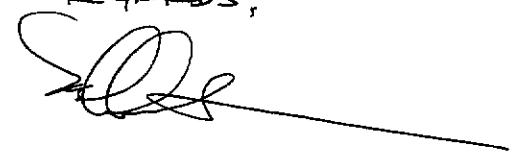
RECEIVED
DEC 21 1988

Department of Water Resources

AS FOLLOW-UP TO MY LETTER OF 11/4/88, ENCLOSED
IS A 8/17/88 FERC ORDER APPROVING TRANSFER OF
THE LICENSE FROM COOK ELECTRIC TO MAGIC RESERVOIR
HYDROELECTRIC, INC.

FOR YOUR RECORDS.

REGARDS,



MICROFILMED

MAR 03 1989

File 1.02
cc- Tols.
- mark A
- ERIC T

44 USC 162 144

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Cook Electric, Inc.
Magic Reservoir Hydroelectric, Inc.
Project No. 3407-010
Idaho

ORDER APPROVING TRANSFER OF LICENSE
(Issued August 17, 1988)

Cook Electric Inc. seeks Commission approval to transfer its license for the Magic Dam Project to Magic Reservoir Hydroelectric, Inc. The project is located on the Big Wood River in Blaine and Camas Counties, Idaho. The purpose of the transfer is to facilitate financing of the project.

Cook Electric Inc. has fully complied with the terms of the license and agrees to pay annual charges that have accrued to the date of the transfer. Magic Reservoir Hydroelectric, Inc. is qualified to hold the license and operate the property under license and agrees to accept all of the terms and conditions of the license and to be bound by the license as if it were the original licensee.

No motions to intervene were filed in response to the public notice of the application to transfer the license. One letter in protest was filed, but subsequently withdrawn. Comments filed by agencies have been fully considered in determining whether to issue this order. Transfer of the license for this project is consistent with the Commission's regulations and is in the public interest.

The Director orders:

- (A) Transfer of the license for this project is approved.
- (B) Approval of the transfer is contingent upon transfer of title of the properties under license and delivery of all license instruments to Magic Reservoir Hydroelectric, Inc., which shall be subject to all terms and conditions of the license as though it were the original licensee. Magic Reservoir Hydroelectric Inc. shall submit certified copies of all instruments of conveyance within 60 days from the date of this order.

MICROFILMED

MAR 03 1989

DC-A-1

-2-

(C) This order is issued under authority delegated to the Director and is final unless appealed to the Commission within 30 days from the date of this order. Magic Reservoir Hydroelectric Inc. shall acknowledge acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet within 60 days from the date of this order.

Dean L. Shumway
Dean L. Shumway
Director, Division
of Project Review

RECEIVED

DEC 21 1988

Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Magie Reservoir Hydroelectric, Inc. Project No. 3407-021
Idaho

ORDER APPROVING REVISED EXHIBIT F

(Issued October 27, 1988)

On September 22, 1988 and October 7, 1988, the Magie Reservoir Hydroelectric, Inc., licensee for the Magie Dam Project filed revised exhibit F drawings and supporting design calculations in compliance with article 305 of the license.

The revised exhibits show the components of the proposed 800 feet spillway extension for the Magie Dam Project and conform to the Commission's regulations.

Concerns were expressed over licensee's earlier filings 1/ which did not address the spillway stability in a satisfactory manner. In his last filing licensee has proposed a slightly relocated spillway alignment and stated that the concrete footings of the spillway structure will be founded on solid rock with proper dewatering and backfilled with suitable material as required in order to provide adequate stability. If constructed according to good engineering practice and as stated by the licensee the spillway structure will be safe and adequate.

The Director orders:

(A) The following revised exhibit F drawings filed on September 22, 1988 and October 7, 1988, in compliance with article 305 of the license are approved and made a part of the license:

Exhibit	FERC Drawing No. 3407-	Showing	Superseding FERC Drawing No. 3407-
F-30	32	New Spillway Plan	17
F-31	33	Sections and Elevations	18
F-32	34	Isometric View and Details	

1/ Licensee's filings of August 5, 1988 and September 12, 1988, in compliance with article 305 of the license were rejected by letter of September 16, 1988.

DC-A-30

(B) The superseded exhibit F drawings are eliminated from the license.

(C) The licensee shall not commence operation of the project until the information as required by article 306 of the license is filed and approved by the Director, Division of Inspections.

(D) Within 90 days of the date of issuance of this order, the licensee shall file an original of the approved exhibit F drawings reproduced on silver or gelatin 35mm microfilm mounted on Type D (3 1/4" x 7 3/8") aperture cards for each drawing. In addition, the licensee shall file two Diazo-type duplicate aperture cards. The original set and one duplicate set of aperture cards should be filed with the Secretary of the Commission. The remaining duplicate set of aperture cards should be filed with the Commission's Portland Regional Office. The FERC drawing numbers (3407-32 through 3407-34) shall be shown in the margin below the title block of each microfilm drawing and also in the upper right corner of each aperture card. The top lines of the aperture cards shall show the FERC exhibit (i.e., F-30 through F-32), project number, drawing title, and date of this order.

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

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NOV - 8 1988

Department of Water Resources
Southern Region Office

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

MICROFILMED

NOV 03 1988

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Cook Electric, Inc.

Project No. 3407-004

ORDER ISSUING LICENSE
(Major Project - Existing Dam)
(Issued January 15, 1987)

Cook Electric, Inc. has filed a license application under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Magic Dam Project, located in Blaine County, Idaho, on the Big Wood River. The project would occupy lands of the United States administered by the Bureau of Land Management.

Notice of the application has been published. The motions to intervene that have been granted and the comments and protests filed by agencies and individuals have been fully considered in determining whether to issue this license, as discussed below.

Idaho Power Company (IPC) asked that a need for project output be shown. The need for project power and its economic feasibility are discussed in the attached Environmental Assessment (EA). The Commission has also discussed these issues raised by IPC in its recent license order for the Horseshoe Bend Project No. 5376 36 FERC ¶61,135 (1986).

The Idaho Department of Water Resources (IDWR) requested that the Commission condition the license to insure that the project would not interfere with developments on the Snake River and its tributaries pursuant to the Idaho State Water Plan. This request is not granted for the reasons given by the Commission in the Horseshoe Bend license order where IDWR requested the inclusion of the same condition.

Recommendations of Federal and State Fish and Wildlife Agencies

Section 10(j) of the Federal Power Act (FPA), as amended by the Electric Consumers Protection Act of 1986 (ECPA), Pub. L. 99-485, requires the Commission to include license conditions based on recommendations of federal and state fish and wildlife agencies for the protection, mitigation, and enhancement of fish and wildlife. The Environmental Assessment (EA) for the Magic Dam Project, which was prepared prior to ECPA and is attached to and made part of this license, addresses the primary concerns of the federal and state fish and wildlife agencies, but did not adopt all of the recommendations contained in the Idaho Department of Fish and Game's (IDFG) comment letter dated March 17, 1986. The IDFG recommendations that the staff did not recommend for adoption in the EA concerned (1) maintaining dissolved oxygen (DO) concentrations downstream from the project and (2) mitigating fish losses resulting from turbine mortality during project operation.

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Consistent with new section 10(j)(2) of the FPA, the Commission staff succeeded in resolving all differences between IDFG's fish and wildlife recommendations and the staff's recommendations as reflected in the EA. By letter of December 12, 1986, the Director Office of Hydropower Licensing (Director) advised IDFG of the differences between the specific provisions recommended by IDFG and the provisions that the staff believes are necessary to limit project-related impacts on the fish and wildlife resources of the project area.

On December 26, 1986, IDFG notified the Director that the differences were minor and easily resolved. IDFG agreed that the staff's recommendations adequately address IDFG concerns with the following exceptions. IDFG believes that any study conducted to determine turbine mortality at the project should include provisions for: (1) compensation for turbine mortality retroactive to the start of project operation; (2) IDFG input on study needs and review and approval of the study design, including methods and procedures; (3) IDFG approval of qualified technical personnel to conduct such studies; and (4) funding of the study by the licensee.

Article 404, included herein, requires development of a turbine mortality monitoring plan. Items 1, 3, and 4 recommended by IDFG would further protect the fishery resource and are therefore incorporated into article 404.

Item 2 recommends that IDFG should have approval authority of the monitoring plan. We disagree with this recommendation, since IDFG will be consulted during development of the plan and all participants must agree to the scope of the plan, IDFG's views would be fully reflected in the monitoring plan. The Commission must retain ultimate approval of all license requirements under the authority of the Federal Power Act.

Comprehensive Plans

Section 10(a)(2) of the FPA, as amended by ECPA, requires the Commission to consider the extent to which a project is consistent with comprehensive plans (where they exist) for improving, developing, or conserving a waterway or waterways affected by the project that are prepared by an agency established pursuant to federal law that has the authority to prepare such plans or by the state in which the facility is or will be located. The Commission considers plans to be within the scope of section 10(a)(2) only if such plans reflect the preparers' own balancing of the competing uses of a waterway, based on their data and applicable policy considerations (i.e., consider and balance all relevant public use considerations). With regard to plans prepared at the state level, such plans are within the scope of section

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10(a) only if they are prepared and adopted pursuant to a specific act of the state legislature and are developed, implemented, and managed by an appropriate state agency. 1/

The Commission has identified one comprehensive plan of the type referred to in section 10(a)(2) of the FPA: the Northwest Power Planning Council's 1986 Northwest Conservation and Electric Power Plan. Construction and operation of the Magic Dam Project would be consistent with the Northwest Power Planning Council's 1984 Fish and Wildlife Program for the Columbia River Basin.

No other comprehensive plans of the type referred to in section 10(a)(2) of the FPA relevant to this project have been identified. Three resource plans 2/ that touch on various aspects of waterway management were brought to our attention and have been reviewed in relation to the proposed project as part of our broad public interest examination under section 10(a)(1) of the FPA. No conflicts were found.

Summary of Findings

An Environmental Assessment (EA) was issued for this project. Background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment are contained in the EA attached to this order. Issuance of this license is not a major federal action significantly affecting the quality of the human environment.

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

1/ 99 CONG. REC. 54140 (remarks by Senator McClure, April 11, 1986).

2/ Bureau of Land Management's Land Use Plan for its Magic Planning Unit-1980; Environmental Protection Agency - Region 10's policies on mitigating adverse environmental impacts permitted under section 404 of the Clean Water Act; State of Idaho's Statewide Comprehensive Outdoor Recreation Plan - 1983.

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Based on our review of the agency and public comments filed in this proceeding, and on our independent analysis, as discussed herein, we conclude that the Magic Dam Project is best adapted to a comprehensive plan for the Big Wood River, taking into consideration the beneficial public uses described in section 10(a)(1) of the Federal Power Act.

The Director orders:

(A) This license is issued to Cook Electric, Inc. (licensee), for a period of 40 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Magic Dam Project. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The project consists of:

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

<u>Exhibit G-</u>	<u>FERC No. 3407-</u>	<u>Showing</u>
1	15	Location Map
2	16	Site Plan

(2) The existing project facilities at the site consisting of: (a) a 128-foot-high, 3,100-foot-long earthfill dam; (b) a 400-foot-long spillway; (c) a dike, located adjacent to the spillway, approximately 800 foot long; (d) a 36.5-foot-high outlet tower; (e) a 620-foot-long, 132-inch diameter outlet conduit; (f) a bifurcation; (g) 2 emergency gates and 2 outlet valves in valve-house; and (h) a 3,740-acre reservoir with a capacity of 191,500 acre-feet at a normal maximum surface elevation of 4,935 feet msl. The proposed facilities consisting of: (a) an 800-foot-long additional spillway; (b) raising the crest of the dike to elevation 4,945 feet msl; (c) a new bifurcation, approximately 40 feet upstream of the existing bifurcation; (d) a 170-foot-long, 132-inch diameter penstock; (e) a powerhouse containing 3 generating units with a combined capacity of 9.0 MW; (f) the 4.16-kV generator leads; (g) a 4.16/46-kV step-up transformer; (h) a 2.8-mile-long transmission line which would connect to existing 46-kV Idaho Power Company lines; and (i) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F recommended for approval in the attached Safety and Design Assessment.

(3) All of the structures, fixtures, equipment and facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project and located within or outside the project boundary, and all riparian or other rights that are

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necessary or appropriate in the operation or maintenance of the project.

(C) The Exhibit G described above and those sections of Exhibits A and F recommended for approval in the attached Safety and Design Assessment are approved and made part of the license.

(D) This license is subject to the articles set forth in Form L-2, (October 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States," except article 20. The license is also subject to the following additional articles:

Article 201. The licensee shall pay the United States the following annual charge, effective the first day of the month in which this license is issued:

- a. For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 12,000 horsepower.
- b. For the purpose of reimbursing the United States for the use, occupancy, and enjoyment of 2.5 acres of its lands other than for transmission line right-of-way, a reasonable annual charge as determined by the Commission in accordance with its regulations in effect from time to time.
- c. For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 17.15 acres of its lands for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 202. Pursuant to Section 10(d) of the Act, after the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20 years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall

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be set aside in the project amortization reserve account. The amounts established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 203 . The licensee shall clear and keep clear to an adequate width all lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which result from maintenance, operation, or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of lands and disposal of unnecessary material shall be done with due diligence to the satisfaction of the authorized representative of the Commission and in accordance with appropriate federal, state, and local statutes and regulations.

Article 301. The licensee shall commence construction of project works within two years from the issuance date of the license and shall complete construction of the project within four years from the issuance date of the license.

Article 302. The licensee shall at least 60 days prior to start of construction, submit one copy to the Commission's Regional Director and two copies to the Director, Division of Inspections, of the final contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse, and water conveyance structures. The Director, Division of Inspections, may require changes in the plans and specifications to assure a safe and adequate project.

Article 303. The licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the licensee shall submit to the Commission's Regional Director and Director, Division of Inspections, one copy each of the approved cofferdam construction drawings and specifications and the letter(s) of approval.

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Article 304. The licensee shall within 90 days of completion of construction file, for approval by the Commission, revised Exhibits A, F, and G to describe and show the project as built.

Article 305. The licensee shall file, for Commission approval, revised Exhibit F drawings showing the final design of project structures. The revised Exhibit F drawings shall be accompanied by a supporting design report and the licensee shall not commence construction of any project structure until the corresponding revised Exhibit F drawing has been approved.

Article 306. The licensee shall submit, with the final contract drawings and specifications for the Magic Dam Hydroelectric Project one copy to the Commission's Regional Director and two copies to the Director, Division of Inspections, of a study demonstrating that under flood conditions the flashboards can be safely removed in a timely manner to provide adequate free-board. The study should cover the following areas: (1) maximum-flow and water surface elevation that the flashboards will be removed and the time it will take to pull or trip and release, (2) method used to pull the flashboards or trip the release, and (3) how will the dam operator gain access to the spillway during flood conditions. The Director, Division of Inspections, reserves the right to require any changes in project design or operation so that Magic Dam will safely pass the PMF. The licensee shall not commence operation of the power generating facilities until the Director, Division of Inspections, has reviewed and approved the study.

Article 401. The licensee, after consultation with the Idaho Department of Fish and Game, the Idaho Department of Health and Welfare, the U.S. Fish and Wildlife Service, and the Bureau of Land Management, shall prepare and file with the Commission, within 1 year from the date of issuance of this license and prior to commencing any land-clearing, land-disturbing, or spoil-producing activities at the project, a comprehensive plan to control erosion, dust, and slope stability, and to minimize the quantity of sediment or other potential water pollutants resulting from project construction, construction and operation of the new spillway section, cofferdam emplacement and removal, spoil-disposal, and project operation. The plan shall also include descriptions and functional design drawings of control measures, topographic map locations of control measures, an implementation schedule, monitoring and maintenance programs for project construction and operation, and provisions for periodic review of the plan and for making any necessary revisions to the plan. The licensee shall include in the filing documentation of agency consultation on the plan, and copies of agency comments or recommendations.

If the licensee disagrees with any agency recommendations, the licensee shall provide a discussion of the reasons for disagreeing, based on actual-site geological, soil, and ground water conditions.

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conditions. The Commission reserves the right to require changes to the plan. Unless the Director, Office of Hydropower Licensing, directs otherwise, the licensee may commence land-clearing, land-disturbing, or spoil-producing activities at the project, 90 days after filing this plan.

Article 402. The licensee, after consultation with the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service, shall develop a monitoring plan to evaluate the extent of sedimentation below Magic dam, caused by project construction and operation, and the impact of this sedimentation on trout spawning habitat.

Within 1 year from the date of issuance of this license, the licensee shall file, for Commission approval, a copy of the monitoring plan, along with comments from the agencies on the plan and a schedule for filing the results of the monitoring. The Commission reserves the right to require modifications to the plan and the schedule.

The results of the monitoring shall be submitted to the Commission according to the approved schedule, along with the comments from the consulted agencies relating to the results. If the results of the monitoring indicate that project construction or operation have resulted in a reduction of trout spawning habitat below Magic Dam, the licensee shall also file, for Commission approval, a plan to protect and maintain spawning habitat and a schedule for implementing the proposed measures. The Commission reserves the right to require modifications to the mitigative plan and schedule.

Article 403. The licensee, after consultation with the Idaho Department of Fish and Game, the Idaho Department of Health and Welfare, and the U.S. Fish and Wildlife Service, shall develop a dissolved oxygen (DO) monitoring plan. The plan shall include measures necessary to effect rapid alteration of project operation to ensure maintenance of DO in the project tailrace at 90% saturation from April 1 through July 1 and maintenance of state DO standards immediately downstream of the project the rest of the year. The plan shall be filed with the Commission for approval within 1 year from the date of issuance of this license. Comments from the above agencies on the plan shall be included in the filing. The Commission reserves the right to require modifications in the plan.

Article 404. The licensee, after consultation with the Idaho Department of Fish and Game (IDFG) and the U.S. Fish and Wildlife Service (FWS), shall develop a monitoring plan (plan) which has been agreed to by all participants, to evaluate turbine-induced injury and mortality to fish resources. The plan shall include methods and procedures to be followed and identify qualified technical personnel that would conduct the study. Within 6 months from the date of issuance of this license, the licensee shall file, for Commission approval, a copy of the plan, along with a schedule for filing the results of the monitoring and comments from the above agencies on the plan and the schedule.

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The results of the monitoring shall be submitted to the Commission according to the approved schedule, along with comments from FWS and IDFG on the results. If the results of the monitoring indicate that measures are necessary to minimize adverse effects to fish resources, the licensee also shall file, for Commission approval, a schedule for implementing the measures, agreed upon by the licensee, FWS, and IDFG. Measures shall include, but not be limited to, providing funding to IDFG for stocking additional fish in the project reservoir, and compensation for turbine-mortality impacts retroactive to the start of project operation. At the same time, copies of the schedule shall be served upon FWS and IDFG. The Commission reserves the right to require necessary measures to protect the fish resource.

Article 405. The licensee, after consultation with the U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game, shall file for Commission approval, within 1 year from the date of issuance of this license, a plan to mitigate in kind for the loss of riparian habitat value from project construction and operation. The plan shall include but shall not be limited to: (a) identification of the type of habitat to be used for replacement; (b) a determination of the location and the number of acres of habitat to be used for replacement; (c) a discussion of the specific construction and maintenance techniques to be used for mitigating project effects; (d) a schedule of implementation; and (e) a monitoring program to determine the effectiveness of mitigative measures. Documentation of agency consultation on the mitigative plan shall be included in the filing. The Commission reserves the right to require changes to the plan.

Article 406. The licensee, before starting any land-clearing or land-disturbing activities that may affect significant archeological or historic sites, shall implement its cultural resources management plan to avoid such sites as described in the licensee's application for license filed with the Commission on July 24, 1984. The plan shall be implemented in a manner satisfactory to the Idaho State Historic Preservation Officer (SHPO). Within 4 years after the date of issuance of this license, the licensee shall file with the Commission a copy of a letter from the SHPO indicating that the plan has been implemented so as to avoid impacts to archeological or historic sites. The licensee shall make funds available in a reasonable amount for the required work. If the licensee discovers any previously unidentified archeological or historic sites during the course of constructing or developing project works or other facilities at the project, the licensee shall stop all construction and development activities in the vicinity of the sites and shall consult a qualified cultural resources specialist and the SHPO about the eligibility of the sites for listing in the National Register of Historic Places and about any measures needed to avoid the sites or to mitigate effects on the sites. If the licensee and the SHPO cannot agree on the amount of money to be spent for project-specific archeological and historical purposes, the Commission reserves the right to require the licensee to conduct the necessary work at the licensee's own expense.

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Article 407. The licensee, after consultation with the National Park Service, the Bureau of Land Management, the Idaho Department of Parks and Recreation, the Blaine County Recreation District, and the Blaine County Planning and Zoning Commission, shall prepare and file with the Commission, for approval, within 1 year from the date of issuance of this license, a Report on Recreational Resources that conforms to the requirements of Commission Regulations 18 CFR at 4.51 (f)(5). The report shall include, but shall not be limited to: a plan for improving access roads, providing shade, and rehabilitating toilet facilities at existing recreational facilities; identification of the effect of reservoir drawdown on ice fishing; provisions for the development of parking, restrooms, landscaping, camping facilities, and fishing access (with consideration for the handicapped) adjacent to Magic Dam; and a proposal for facility development at the Dinosaur Ridge recreation site. Further, the filing shall include a drawing showing the type and location of the facilities to be provided at the project, a construction schedule, identification of the entity responsible for operating and maintaining the project recreational facilities, and documentation of consultation with the above-named agencies.

Article 408. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the licensee may grant permission without Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining

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walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters.

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but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

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

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

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

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

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

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

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

Article 409. The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal or state fish and wildlife agencies or affected Indian tribes, alterations of project structures and operation that take into account, to the fullest extent practicable, at each relevant stage of the decision-making process, the regional fish and wildlife program developed and amended under the Pacific Northwest Electric Power Planning and Conservation Act.

(E) The Commission reserves the right to assess the licensee fees pursuant to section 30(e) of the Federal Power Act.

(F) This order is issued under authority delegated to the Director and is final unless appealed under Rule 1902 to the Commission by any party within 30 days from the issuance date of this order. Filing an appeal does not stay the effective date of this order or any date specified in this order. The licensee's failure to appeal this order shall constitute acceptance of the license.

Richard T. Hunt

Richard T. Hunt
Director, Office of
Hydropower Licensing

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Magic Reservoir Hydroelectric, Inc.

Project No. 3407-020
Idaho

ORDER AMENDING LICENSE
(Issued October 13, 1988)

Magic Reservoir Hydroelectric, Inc., licensee for the Magic Dam Hydroelectric Project, filed on September 23, 1988, an application for amendment to revise the project's primary transmission line. The project was licensed on January 15, 1987. The project is located on the Big Wood River in Blaine and Camas Counties, Idaho. The proposed revised transmission line route would occupy lands of the United States administered by the Bureau of Land Management (BLM).

The licensee requests that its 2.8-mile-long, 46-kilovolt (kV) transmission line be revised to an approximately 9-mile-long, 138-kV facility. The revised line would also be located northwest of the powerhouse rather than southeast as licensed. This revision was necessitated by a change of requirements made by Idaho Power Company (IPC) to facilitate connection of the project to the IPC distribution system.

Comments received from the agencies have been fully considered in determining whether to issue an amendment of this license; no agency objected to the amendment. The BLM issued a right-of-way permit for the project, including the revised transmission line, on September 20, 1988.

The project, as amended, will not conflict with any planned or authorized development of the waterway. After considering the environmental information in the application for amendment of license, the staff's independent assessment 2/ and other public comments, the Director finds that issuance of this order is not a major federal action significantly affecting the quality of the human environment.

1/ Cook Electric, Inc., Idaho, 38 FERC ¶ 62,034.

2/ Environmental Assessment, Magic Dam Hydroelectric Project, Amendment of License, FERC Project No. 3407-020, Federal Energy Regulatory Commission, dated October 13, 1988. This document is available in the Commission's public files associated with this proceeding and is attached to this order.

The Director orders:

(A) The license for Project No. 3407 is amended as proposed in the application filed September 23, 1988, effective the first day of the month in which this order is issued.

(B) Ordering paragraph (B)(2) of the license is amended as follows:

The transformer and transmission line descriptions at (B)(2)(g) and (h), respectively, are revised to read "(g) a 4.16/138-kV, 9-mVA step-up transformer; (h) a 9-mile-long, 138-kilovolt (kV) transmission line which would connect to an existing 138-kV Idaho Power Company transmission line;"

(C) Article 201 of the license is amended as follows:

Part (c) of article 201 is revised to read "c. For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 109 acres of its lands for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time."

(D) The licensee shall, within 90 days from the date of completion of project construction, file for approval by the Commission, revised Exhibits A, F, and G to describe the as built transmission line as required by article 304 of the license.

(E) The licensee shall, after consultation with the U.S. Fish and Wildlife Service, Idaho Department of Fish and Game, and Bureau of Land Management, design and construct the transmission line to protect raptors from electrocution and collision. The transmission line design shall be in accordance with the guidelines set forth in "Suggested Practices for Raptor Protection on Power Lines", Raptor Research Report No. 4, Raptor Research Foundation, Inc., 1981. Within 90 days from the date of completion of project construction, the licensee shall file detailed drawings of the as-built transmission line clearly showing the phase spacing, configuration, grounding practices, and markings, and agency comments on the design to protect raptors from electrocution and collision.

(F) The revised cultural resources management plan filed on September 23, 1988, is approved and shall conform to all the requirements of article 406 of the license.

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(G) This order is issued under authority delegated to the Director and is final unless appealed under Rule 1902 to the Commission by any party within 30 days from the issuance date of this order. Filing an appeal does not stay the effective date of this order or any date specified in this order. The licensee's failure to appeal this order shall constitute acceptance of the order.

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

ENVIRONMENTAL ASSESSMENT
FOR AMENDMENT OF LICENSE

Magic Dam Hydroelectric Project

FERC Project No. 3407-020

Idaho

Federal Energy Regulatory Commission
Office of Hydropower Licensing
Division of Project Compliance and Administration
825 N. Capitol Street, NE
Washington, D.C. 20426

October 13, 1988

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FEDERAL ENERGY REGULATORY COMMISSION OFFICE OF HYDROPOWER LICENSING DIVISION OF PROJECT COMPLIANCE AND ADMINISTRATION

Date: October 13, 1988

Project name: Magic Dam

FERC Project No. 3407-020

A. APPLICATION

1. Application type: Amendment of license

2. Date filed with the Commission: September 23, 1988

3. Applicant: Magic Reservoir Hydroelectric, Inc.

4. Water body: Big Wood River River basin: Snake River

5. Nearest city or town: Shoshone, ID

6. County: Blaine and Camas State: ID

B. PURPOSE AND NEED FOR ACTION

1. The purpose of the transmission line is to connect the Magic Dam Project with the transmission system of Idaho Power Company (IPC).

2. The purpose of the proposed amendment is to revise the route of the transmission line that was authorized by the Commission in the order issuing the license on January 15, 1987. Magic Reservoir Hydroelectric, Inc. (licensee) requests that the transmission line be revised because of a requirement of IPC. Subsequent to issuance of the license, IPC reversed its position on the connection point of the transmission line and required that the delivery point for the power be along IPC's King-Wood 138-kilovolt (kv) line which runs west of the project.

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C. PROPOSED PROJECT AND ALTERNATIVES

1. Description of the proposed action.

The licensee proposes to revise the transmission line from the 2.8-mile-long, 46-kv facility licensed on January 15, 1987, to approximately a 9-mile-long, 138-kv facility. The revised line would also be located northwest of the powerhouse rather than southeast as licensed.

2. Applicant's proposed mitigative measures.

The licensee has routed the transmission line to avoid a reservoir crossing; to provide adequate airport runway clearance; and to avoid sage grouse leks (strutting grounds). Further, the line would be designed to protect raptors from electrocution.

3. Federal lands affected.

X Yes; Bureau of Land Management (BLM); acreage = 109;
(agency)
— Conditions pursuant to Section 4(e) of the Federal
Power Act have been provided by letter dated
/ / (attachment A) for the adequate
protection and utilization of federal lands.

X Conditions have not been provided.

Remarks: The licensee was granted a right-of-way permit for the Magic Dam Project on September 20, 1988. This permit includes the revised transmission line route.

4. Alternatives to the proposed project.

a. Action alternatives

The alternative transmission line originally proposed by the licensee and presented to BLM was modified slightly. BLM recommended that the line be realigned in the area of Cottonwood Road to minimize visual impacts. It is this modified line that the BLM granted a right-of-way permit, and that is being evaluated by this environmental assessment. No other reasonable action alternatives have been found.

b. Alternative of no action.

No action, denial of the amendment, would preclude the applicant from constructing the transmission line along the proposed alternative route.

D. CONSULTATION AND COMPLIANCE

1. Fish and wildlife agency consultation (Fish & Wildlife Coordination Act).

a. U.S. Fish & Wildlife Service: X Yes. No.
b. State(s): X Yes. No.
c. National Marine Fisheries Service: Yes. X No.

2. Section 7 consultation (Endangered Species Act).

a. Listed species: None. X Present:

b. Consultation: X Not required.
 Required; completed: / /.

Remarks: The bald eagle, a federally listed endangered species, winters at an area approximately 5 to 6 miles north of Magic Dam.

3. Section 401 certification (Clean Water Act).

X Not required.

4. Cultural resource consultation (Historic Preservation Act).

a. State Historic Preservation Officer: X Yes. No.
b. National Park Service: Yes. X No.
c. National Register status: X None.
d. Council: X Not required. Eligible or listed.
e. Further consultation: X Not required. Completed: / /.
 Required.

Remarks: By letter of September 21, 1988, the State Historic Preservation Officer indicates that, as long as the three archeological sites that occur along the transmission line corridor are avoided, the project would have no effect on cultural resources.

5. Recreational consultation (Federal Power Act).

a. U.S. Owners: X Yes. No.
b. National Park Service: Yes. X No.
c. State(s): Yes. X No.

6. Wild and scenic rivers (Wild and Scenic Rivers Act).

Status: X None. Listed. Determination completed: / /.

Administering agency: _____

- Status: X None. _____ Designated.
 _____ Determination completed: / / .
- Administering agency: _____

1. The following agencies and entities provided comments on the revised transmission line.

U.S. Fish and Wildlife Service	09/22/88
Blaine County Planning & Zoning Commission	08/16/88
Idaho Department of Fish and Game	07/15/88
Idaho State Historical Society	09/21/88

2. The applicant responded to the comments or motion(s) to intervene by letter(s) dated 1/1.

X The applicant did not respond to the comments or motion(s) to intervene.

1. General description of the locale.

Magic Dam is located about 30 miles north of the town of Shoshone, Idaho, in the northern part of Snake River plain. The project area is situated on gently sloping, relatively even terrain near elevation 4,700 feet mean sea level. The area is characterized by hot summers and cold winters. The population base surrounding Magic Dam is distinctly rural (Bureau of Land Management, 1988). The revised transmission line corridor (corridor) would be located entirely on public lands administered by the BLM, Shoshone District.

- The revised corridor would generally avoid recreational sites and developed areas, and therefore would have no direct or indirect adverse effects on recreational and socioeconomic resources. Although this corridor would cross several small streams, construction and operation of the transmission line would have no adverse effects on water quality and fisheries. Construction activities would have a potential for minor erosion, but such effects would be minimized, if not prevented, by licensee's implementation of erosion and sedimentation controls. The following is a discussion of resources that would be affected by the proposed action.

- b. Vegetation:

Mountain big sagebrush

- | | |
|------------------------|--|
| Mountain big sagebrush | <ul style="list-style-type: none"> - big sagebrush, gray rabbitbrush, Great Basin wildrye, bitterbush, bluebunch wheatgrass |
| Alkali sagebrush | <ul style="list-style-type: none"> - big sagebrush, Hooker's balsamroot, long-leaved phlox, mat buckwheat, fuzzy sagebrush |
| Wyoming big sagebrush | <ul style="list-style-type: none"> - Wyoming big sagebrush, low sagebrush, Sandberg's bluegrass |
| Grassland | <ul style="list-style-type: none"> - Crested wheatgrass, big sagebrush, antelope bitterbrush |

c. Wildlife: Typical wildlife species that inhabit the corridor are mule deer, pronghorn antelope, coyote, sage grouse, chukar, Hungarian partridge, red-tailed hawk, Cooper's hawk, and ferruginous hawk.

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g. Cultural: Three archeological sites were located along the corridor on a June 6, 1988, cultural resources survey. National Register (listed and eligible) properties have not been recorded.

e. Visual quality: The general scenery of the area is pleasant with the diversity and patterns of vegetation and geological features, but lacks richness.

j. Land use: The project area is managed by the BLM for outdoor recreation. Developed recreational facilities, however, are oriented around the Magic Dam Reservoir and Big Wood River, and are lacking along the corridor. The corridor is generally rural.

G. ENVIRONMENTAL ISSUES AND PROPOSED RESOLUTIONS

There are 2 issues addressed below.

1. Raptor Protection:

The 9-mile-long transmission line may pose a electrocution and collision hazard to avian species, particularly to large raptors. The Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service request that the transmission line be designed to protect raptors. The BLM has included raptor protection as one of the terms and conditions to its right-of-way grant/temporary use permit issued on September 20, 1988, which the licensee has accepted. The licensee should, therefore, design the transmission line to protect raptors from electrocution and collision.

2. Cultural Resources:

Construction of the transmission line may impact three additional archeological sites than addressed by the cultural resources management plan approved by article 406 of the license. The licensee's filing of September 23, 1988, contains a revised cultural resources management plan that addresses the archeological sites along the corridor. Generally, the plan provides for the avoidance and photo-documentation of archeological sites. The State Historic Preservation Officer indicates that there would be no effect on cultural resources if these sites are avoided and photo-documented. The licensee should, therefore, implement its revised cultural resources plan filed on September 23, 1988, and conform to the other requirements of article 406 of the license.

H. ENVIRONMENTAL IMPACTS

1. Assessment of impacts expected from the applicant's proposed project (P), with the applicant's proposed mitigation and any conditions set by a federal land management agency; the proposed project with any additional mitigation recommended by the staff (PS); and any action alternative considered (A). Assessment symbols indicate the following impact levels:

O = None; 1 = Minor; 2 = Moderate; 3 = Major;
A = Adverse; B = Beneficial; L = Long-term; S = Short-term.

Resource	Impact			Resource	Impact		
	P	PS	A		P	PS	A
a. Geology-Soils	1AS			f. Wildlife		1AS	
b. Streamflow	O			g. Cultural:			
c. Water quality:				Archeological		O	
Temperature	O			Historical		O	
Dissolved				h. Visual quality		1AL	
oxygen	O			i. Recreation		O	
Turbidity and				j. Land use		1AL	
sedimentation	O			k. Socioeconomics		O	
d. Fisheries:							
Anadromous	O						
Resident	O						
e. Vegetation	1AS						

Remarks:

(a) Minor short-term erosion would occur during the construction period.

(c,f) Vegetative cover would be disturbed by equipment during the construction period which would result in minor, short-term effects on vegetation and wildlife resources. About 1 acre would be permanently lost through the installation of poles.

(h,j) Because of the rural nature of the corridor, the presence of the transmission line would represent a permanent, but minor visual intrusion in the area.

2. Impacts of the no-action alternative.

Under the no-action alternative, there would be no construction of the alternative transmission line. This would preclude the project from connecting to the IPC transmission system, since IPC rejected the licensed transmission line.

3. Recommended alternative (including proposed, required, and recommended mitigation measures):

W Proposed alignment. W Action alternative. W No action.

4. Reason(s) for selecting the preferred alternative.

The revised transmission line would better facilitate connection of the Magic Dam project with the IPC system with minimal environmental disturbance.

I. UNAVOIDABLE ADVERSE IMPACTS OF THE RECOMMENDED ALTERNATIVE

Construction of the revised transmission line would result in short-term increases in erosion, and short-term adverse effects on vegetation and wildlife resources. After construction, the transmission line would represent a minor visual intrusion on the visual quality of the project area.

J. CONCLUSION

Approval of the recommended alternative would not constitute a major federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement (EIS) will not be prepared.

K. LITERATURE CITED

Bureau of Land Management. 1988. Magic Dam Hydroelectric Project -- Land Report, Decision Record/Rationale, Finding of No Significant Impact. July 22, 1988.

L. LIST OF PREPARERS

Name	Position title
Patrick K. Murphy	Wildlife Biologist (Coordinator)

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WASHINGTON, D.C. 20426

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Department of Water Resources
Southern Region Office

P -0008407020 112981
KENNETH R. ARMENTI, ATTY. GEN.,
IDAHO DEPT. OF WATER RESOURCES (10) P. P.,
2142 4TH AVENUE EAST, N.,
TWIN FALLS, ID 83301

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OCT 21 1988

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Department of Energy
Southern Region Office

Magic Reservoir Hydroelectric, Inc.

Project No. 3407-020

NOTICE OF AVAILABILITY OF ENVIRONMENTAL ASSESSMENT
(Issued October 13, 1988)

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the Magic Dam Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed amendment. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed amendment and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell
Secretary

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WASHINGTON, D.C. 20426

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TWIN FALLS, ID 83301

MAGIC RESERVOIR HYDROELECTRIC, INC.

2399 SOUTH ORCHARD STREET, SUITE 201

BOISE, ID 83705

(208) 336-3000

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October 27, 1988

OCT 28 1988

Mr. Loren Holmes, Supervisor
Southern Region
Idaho Dept. of Water Resources
2148 4th Ave. E
Twin Falls, ID 83301

Department of Water Resources
Southern Region Office

Re: Magic Dam Hydroelectric Project

Dear Mr. Holmes:

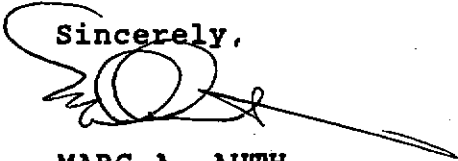
On behalf of Magic Reservoir Hydroelectric, Inc. we enclose herewith an Application for Permit to appropriate water for use at the Magic Dam Hydroelectric Project, presently under construction.

Also enclosed is a check in the amount of \$2,225.00 which we understand will cover the costs of processing this application.

As described under "Remarks" in the application, this filing is addendum to Permit(s) No. 37-7848 and 37-8178 inasmuch as there is potential for power generation on either side of the irrigation season while still in accordance with Big Wood Canal Company's flow management regimes. The 300 cfs identified in this application-- use of which would extend between January 1 and December 31st-- serves to increase power flows such that the aggregate of previously-approved permits together with this application, if approved, match the flow-through capacity of the turbine being installed at the dam. We acknowledge, of course, that all power flows will be subordinate to the dam owner's flow release management plan.

We appreciate the department's expeditious review and processing of this application. If you have any questions, please let me know at your first opportunity.

Sincerely,


MARC A. AUTH

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MAR 03 1989

cc: Jay Jackson, President (Magic Reservoir Hydroelectric, Inc.)
Dick Oneida, Manager (Big Wood Canal Company)

MA/lj

STAFF ANALYSIS SUPPLEMENT

1) Water District 37 Basin # 37

2) Local description (of one P/D)

☐

At the above street address

☐

 miles N/S and miles E/W

of
(City center or numbered highway intersection)

☒

At Magic Dam.

(Travel directions from city center or highway intersection)

3/83

IDENT. NO. 37-08389

I D A H O D E P A R T M E N T O F W A T E R R E S O U R C E S

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