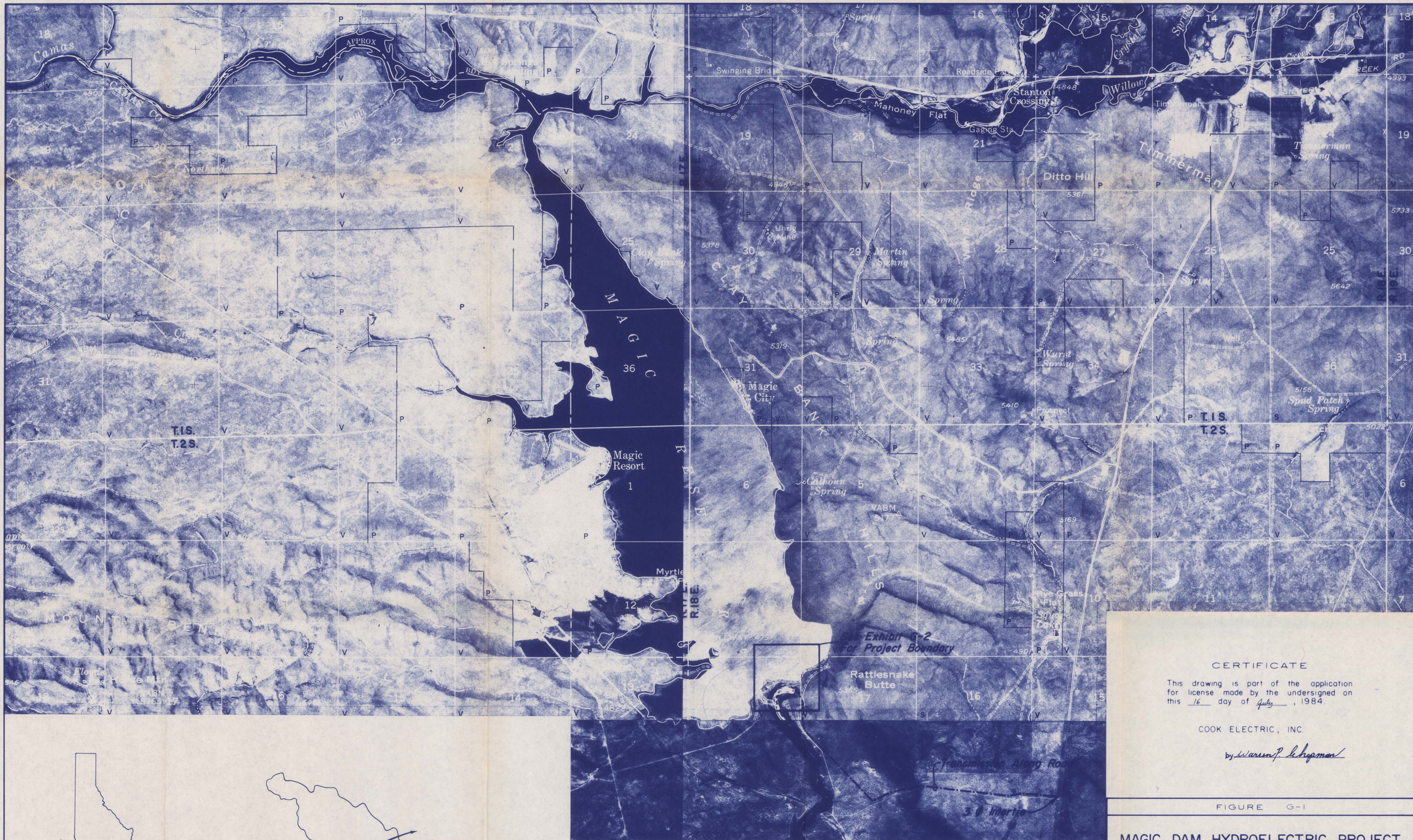
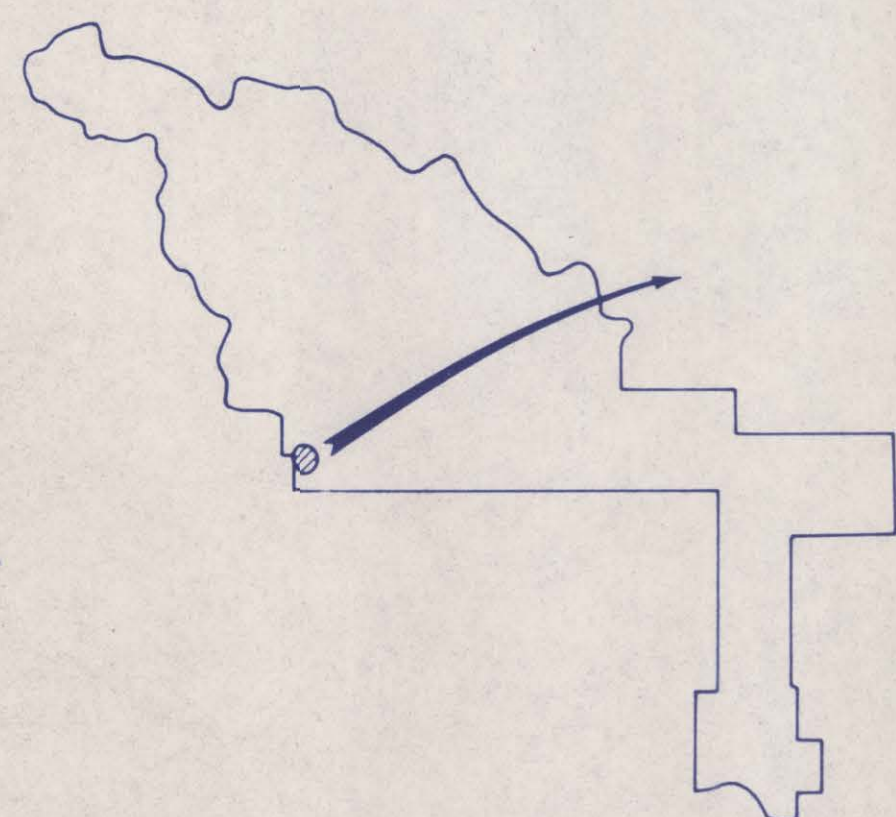




IDAHO,
No Scale



BLAINE COUNTY
No Scale

CERTIFICATE

This drawing is part of the application for license made by the undersigned on this 16 day of July, 1984.

COOK ELECTRIC, INC.

by Warren P. Chapman

FIGURE G-1

MAGIC DAM HYDROELECTRIC PROJECT

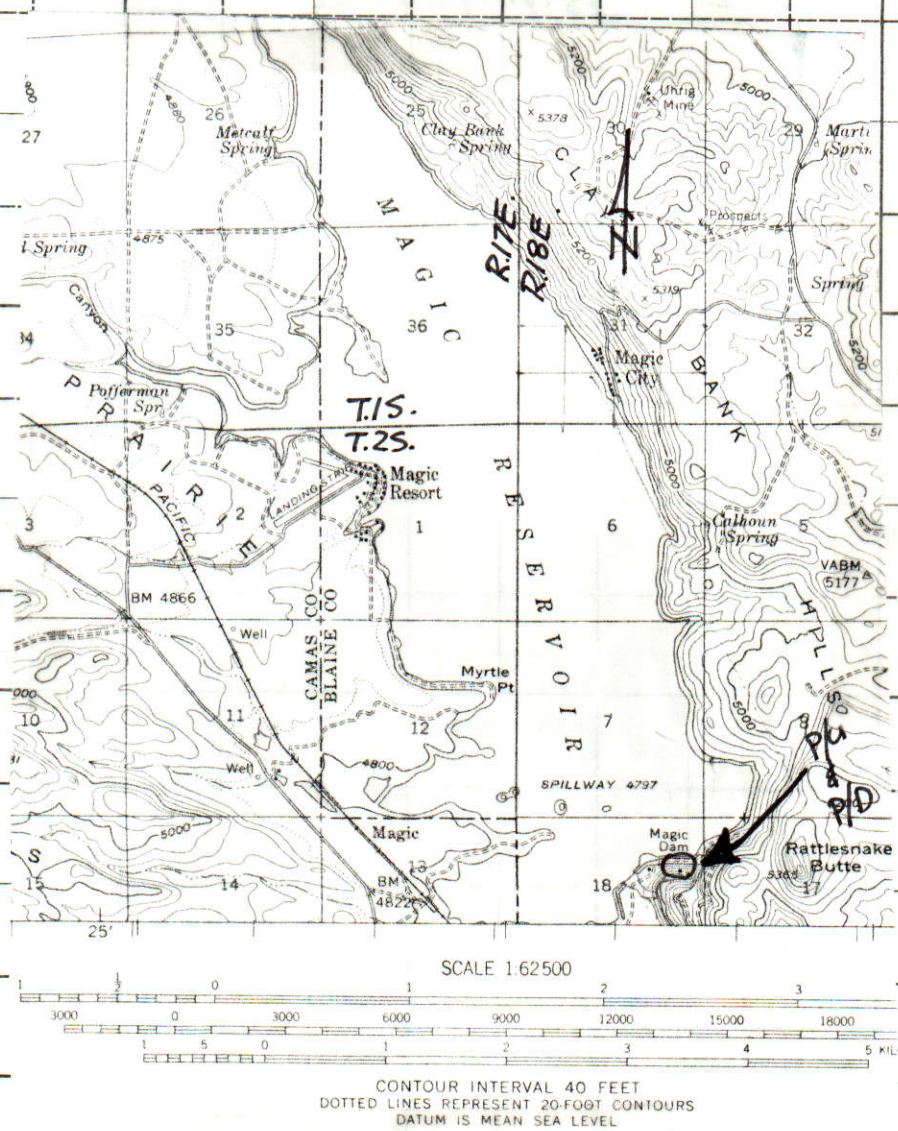
LOCATION MAP

 J-U-B ENGINEERS, INC. Engineers Surveyors Planners Twin Falls, Idaho			
Des.	Dr.	Ck.	Dwg. No.
Scale	Date	Sht. of	

Map is too lg. to be filmed on our microfiche equipment, see note filmed in its place

MICROFILMED
FEB 05 1999

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



Scale: 2 inches equal 1 mile.

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

MAILED

SEP 28 1988

Warren P. Chapman
 (Applicant)
 Pres.
 Cook Electric Inc.

AFFIDAVIT of PUBLICATION

State of Idaho, }
County of Blaine } SS.

GORDON O. GLASMANN

, 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 28 day of August

19 80, and the date of the last publication was on the 4

day of September 19 80.

Subscribed and sworn to before me this 5th

day of September, 19 80.
(SEAL)

Rabeta Bruckner
NOTARY PUBLIC

WOOD RIVER JOURNAL

Hailey, Idaho

COST OF PUBLICATION

Numer of Picas per Line 13
Number of Lines in Notice 37
Number of Insertions 2
Lines tabular at _____ 4¢ / Pica
37 Lines straight at 14.43 3¢ / Pica
37 Subsequent lines at 9.62 2¢ / Pica
TOTAL COST 24.05

COPY OF NOTICE

(Paste Here)

Permit 37-7848
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept of Water Resources
1041 Blue Lakes Blvd N
Twin Falls, Idaho 83301

NOTICE OF APPLICATION FOR WATER RIGHT

NOTICE IS HEREBY GIVEN, That the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho:

37-7848

Name: Cook Electric, Incorporated
Address: P.O. Box 1071, Twin Falls, Ida., 83301

Source: Big Wood River tributary to Snake River

Date Filed: 08/14/1980

Amount: 800.00 cfs

Diversion Point: NENE Sec 18 T 02S R 18E, Blaine County

Use: Power-(800.00 cfs) from 04/01 to 10/01

Place of Use: NENE Sec 18 T 02S, R 18E

Diversion Means: Magic Dam on Magic Reservoir

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301, and received on or before September 15, 1980.

C. Stephen Allred

Director

Publish: Wood River Journal-August 28, September 4, 1980.

No

139

SEP 9 1980

Department of Water Resources
Southern District Office

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE: \$300

IDA 41 182832C1 03/28/87
NOTIFY SENDER OF NEW ADDRESS
IDA DEPT WATER RES
2148 4TH AVE E
TWIN FALLS ID 83301-7451



POSTAGE AND FEES PAID
FEDERAL ENERGY
REGULATORY COMMISSION
FERC-351

F -0003407007 112981
KENNETH R. ARMENT ATTY. GEN.
IDAHO DEPT. OF WATER RESOURCES (TWIN FALLS)
1041 BLUE LAKES BLVD. N.
TWIN FALLS, ID 83301

MAILED
SEP 28 1988

1



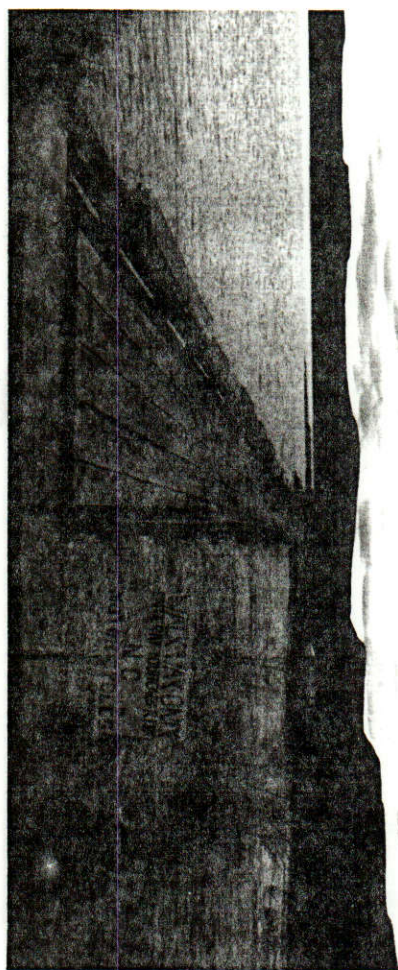
2



3

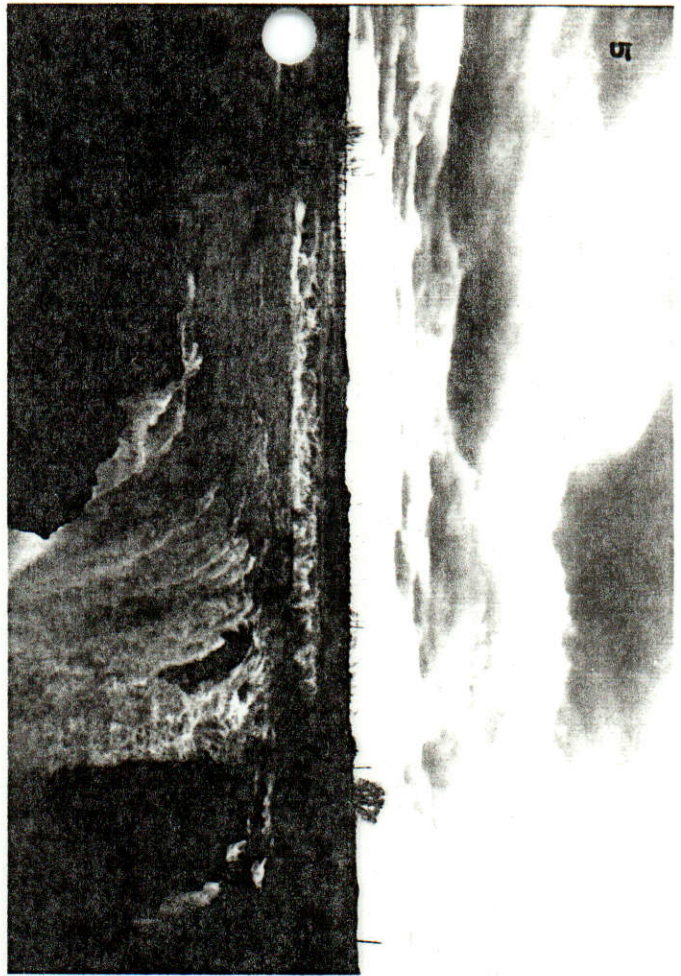


4





7



5

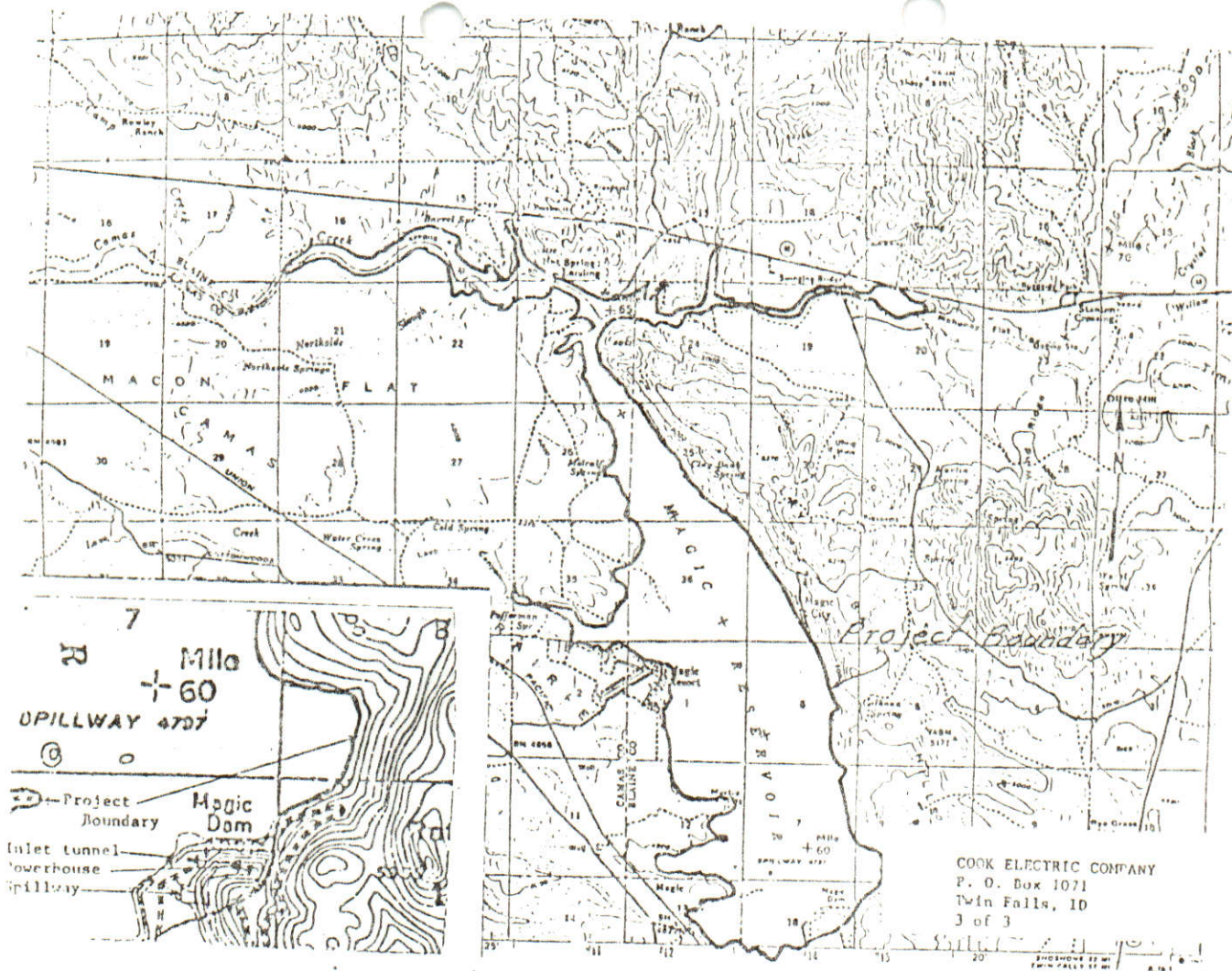


8



6

STEREOTYPED
SEP 28 1988



FEDERAL ENERGY REGULATORY COMMISSION
TERMS AND CONDITIONS OF
PRELIMINARY PERMIT

Form F-1
(Revised October, 1975)

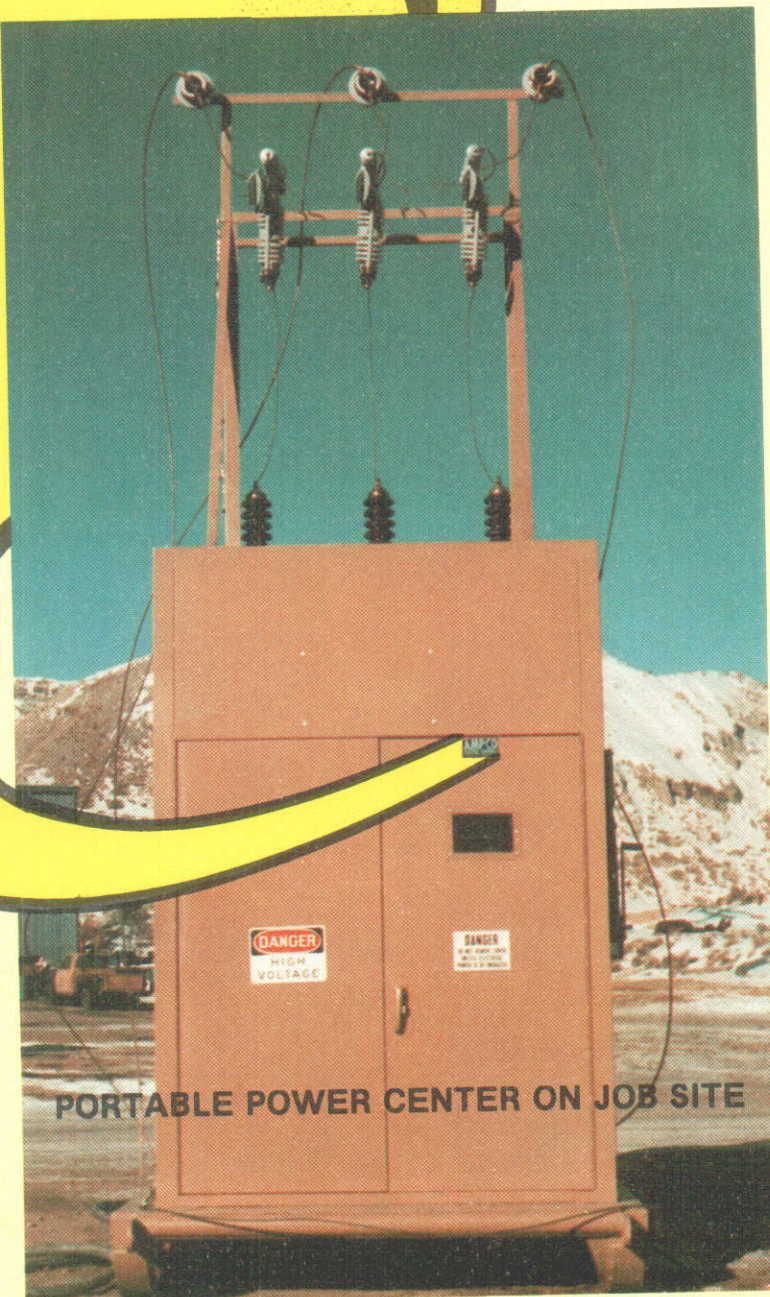
RECEIVED
SEP 24 1975

Article 1. The permittee shall make such engineering and other investigations, secure such data, and perform such acts as are necessary to determine the feasibility of the proposed project and, if said project is found to be feasible, to prepare an application for license for the project that will be in conformance with current rules and regulations of the Commission. In carrying out the requirements of this permit the permittee shall:

- A. Install, as soon as practicable, and thereafter maintain, such stream gages and stream-gaging stations as the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region shall designate as necessary and best adapted for the purpose of determining the stage and flow of the stream or streams affected by the proposed project, and shall provide for the required reading of such gages and for the adequate rating of such stations. The number, design, location, and time of installation of gages and stations, the rating of the affected stream or streams, shall be made under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging in the region of said project; and the permittee shall advance to said Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The permittee shall, to the satisfaction of the Commission, keep accurate and sufficient records of the stage and flow of the affected stream or streams, and shall make such records available to the Commission at such times as the Commission may prescribe.
- B. Sink such test pits or make such borings or other foundation explorations, and make such detailed geologic studies and tests on foundations and fill materials, as are necessary to support preliminary engineering designs and cost estimates.

AMPCO

"ELECTRICAL CONTROLS CUSTOM ENGINEERED FOR YOU"



PORTABLE POWER CENTER ON JOB SITE

DESIGNED AND MANUFACTURED BY
COOK ELECTRIC, INC.

P. O. BOX 1071
TWIN FALLS, IDAHO 83301
PHONE 208-734-3252

Pumping Plant Panels
Power Distribution Centers
Reduced Voltage Panels
Industrial Control Panels

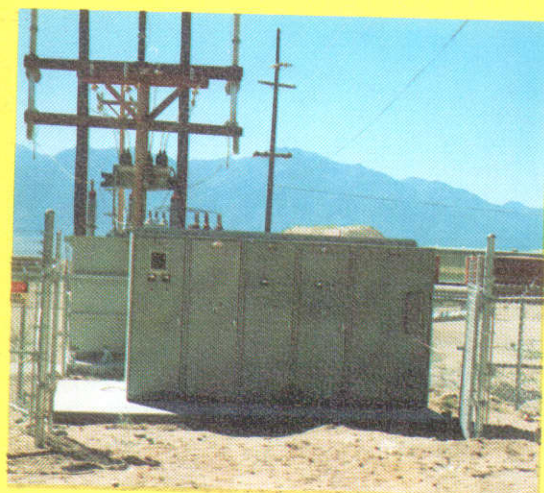
High Voltage Panels
Motor Control Centers
Telemetering Panels
Control Consoles



AMPCO

ELECTRICAL CONTROLS

High Voltage
Industrial Power Centers



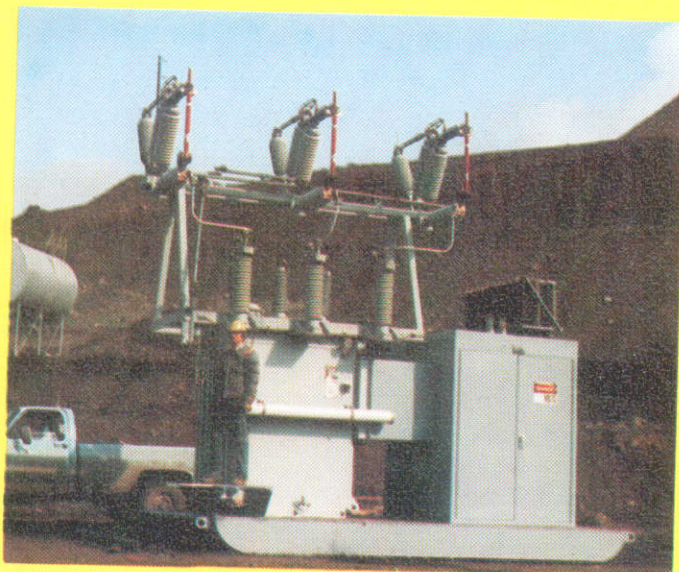
**CENTRAL MINING POWER CENTER
ON JOB SITE**
5 KV DISTRIBUTION SYSTEM

INDUSTRIAL CONTROL PANELS

The exclusive use of major brand components assures you of dependability as well as availability of parts.

High voltage starters and switchgear by direct quote.

Complete systems consultation and design available on request.

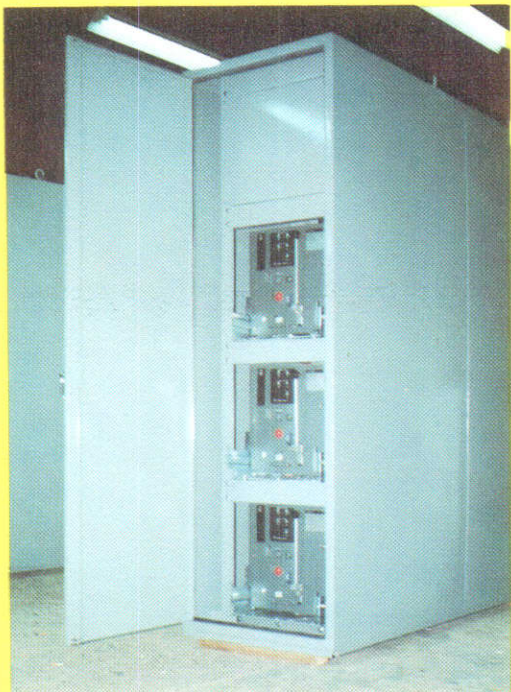


46 KV to 7.2 KV



24.9 KV to 5 KV

PORTABLE SKID MOUNT "MINE" POWER CENTERS

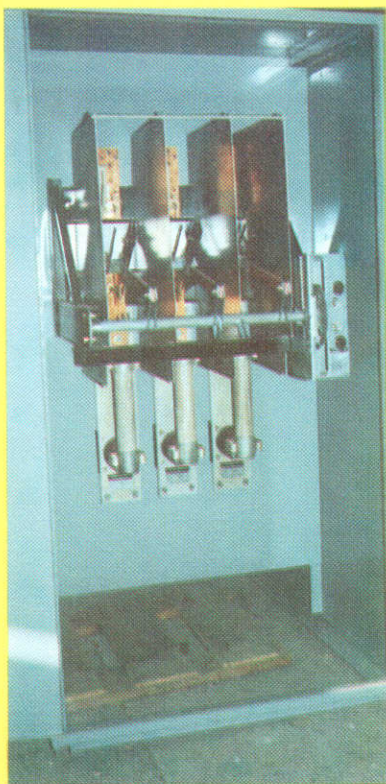


**480 VOLT TYPE D S BREAKER AND ENCLOSURE
DISTRIBUTION CENTER FOR PROCESS AREAS**



AMPCO

**POWER
DISCONNECTS
AND
ENCLOSURES**



**TYPE AWP SWITCH ENCLOSURE
FOR TRANSFORMER
PRIMARY DISCONNECT**

**AVAILABLE IN VOLTAGES FROM
2300 thru 34.5 KV**

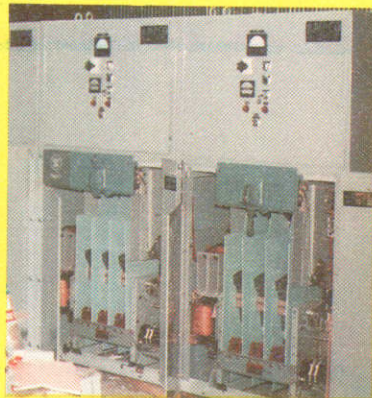


**DESIGNED AND
MANUFACTURED BY**

COOK ELECTRIC, INC.

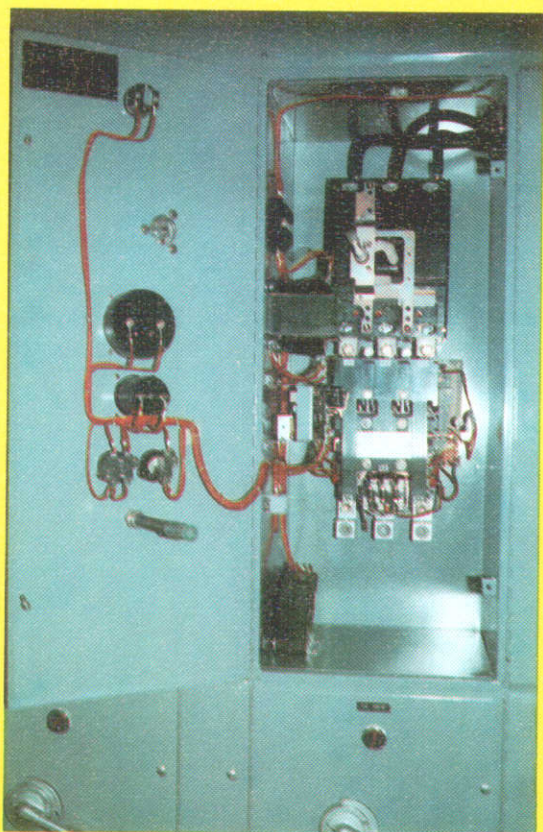


Panels engineered for your voltage and control requirements.



**MEDIUM VOLTAGE MOTOR CONTROL CENTER
AMPGARD STARTERS**

Available from 2300 Volt thru 7200 Volt



AMPCO

MOTOR CONTROL CENTERS

Major components are interchangeable
with Westinghouse.



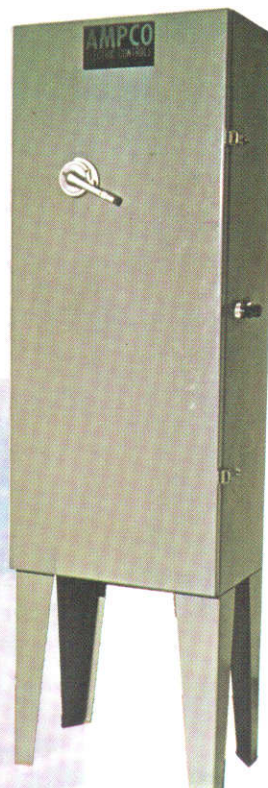
If you need panels to control motors, conveyor systems, relay systems, etc., let us at COOK ELECTRIC, INC. supply you with quality AMPCO panels built to your specific requirements.

**480 VOLT MOTOR CONTROL FOR
200 HP BOOSTER STATION**

AMPCO

CONTROL PANELS

DESIGNED AND MANUFACTURED BY
COOK ELECTRIC, INC.



"ELECTRICAL CONTROLS CUSTOM ENGINEERED FOR YOU"

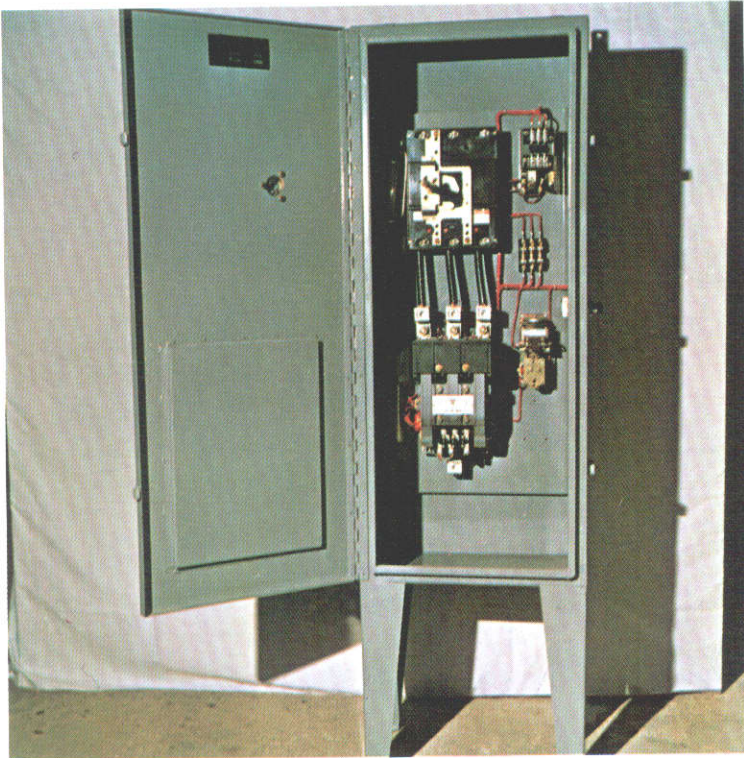
Pumping Plant Panels
Power Distribution Centers
Reduced Voltage Panels
Industrial Control Panels

Custom Enclosures

High Voltage Panels
Motor Control Centers
Telemetry Panels
Control Consoles

P. O. BOX 1071
TWIN FALLS, IDAHO 83301
PHONE 208-734-3252

DISTRIBUTED BY:



200 H.P. 480 V. Panel

PUMPING PLANT PANELS

AMPCO pumping plant panels are designed to provide trouble free, long life and dependability.

The unique design of our enclosures allows us to offer a panel that is rain-tight, drip proof and dust resistant — all without gasketing!

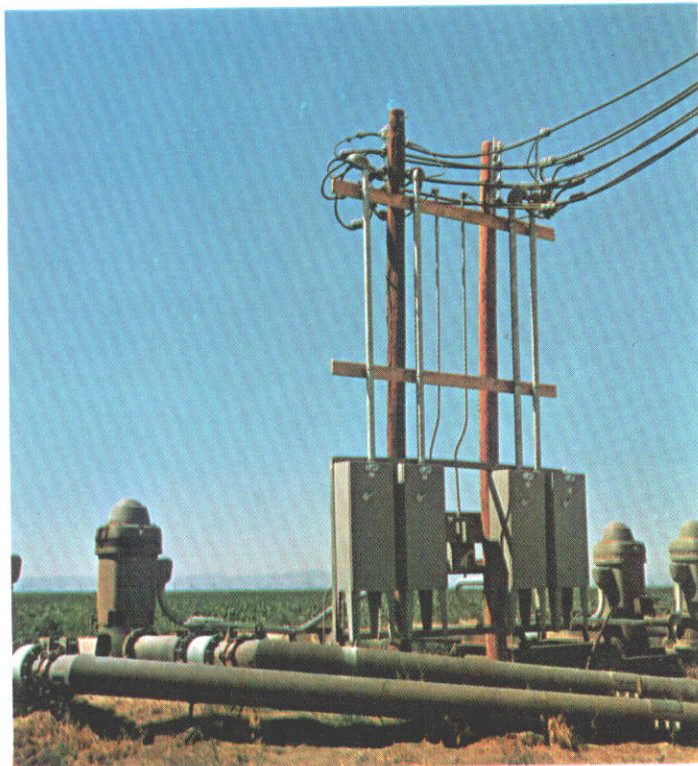
The exclusive use of major brand components assures you of dependability as well as availability of parts.

Panels engineered for your voltage and control requirements.

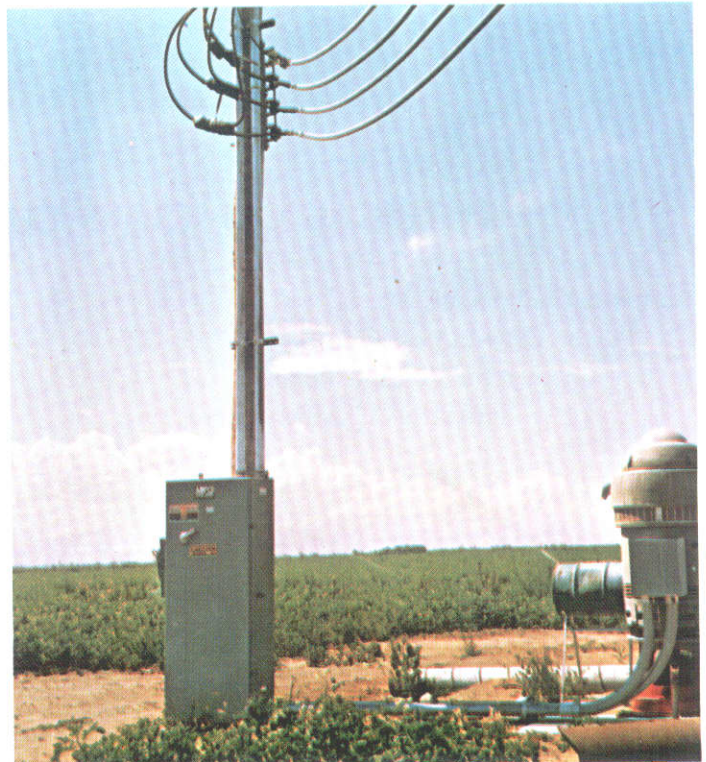
Part winding and autotransformer panels through 700 H. P.

High voltage starters and switchgear by direct quote.

Complete systems consultation and design available on request.



Two 150 H.P. and Two 200 H.P. 480 V. Panels



350 H.P. 480 V. Panel

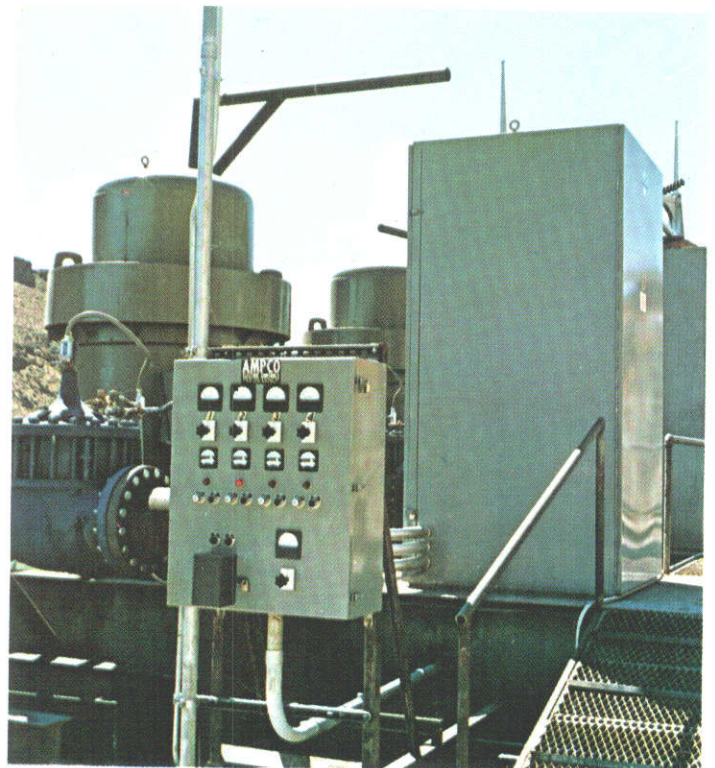


Four 600 H.P. 2300 V. Panels and One 1200 Amp. Air Breaker Panel

For controlling a number of operations from a central remote point, push buttons, switches, pilot lights, meters, etc., can be mounted on the control console. Wiring, relays and other control devices can be mounted inside the console, which is convenient for operation and repair.

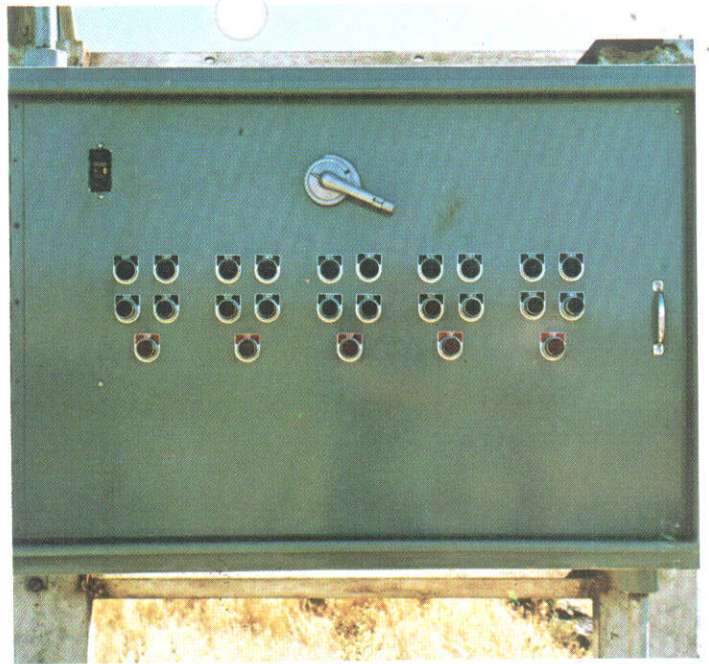


Four 2000 H.P. 2300 V. Panels and One 2000 Amp. Air Breaker Panel

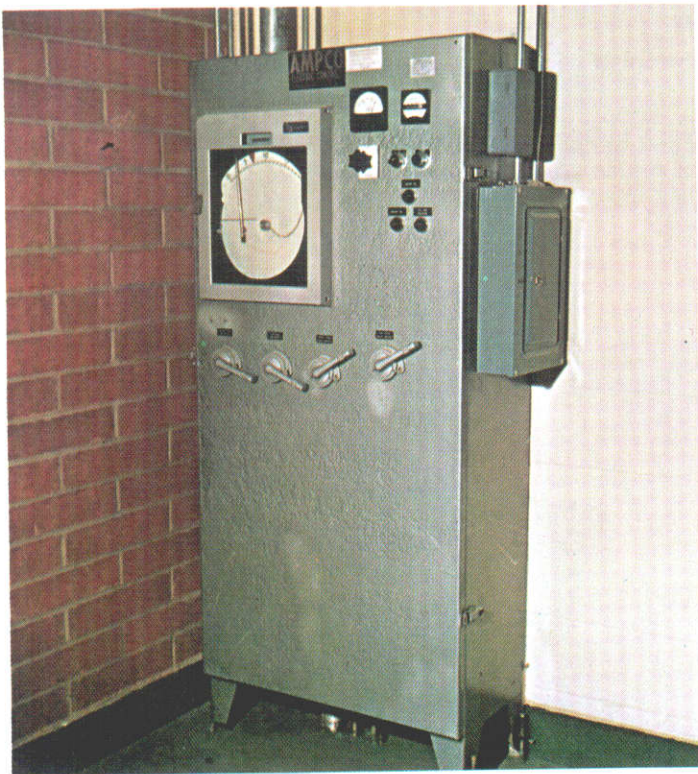


INDUSTRIAL CONTROL PANELS

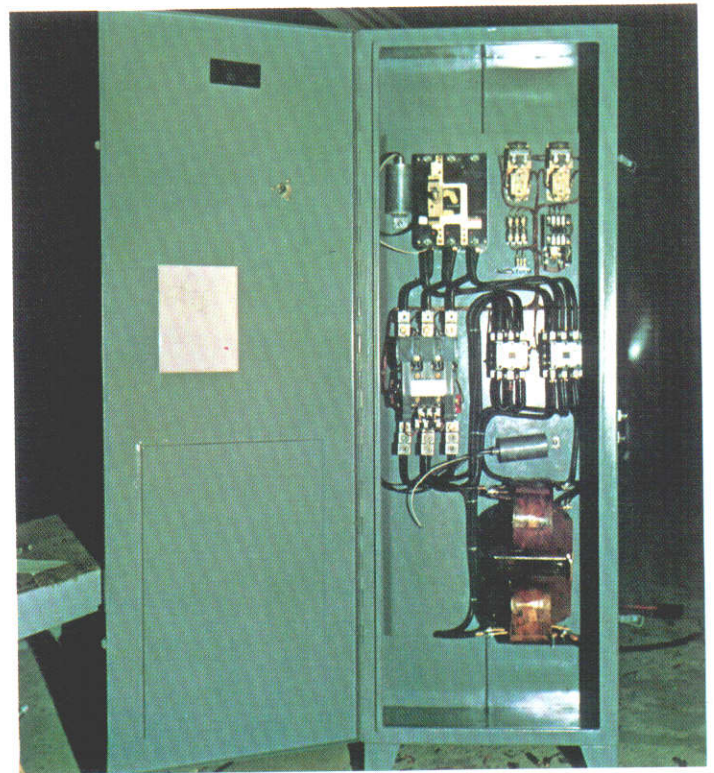
If you need panels to control motors, conveyor systems, relay systems, etc., let us at AMPCO supply you with quality panels built to your specific requirements.



Vertical Gate Control Panel



Control Panel for City Water System



200 H.P. 480 V. Autotransformer Panel

Call on us at AMPCO for help if you need consultation on any control needs.

COOK ELECTRIC, INC.
P. O. Box 1071
Twin Falls, Idaho 83301
Phone 208-734-3252

Major Components
Are Interchangeable
With Westinghouse



State of Idaho
Department of Water Resources

ASSIGNMENT OF PERMIT

Department of Water Resources

I, Cook Electric, Inc., hereby assign to Magic Reservoir Hydroelectric, Inc.
of 2399 South Orchard Street, Suite 201, Boise, ID 83705
Address

CHECK ONE



All my right, title, and interest in and to Permit No. 37-7848
to appropriate the public waters of the State of Idaho.



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

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

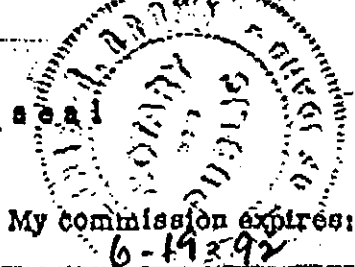
Made this 16 day of May, 19 88.

Cook Electric, Inc.
Os. Warren P. B. Dorman Pres.
Permit Holder

Elaine Chapman Secretary
Spouse of Permit Holder

State of Idaho)
County of TWIN FALLS) ss.

On this 16 day of MAY, 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.



Donna R. Brown
Notary Public residing at
Twin Falls

MICROFILMED

SEP 28 1988

37-7848
37-8178
Water Right No.

Notary Public residing at

AMENDMENT TO AGREEMENT

THIS AGREEMENT Made and entered into this 22 day of March, 1988, by and between BIG WOOD CANAL COMPANY (hereinafter "Big Wood") and MAGIC RESERVOIR HYDROELECTRIC, INC., an Idaho Corporation, Boise, Idaho (hereinafter "Hydroelectric").

WITNESSETH:

WHEREAS, Big Wood entered into a certain agreement on September 2, 1986 with Cook Electric, Inc. relating to the development of a hydroelectric facility upon Magic Dam and Reservoir (owned by Big Wood and located in Blaine County, Idaho); and

WHEREAS, by mesne conveyances and assignments, Hydroelectric has succeeded to and now is the owner and holder of all the right, title and interest of Cook Electric, Inc. in the said agreement above referred to and dated September 2, 1986;

NOW, THEREFORE, In consideration of the mutual covenants and agreements herein contained, IT IS AGREED:

1. That the schedule of payments attached to the agreement between Big Wood and Cook Electric, Inc. on the 2nd day of September, 1986 be and the same hereby is amended to be and read as follows:

SCHEDULE OF PAYMENTS

FIFTEEN YEAR PERIOD FOLLOWING FIRST POWER PRODUCTION

Production of KWH in excess of 30,000,000 KWH, royalty of 25%

PRODUCTION OF POWER IN THE SIXTEENTH THROUGH THE TWENTIETH YEAR

Production of KWH in excess of 27,000,000 KWH, royalty of 50%

SEP 28 1988

PRODUCTION OF POWER IN THE TWENTY-FIRST THROUGH THE THIRTIETH YEAR

Production of KWH in excess of 22,000,000 KWH, Royalty of 50%

2. That the said agreement in all other respects is hereby ratified, confirmed and approved.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first above written.

BIG WOOD CANAL COMPANY

BY: Jerry Vance
President

ATTEST:

Colleen Bishop
Secretary

MAGIC RESERVOIR HYDROELECTRIC, INC.

BY: Jay R. Jackson
President

ATTEST:

Secretary

MICROFILMED

SEP 28 1988

When recorded Return to:

Big Wood Canal Co.

PO Box C 8

Shoshone ID 83352

AGREEMENT

THIS AGREEMENT made and entered into this 2nd day of September, 1986, by and between Big Wood Canal Company, a corporation, Shoshone, Idaho, (hereinafter "Big Wood"), and Cook Electric, Inc., an Idaho Corporation, (hereinafter "Cook").

WHEREAS, Big Wood is the owner of a dam situated on the Big Wood River and located in Section 18, Township 2 South, Range 18 E.B.M., Blaine County, Idaho, commonly and usually referred to as Magic Dam and which dam causes the impoundment of water in a reservoir commonly and usually referred to as Magic Reservoir; and

WHEREAS, the purpose of the construction and maintenance and operation of Magic Dam and the reservoir is for the purpose of providing irrigation water to stockholders of Big Wood; and

WHEREAS, Cook is currently in the process of filing an Application with the Federal Energy Regulatory Commission for the purpose of obtaining a license for the installation of a hydroelectric project at Magic Dam; and

WHEREAS, a letter of intent was entered into by and between representatives of Big Wood and Cook on the 27th day of July, 1983, a copy of which is attached hereto; and

WHEREAS, an agreement was entered into by and between representatives of Big Wood and Cook on the 10th day of May, 1984, a copy of which is attached hereto; and

WHEREAS, the parties desire to amend and supplement the terms and provisions of said letter of intent and agreement.

NOW, THEREFORE, it is hereby agreed:

1. Construction of facility. Cook shall install and construct at its expense all facilities required for the installation of a hydroelectric project of a minimum capacity of five megawatts. Cook acknowledges and agrees that the existing dam and outlet facilities at Magic Dam are an integral part of any hydroelectric facility and that the structural integrity of

AGREEMENT

Page -1-

RECORDED

SEP 28 1988

the dam and outlet facilities must be inspected, replaced or rehabilitated as may be required to meet the standards for "safety-in-dams" (These recommendations are made in accordance with "Safety of Dams Rules and Regulations" adopted by the State of Idaho in 1978. No conflict exists between state and federal criteria.), provide that all Federal Energy Regulatory Commission's dam safety requirements must be met and all costs associated with such inspection, replacement or rehabilitation will become part of any hydroelectric development at Magic Dam.

2. Approval of plans. The construction of any facility or modification of any existing facility shall not be initiated until the designated representative of Big Wood has approved in writing the designs and specifications.

Both parties of the Agreement agree that we must provide that Federal Energy Regulatory Commission mandated construction or modification must be made regardless of approval by any party to the contract.

3. Operation of Magic Dam. Magic Dam will continue to be operated by Big Wood in a manner so that (1) the present storage rights of the stockholders of Big Wood shall not be altered or changed, (2) Cook shall not obtain any storage rights in Magic Reservoir, and (3) the primary irrigation purpose and the incidental purpose of Magic Reservoir shall not be impaired by the subordinate utilization for power generation at the power plant of the water released from Magic Reservoir. Big Wood is not obligated to operate Magic Dam in a manner to have water in Magic Reservoir for power generation or to operate to increase the head in Magic Reservoir for power generation.

Operation of Magic Dam and the reservoir is subject at all times to scheduled interruptions for inspections, maintenance and repairs of the dam and at all times for any emergency operating situations relating to Magic Dam.

4. Payment. In consideration of the use of Magic Dam and the falling water impounded in Magic Reservoir, Cook will pay Big

AGREEMENT

Page -2-

MICROFILMED

SEP 28 1988

Wood payments in accordance with the schedule of payments attached hereto.

Payments shall be made quarterly, in arrears, computed on the production of the previous three months and projections of production for the ensuing three months.

The first payment to be made three months following the date of the first production of power.

5. Term of use of property. The right of Cook to use the facility constructed shall remain in full force and effect and be binding upon the parties hereto from and after the date hereof and shall reflect the requirements of Standard License Article No. 5, i.e., that licensee, within five years from the date of issuance of the license, shall acquire the right to use in perpetuity all lands other than lands of the United States necessary or appropriate for the construction, maintenance, and operation of the project.

Cook does hereby grant unto Big Wood the exclusive option to purchase for the sum of TEN DOLLARS (\$10.00) and to transfer, without cost to seller, by good and sufficient bills of sale, quitclaim deeds or assignment, all of Cook's rights, titles and interests in and to the project, power production contracts, FERC exemptions or license and any and all improvements or personal property constituting a part of the project, subject to the approval of the Federal Energy Regulatory Commission. Such option may be exercised at any time following the expiration of thirty (30) years from the date of first power production by the facilities so constructed.

6. Early termination agreement. This agreement may be terminated and cancelled without liability to Big Wood if the Federal Energy Regulatory Commission cancels Cook's rights on this project, and in no event does Cook's rights under this agreement extend beyond two (2) years for construction to start from the issuance of a license and four (4) years to complete construction.

AGREEMENT

Page -3-

MICROFILMED

SEP 28 1988

7. Maintenance. At all times during the term of this agreement, Cook shall, at Cook's own cost and expense, keep and maintain the hydroelectric project and all improvements now or hereafter placed on the project as well as all facilities now or hereafter appurtenant to the project in good order and repair and in a safe and clean condition. Cook shall operate and maintain the facilities in accordance with Prudent Electrical Practices, the National Electric Safety Code in effect from time to time, and other applicable local, state and federal codes, and shall provide and maintain adequate protective equipment sufficient to prevent damage to the facility.

8. No liability for water shortage or interruption. No liability shall accrue against Big Wood or any of its officers, agents, or employees for damage, direct or indirect, arising by reason of shortages in the quantity of water available through Magic Dam or interruptions in water releases resulting from drought, inaccuracy in distribution, hostile diversion, prior or superior claims, accident to or failure of Magic Dam, or the by-passing of water around the power plant, whether or not attributable to negligence of the officers, agents or employees of Big Wood or other causes of whatsoever kind.

9. Indemnity and insurance. Cook shall indemnify and hold Big Wood and the property of Big Wood Canal Company free and harmless from any and all liability, claims loss, damages or expenses resulting from Cook's occupation and use of the site.

Cook shall, at Cook's own cost and expense, secure promptly after execution of this agreement and maintain during the entire term of the agreement a broad form comprehensive coverage policy of public liability insurance issued by and insurance company acceptable to Big Wood and authorized to issue liability insurance in Idaho insuring Cook and Big Wood against loss and liability caused by or connected with Cook's occupation and use of the site in amounts not less than:

(a) \$ 500,000.00 for injury to or death of one person

AGREEMENT

Page -4-

RECEIVED
JAN 28 1988

and, subject to such limitations for the injury or death of one person, but not less than \$ 1,000,000.00 for injury or death of two or more persons as a result of an accident or incident.

(b) \$ 1,000,000.00 for damage to or destruction of any property of others, including property of Big Wood.

Provided, however, that if the insurance requirements of any power sales agreement entered into by Cook with a third party are more stringent or require higher limits, Cook shall comply with such other more stringent and higher limit requirements.

Evidence of the issuance of the continuation of full force and effect of all such policies shall be supplied to Big Wood upon the request of Big Wood.

All of such policies shall contain a provision to the effect that the policy or policies may not be cancelled without a written Notice to Big Wood of less than ninety (90) days.

(10) Regulatory body requirements. Any and all enhancement or mitigation requirements or water quality facilities which may be imposed by governmental bodies having authority to do so, shall be constructed, operated and maintained by Cook.

(11) Default. In the event Cook is in default under this agreement, and such default is not cured within thirty (30) days after written notice of the default is delivered to Cook, Big Wood shall have the right to bring one or more of the following actions:

(a) An action for specific performance under this agreement;

(b) An action for damages incurred as a result of the default; and

(c) Any other rights and remedies provided by law, including the right to assume possession and control and operation of the hydroelectric project.

In the event of default, the defaulting party shall pay all costs and fees incurred by the non-defaulting party in enforcing this agreement against such defaulting party, including reason-

AGREEMENT

Page -5-

MICROFILMED

SEP 28 1988

able attorney fees and court costs.

12. Suspension or termination of use of water by Cook upon default. In the event of the failure of Cook to pay when due all or any part of the payments, as hereinabove provided, in addition to the other remedies as hereinabove provided, Big Wood shall take such steps as shall be necessary to suspend all rights of Cook to the use of any water for the generation of power.

13. Notices. All notices required or permitted hereunder shall be deemed duly delivered when personally delivered or when sent by United States Mail, postage prepaid, certified mail, with return receipt requested, and addressed to the parties as follows

Big Wood Canal Company
111 South Apple
Shoshone, Idaho 83352

Cook Electric, Inc.
P.O. Box No. 1071
Twin Falls, Idaho 83303-1071

14. Binding agreement. This agreement shall inure to the benefit of the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

BIG WOOD CANAL COMPANY

BY: Jerry Vance

ATTEST:

William Bushings
Secretary

COOK ELECTRIC, INC.

BY: Warren P. Chapman

Warren P. Chapman
President

ATTEST:

William Chapman
Secretary

AGREEMENT

Page -6-

MICROFILMED

SEP 28 1988

STATE OF IDAHO)
County of Lemmon) ss.

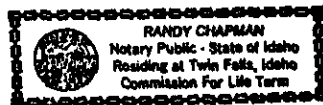
On this 2 day of September, 1986, before me, the undersigned, a Notary Public in and for said State, personally appeared Gerry Nance and Gallie Bishop, who being by me duly sworn, did say, each for himself, that he the said Gerry Nance is the President, and she, the said Gallie Bishop is the Secretary of BIG WOOD CANAL COMPANY, a corporation, and that the within and foregoing instrument was signed on behalf of said corporation by authority of a resolution of its board of directors and said Gerry Nance and Gallie Bishop each duly acknowledged to me that the said corporation executed the same and that the seal affixed is the seal of the corporation.



Lee M. Crothers
Notary Public for the State of
Idaho;
Residing at: Blackfoot

STATE OF IDAHO)
County of Twin Falls) ss.

On this 2 day of September, 1986, before me, the undersigned, a Notary Public in and for said State, personally appeared WARREN P. CHAPMAN and ELAINE CHAPMAN, who being by me duly sworn, did say, each for himself, that he the said WARREN P. CHAPMAN is the President, and she the said ELAINE CHAPMAN is the Secretary of COOK ELECTRIC, INC., a corporation, and that the within and foregoing instrument was signed on behalf of said corporation by authority of a resolution of its board of directors and said WARREN P. CHAPMAN and ELAINE CHAPMAN each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of the corporation.



Randy Chapman
Notary Public for the State of
Idaho;
Residing at: Twin Falls, Idaho

AGREEMENT

Page -7-

MICROFILMED

SEP 28 1988

886-2331

2

2000
10/10/00

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

APPROVED

1. Name of applicant Cook Electric, Inc. Phone 734-3252

Post office address P. O. Box 1071 - Twin Falls, Idaho 83301

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 Section 18 Township 2S

Range 18E B.M. Blaine County, additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 800 cfs for Power purposes from Apr. 1 to Oct. 1 (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:

a. 800 cubic feet per second and/or b. 144,000 acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Magic Dam on Magic Reservoir

b. Height of storage dam 133 feet, active reservoir capacity _____ acre-feet; total reservoir capacity 192,000 acre-feet, materials used in storage dam: Earth and Concrete

Period of year when water will be diverted to storage Oct. 1 to Apr. 1 inclusive.
(Month/Day) (Month/Day)

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

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

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 18 Township 2S

Range 18E B.M.

(2) Amount of power to be generated: 4000 KW horsepower under 70 feet of head.

(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served Idaho Power, or number of families to be supplied with domestic ^{power} ~~water~~ Magic Farms

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

SEP 28 1988

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

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

Total number of acres to be irrigated _____

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

9. 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 To be negotiated.

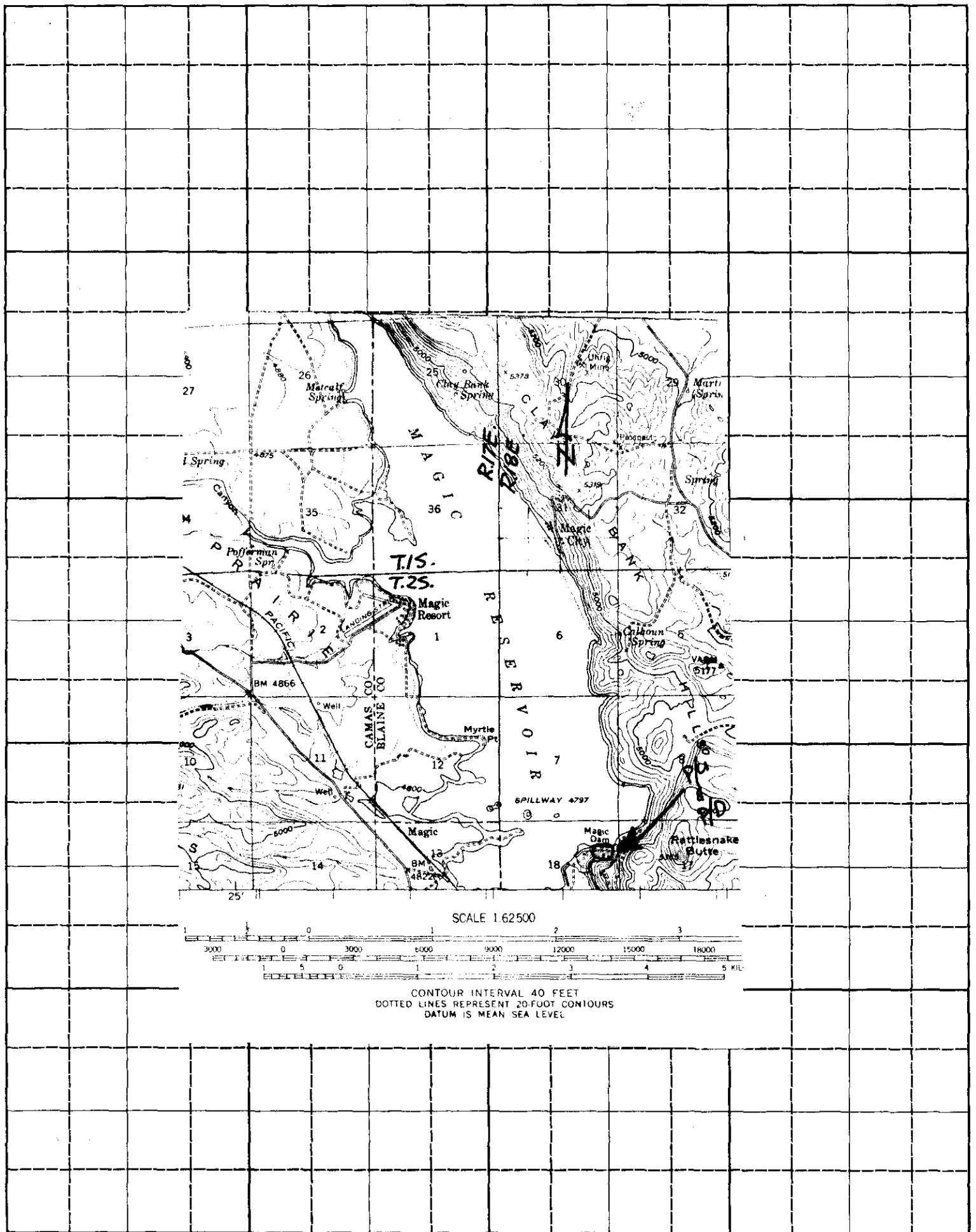
10. Remarks We are requesting this application be processed and approved due to the fact that there is no generation on this location at this time, and to the best of our knowledge, there has been no power generation application filed prior to ours.

Because of the Northwest energy crisis, we feel this would be beneficial to the general public of Idaho and surrounding states.

We have full intentions of reasonably compensating the canal company in our negotiations with them.

Please notify us if we can be of further assistance.

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



Scale: 2 inches equal 1 mile.

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

RECEIVED

SEP 28 1988

Warren P. Chapman
 (Applicant)
 Pres.
 Cook Electric Inc.

Proposed Priority 8/14/80

Received by lh Date 8/14/80 Time 8/14/80

Preliminary check by ADM Fee \$ 3525.00 # 16556

Receipted by marpa Date 8/14/80

Publication prepared by mm Date 8/15/80

Published in Neenah River Journal

Publication dates 8/28 + 9/4/80

Publication approved marpa Date 9/9/80

Protests filed by: Big Wood Canal Co. withdrawn

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by JK KW

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. 37-7848, 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 September 1, 19 92.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. Other: SEE ATTACHED SHEET FOR CONDITIONS d thru p.

Witness my hand this 1st day of September, 19 87.

A. Glen Saxton
Chief, Operations Bureau

RECORDED

SEP 28 1988

ATTACHMENT TO CONDITIONS OF APPROVAL

For Permit No. 37-7848

- d. 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.
- e. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
- f. The issuance of this permit in no way grants any right-of-way or easement across the land of another.
- g. 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.
- h. Water used under this permit if discharged into a natural channel or subsurface system shall meet Idaho Water Quality Standards.
- i. 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.
- j. 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.
- k. 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.
- 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. The design and construction of the hydro facility to be installed at Magic Dam shall be approved by the Department, pursuant to the Safety of Dams Statutes, Idaho Code.
- p. Use of water under this permit is subject to control by the watermaster of State Water District No. 37, Big Wood River.

Witness my hand this 1st day of September, 1987.

RECEIVED

SEP 28 1987

J. Glen Saylor
Chief, Operations Bureau

Individual Owner

AFFIDAVIT TO ESTABLISH RESIDENCE

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

/s/ _____

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

/s/ _____

Notary Public
Residence _____

My Commission Expires _____

Corporation or Association

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

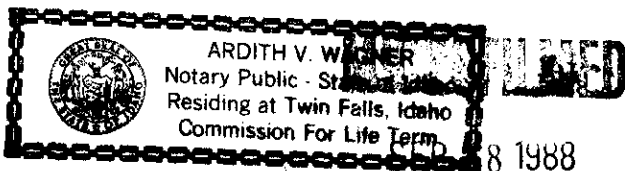
I, Warren P. Chapman of City of Twin Falls, County of Twin Falls, State of Idaho, being first duly sworn, depose and say: That I am the designated statutory agent of the Cook Electric, Inc., that as such I am in charge of the registered office of the said Corporation, as provided by Section 30-143, Idaho Code, at Twin Falls, Idaho, wherein are kept the records provided by Section 30-144, Idaho Code, and that Cook Electric, Inc. is a legal Corporation qualified to do business in the State of Idaho under the laws of the State of Idaho.

/s/ Warren P. Chapman

Subscribed and sworn to before me this 14th day of August, 1980

/s/ Ardith V. Wagner

Notary Public
Residence Twin Falls, Idaho
My Commission Expires Lifetime



AFFIDAVIT of PUBLICATION

State of Idaho, }
County of Blaine } SS.

GORDON O. GLASMANN

, 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 28 day of August, 1980, and the date of the last publication was on the 4 day of September, 1980.

Subscribed and sworn to before me this 5th day of September, 1980.
(SEAL)

Robert McKee

NOTARY PUBLIC

WOOD RIVER JOURNAL

Hailey, Idaho

COST OF PUBLICATION

MICROFILMED

Numer of Picas per Line 13
Number of Lines in Notice 37
Number of Insertions 2
Lines tabular at _____ 4¢ / Pica
37 Lines straight at 14.43 3¢ / Pica
37 Subsequent lines at 9.62 2¢ / Pica
TOTAL COST 24.05

COPY OF NOTICE

(Paste Here)

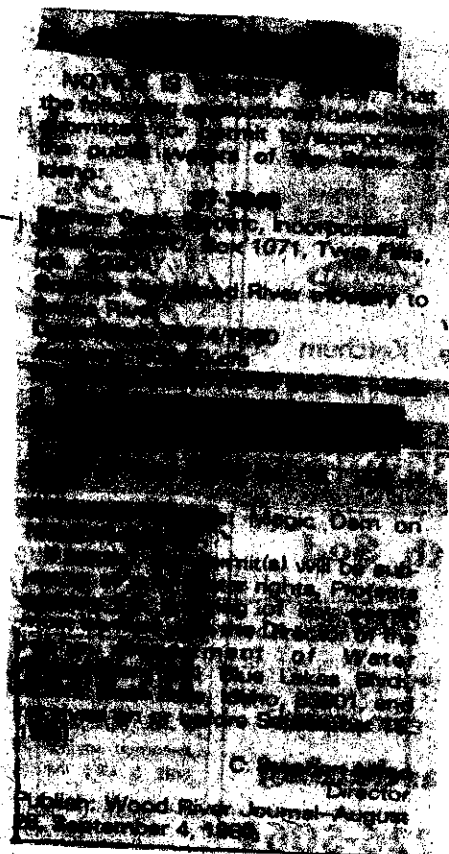
Permit 37-7848
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept of Water Resources
1041 Blue Lakes Blvd N
Twin Falls, Idaho 83301



No 139

SEP 9 1980

Department of Water Resources
Southern District Office

Please See The
Following Books In
The Microfilm:

Ferc Project #3407

Ferc Project #3407-004

! The Special Request For
Assistance dated: May 7, 1987

File #37-7848

SEE MICROFILM JACKET FOR ADDITIONAL
INFORMATION. REPORTS ARE LOCATED ON
MICROFILM.

80 PERC 4219

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Magic 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 limits (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 PERC ¶ 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 PERC ¶ 62,122

RECEIVED
SEP 2 1997
Department of Water Resources

57-7848
-8178
8389

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Magic Reservoir Hydroelectric, Inc.

Project No. 3407-060
Idaho

37-7848
8178
8389

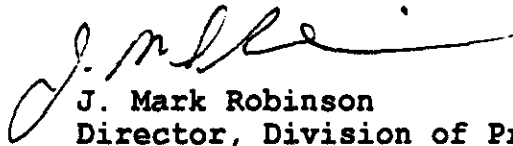
ORDER GRANTING EXTENSION OF TIME
(Issued October 31, 1995)

The licensee for the Magic Dam Project has requested an extension of time to file a Resource Enhancement Plan and Implementation Schedule in accordance with ordering paragraph (B) of the Order Approving Agreement on Mitigation Plan and Dismissing Rehearing Request issued July 5, 1995.¹ The reasons advanced by the licensee in support of the requested extension of time are reasonable and justify the extension.

The Director orders:

(A) The deadline for filing the Resource Enhancement Plan and Implementation Schedule is extended to November 4, 1995.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.



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

RECEIVED
NOV 06 1995
Department of Water Resources

¹ 72 FERC ¶ 61,010.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and Donald F. Santa, Jr.

Magic Reservoir Hydroelectric, Inc.) Project No. 3407-042
)
) Idaho

ORDER APPROVING AGREEMENT ON
MITIGATION PLAN AND DISMISSING REHEARING REQUEST

(Issued July 5, 1995)

On June 2, 1993, Magic Reservoir Hydroelectric, Inc. (Magic), licensee for Magic Dam Project No. 3407, requested rehearing of a May 4, 1993 order issued by the Commission's Director, Division of Project Compliance and Administration (Director), rejecting as based on inadequate monitoring Magic's proposed compensatory mitigation for project-caused fish mortality and directing Magic to submit a new monitoring plan. 1/

Magic's rehearing request advised that it was negotiating with the Idaho Department of Fish and Game (IDFG) and the U.S. Fish and Wildlife Service (FWS) with respect to appropriate compensatory mitigation, and on July 19, 1993, Magic filed a request for Commission approval of the agreement that was reached with these agencies. This order approves the agreement, adds a filing requirement, and dismisses as moot Magic's request for rehearing.

BACKGROUND

The Magic Dam Project, located on the Big Wood River in Idaho, includes a 128-foot-high, 3,100-foot-long earthfill dam built in 1910 and the 3,740-acre Magic Reservoir. The project powerhouse has three generating units with a combined capacity of 9 megawatts. The license does not disturb the pre-existing flow release regime, which serves agricultural irrigation needs. 2/

1/ 63 FERC ¶ 62,122. The project is located in Blaine County, Idaho, and was licensed in 1987. See 38 FERC ¶ 62,034.

2/ See 38 FERC at pp. 63,054, 63,057.

Project No. 3407-042

- 2 -

The project draws from the reservoir water with low dissolved oxygen (DO) content, 3/ and since the trout in the reservoir avoid low-DO regions, it was expected that fish entrainment and mortality would be low. Article 404 of the license required Magic to monitor turbine-induced injury and mortality 4/ to verify that project operations do not have significant adverse impacts on the rainbow trout populations in Magic Reservoir and the Big Wood River. 5/ The article provided that mitigation for adverse impacts could include the funding of compensatory mitigation measures.

3/ See *Id.* at p. 63,058.

4/ Article 404 states:

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 results of the monitoring shall be submitted to the Commission . . . , 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.

38 FERC at p. 63,049. The Commission approved Magic's monitoring plan in September 1988. 44 FERC ¶ 62,290.

5/ Idaho Fish and Game periodically stocks the reservoir with rainbow trout fingerlings. As a result, Magic Reservoir is one of the most heavily fished reservoirs in south-central Idaho. The three-mile-long reach of the Big Wood River below the dam is one of the best rainbow trout fisheries in south-central Idaho, supporting a self-sustaining wild rainbow trout population. See 38 FERC at p. 63,058.

RECEIVED

JUL 10 1995

Department of Water Resources

DC-A-51

RECEIVED

JUL 13 1993

Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and Donald F. Santa, Jr.

Magic Reservoir Hydroelectric, Inc.) Project no. 3407-042

37-7848

ORDER GRANTING REHEARING FOR
FURTHER CONSIDERATION

(Issued July 2, 1993)

On June 2, 1993, Magic Reservoir Hydroelectric, Inc. license for Project No. 3407 located on the Big wood River in Idaho, filed a request for rehearing of a May 4, 1993 order issued by the Commission's Director, Division of Project Compliance and Administration, entitled Order Modifying Mitigation Recommendation for Turbine-Induced fish Mortality. 1/

In the absence of Commission action within 30 days, the request for rehearing would be deemed to have been denied. 18 C.F.R § 385.713 (1992). In order to allow sufficient time for due consideration of the matters raised, rehearing is hereby granted for the limited purpose of further consideration.

By the Commission.

(S E A L)



Linwood A. Watson, Jr.,
Acting Secretary.

37-7848

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Magic Reservoir Hydroelectric, Inc. Project No. 3407-038
Idaho

ORDER APPROVING TEMPORARY MODIFICATION OF DISSOLVED OXYGEN
REQUIREMENT

(Issued May 8, 1991)

On November 13, 1990, Magic Reservoir Hydroelectric, Inc. (licensee) filed an application for amendment of license for the Magic Dam Project. On December 20, 1990, the licensee filed an amendment to its November 13, 1990, amendment application. Additional material, dated April 25, 1991, was provided by the licensee to support its amendment application.

The licensee requests that the DO levels required by license article 403 be revised for the 1991 operating year to reflect an agreement between the licensee and Idaho Department of Fish and Game (IDFG). Currently, article 403 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. Under the agreement, article 403 would be revised for the 1991 operating year as follows:

Dissolved oxygen limits (mg/l)

Time period	30-day		7-day		Instantaneous
	mean	minimum	mean	minimum	
April 1 - June 30	6.0	5.0	5.0	4.5	4.5
July 1 - October 15	6.0	4.7	4.7	3.5	3.5

The licensee would also monitor fish activity in the large pool at the base of Magic Dam. 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.

The licensee requests the amendment to the current DO requirements of its license because it believes that the required DO levels were based on misinformation and erroneous assumptions and are significantly higher than levels necessary to protect fish resources in the reach of river below Magic Dam. The licensee argues that the DO concentration minimums set in the license are greater than those required by State of Idaho approved standards, which were promulgated to protect fish resources as well as water quality. The ultimate result is that

DC-A-45

it is impossible for the project to meet the current DO requirements of the license for a large part of the irrigation season without the release of a large percentage of the water through valves to aerate downstream flows. DO levels below the dam have been measured as low as 3.8 mg/l at a water temperature of 55° Fahrenheit before partitioning a portion of the flow through the valves and bypassing the turbines to increase DO levels. This significantly reduces power generation, with no apparent effect on the fish resources.

By letter dated December 6, 1990, the Idaho Department of Health and Welfare (IDHW) stated that the requested change to the DO requirement would be consistent with the Idaho Water Quality Standards and Wastewater Treatment Requirements. The IDHW also stated that it would be a party to the review of monitoring data and determination of DO standards for the project after the 1991 operating year. The U.S. Fish and Wildlife Service, by letter dated December 7, 1990, reported that it has no objection to the proposed amendment for a temporary revision to the DO requirements. By letter dated April 23, 1991, the IDFG stated that, while the proposed DO levels achieved under the licensee's proposal would not offer the same level of protection as the current license standard, the requested DO levels should provide an increase over the DO levels in water released for irrigation purposes.

Information provided by the licensee and the IDFG suggest that water quality and irrigation demand limit the quality and potential of the fish resources below Magic Dam. During a portion of the irrigation season, the ambient DO concentrations of the releases from the dam are below optimum levels for a coldwater trout fishery. When the irrigation season ends, typically from mid summer to early fall, only the 3-acre pool immediately below Magic Dam and several other smaller pools downstream provide fish habitat. Although the trout habitat of the Big Wood River between Magic Dam and the Richfield Canal may be limited by the effects of poor water quality and irrigation demands, these pools support populations of rainbow and brown trout, which reportedly reach trophy size.

The licensee's proposed DO levels will not provide the same degree of protection for the fish resource as does the required DO levels of the extant license. However, since the deep pools apparently provide habitat with sufficient DO to sustain the existing fish resource, the licensee should be granted the option of operating the project as requested during 1991 and to assess downstream DO levels and fishery responses under actual operating conditions.

While implementing the licensee's proposed DO levels for the balance of 1991 may sustain the existing fish resource for a short period of time, long-term implementation could result in

RECEIVED
MAY 16 1991

Department of Water Resources

RECEIVED

SEP 09 1988

Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Magic Reservoir Hydro, Inc.

Project No. 3407-014
Idaho

ORDER GRANTING EXTENSION OF TIME

(Issued August 23, 1988)

On July 17, 1988, the licensee for the Magic Dam Project filed a request for a 90 day extension of the deadline for filing a turbine mortality monitoring plan pursuant to article 404. The licensee states that the extension would allow for agency review and approval of the plan.

On July 13, 1987, the licensee requested, and by Commission order issued on August 5, 1987, was granted, an extension of time until July 15, 1988, for filing the plan. The licensee was also directed to file quarterly reports with the Secretary of the Commission on the progress made towards compliance with article 404, beginning on October 15, 1987. No progress reports were filed until May 8, 1988. The licensee's July 17, 1988, filing, however, contained a proposed turbine mortality study plan, thereby demonstrating progress in the completion of the requirements of article 404.

Failure to submit the quarterly reports as required by the Commission's August 5, 1987, order has put the licensee in violation of the conditions of its license. However, because the licensee is progressing to completion of the requirements of articles 404 and no adverse impacts to environmental resources have resulted, no enforcement action or penalties pursuant to section 31 of the Federal Power Act (Act), as amended by the Electric Consumers Protection Act of 1986, will be recommended at this time. This violation, however, will become part of the non-compliance record for this project.

With respect to the request for an additional extension of time to comply with article 404, since project construction has not been completed and the extension of time would not delay the post-operation monitoring, the extension of time is granted, pending compliance with the required due date, however, failure to comply with this matter being referred for enforcement action or penalties pursuant to section 31 of the Act, as amended by the Electric Consumers Protection Act of 1986.

MAR 06 1990

DC-A-15

The Director orders:

(A) The request for an extension of time to October 15, 1988, for filing the turbine mortality monitoring plan required by article 404, is approved.

(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.

Fred E. Springer
Fred E. Springer
Director, Office of
Hydropower Licensing

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

MICROFILMED

MAR 06 1990

1/88

PROOF OF BENEFICIAL USE

ANALYSIS SHEET

Permit No. 37-7848

Date: 2-22-90

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 _____
_____ Reinstated

Source of Water:

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

Extent of Use and Rate of Diversion:

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

Measuring Device:

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

Remarks:

Proof acceptable

N/A Priority Calculation:
Date proof received _____

Date proof due _____

No. of days late _____

Priority date _____

NEW PRIORITY DATE _____

SEND FILES TO DATA ENTRY AND THEN TO MICROFILM

03/86

RECEIVED

JAN 29 1990

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Department of Water Resources

PROOF OF BENEFICIAL USE

For Office Use Only
 \$300.00 Fee Received 300.00
 2/16/90 Date 1/29/90
 C014753 Receipt # C014294
 C. Wong 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. 37-7848Name(s) of Permit Holder: Magic Reservoir Hydroelectric, Inc.Post Office Address: P.O. Box 27 Boise, ID 83707Telephone No. 208-336-2110Source of Water: Big Wood River

Extent of Use:

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

Irrigation _____ (acres) Other/Remark Power PurposesTotal rate and/or volume for which proof is submitted 800 cfs _____ acre-feetShow the date water was first diverted and beneficially used under this permit: May 17, 1989

Measuring Device: Required? ☒ Yes ☐ No Fee enclosed \$ 300.00
 Installed? ☒ Yes ☐ No (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 Hawk208-389-7306

(Name)

(Telephone Number)

P.O. Box 27 Boise, ID 83707

(Address)

MAR 06 1990

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

1/29/90
 Date

[Signature] - Secretary
 Signature of Permit Holder (and title, if appropriate)

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
	\$625.00	\$1,800.00	\$1,175.00

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

3378v

Enclosure

FILED
MAR 06 1990

February 8, 1990

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

Gentlemen:

Re: Permit No. 37-7848

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

For Permit No. 37-7848, I find that you submitted proof for the diversion of 800 cfs, but submitted only \$300.00 as the fee. For the diversion of 800 cfs, the filing fee is \$600.00 (see enclosed instruction sheet). With the submittal of only \$300.00, the maximum the department could issue a water right license is 8 to 9 cfs. With the submittal of the additional \$300.00, the license can be issued for the maximum diversion of 800 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

MICROFILMED

MAR 06 1990

RECEIPT
For Monies Paid
to the
IDAHO DEPARTMENT OF WATER RESOURCES

Receipt No: C014294

Date: 01/30/90
Time: 10:11:05

Received

From: MAGIC RESERVOIR HYDROELEC

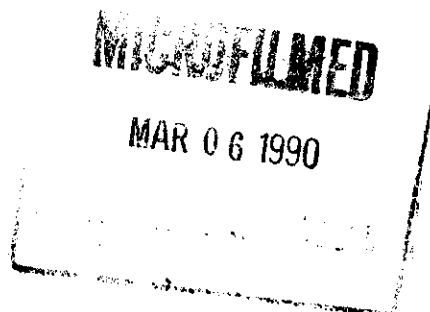
Type of Payment	Program Acct Class	Amount
PROOF OF BENEFICIAL USE (377848)	0640122 1238 6490	\$300.00
	Total	\$300.00

CHECK 0904

Idaho Department of Water Resources

Region: STATE

Signature: C. Hong



0904

INVOICE NO.	DESCRIPTION	ACCOUNT	CENTER	AMOUNT	PROJECT	DESC. II
	Water Permit No. 37-7848	9101		\$300.00		
MICROFILMED MAR 06 1990						

Cook Electric
37-7848

47 FERC 61,364

JUN 12 0 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. Hessey, Chairman;
Charles G. Stalton, Charles A. Trabant,
Elizabeth Anne Moler and Jerry J. Langdon.

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

ORDER DENYING AND DISMISSING APPEALS

(Issued June 9, 1989)

By orders issued January 15, 1987, 1/ 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, 3/ 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),

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. 6/

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

- 1/ 38 FERC ¶ 62,034 (1987).
- 2/ 39 FERC ¶ 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 FERC ¶ 62,144 (1988).

DC-A-54

- 4/ See Order No. 481-A, 43 FERC ¶ 61,120 (April 27, 1988), 53 Fed. Reg. 15802 (May 4, 1988), 111 FERC Stats. & Regs. ¶ 30,811.
- 5/ See 38 FERC at 63,067-68 (Project No. 3407), 39 FERC at 63,497 (Project No. 8909).
- 6/ Id.

MICROFILMED

MAR 06 1990

WR-NUMBER: 37-07848 CURRENT OWNER: COOK ELECTRIC INC. P.O. BOX 1071 TWIN FALLS, ID 83301

COUNTY: BLAINE

SOURCE: BIG WOOD RIVER TRIBUTARY: SNAKE RIVER

WATER USE: POWER DIVERSION RATE: 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

COUNTY: BLAINE TRIBUTARY: MALAD RIVER

SOURCE: BIG WOOD RIVER DIVERSION RATE: 2000.000 PERIOD FROM: 01/01 PERIOD TO: 12/31

WATER USE: POWER TOTAL: 2000.000

REMARKS: (175 DROP) SESE, S19, T4S, R18E; 160 CFS, 345 HP @ 22'. (PENDLETON DROP) SWSE, S35, 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; 200 CFS, 330 HP @ 17'. (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, R19E; 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 06 1990

LISTER
(RMG)

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS REPORT

DATE: 07/11/89
PAGE: 2

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. HIRSCH
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
WATER USE: LITTLE WOOD RIVER
TRIBUTARY: MALAD RIVER
MALAD RIVER
DIVERSION RATE: 280.000
DIVERSION VOLUME: 280.000
PERIOD FROM: 01/01
PERIOD TO: 12/31
WATER-DIST: 37

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 Acres
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: 37

MAR 06 1990

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

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

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

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

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

MICROFILMED

MAR 06 1990

37-5389
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 06 1990

DC-A-1



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

September 13, 1988

RE: Permit Nos. 37-7848/8178

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

Gentlemen:

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

We assume you are aware of requirements remaining to finalize the permits into licenses.

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

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

RECEIVED

SEP 28 1988

MAGIC RESERVOIR HYDROELECTRIC, INC.

2399 SOUTH ORCHARD STREET, SUITE 201

BOISE, ID 83705

(208) 336-3000

Ltr. 001
File 1.20

RECEIVED
AUG 30 1988

August 30, 1988

Mr. Jim Johnson
Water Rights Supervisor
Idaho Dept. of Water Resources
Statehouse Mail
Boise, ID 83720

Department of Water Resources

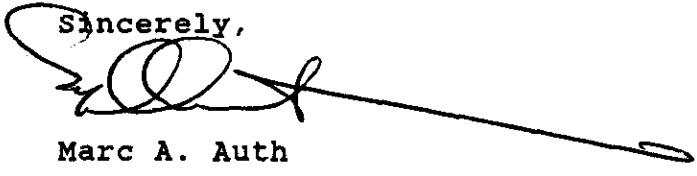
Re: Water Permit Nos. 37-7848 and 37-8178
Magic Dam Hydroelectric Project

Dear Mr. Johnson:

We enclose herewith on behalf of Magic Reservoir Hydroelectric, Inc. a completed Affidavit for Water Rights to be Used for Power Purposes at the Magic Dam Hydroelectric Project. Per our August 29 discussion, also attached are a 9/2/86 Agreement between Big Wood Canal Company (the Dam owners) and Cook Electric, Inc. (the original water permittee). Insofar as Magic Reservoir Hydroelectric, Inc. has subsequently assumed all right, title and interest of Cook Electric, we are also including a 3/22/88 Amendment Agreement between the Big Wood Canal Company and Magic Reservoir Hydroelectric, Inc.

We trust this Affidavit and attached Agreements meet your needs for the assignment process. If you have any questions, please let me know.

Sincerely,


Marc A. Auth

MAA/lj

cc: J. R. Jackson, Pres. (MRH, Inc.)

INDEXED & FILED

SEP 28 1988



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

August 23, 1988

RE: Permit Nos. 37-7848 & 37-8178

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

Gentlemen:

The Department is in receipt of assignments of the above referenced permits changing ownership of the permits to you.

Before we can formally change our records reflecting this ownership change we must be in receipt of an affidavit stating that the new owner is established to do business in Idaho in accordance with the provisions of Section 42-205, Idaho Code.

Please complete and return the enclosed affidavit.

If you have any questions, please let us know.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

RECEIVED

SEP 28 1988

MYERS ENGINEERING COMPANY, P.A.

Consulting Engineers

750 Warm Springs Avenue
Boise, Idaho 83712
Telephone: (208) 336-1425

RECEIVED
MAY 18 1988

May 17, 1988

Department of Water Resources

Mr. Jim Johnson
Idaho Water Resources Board
Statehouse
Boise, ID 83720

Re: Assignment of Permit No's 37-7848 & 37-8178

Dear Mr. Johnson:

Enclosed are copies of the above assignment forms from the original applicant Cook Electric Inc. to Magic Reservoir Hydroelectric Inc. Please note this action in your records. The original documents can be furnished at a later date if required; they are currently in the mail to us.

Sincerely,



Carl L. Myers, P.E.

Enclosure

cc: Magic Hydroelectric Inc.
Owen Orndorff

RECEIVED

SEP 28 1988

MEMORANDUM

TO: Norm Young, Glen Saxton, Jim Johnson, and File Nos.
37-8178 and 37-7848

FROM: Gary Spackman *Gary*

DATE: September 9, 1987

RE: Establishment of Term of Years for Hydropower Permits

Under Idaho Code 42-203B(7), the Director is required to designate the number of years through which the term of license will extend. It appears that the Director should impose the term of years for the license, if possible, at the time the permit is issued.

Four criteria must be evaluated prior to establishing the term of years: (1) The term of any power purchase contract, (2) Policy of the Idaho Public Utilities Commission, (3) The term of a FERC license, and (4) Existing downstream uses. The power purchase contract has a term of thirty-five (35) years. The Public Utilities Commission approved the contract for thirty-five years. The FERC license was granted for forty (40) years. The hydropower use proposed will not affect downstream users, in fact, the use is in conjunction with water being released to downstream users.

As a result of the above evaluation, I recommend that we grant a period of license of forty (40) years, which is the FERC license period. The conditions should read as follows:

The duration of the diversion and use of water under this permit and any license subsequently issued is forty (40) years from the date of the issuance of this permit. Prior to the expiration of the license, the use will be reviewed relative to the interest of the public, and the Director may reissue the license to include all or any part of the use authorized herein any may revise, delete, or add conditions under which the right may be exercised.

Note: - This memo got separated from the files and the permits were issued w/out a specific term of years. The duration of the right can be established at the time of licensing.

6.5

RECEIVED

SEP 28 1988

— I D A H —
DEPARTMENT OF WATER RESOURCES

- - - - -

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440
SEPTEMBER 03, 1987

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

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 37-7848

DEAR PERMIT HOLDER:

ENCLOSED IS A COPY OF YOUR APPROVED APPLICATION FOR PERMIT. WE DIRECT YOUR ATTENTION TO THE CONDITIONS OF APPROVAL ON THE FOURTH PAGE.

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.

PLEASE NOTE THE REQUIREMENT THAT AS A PERMIT HOLDER YOU MUST COMMENCE THE EXCAVATION OR CONSTRUCTION OF DIVERTING WORKS WITHIN ONE YEAR OF THE DATE THE PERMIT WAS ISSUED, AND YOU MUST PROCEED DILIGENTLY UNTIL THE PROJECT IS COMPLETED. THE ENCLOSED BLUE CARD MUST BE COMPLETED AND RETURNED TO THIS OFFICE AS SOON AS YOU COMMENCE CONSTRUCTION, NO LATER THAN ONE YEAR FROM THE DATE THE PERMIT WAS APPROVED.

WE HAVE ENCLOSED A FORM ENTITLED "INSTRUCTIONS FOR PROOF OF BENEFICIAL USE". PLEASE READ THE INSTRUCTIONS CAREFULLY SINCE YOU MUST TAKE FURTHER ACTION TO DEVELOP THIS PERMIT INTO A LICENSE.

SINCERELY,

GARY SPACKMAN
SUPERVISOR, WATER ALLOCATION SECTION

GS: SC
ENCLOSURES

MICROFILMED

SEP 28 1988

COOK ELECTRIC, Inc.

PHONE:
734-3252

P. O. BOX 1071
TWIN FALLS, IDAHO
83301

August 20, 1987

RECEIVED
AUG 21 1987

37-7848

State of Idaho
Department of Water Resources
Statehouse
Boise, Idaho 83720

Department of Water Resources

ATT: Mr. Gary Spackman

Dear Mr. Spackman:

We are writing you this letter according to our telephone conversation yesterday. We are requesting you contact the personnel at the Idaho Water Resources Board, that we discussed yesterday to help expedite the water application.

We are requesting you treat the water application, requested by Cook Electric, Inc., on Magic Dam Hydroelectric Project, FERC No. 3407-004, under an emergency status for the following reasons:

1. The immediate repair required to meet the Federal Energy Regulatory Commissions regulations.

2. The Magic Dam Reservoir is at a very low level at the present time, which is required to install safety equipment at the inlet structure on the penstock.

3. It would be a shame to have to drain the reservoir in the future to install the safety equipment.

4. Our finance for this equipment is being held up until this water permit is obtained.

Thank you,

COOK ELECTRIC, INC.

Warren P. Chapman

Warren P. Chapman
President

RECEIVED

SEP 28 1988

MEMORANDUM

TO: File Nos. 37-8178 and 37-7848
FROM: Gary Spackman *Gary*
DATE: July 30, 1987
RE: Review for application approval

I have reviewed Applications to Appropriate Water Nos. 37-8178 and 37-7848 filed in the name of Cook Electric, Inc. for generation of hydropower at Magic Dam. Attached is a rough checklist of the required information under Rule No. 4,5,3. of the Water Allocation Rules and Regulations for large diversions.

After reviewing the applications and supporting documents, I find that Cook Electric, Inc. has supplied the necessary information required by the Department to evaluate the applications.

Based upon my review, the following is a summary of use of the evaluation criteria contained in Rule 5.1 of the Water Appropriate Rules and Regulations:

Will the proposed use reduce the quantity of water under existing water rights?

These filings will not reduce normal delivery practices by the Big Wood Canal Company for irrigation purposes. The applicant has entered into a contract with Big Wood Canal Company which subordinates the delivery of water for hydropower generation to the demands for irrigation flows and maintenance of the delivery systems.

Water quality has been evaluated by the Department of Health and Welfare, and it appears that the water quality will be maintained.

Is the water supply sufficient for the proposed use?

Water will be available in sufficient quantities to operate the proposed turbines in various combinations during the irrigation season. Some additional high run-off flows may also contribute to the hydropower generation. During the winter time, power will probably not be generated because of storage for irrigation in the upcoming irrigation season.

MICROFILMED

SEP 28 1988

Is the application made in good faith?

By agreement with Big Wood Canal Company, the applicant has access to the dam and the surrounding lands for construction. The applicant has also obtained a FERC license for the project. There are not obvious impediments to the successful completion of the project.

Does the applicant have sufficient financial resources?

The file contains a confidential statement from persons or entities willing to participate in the project and assist in financing its completion. Earnest money has already been paid to Cook Electric as part of the financial arrangement. The information is confidential and should be returned following this review.

Does the project conflict with the local public interest?

The project will assist the economy at least temporarily during the construction of the hydropower facilities. Following completion, there will probably not be a lot of direct economic benefit, although the plant will supply power to the Idaho Power grid. The shareholders in Big Wood Canal Co., primarily farmers, will benefit from revenues generated.

The Department of Fish and Game has commented on the proposed plan, and the applicants are proposing to screen the present spillway to prevent fish passage over the spillway.

The applicants plan appears to comply with air and water quality standards.

Based on the above review, I recommend that we issue a permit to appropriate water to Cook Electric, Inc. for the above applications with the standard hydropower conditions attached and a condition of years equal to the number of years imposed by the FERC license.

SEP 28 1966



RECEIVED

MAY 22 1987

Department of Water Resources

OFFICE OF THE GOVERNOR

STATE CAPITOL

BOISE

May 15, 1987

CECIL D. ANDRUS
GOVERNOR

Mr. Warren Chapman, President
Cook Electric, Inc.
P.O. Box 1071
Twin Falls, ID 83301

Dear Mr. Chapman:

Thank you for your letter of April 20, 1987, providing an update on your project. It is inappropriate for me to intervene in the present contract negotiations with Idaho Power Company. That issue is presently being considered by the Idaho Public Utilities Commission in quasi-judicial proceedings that must be decided using the record developed by the PUC and the law governing the matter. A generic case considering this matter is set for hearing before the PUC in June and your specific request is scheduled for June 18, 1987.

Immediate development of the project cannot be encouraged until the state of Idaho's appeal of the FERC license has been resolved. The state routinely requests that FERC include a subordination condition in the federal license to insure that large nonconsumptive uses of water do not lock up the water supplies of a basin thereby preventing needed upstream development. FERC was asked to include a subordination condition in the Magic Dam hydro project license, but failed to do so. The state is appealing the license conditions, and has not at this time issued a state permit to allow appropriation of water for the project. While I am confident that this issue will be resolved, I cannot encourage development of the project while the issue is still pending.

I have conveyed copies of your letter and special request to the PUC and the Department of Water Resources with instructions to consider your request as your motion for summary judgment and application for water permit as evaluated.

With best regards,

Sincerely,

Cecil D. Andrus
Governor

cc: ~~Robert E. Dunn, IDWR~~
Perry Swisher, PUC
CDA:lmg
0158G/1863r/spuc
A/C/F

SEP 28 1988

State of Idaho
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

COOK ELECTRIC, INC.

INITIAL REVIEW BY: ADM

APPLICATION NUMBER: 37-7848

CHECK:

- ☒ Source.
☒ Point of diversion.
☒ County.
☒ Description of diverting works.
☒ Time required for beneficial use of water.
☒ Place of use or acres irrigated.
☒ Map.
☒ Signature.
☒ Fee.
☐ Yes ☒ No Field check required.
☐ Yes ☒ No Critical groundwater area.
☒ Yes ☐ No Request dam safety information. Sent by: _____ Date: _____
☒ Yes ☐ No In form to receipt.

Field check by: _____

Date: _____

Comments: _____

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: _____

SEND COPIES TO:

- ☐ Idaho State Health Department.
☒ Idaho Fish and Game Department.
☒ Idaho Department of Lands.
☐ U.S. Bureau of Land Management.
☐ U.S. Forest Service.

Copies sent by: _____

Date: _____

☒ Other Big Wood Canal Co.

PROCESSING: Ried Newby, W.D. 37

☐ Yes ☒ No

Platted by: ADM

Map No. Y-23

☐ Yes ☒ No

Other rights on same place of use. No rts found

☐ Yes ☐ No

In form for advertising.

Final date for protests: 9/15/80

☒ Yes ☐ No

Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. Date: 9/9/80
☒ Application published correctly. If not, record action taken: _____
☒ Fee amount, receipt date & number, recorded on application.
☒ Publication dates and paper, recorded on application.
☒ Protests, dates, withdrawal, etc., recorded on application.
☒ Recommendation & initial, recorded on application.

☒ Yes ☐ No Measuring device required.

☐ Yes ☒ No Access port required.

☒ Yes ☐ No Will water be delivered by watermaster? If yes, what district? 37

8/14/1980 Date of priority recommended.

Special conditions of approval or cover letter.

DIF, 05, 08A, 17K, 17M, 18A, 25, 27, 30

By: Larry O. Halverson

Date: 7/21/87

STATE OFFICE REVIEW:

L19, L17

DIF 26A 05 (37, Big Wood River)

04 08A 09E 17G 17K 18A 25 27 30

☐ See attached sheet for more information.

By: KW

Date: 8/25/87

rec'd 9/15/80

Water Right Files

37-7848, 37-8178

RECEIVED

MAR 31 1987

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

Cook Electric, Inc.)

Project No. 3407-007

NOTICE TO INTENT TO ACT

(March 19, 1987)

The appellant 1/, pursuant to 18 C.F.R. § 385.1902 (1986), has appealed the Commission staff's action 2/ in the above-captioned proceeding. Further time is required to consider the issues raised on appeal. The Commission intends to act on appellant's appeal, which shall not, therefore, be deemed denied by operation of law pursuant to Section 385.1902(c) of the Commission's Rules of Practice and Procedure.

By direction of the Commission.

(S E A L)

Kenneth F. Plumb

Kenneth F. Plumb,
Secretary.

1/ The Idaho Department of Water Resources.

2/ Cook Electric, Inc., 38 FERC ¶ 62,034 (1987).

MICROFILMED

SEP 28 1988

DC-A-17

37-7848

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

IDA 41 182832C1 03/28/87
NOTIFY SENDER OF NEW ADDRESS
IDA DEPT WATER RES
2148 4TH AVE E
TWIN FALLS ID 83301-7451



POSTAGE AND FEES PAID
FEDERAL ENERGY
REGULATORY COMMISSION
FERC 351

1 0000000000 000000
KENNETH D. ADHEM ATTORNEY
TRAND DEPT. OF WATER RESOURCES (TWIN FALLS)
1041 BLUE SPRING BLVD. N.
TWIN FALLS, ID 83301

SEP 28 1988

File _____

COOK ELECTRIC, Inc.

PHONE:
734-3252

P. O. BOX 1071
TWIN FALLS, IDAHO
83301

January 23, 1986

*no response
read
1st
1-27-86*

RECEIVED

JAN 27 1986

State of Idaho
Department of Water Resources
State House
Boise, Idaho 83720

37-7848 ✓
37-8178 Department of Water Resources

Project No. 3407-004
Magic Dam

We are requesting that you comment on the above project, along the lines of the rough draft, which is enclosed, and other comments that you might have to assist Cook Electric, Inc., in obtaining their license on this project, so we can start construction on a new 600 feet of spillway, which is required by our studies that you have copies of.

Sincerely,

COOK ELECTRIC, INC.

Warren P. Chapman

Warren P. Chapman
President

RECEIVED

SEP 28 1988

LETTER HEAD
OF AGENCY

January , 1986

Cook Electric, Inc.
P.O. Box 1071
Twin Falls, Idaho 83301

ATT: Warren P. Chapman, President

Project No. 3407-004
Magic Dam

We support the applicant for hydro license, Ferc No. 3407-004,
for the following reasons:

To improve dam safety, your plans show an additional 600 ft. of spillway, which should reduce fish loss over the spillway and improve soil erosion down stream from the dam. This would let you maintain higher water levels in the dam with this additional spillway. It would also assist Big Wood Canal Co., in managing the reservoir levels. We feel it is in the best interest of the general public to improve irrigation storage, dam safety, boating, fish loss and other recreation needs.

Sincerely,

Agencies Name

MICROFILMED
SEP 28 1988

MAGIC DAM

1. Powerhouse Site
2. Magic Reservoir
3. Spillway
4. Spillway
5. Spillway
6. Spillway
7. Spillway
8. Big Wood River Below Dam

INDEXED

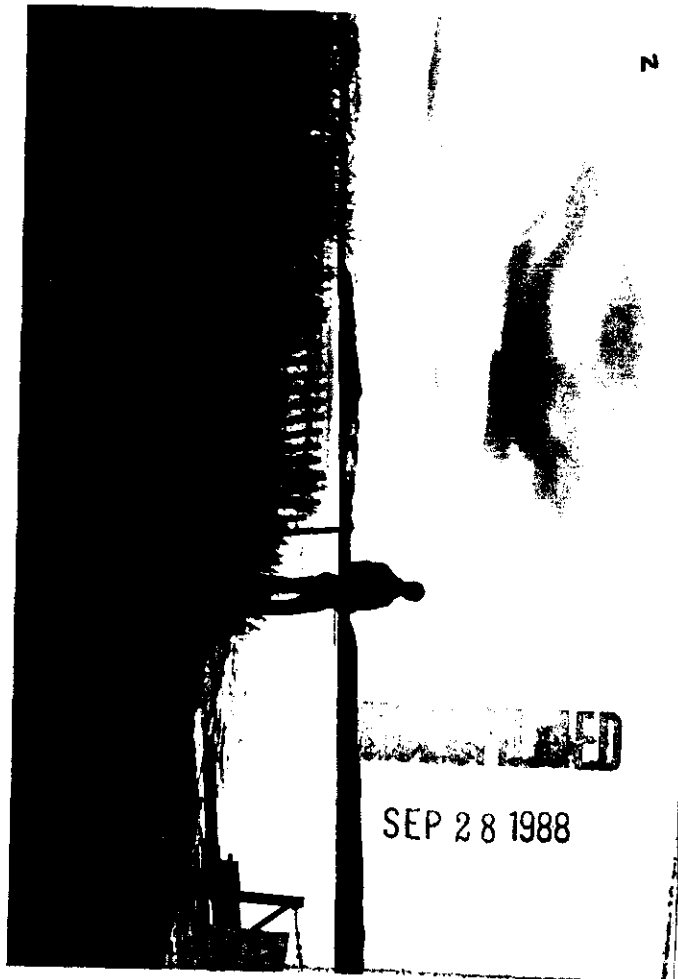
SEP 28 1988



1



3



2



4



RECEIVED

SEP 28 1988

INTER-DEPARTMENT MEMO — 1

FROM Glen Saylor

DATE 1-14-86

TO File 37-7848 ✓
37-8178

SUBJECT

- The nine (9) bound documents transmitted by Cook Electric with the Dec 3, 1985 letter have been filed in Dam Safety Sec.

INDEXED

SEP 28 1988

[Handwritten Signature]

SIGNATURE

COOK ELECTRIC, Inc.

PHONE:
734-3252

P. O. BOX 1071
TWIN FALLS, IDAHO
83301

December 3, 1985

RECEIVED
DEC 5 1985

State of Idaho
Department of Water Resources
State House
Boise, Idaho 83720

Department of Water Resources

Reference: Magic Hydroelectric Project, FERC Project No.
3407-004 - Idaho

Gentlemen:

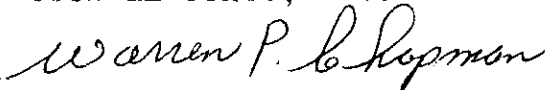
Enclosed please find one (1) copy each of nine (9) bound documents, which constitute our application for license of the referenced project.

Pursuant to the Federal Energy Regulatory Commission's letter of November 8, 1985, to you, copies of the subject application are being sent to you for your information and any comments and recommendations you may have involving your interests. Please submit your comments to the Secretary, Federal Energy Regulatory Commission, Washington, D.C. 20426, with a copy directly to the Applicant, within 60 days of the date of this letter. If you have not submitted comments, or requests that the Commission grant an extension of time within that period, the Commission will assume that you have none.

If you have any questions, please call Mr. Warren P. Chapman or Mr. Randy Chapman at (208) 734-3252.

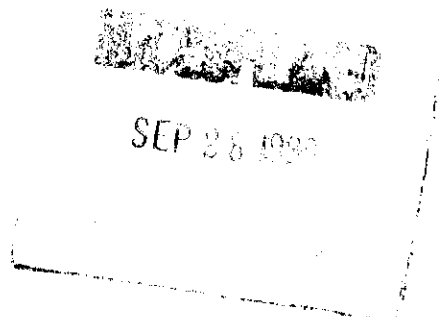
Thank you for your cooperation.

Respectfully submitted,
COOK ELECTRIC, INC.



Warren P. Chapman
President

WPC:gc
cc:FERC



RECEIVED

DEC 24 1985

Department of Water Resources
Southeast District Office

RECEIVED

DEC 18 1985

Department of Water Resources

RECEIVED
DEC 24 1985

DEPARTMENT OF WATER RESOURCES
SOUTHEAST DISTRICT OFFICE

IN THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * *

JAN 3 1986

IN RE: APPLICATION OF COOK)
ELECTRIC, INC., IDENTIFICATION)
NO. 37-7848)

Department of Water Resources
WITHDRAWAL OF PETITION
FOR ORDER PERMITTING
INTERVENTION

* * * * *

COME NOW, Twin Falls Canal Company and North Side Canal Company, Ltd., and formally withdraw that certain Petition For Order Permitting Intervention previously filed in this action and dated January 30, 1981. The grounds for the withdrawal of this Petition are as follows:

1. The interveners have been advised by representatives of Big Wood Canal Company that a certain agreement has been entered into between said Canal Company and the original applicants, Cook Electric, Inc., relative to the project originally contemplated by the applicant. As a result, the protest originally filed by Big Wood Canal Company to the above application has been resolved and the grounds for the requested intervention have been rendered moot.

DATED this 16 day of December, 1985.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

MICROFILMED

SEP 28 1988

By James C. Tucker
James C. Tucker

WITHDRAWAL OF PETITION -1-

CERTIFICATE OF MAILING

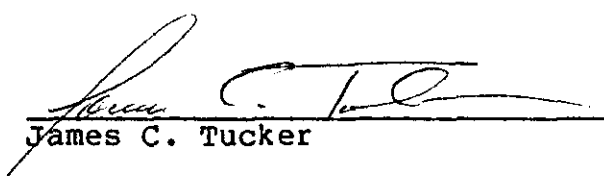
I hereby certify that on this 16 day of Dec, 1985, I served a copy of the foregoing WITHDRAWAL OF PETITION FOR ORDER PERMITTING INTERVENTION, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Mr. Cecil Hobdey
Attorney at Law
P.O. Box 176
Gooding, ID 83330

Cook Electric, Inc.
P.O. Box 1071
Twin Falls, ID 83301

Big Wood Canal Company
P.O. Box C
Shoshone, ID 83352

Department of Water Resources
Statehouse
Boise, ID 83720


James C. Tucker

SEP 28 1985

RECEIVED

DEC 17 1985

Department of Water Resources
Southwest District Office

IN THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

* * * * *

IN RE: APPLICATION OF COOK)
ELECTRIC, INC., IDENTIFICATION) WITHDRAWAL OF PETITION
NO. 37-7848) FOR ORDER PERMITTING
) INTERVENTION

* * * * *

COME NOW, Twin Falls Canal Company and North Side Canal Company, Ltd., and formally withdraw that certain Petition For Order Permitting Intervention previously filed in this action and dated January 30, 1981. The grounds for the withdrawal of this Petition are as follows:

1. The interveners have been advised by representatives of Big Wood Canal Company that a certain agreement has been entered into between said Canal Company and the original applicants, Cook Electric, Inc., relative to the project originally contemplated by the applicant. As a result, the protest originally filed by Big Wood Canal Company to the above application has been resolved and the grounds for the requested intervention have been rendered moot.

DATED this 16 day of December, 1985.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

SEP 28 1988

By James C. Tucker
James C. Tucker

CERTIFICATE OF MAILING

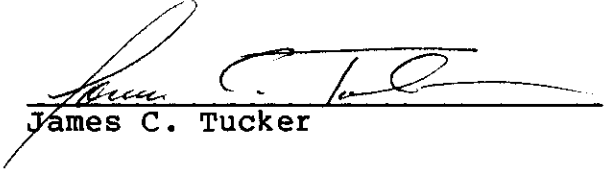
I hereby certify that on this 16 day of Dec, 1985, I served a copy of the foregoing WITHDRAWAL OF PETITION FOR ORDER PERMITTING INTERVENTION, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Mr. Cecil Hobdey
Attorney at Law
P.O. Box 176
Gooding, ID 83330

Cook Electric, Inc.
P.O. Box 1071
Twin Falls, ID 83301

Big Wood Canal Company
P.O. Box C
Shoshone, ID 83352

Department of Water Resources
Statehouse
Boise, ID 83720


James C. Tucker



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

December 3, 1985

John A. Rosholt
Attorney at Law
P. O. Box 1906
Twin Falls, Idaho 83301

Re: Application for Permit No. 37-7848

Dear John:

The purpose of this letter is to ask whether the Twin Falls and North Side Canal Companies still wish to intervene in the matter of Application 37-7848 filed by Cook Electric, Inc.

Cook Electric, Inc., filed its application to appropriate 800 cfs of water at Magic Dam on August 14, 1980. The application was protested by Big Wood Canal Co. On January 30, 1981, we received your petition to intervene on behalf of the Twin Falls and North Side Canal Companies.

After some negotiation, Cook Electric, Inc., and Big Wood Canal Co., entered into an agreement to cooperate on the project, thus resolving Big Wood's protest.

In view of the protest being resolved, and possible changes in the relationship between Cook Electric, Inc., and Twin Falls and North Side Canal Companies, please advise if the Department should act on the petition to intervene or if it will be withdrawn.

Very truly yours,

Loren O. Holmes
Southern Region Supervisor

LOH:marya

MICROFILMED

SEP 28 1988



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

A. Kenneth Dunn
Director

August 23, 1984

Cook Electric, Inc.
P. O. Box 1071
Twin Falls, Idaho 83301

Re: 37-7848 -

Gentlemen:

This office recently received a copy of an agreement in which Cook Electric and Big Wood Canal Company agreed to cooperate on construction of the Magic Dam hydroelectric project.

The agreement apparently resolves the protest of Big Wood Canal Company against application 37-7848.

Before we can proceed further with the applications in this office, the following information must be submitted to be made part of the applications:

- 1) An itemized cost estimate for the project.
- 2) A showing that a "here and now" financial commitment sufficient to complete the project has been made by the applicant or by a project developer.

In addition, engineering plans for modification to Magic Dam - required by the project must be approved by the Department before construction.

Please contact this office if you have any questions.

Very truly yours,

LOREN O. HOLMES
Southern Region Supervisor

LOH:marya

RECEIVED

SEP 28 1988



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

August 23, 1984

Big Wood Canal Company
112 South Apple Street
Box C
Shoshone, Idaho 83352

Re: 37-7848 & 37-8178 -- Cook Electric

Gentlemen:

This office currently holds Applications for Permit Numbers 37-7848 and 37-8178 in the name of Cook Electric, Inc., to appropriate water for hydroelectric power generation at Magic Dam.

Application 37-7848 was protested by Big Wood Canal Company in August, 1980 and has been held pending a hearing.

We recently received a copy of an agreement between Cook Electric and Big Wood Canal Company indicating the two parties are going to cooperate on the construction of the Magic Dam power project.

We are assuming that the agreement resolves the matter of the protest. Unless advised otherwise, the protest will be considered withdrawn, and we will proceed with processing of application 37-7848 without a hearing.

Very truly yours,

LOREN O. HOLMES
Southern Region Supervisor

LOH:marya

cc: Warren Chapman

RECEIVED

SEP 28 1988

39-7248
39-8198
37-7881

P-3407-000

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission
(November 14, 1985)

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

- a. Type of Application: Major License.
- b. Project No.: 3407-000
- c. Date Filed: July 24, 1984
- d. Applicant: Cook Electric, Inc.
- e. Name of Project: Magic Dam
- f. Location: At the Big Wood Canal Company's Magic Dam, effecting
Bureau of Reclamation land, on Big Wood River in
Blaine County, Idaho
- g. Filed Pursuant to: Federal Power Act 16 U.S.C. §5791(a) - 825(r)
- h. Contact Person: Mr. Warren P. Chapman
Cook Electric, Inc.
P.O. Box 1071
2356 Beryl Avenue
Twin Falls, ID 83301

i. Comment Date: JAN 13 1986

j. Description of Project: The existing project facilities at the site consist of: (1) a 128-foot-high, 3,100-foot-long earth fill dam; (2) a 400-foot-long spillway; (3) a 36.5-foot-high outlet tower; (4) a 620-foot-long, 132-inch-diameter outlet conduit; (5) a bifurcation; (6) 2 emergency gates and 2 outlet valves in a powerhouse; and (7) a 3740-acre reservoir with a capacity of 191,500 acre-feet at a normal maximum surface elevation of 4,935 feet. In addition the project would consist of the following proposed facilities: (1) a 600-foot-long additional spillway; (2) a new bifurcation, approximately 40-feet upstream of the existing bifurcation; (3) a 170-foot-long, 132-inch-diameter penstock; (4) a powerhouse containing 3 generating units with a combined capacity of 9.0 MW and an average annual generation of 27,738 MWh; and (5) a 2.8-mile-long transmission line which would connect to existing 46-KV Idaho Power Lines. The estimated cost of the project is \$4,615,782.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B and C

MICROFILMED
SEP 28 1988

A3.

Development Application -- Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

B.

Comments, Protests, or Motions to Intervene - Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C.

Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

A9.

Notice of intent -- A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application and be served on the applicant(s) named in this public notice.

RECEIVED

SEP 20 1988

Kenneth F. Plumb
Secretary

COOK ELECTRIC, Inc.

PHONE:
734-3252

P. O. BOX 1071
TWIN FALLS, IDAHO
83301

October 19, 1982

Department of Water Resources
Western Region
Statehouse
Boise, Idaho 83720

RE: FERC 3407-000 Magic Dam Power Project

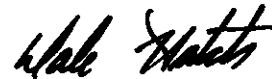
Gentlemen:

Cook Electric, Inc. has been granted a Preliminary Permit to develop hydro-power by the FERC on the Magic Dam near Shoshone, Idaho.

We would appreciate a letter from you concerning any objections you may have to this project. If you have no objections please so state.

Thank you for your consideration. Your prompt response will be appreciated.

Sincerely,
COOK ELECTRIC, INC.



Dale Hatch
Liaison Officer

SDH:nw
cc: Michener Associates, Inc.

RECEIVED

SEP 28 1988



OCT 20 1982

Department of Water Resources
Western Regional Office

COOK ELECTRIC, Inc.

PHONE:
734-3252

P. O. BOX 1071
TWIN FALLS, IDAHO
83301

October 15, 1982

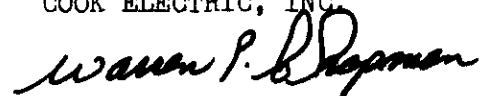
To Whom It May Concern:

This letter is to inform you that we have designated Dale Hatch, a member of our staff, as a liaison officer to act for the Permittee, Cook Electric, Inc. This designation refers to the preliminary permit for Project No. 3407-000, Magic Dam, issued by the Federal Regulatory Commission on July 28, 1982.

Mr. Hatch may be reached at the phone and address as shown above. We are enclosing a list of the parties informed of this appointment.

Thank you for your cooperation.

Sincerely,
COOK ELECTRIC, INC.



Warren P. Chapman
President

WPC:sdh
Encl:

RECEIVED

OCT 21 1982

Department of Water Resources
Southern District Office

MICROFILMED

SEP 28 1988

Department of Water Resources
Western District Office

William W. Lindsay, Director
Office of Electric Power Regulation
Federal Energy Regulatory Commission
825 North Capitol Street, N.W.
Washington, D.C. 20426

William F. Kopfler, Regional Engineer
Federal Energy Regulatory Commission
333 Market Street, Sixth Floor
San Francisco, California 94105

United States Department Of Agriculture
Forest Service
Washington Office
12th & Independence S.W.
P.O. Box No. 2417
Washington, D.C. 20013

United States Department Of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Environmental & Technical Services Division
P.O. Box No. 4332
Portland, Oregon 97208

Idaho Public Utilities Commission
Statehouse
Boise, Idaho 83720

State of Idaho
Fish and Game Department
P.O. Box # 25
Boise, Idaho 83707

Mr. Donald P. Dubois
Regional Administrator, Region X
Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

Mr. Merle W. Wells
Historic Preservation Coordinator
Idaho Historical Society
610 North Julia Davis Drive
Boise, Idaho 83706

Corps of Engineers
Bldg. 602, City-County Airport
Walla Walla, Washington 99362

Water Quality Agent
Region X
1200 Sixth Avenue
Seattle, Washington 98101

MICROFILMED

SEP 28 1988

LIST OF THE PARTIES INFORMED OF THE APPOINTMENT OF DAY HATCH AS A LIAISON OFFICER
TO ACT FOR THE PERMIT REGARDS PRELIMINARY PERMIT FOR PROJECT NO. 3407-000

Director, Northwest Region
National Marine Fisheries Service
1700 Westlake Avenue North
Seattle, Washington 98109

Charles S. Polityka
Regional Environmental Officer
Department of the Interior
Suite 1691
500 N.E. Multnomah Street
Portland, Oregon 97232

Regional Director
Heritage Conservation & Recreation Service
915 Second Avenue
Seattle, Washington 98174

State of Idaho
Department of Parks & Recreation
Statehouse
Boise, Idaho 83720

Idaho Department of Health & Welfare
Division of Environment
Statehouse
Boise, Idaho 83720

Regional Director
National Park Service
Westin Building, Room 1920
2001 Sixth Avenue
Seattle, Washington 98121

Area Office
U.S. Fish and Wildlife Service
4620 Overland Road, Room 238
Boise, Idaho 83705

State Director
Bureau of Land Management
Room 334, Federal Building
550 West Fort Street
Boise, Idaho 83702

Department Of Water Resources
Western Region
Statehouse
Boise, Idaho 83720

Thomas K. Schafer, P.E. & L.S.
P.O. Box # 283
Twin Falls, Idaho 83301

Hobdley & Varin
P.O. Box # 176
Gooding, Idaho 83330

RECEIVED

SEP 28 1988

LIST OF THE PARTIES INFORMED OF THE APPOINTMENT OF DALE HATCH AS A LIAISON OFFICER
TO ACT FOR THE PERMITTEE REGARDS PRELIMINARY PERMIT TO PROJECT NO. 3407-000

United States Department Of The Interior
U.S. Geological Survey
Water Resources Division
Box No. 036, Federal Building
550 West Fort Street
Boise, Idaho 83724

Big Wood Canal Company
112 South Apple Street
Box C
Shoshone, Idaho 83352

American Falls Reservoir District No. 2
112 South Apple Street
Box C
Shoshone, Idaho 83352

Nelson, Rosholt, Robertson, Tolman & Tucker
P.O. Box No. 1906
Twin Falls, Idaho 83301

RECEIVED

SEP 28 1988

Southern

Dennis S. Voorhees

ATTORNEY AT LAW
P.O. BOX 922
FIRST INTERSTATE BANK BLDG.
TWIN FALLS, IDAHO 83301
TELEPHONE (208) 733-2600

RECEIVED

SEP 3 1982

Department of Water Resources
Southern District Office

August 24, 1982

Mr. David R. Tuthill, Jr.
Department of Water Resources
Statehouse
Boise, Idaho 83720

*Copy of this letter sent
to Phillips & to Southern Reg
No response req'd now* **SEP 8-27-82**

Re: Application for Permit No. 37-7848

Dear David:

The Federal Energy Regulatory Commission recently granted Cook Electric, Inc., a preliminary permit under the Federal Power Act for a proposed water power project to be known as Magic Dam located on the Big Wood River in Blaine County, Idaho. I enclose a copy of the Order issuing the preliminary permit. It pertains to the same project for which a water permit was applied for by Cook Electric in the Fall of 1980, Application for Permit No. 37-7848.

The Application was protested by the Big Wood Canal Company. No action on the Application or protest has taken place pending the outcome of the FERC determination.

I expect to be meeting with the Big Wood Canal Company in September in an attempt to allay their concerns as outlined in the letter of protest filed with the Department. I will advise you on the prospects of resolution after the meeting has taken place.

Should resolution not be possible, I maintain for the reasons set out in my October 7, 1980, letter to Mr. Cecil D. Hobdey, attorney for the Big Wood Canal Company, a copy of which is on file in this proceeding, that the Cook Electric filing is not speculative. The power of eminent domain for power generation as recognized in the Idaho cases of Marshall v. Niagra Springs Orchard Co., 22 Idaho 144 (1912) and Bassett v. Swenson, 51 Idaho 256 (1931), distinguish this type of filing from that discussed in Lemmon v. Hardy, 95 Idaho 170 (1974) (Agricultural Development).

MICROFILMED

SEP 28 1988

Mr. David R. Tuthill, Jr.
August 24, 1982
Page Two.

In 1981 the Idaho legislature amended Idaho Code 42-205 to give preference to holders of existing water permits at facilities owned by them when in competition with others for hydro power development. Whatever be the wisdom of this legislation, it flies squarely in the face of Federal preemption of hydro power development on navigable streams and effected by the Federal Power Act. The cases construing the interplay of Federal Power preemption and State water law regulations make it clear that protection from supersedure is limited to laws relating to the "control, appropriation, use, or distribution of water in irrigation or for municipal or other uses of the same nature." (Emphasis supplied.) Note here that "other uses" does not include power generation. First Iowa Hydro-Electric Cooperative v. Federal Power Commission, 328 U.S. 152, 66 S.Ct. 906, 90 L.Ed. 1143 (1946). In August of last year a United States District Court for the District of Vermont held in Town of Springfield, Vermont v. State of Vermont Environmental Board, 521 F.Supp. 243 that where the power to withhold a State permit constitutes the power to thwart a Federal project, the same is prohibited. In that case a State agency entered an Order barring a licensee under the Federal Power Act from proceeding with development of a hydro-electric project until a State Land Use Permit was obtained. The Order of the agency was held to be void and in violation of the preemptive provisions of the Federal Power Act. Accordingly, I believe the recent amendment to Idaho Code 42-205 to be of no force and effect.

If I can be of any greater assistance in advising you on the legal issues arising under the Cook Electric Application, please do not hesitate to call on me for additional comments. As I indicated earlier, Cook Electric intends to meet with the Big Wood Canal Company in September to resolve this matter. We will advise you as to the results of that meeting.

Sincerely yours,

Dennis J. Voorhees

DENNIS S. VOORHEES

DSV/pbj

RECEIVED

SEP 28 1988

FEDERAL ENERGY
REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

Warren P. Chapman P-3407-000
Cook Electric Company
P.O. Box 1071
Twin Falls, ID 83301

POSTAGE AND FEES PAID
FEDERAL ENERGY
REGULATORY COMMISSION
FERC 351



RECEIVED

SEP 28 1988

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

20 FERC ¶62,167

- 2 -

Cook Electric Company) Project No. 3407-000
Big Wood Canal Company and American
Falls Reservoir District No. 2) Project No. 4488-000

ORDER ISSUING PRELIMINARY PERMIT
AND DENYING COMPETING APPLICATION(S)

(Issued July 28, 1982)

The Applicants ^{1/} filed competing applications for preliminary permit under Section 4(f) of the Federal Power Act (Act), 16 U.S.C. §797(f), for proposed water power projects, to be located at an existing dam. ^{2/}

Notice of the applications was published in accordance with Section 4 (f) of the Act and the Commission's regulations. All protests that have been submitted, petitions to intervene that have been granted, together with all comments filed by Federal, State, and local agencies have been fully considered in determining whether to issue this permit. Parties, other than the Applicants, and agencies commenting on the applications did not object to the issuance of this permit.

Competing Applications

Staff has reviewed the proposals for development of the site by the Applicants, including the claims by the Big Wood Canal Company and the American Falls Reservoir District No. 2 that they are in the best position to optimize operation of the proposed hydroelectric project because the Big Wood Canal Company owns, operates and maintains Magic Dam and reservoir and all other structures contained within the project boundary, maintains all water rights and controls all water releases. None of the Applicants has presented a plan based on detailed studies. At this early stage of planning, there are no significant substantiated differences in the Applicants' plans and none of the plans are sufficiently developed to enable a conclusion

^{1/} Cook Electric Company, Project No. 3407, filed on November 3, 1980. Big Wood Canal Company and American Falls Reservoir District No. 2, Project No. 4488, filed on April 18, 1981.

^{2/} Authority to act on this matter is delegated to the Director, Division of Hydropower Licensing, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 45 Fed. Reg. 21216 (1980), as amended by Order No. 112 in Docket No. RM81-5, issued November 21, 1980, FERC Statutes and Regulations ¶30,211 (45 Fed. Reg. 79024).

to be reached as to which is the best proposal. The purpose of a permit is to study the feasibility of a project and to determine the optimum development of the site. Inasmuch as each Applicant's plan is based on an estimate of capacity and energy and does not include other relevant factors more appropriate for consideration at the license stage, there is no basis at this preliminary stage to conclude that any one of these plans is superior to another. Information and analysis would be developed by the applicant during the term of the permit to ensure that a license, if granted, is for the plan that is best adapted to develop, conserve, and utilize in the public interest the water resources of the region. An application filed jointly by a municipality and a non-municipal entity (referred to collectively as "hybrid applicant") is not eligible for the statutory preference afforded municipalities under Section 7(a) of the Act. City of Fayetteville Public Works Commission, Project No. 3137, et al., "Order Determining Preference, Issuing Preliminary Permit and Denying Competing Application" (16 FERC ¶ 61,209). A hybrid applicant is nevertheless eligible to compete in any proceeding on an equal basis with all other non-preference applicants. Therefore, consistent with Section 4.33(g)(2) of its regulations which states that the Commission will favor the applicant whose application was submitted first in time, this permit is issued to the Permittee described in Ordering Paragraph (A). ^{3/}

Effects of this Preliminary Permit

The purpose of any preliminary permit is to maintain priority of application for a license during the term of the permit while the Permittee conducts investigations and secures data necessary to determine the feasibility of the proposed project and to prepare an acceptable application for license. A preliminary permit does not authorize construction of any project works. This permit does require the Permittee to conduct certain studies, but under conditions which will assure that those studies cause no significant adverse environmental impacts. For these reasons, the issuance of this preliminary

^{3/} See Commission Order Denying Appeal, Projects Nos. 3209, 3518 and 4124, 19 FERC ¶61,098 (May 3, 1982).

RECEIVED

SEP 28 1988

permit is not a major Federal action significantly affecting the quality of the human environment.

Any concerns raised in the comments, protests, or petitions to intervene addressing the potential effects of actually constructing and operating the proposed project are not affected by the issuance of a preliminary permit.

The articles of this permit provide for studies, in coordination with the appropriate agencies, to address the technical, economic, and environmental considerations related to the proposed project. Should the Permittee find the project to be feasible and file an application for a license, all interested persons and agencies will be given notice and have an opportunity to review the application, present their comments concerning the project and the effects of its construction and operation, and seek to participate in the licensing proceedings.

The named permittee is the only party entitled to the preference and priority of application for license afforded by this preliminary permit. In order to invoke this permit-based priority and preference in any subsequent licensing competition, the named Permittee must file an application for license as the sole applicant, thereby evidencing its intent to be the sole licensee and hold all proprietary rights necessary for project purposes, they must be included as joint applicants in any application for license filed. In such an instance where parties other than the Permittee are added as joint applicants for license, the joint application will not be eligible for any permit-based preference or priority. City of Fayetteville Public Works Commission, Project No. 3137, et al., "Order Determining Preference, Issuing Preliminary Permit and Denying Competing Application" (16 FERC ¶ 61,209).

Term of Permit

The proposed project would utilize an existing dam and is considered a small scale development. Feasibility studies for small projects are limited in scope and should not require the maximum term for a preliminary permit (36 months) permitted under the Act. Therefore, the term of this permit is limited to 24 months. Review of this project indicates that this permit term should be fully adequate to complete the necessary studies if they are pursued expeditiously. Extension of the term of this permit will not be granted, except in unusual circumstances where good cause for extension is clearly demonstrated.

It is order that:

(A) A preliminary permit is issued for the proposed project to Cook Electric Company, Project No. 3407, as described in the attached notice, for a period effective the first day of the

month following the month in which this permit is issued, and ending either 24 months from the effective date or on the date that an application for license submitted by the Permittee has been accepted for filing, whichever occurs first. This permit is subject to the terms and conditions of the Federal Power Act (Act), which is incorporated by reference as part of this permit, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The application for a preliminary permit for Project No. 4488 is denied.

(C) This permit is also subject to Articles 1 through 6 set forth in Form P-1 (revised October 1975), entitled "Terms and Conditions of Preliminary Permit," attached to (reported at 54 FPC 1797) and made a part of this permit, and subject to the following special conditions set forth as additional articles:

Article 7. In the interest of protecting and developing the natural resources and other environmental values of the project area, the Permittee shall consult with the appropriate Federal, State, and local agencies in their fields of responsibility and expertise, shall conduct its project investigations in a manner which protects the environmental integrity of the area, and shall fully explore all feasible alternatives to the project and alternative project designs, taking into account impacts on natural resources and other environmental values. These resources and values include, but are not limited to: forests, land management and treatment, fish, wildlife, recreation and public use, flood regulation, water and air quality (including water supply, groundwater studies, waste treatment and disposal), public health and safety, archeological, historic and cultural sites, threatened or endangered species of flora and fauna, and scenic and aesthetic values. The Permittee shall initiate and conduct, or have conducted, any studies that may be necessary to determine the impact of the construction and operation of the proposed project on these natural resources and values and measures needed to protect and develop them or to provide for their mitigation or replacement, including alternative designs and operational measures, and shall utilize the results of these studies in the preparation of the relevant exhibits required to accompany any application for a license to construct and operate the project. In connection with studies pertaining to archeological and historic and cultural sites, the Permittee shall consult with the State Historic Preservation Officer for each state in which any part of the project would be located, and the National Park Service of the U.S. Department of the Interior.

Article 8. The Permittee shall submit in triplicate at the close of each six-month period, from the effective date of this permit, to the Director, Office of Electric Power Regulation, with a copy to the FERC Regional Engineer, for the Region in which the proposed project would be located (the Commission's authorized representative for the purposes of this permit), or

RECEIVED
SEP 28 1988

to any other officer the Commission may designate, and a copy, if requested, to any agency consulted, accurate statements of the progress of all investigations, consultations, and studies accomplished during the period and of work contemplated under this permit for the ensuing period.

Article 9. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping appropriate Federal, State, and local agencies specified in this permit currently informed as to the progress of investigations throughout the term of the permit. The liaison officer shall communicate with those agencies within 60 days from the date of issuance of this permit.

Article 10. The Permittee shall, during the initial period of the permit, consult with the U.S. Fish and Wildlife Service of the Department of the Interior, the State fish and game agencies, and the National Marine Fisheries Service of the U.S. Department of Commerce if the project affects anadromous fish, to obtain their views and recommendations on studies to be conducted during the term of the permit to assess the effect that the proposed project might have on fish and wildlife resources, and the facilities or measures that may be needed to conserve and develop those resources. A copy of the report on the Permittee's study shall be filed as part of the fish and wildlife exhibits or reports of any subsequent application for license.

Article 11. During the development of the fish and wildlife report pursuant to Article 10, the Permittee shall take into account the regional fish and wildlife plan developed pursuant to the Pacific Northwest Electric Power Planning and Conservation Act. Any inconsistencies with the regional plan must be specifically addressed in any fish and wildlife report of any subsequent application for license or exemption.

(D) This order is final unless a petition appealing it to the Commission is filed within 30 days from the date of its issuance, as provided in Section 1.7(d) of the Commission's regulations, 18 C.F.R. 1.7(d) (1979), as amended, 44 Fed. Reg. 46449 (1979). The filing of a petition appealing this order to the Commission or an application for rehearing as provided in Section 313(a) of the Act does not operate as a stay of the effective date of this permit or of any other date specified in this order, except as specifically ordered by the Commission.

Ronald A. Corso

Ronald A. Corso
Director, Division of
Hydropower Licensing

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

RECEIVED
SEP 28 1981

Cook Electric Company)

Project No. 3407-000

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT

(February 13, 1981)

Take notice that Cook Electric Company (Applicant) filed on November 3, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§791(a) - 825(r)] for proposed Project No. 3407 to be known as Magic Dam located on Big Wood River in Blaine County, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Warren P. Chapman, Cook Electric Company, P. O. Box 1071, Twin Falls, Idaho 83301. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description - The proposed project would consist of: (1) an earth and rock fill dam, Magic Dam, with a length of 3,100 feet and a height of 128 feet; (2) a reservoir with a surface area of 3,776 acres and a storage capacity of 191,500 acre-feet; (3) an outlet conduit with a diameter of 11 feet and a length of 607 feet; (4) a 7 mile, 125-kV transmission line; and (5) three 1,000-kW, two 500-kW, and one 25-kW generating units. The Applicant estimates that the average annual energy output would be 8,859,000 kWh.

Purpose of Project - Much of the power generated by the proposed project would be used locally through the Idaho Power system. The balance would be delivered to the main Idaho Power grid.

Proposed Scope and Cost of Studies under Permit - The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time they would conduct hydrologic, environmental, and engineering studies and inspect the existing project structures. The Applicant estimates the cost of the studies to be \$33,000.

Purpose of Preliminary Permit - A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Project No. 3407-000

-2-

Agency Comments - Federal, state, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications - Anyone desiring to file a competing application must submit to the Commission, on or before April 20, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than June 19, 1981. A notice of intent must conform with the requirements of 18 C.F.R. §4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 C.F.R. §4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene - Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 C.F.R. §1.8 or §1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in §1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 20, 1981.

Project No. 3407-000

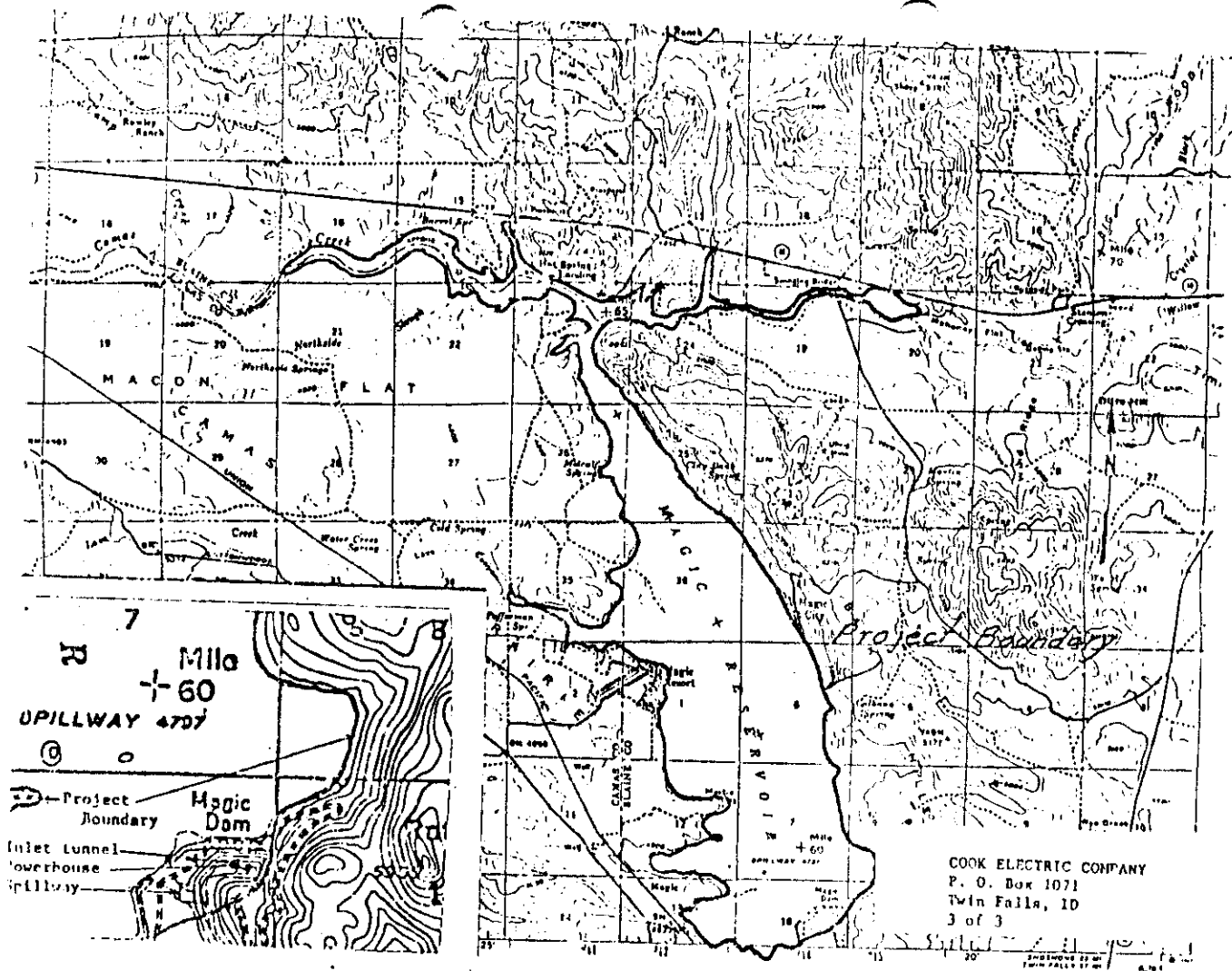
-3-

Filing and Service of Responsive Documents - Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3407. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth P. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D. C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N. W., Washington, D. C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb
Secretary

RECEIVED

SEP 28 1988



FEDERAL ENERGY REGULATORY COMMISSION
TERMS AND CONDITIONS OF
PRELIMINARY PERMIT

Form F-1
(Revised October, 1995)

SEP 2 1988

Article 1. The Permittee shall make such engineering and other investigations, secure such data, and perform such acts as are necessary to determine the feasibility of the proposed project and, if said project is found to be feasible, be in conformance with current rules and regulations of the Commission. In carrying out the requirements of this permit the Permittee shall:

A. Install as soon as practicable, and thereafter maintain, such stream gages and stream-gaging stations as the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region shall designate as necessary and best adapted for the purpose of determining the stage and flow of the stream or streams affected by the proposed project, and shall provide for the required reading of such gages and for the adequate rating of such stations. The number, design, location, and time of installation of gages and stations, the rating of such stations, and the determination of the flow of the affected stream or streams, shall be made under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging in the region of said project; and the Permittee shall advance to said necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Permittee shall, to the satisfaction of the Commission, keep accurate and sufficient records of the stage and flow of the affected stream or streams, and shall make such records available to the Commission at such times as the Commission may prescribe.

B. Sink such test pits or make such borings or other foundation explorations, and make such detailed geologic studies and tests on foundations and fill materials, as are necessary to support preliminary engineering designs and cost estimates.

C. Begin the required investigations within 60 days after acceptance of the permit, and thereafter prosecute said investigations in such manner and at such rate as in the judgment of the Commission will ensure their completion within the period of the permit.

D. Furnish with any application for license subsequently filed with the Commission copies of engineering and geologic reports, results of tests and analyses, and any other information secured in connection with the investigations, examinations and surveys conducted under this permit.

E. Exercise appropriate measures at all times during field studies to prevent irreparable damage to the environment of the proposed project. All test sites shall be restored as closely as possible to their original condition, and to the satisfaction of the Commission's authorized representative, or, where Federal lands are affected, to the satisfaction of the agency administering such lands.

Article 2. A license will be issued for the proposed project only if in the judgment of the Commission said project will be best adapted to a comprehensive plan for the improvement or development of a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes. In reaching a decision on the desirability of issuing a license, the Commission will consider, among other things:

A. Whether the maps, plans, and specifications are such:

(1) That full, practicable utilization will be made of the water, storage possibilities, and head at the site to be developed;

(2) That the structures will be safe and constructed in accordance with good engineering practice; and

(3) That all unnecessary energy losses, whether in hydraulic works or in mechanical or electrical equipment, will be avoided.

B. Whether in relation to existing or probable future projects upon the same or adjacent streams, the potential for the fullest practicable utilization of the available water, storage possibilities, and head will be maintained.

C. Whether said project will be in general accord with the most beneficial utilization of the water for navigation, water power, irrigation, or other public uses, and for aiding flood control, reclamation, and similar developments.

D. Whether proper provision is made for present or future electrical interconnection with other projects or systems in order to take advantage of diversity of streamflow and of power demands.

E. Whether the use to which the power will be devoted is, in general, in accord with the public interest.

F. Whether the applicant is financially able to carry out the development.

G. Whether the construction, maintenance, and operation of the proposed project works will interfere or be inconsistent with the purpose for which any reservation, as defined in the Federal Power Act, was created or acquired.

Article 3. The priority granted under the permit shall be lost if the permittee fails to fulfill the requirements of the permit, if the permit is canceled by order of the Commission, or if the permittee fails, on or before the expiration date of the permit, to file with the Commission or its designated agent an application for license for the proposed project in conformity with the Commission's rules and regulations then in effect.

Article 4. The permittee shall keep accurate records of all expenditures made for the purposes authorized by the permit, together with all vouchers and other supporting data relating to such expenditures, which records and related materials shall be retained by the permittee.

Article 5. The permit confers no authority upon the permittee to undertake construction of the proposed project, or any part thereof, or to occupy or use lands or other property of the United States for the purposes of construction, unless specific permission is given by the Commission for such occupancy or use; and neither the granting of such authority nor the performance of construction work, whether with or without such authority, shall be deemed to have created any equities or to have established any rights with respect to issuance of a license for the proposed project, beyond what would have been created or established had such authority not been given or such work not been performed.

Article 6. The permit is not transferable and may be canceled by order of the Commission upon failure of the permittee to begin in good faith, or to prosecute diligently, the investigations, examinations, and surveys contemplated under the permit, or to comply with any other conditions therein, or for any other good cause shown after notice and opportunity for hearing.

UNRECORDED

SEP 28 1988

PHILLIP J. RASSIER
KENNETH R. ARMENT
Deputy Attorneys General
Department of Water Resources
Statehouse
Boise, Idaho 83720
Telephone: (208) 334-4448

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

IN THE MATTER OF APPLICATION	)	Project No. 3407-004
FOR MAJOR LICENSE BY	)	
COOK ELECTRIC, INC.	)	PETITION FOR APPEAL
	)	FROM STAFF ACTION BY
	)	THE IDAHO DEPARTMENT OF
	)	WATER RESOURCES

TO: Kenneth F. Plumb, Secretary
Federal Energy Regulatory Commission

The Idaho Department of Water Resources [IDWR] hereby petitions the Federal Energy Regulatory Commission [Commission] for appeal from staff action in the above referenced project, pursuant to Rule 1902, 18 CFR § 385.1902 (1986). The petition for appeal is limited to that portion of the order prepared by staff issued on January 15, 1987: (1) rejecting IDWR's request 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

SEP 28 1988

Plan; and (2) refusing to recognize or consider both the recommendations of the IDWR, and the Idaho State Water Plan as a comprehensive plan under section 10(a)(2) of the Federal Power Act [FPA], as amended by the Electric Consumers Protection Act of 1986, Pub. L. 99-485 [EPCA]. In support of this application IDWR states as follows:

I.
COMMISSION STAFF FAILED TO COMPLY
WITH SECTION 10(a) OF THE FEDERAL POWER ACT

A. THE IDAHO STATE WATER PLAN IS A COMPREHENSIVE PLAN WHICH COMMISSION STAFF MUST RECOGNIZE UNDER FPA § 10(a)(2)(A)

Section 10(a)(2)(A) of the FPA, as amended by ECPA, requires the Commission to consider the extent to which a project is consistent with the comprehensive plan for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by the State in which the facility is or will be located. The Idaho State Water Plan is such a comprehensive plan. Article XV, § 7 of the constitution of the state of Idaho established a water resource agency, composed as the Idaho Legislature may comprise, with the "power to formulate and implement a state water water plan for optimum development of water resources in the public interest." Further, the Idaho Legislature has the authority to amend or reject the plan, and all changes to the plan are required to be submitted to the Idaho Legislature. The Idaho Legislature, pursuant to Idaho Const., Art. XV, § 7, designated the Idaho

Water Resource Board (IWRB), an agency located within the Idaho Department of Water Resources, as the constitutional water agency responsible for the formulation and implementation of a state water plan.

In response to a November 6, 1986 letter from Richard T. Hunt, Director of the Office of Hydropower Licensing (Exhibit A) which specifically referenced the Magic Dam Project, IDWR sent the Commission copies of the 1982 Idaho State Water Plan (currently being amended) and Idaho Const., Art. XV § 3 which provides that the state may limit and regulate the use of water for power purposes (See, Exhibit B). Despite the submission of the Idaho State Water Plan in this matter, and the requirement under FPA § 10(a)(2)(A) that the Commission shall consider the extent to which the project is consistent with a comprehensive plan prepared by the state in which the facility is or will be located, the Commission staff failed to address the existence, substance, or effect of the plan in relation to licensing of the project under the "Comprehensive Plans" portion of the staff's order. The complete failure of the Commission staff to address the Idaho State Water Plan, in derogation of statutory duties, may be generously characterized as arbitrary and capricious action. Under FPA § 10(a)(2)(A), the Commission must address the extent to which the project and its licensing conditions are consistent with the Idaho State Water Plan. The staff's statement that "[n]o other comprehensive plans of the type referred to in section 10(a)(2) of the FPA are relevant to

SEP 28 1988

this project have been identified" is unjustified, incorrect and not supported by the record.

The Idaho State Water Plan balances the relevant competing environmental, economic and social interests in a true comprehensive plan in the public interest for future water resource management in Idaho. Further, the Idaho State Water Plan does not conflict with the plans developed by the Northwest Power Planning Council in substance or jurisdiction. Pacific Northwest Electric Power Planning and Conservation Act §§ 2(3)(A) and 10, 16 U.S.C. §§ 839 and 839(g) respectively. A great deal of planning and resources have been expended to implement the Idaho State Water Plan. An excerpt from the Forward section of the plan states:

Implementation of the State Water Plan will require changes in Idaho law and public attitudes. The Idaho Water Resource Board will work closely with the legislature to secure changes in the law where necessary. Public understanding and compromise will be required by all interests to assure the plan's full implementation. Unless the plan is implemented, there may not be sufficient water supplies left in many areas to maintain Idaho's quality of life. The Idaho Water Resource Board has found great support among the citizens of Idaho for a state water plan and is confident that it will be accepted as a process for continuing Idaho's economic growth while protecting a quality environment.

Because public priorities in economic and social conditions change, this plan will be reviewed and updated on a continuing basis, according to statute this review must take place at least once every five years. Future reviews will re-examine the need for water allocations, evaluate groundwater and water quality policies, and address other issues on the basis of opportunities to better use, protect and preserve the state's water resources for generations to come.

SEP 28 1988

Policy 32 of the state water plan specifically recognizes the competing and sometimes complementary interests of agriculture, municipal and industrial development and use, hydropower generation, navigation, aquaculture, recreation, Indian resource use, fish and wildlife, water quality and pollution control, interstate considerations and administration of the state water plan in the Snake River basin. Among the legislation adopted in conformance with the state water plan are Idaho Code §§ 42-203B, C, and D. These statutes authorize the subordination of hydropower water rights and establish a limited pool of trust water which may be depleted by future upstream uses. The extent of subordination is not unlimited or unreasonable. Hydropower water users have the statutory right to negotiate the extent of water right subordination with the state. New upstream water users who seek reallocation of the trust water must have their application reviewed in conformance with the following:

(2) (a) The director in making such public interest determinations for purposes of this section shall consider:

- (i) The potential benefits, both direct and indirect, that the proposed use would provide to the state and local economy;
- (ii) The economic impact the proposed use would have upon electric utility rates in the state of Idaho, and the availability, foreseeability and cost of alternative energy sources to ameliorate such impact;
- (iii) The promotion of the family farming tradition;
- (iv) The promotion of full economic and multiple use development of the water resources of the state of Idaho;

SEP 28 1988

(v) In the Snake River Basin above the Murphy gauge whether the proposed development conforms to a staged development policy of up to twenty thousand (20,000) acres per year or eighty thousand (80,000) acres in any four year period.

No single factor enumerated above shall be entitled to greater weight by the director in arriving at this determination.

I.C. § 42-203C(2)(a).

The Idaho State Water Plan is the embodiment of practical, deliberate and balanced resource planning and policy decisions. Consequently, since the staff did not identify any comprehensive plan prepared by the Commission or staff, nor did staff identify any comprehensive plans which conflict with the Idaho State Water Plan or provide for other economic development outside the realm of hydropower generation, Commission staff was incorrect in not identifying and deferring to the efforts of the state of Idaho in adopting a comprehensive state water plan.

B. COMMISSION STAFF FAILED TO CONSIDER THE RECOMMENDATIONS OF IDWR SUBMITTED UNDER FPA § 10(a)(2)(B)

Section 10(a)(2)(B) of the FPA, as amended by ECPA, states that the Commission shall consider "[t]he recommendations of Federal and State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located." IDWR is such a state agency for Idaho. See, ¶¶ I and II, Project No. 3407-000, Motion to Intervene of Idaho Department of Water Resources. Commission staff, however,

SEP 28 1988

failed to consider the recommendations of IDWR, as expressed in the IDWR motion to intervene, as mandated by FPA § 10(a)(2)(B). The Commission also has demonstrated a recent practice of ignoring requests by IDWR made through interventions at the preliminary permit stage of Commission applications for applicants to consult with IDWR on the applicant's feasibility studies in the area of water rights and effects upon state minimum stream flow values, including effects upon fish and wildlife, recreation, and aesthetic beauty. The Commission's January 29, 1987 order issuing a preliminary permit to North Fork Power for the proposed St. Anthony Canal Project No. 9998-000, is the first occurrence of the Commission specifically requiring an applicant to consult with IDWR during preliminary permit studies.

Instead of complying with FPA § 10(a)(2)(B), however, Commission staff chose merely to rely on the reasoning set forth in the Commission's Horseshoe Bend license order. The staff's reliance on the Horseshoe Bend license order is totally inappropriate since at the time of issuance of the order the FPA had not yet been amended by the EPCA, and the Commission was not compelled to, nor did it consider the recommendations of IDWR due to the Commission's perceived inconsistency of the IDWR recommendations with the jurisdiction of the Commission. In addition, one of the major facts which the Commission relied on in its Horseshoe Bend order, the vigorous opposition of the applicant to a proposed subordination condition, was not

RECEIVED
SEP 28 1988

present in the instant matter, rather Cook Electric Inc. expressed the desire to have the subordination clause included in its Commission license.

Furthermore, the Commission staff relied on provisions of the Horseshoe Bend order which the Commission is presently reconsidering. See, Exhibit C. A Commission order should be final before Commission staff is allowed to treat such an order as final by applying it uniformly to different projects under considerably different facts. Indeed, both the Commission and the staff have failed to explain the departure from the long-standing precedence of including a water right subordination condition on a federal power license when requested by the State of Idaho. See, Hells Canyon Project No. 1971, License Article 41.

C. COMMISSION STAFF FAILED TO CONSIDER IRRIGATION AND OTHER BENEFICIAL PUBLIC USES UNDER FPA § 10(a)(1)

Section 10(a)(1) of the FPA requires the Commission to modify the project so it will be best adapted to a comprehensive plan for improving or developing a waterway for many beneficial public uses including irrigation, flood control, water supply and recreation. As discussed above, Commission staff failed to identify the Idaho State Water Plan as an existing comprehensive plan under FPA § 10(a)(2)(A). In addition, staff identified no other comprehensive plans which dealt with the broad spectrum of multiple use planning which is contained in the Idaho State Water Plan. Since staff has failed

SEP 28 1988

to consider these other beneficial public uses, by definition staff has failed to adapt the project to a comprehensive plan as required by FPA § 10(a)(1). Instead, staff has decided to ignore the existence of the Idaho State Water Plan and the mandates of FPA § 10(a)(1). In National Wildlife Federation v. F.E.R.C., 801 F.2d 1505 (9th Sure. 1986), as in the present case, the decision of Commission staff "is not supported by any evidence in the record, let alone 'substantial evidence' as required by 16 U.S.C. § 8251(b). Id. at 1511.

II.

IDWR IS THE AGENCY IN THE STATE OF IDAHO RESPONSIBLE FOR THE CONTROL, APPROPRIATION, USE AND DISTRIBUTION OF WATER

The Constitution of the state of Idaho provides that the waters of the state are subject to the regulation and control of the state. Idaho Const., Art. XV, §§ 1,3. IDWR is that agency in state government designated to supervise the appropriation and allotment of the waters of the state. Idaho Code §§ 42-101, 42-1701 (1977), 42-1805 (Supp. 1986).

An integral part of Idaho water regulation has been the subordination of water rights for power purposes to protect the public interest from restrictions on all future development. Idaho Const., Art. XV, § 3; Idaho Code § 42-203B (Supp. 1986). Under the appropriation doctrine prevalent in the western states, an unsubordinated hydropower water right may prevent any junior priority upstream water diversion which would diminish the flow of water at the project. The hydropower project

RECEIVED

SEP 28 1988

could prevent new consumptive uses of the water for residential, commercial and institutional uses as well as industrial, agricultural and environmental projects. This would result in the licensee of the project, rather than the state, having the ultimate control over the future appropriation, use and distribution of all water upstream from the project. To attempt to avoid such a violation of the public trust, most of the major hydropower projects constructed in Idaho during the last thirty years have been issued subordinated water rights by the state of Idaho.

The Commission's order, as prepared by staff, in issuing a major license for this project does not recognize the need for subordination to any future upstream consumptive water uses on the stream over the 40 year term of the license. The failure to address future upstream water needs is particularly striking in light of the fact that the order and accompanying Environmental Assessment do address almost every other present and future concern including: fishing, water quality, botanical and wildlife, visual, cultural, recreational and environmental. It is error for the staff to conclude that the project, with the present conditions, is best adapted to a comprehensive plan for the waterway of the Big Wood River when the license does not address future upstream consumptive water needs in the basin over the 40 year term of the license.

To the extent the Commission's order as prepared by staff precludes other forms of economic development in the waterway

SEP 28 1988

upstream from the project, it constitutes a serious and unnecessary infringement upon important elements of state sovereignty which is not supported by the record.

III.
SECTION 27 OF THE FEDERAL POWER ACT
PRESERVES A ROLE FOR STATE WATER LAW

Section 27 of the Federal Power Act mandates that the control, appropriation, use, or distribution of water by the respective states is unaffected by the FPA. Despite the existence of this Congressional mandate saving the traditional jurisdiction of the states over their water resources, the Commission staff fails to give any meaningful recognition to the role of state water law. The resulting implication is that the operation of licensed projects takes complete precedence over state water law because state water law may affect to some degree the manner in which a project is operated. Consequently, IDWR has sought the inclusion of water right subordination language in the project license to avoid litigation over the establishment of future water rights. Until such time as the Commission acknowledges state jurisdiction in this area under FPA § 27, inclusion of the language is necessary for the integration rather than the duplication of federal and state jurisdictions under the Act. First Iowa Hydro-Electric Coop v. FPC, 328 U.S. 152, 176 (1946).

RECEIVED

SEP 28 1988

IV.

IDWR'S SUBORDINATION REQUEST IS CONSISTENT WITH BOTH
THE INTENT OF CONGRESS AND ESTABLISHED LAW

A. Section 27 of the Act Saves the Traditional
Jurisdiction of the States Over the Regulation of
Their Water Resources

The Commission's order as prepared by staff denies the subordination condition requested by IDWR for the same reasons given by the Commission in its Horseshoe Bend license order (Boise Cascade Corporation, Project No. 5376-001, 36 FERC ¶ 61, 135). The only authority cited by the Commission in support of its ruling against IDWR's subordination request in Horseshoe Bend was First Iowa Hydroelectric Coop. v. FPC, 328 U.S. 152 (1946). Contrary to the Commission's apparent reading of this decision, First Iowa does not support the staff's denial of the subordination request in this case. In First Iowa, the state of Iowa claimed that § 10 of the Act required the Federal Power Commission [FPC] to abstain from licensing a project until such time as the applicant acquired a permit from the state. Iowa law prohibited the construction of the project since the project would not return the diverted water back into the same river channel. The Court determined that the FPC, the Commission's predecessor, had exclusive jurisdiction over the licensing of hydropower projects on navigable rivers. Since the state's argument dealt with licensing of the project under § 9, and the state law would prohibit the project, the Court found that the state's position was in direct conflict with

RECEIVED
SEP 28 1988

Congressional intent in establishing the FPA and was therefore pre-empted by federal law.

Important to the present case, however, is the fact that the Court stressed the difference between FPA §§ 9 and 27. The Court stated that the § 27 savings clause "in protecting state laws from supersedure, is limited to laws as to the control, appropriation, use or distribution of water in irrigation or for municipal or other uses of the same nature." 328 U.S. at 175-76. In the present case, IDWR acknowledges the jurisdiction of the Commission to issue a federal hydropower license for the project. It is the position of IDWR, however, that issuance of the FERC license does not affect IDWR's regulation of Idaho waters unless state law is in direct conflict with the Act. IDWR does not seek to prohibit the project. IDWR has merely requested acknowledgment that the licensee and the Commission have complied with the intent of Congress as expressed in § 27 and as interpreted by the Supreme Court in the First Iowa decision.

In contrast to the interpretation of FPA § 9 contained in First Iowa, is the Supreme Court's interpretation in California v. United States, 438 U.S. 645 (1978), of § 8 of the Reclamation Act of 1902, which is a state water law savings clause very similar to FPA § 27. The Court in California v. United States overturned a decision by the Ninth Circuit Court of Appeals which held that California cannot condition its allo-

RECEIVED
SEP 28 1988

cation of water to a federal reclamation project. The Court stated:

Section 8 cannot be read to require the Secretary to comply with state law only when it becomes necessary to purchase or condemn vested water rights. That section does, of course, provide for the protection of vested water rights, but it also requires the Secretary to comply with state law in the 'control, appropriation, use, or distribution of water.' Nor, as the United States contends, does § 8 merely require the Secretary of the Interior to file a notice with the State of his intent to appropriate but to thereafter ignore the substantive provisions of state law. The legislative history of the Reclamation Act of 1902 makes it abundantly clear that Congress intended to defer to the substance, as well as the form, of state water law. The Government's interpretation would trivialize the broad language and purpose of § 8.

Id. at 674-75.

The Court also noted as a further example of Congressional intent the policy of Congress stated in the Flood Control Act of 1944, 53 Stat. 888, to defer to state water law: "it is the 'policy of the Congress to recognize the interests and rights of the States in determining the development of watersheds within their borders and likewise their interests and rights in water utilization and control.'" Id. at 678. The Court explained the need to observe state water law by quoting from a Senate report on the McCarran Amendment, 43 U.S.C. § 666(a), which subjects the United States to state-court jurisdiction for general stream adjudications:

"In the arid Western States, for more than 80 years, the law has been the water above and beneath the surface of the ground belongs to the public, and the right to the use thereof is to be acquired from

SEP 26 1988

the State in which it is found, which State is vested with the primary control thereof.

Since it is clear that the States have the control of water within their boundaries, it is essential that each and every owner along a given water course, including the United States, must be amenable to the law of the State, if there is to be a proper administration of the water law as it has developed over the years." S. Rep. No. 755, 82d Cong., 1st Sess., 3,6 (1951).

Id. at 678-79.

A U.S. district court explained the relationship between First Iowa and California v. United States, in the following manner:

If there is one theme that runs through both First Iowa and California v. United States, it is that duplicative regulation is to be avoided. Both the States and the Federal Government have roles to play in regulating the use of our Nation's waters, but their roles are different. The States have been given primary jurisdiction over proprietary rights in water. Local regulation is appropriate because of the legal and geographical differences between the arid Western States, where the doctrine of prior appropriation generally prevails and water rights are subject to strict state regulation, and the Eastern States, where water rights are governed by the doctrine of riparian rights and an abundance of water obviates the need for complex state water distribution plans.

Town of Springfield, Vt. v. McCarren, 549 F. Supp. 1134, 1156 (1982).

Thus, unless the requested subordination provision is directly inconsistent with the FPA, the Commission must recognize the subordination condition imposed under state law and should modify the present order to either include the provision

MICROFILMED

as a condition on the project license or recognize the validity of a similar condition to be placed on the licensee's state water right for the project.

B. The Subordination of Water Rights for the Magic Dam Project Is Not Directly Inconsistent with Congressional Intent

The Commission's order as prepared by staff merely references the reasons given by the Commission in the Horseshoe Bend license determination that subordination of the water rights of the project is not in the public interest and would violate Congressional intent of the Act. The Commission claimed in the Horseshoe Bend license order that inclusion of a subordination clause in the license would in fact be regulation by IDWR which would render the financing, construction and operation of the project so speculative that the project would be effectively voided. The Commission made these conclusions without any support from the record. The order further avoided any recognition of the role of the state in the future allocation of water resources in the watershed. The Commission implied that only if the State has a pre-existing detailed estimate of the timing and extent of future water needs in the watershed will the Commission even consider giving any recognition to IDWR's subordination request.

The Commission's exaggerated concern, expressed in the Horseshoe Bend license, that the State would be in a position to destroy the viability of the project is both demeaning to the state and demonstrative of a lack of understanding, or

SEP 28 1988

willingness to recognize, the practical realities of water distribution to downstream senior users on the stream.

The Commission staff's concern about the viability of the project, if a subordination provision is imposed, also fails to take into account numerous other factual and legal considerations which IDWR should be given an opportunity to present before the Commission on this matter. IDWR is not aware of the applicant having any difficulty in financing the instant project, nor does IDWR have knowledge that there is any evidence of financial difficulty in the record due to IDWR's subordination. The staff's determination of the subordination issue in this matter without providing an opportunity for a more thorough presentation of the relevant factual and legal considerations can only be characterized as arbitrary and capricious decision making. The Commission's January 29, 1987 order issuing a preliminary permit to North Fork Power, Project No. 9998-000, is the first occasion that the Commission has ever required an applicant to coordinate with the IDWR to include consideration of subordination of water rights in the applicant's feasibility studies despite numerous previous requests by IDWR in other Commission proceedings.

The Commission's order as prepared by staff fails to explain how it determined the requested subordination provision would make the project infeasible in light of the complete lack of evidence presented on the feasibility of a subordination clause and the staff's knowledge that the largest hydropower

SEP 28 1988

complex in the state remains viable notwithstanding the presence of a subordination provision in the FERC license. See Hells Canyon Project No. 1971, License Article 41. Unlike the Horseshoe Bend proceedings, the issue of lack of feasibility for financing the project due to the inclusion of a subordination condition was never even mentioned by the applicant or the Commission staff. The staff's concern regarding the State's willingness to destroy the viability of the project fails to recognize state policy expressed in legislation and the State Water Plan aimed at protecting a healthy hydropower base for the state. Particular attention is focused on Idaho Code § 42-203B (Supp. 1986) which provides that the holder of a water right for power purposes may enter into an agreement with the state for the purpose of having the state establish a minimum stream flow protect the viability of a hydropower project.

V. CONCLUSION

The staff's overt failure to comply with FPA §§ 10(a)(2)(A) and (B), without giving substantive review or even acknowledging the existence of the Idaho State Water Plan and the recommendations of the IDWR is shocking! The Commission and its staff must abide by the requirement under FPA § 10(a)(1) that project specifications and conditions need to be adapted to a comprehensive plan which includes other beneficial public uses aside from water power development and environmental mitigation efforts. In arid Idaho water is a vital resource in

SEP 28 1988

the economic development of the state. The Commission must consider economic development which may consume water as a beneficial public use in the comprehensive plan for the Big Wood River Basin. The electric power surplus existing in Idaho and the pacific northwest will not dissipate unless the state and region can overcome their sluggish economic conditions through new and progressive economic development. Unless the latter occurs, there will be no need for the Commission to issue any licenses for new projects as there will be no demand for the additional electricity generated.

Furthermore, the Commission's order as prepared by staff would purport to vest in the licensee, as a matter of federal pre-emptive law, the right to control future development of the Big Wood watershed. The Commission order prepared by staff carries the implications of water right subordination to unrealistic extremes without paying any attention to the role of the state and IDWR in safeguarding the waters of Idaho for the public trust in compliance with FPA § 27. IDWR'S regulation of state waters does not attempt to void or prohibit the existence of the project contrary to the intent of Congress. IDWR's request for a subordination provision in the license is consistent with the dictate of FPA § 27 that the control, appropriation, use, and distribution of water within Idaho is unaffected by passage of the Act.

MICROFILMED

SEP 28 1988

RELIEF REQUESTED

For the reasons given above, IDWR respectfully requests as follows:

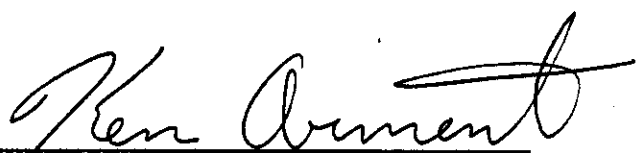
1. The Commission grant the petition for appeal from staff action.
2. The Commission modify the order of January 15, 1987 as prepared by staff to include the subordination provision requested by IDWR as a condition to the license.
3. The Commission recognize the Idaho State Water Plan as a comprehensive plan under FPA § 10(a)(2)(A) and consider the extent to which the project is consistent with the Idaho State Water Plan.
4. The Commission consider the recommendations of the IDWR in conformance with FPA § 10(a)(2)(B).
5. The Commission include studies of water right subordination in development of a comprehensive plan for hydropower development in the Big Wood River Basin in conformance with FPA § 10(a)(1).
6. For such other and further relief as the Commission may deem just and proper.

DATED this 13th day of February, 1987.

JIM JONES
Attorney General
State of Idaho

RECEIVED

SEP 28 1988


KENNETH R. ARMENT
Deputy Attorney General
Idaho Department of
Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That I have this day served the foregoing
Petition For Appeal From Staff Action By The Idaho Department
of Water Resources, upon the following:

Mr. Warren P. Chapman
Cook Electric, Inc.
P.O. Box 1071
2356 Beryl Avenue
Twin Falls, ID 83301

Nicolas R. Ysursa
Attorney for Idaho Power Company
1220 Idaho Street
P.O. Box 70
Boise, ID 83707

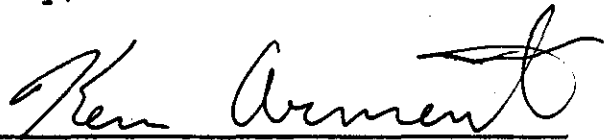
Fred E. Springer, Chief
Applications Branch
Office of Hydropower Licensing
Federal Energy Regulatory Commission
Room 208 RB
825 North Capitol Street, N.E.
Washington, D.C. 20426

Lee S. Sherline
Leighton & Sherline
Suite 101
1010 Massachusetts Avenue N.W.
Washington, D.C. 20001-5402

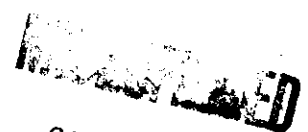
RECEIVED

SEP 28 1988

DATED this 13th day of February, 1987.



KENNETH R. ARMENT
Deputy Attorney General
Idaho Department of Water
Resources



SEP 28 1988

EXHIBIT A

INDEXED

SEP 28 1988

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

RECEIVED
NOV 10 1986

NOV. 6. 1986

Department of Water Resources

Mr. A. Kenneth Dunn
Director
Idaho Department of Water Resources
Statehouse
Boise, ID 83720

Dear Mr. Dunn:

The recently enacted Electric Consumers Protection Act of 1986 amends portions of the Federal Power Act. The amended Section 10(a) of the Federal Power Act (Act) expands the discussion and requirements related to comprehensive plans. The amended Section 10(a) requires the Federal Energy Regulatory Commission (Commission), in its review of hydropower license applications, to consider the extent to which each project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by the state in which the facility is or will be located.

Pursuant to the requirements of the Act, Commission's staff is identifying and reviewing relevant state comprehensive plans to determine if licensing actions pending before the Commission would affect, or be affected by, these plans. It is particularly important that the Commission receive from your agency any comprehensive plans that would affect, or be affected by, specific proposed hydroelectric projects now pending before the Commission (See enclosed public notices for these projects). Therefore, I am asking you to submit to the Commission any relevant state comprehensive plans prepared by your agency addressing the planning and management of waterways in your state for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat) and for other beneficial public uses, including irrigation, flood control, water supply, recreation, cultural and other relevant resources of the state in which the project is located.

It would be appreciated if you would send the plans within 10 days or notify the Commission if you do not have any relevant plans to submit. Please send the response to:

Federal Energy Regulatory Commission
Division of Environmental Analysis
825 North Capitol Street, NE
Washington, D.C. 20426
Attn: Mr. Einar S. Olsen - RC-93

MICROFILMED

SEP 28 1988

-2-

Should you need any clarification regarding this request, please contact Mr. Einar S. Olsen at (202) 376-1949. Thank you for your assistance.

Sincerely,

A handwritten signature in dark ink, reading "Richard T. Hunt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard T. Hunt
Director, Office of
Hydropower Licensing



SEP 28 1988

a. Type of Application: Major License

b. Project No: 3924-002

c. Date Filed: June 28, 1983

d. Applicant: Consulting Associates, Inc.

e. Name of Project: Malad High Drop Power

f. Location: On the Big Wood River in Gooding County, Idaho

g. Filled Pursuant to: Federal Power Act, 16, U.S.C. §5791 (a) - 825 (r)

h. Contact Person: Vernon F. Ravenscroft, P.O. Box 893,
Boise, Idaho 83701

i. Comment Date: MAR 26 1984

j. Description of Project: The proposed project would consist of: (1) modification of an existing inlet structure at elevation 3,276 feet; (2) a 700-foot-long, 72-inch-diameter pipeline; (3) a 2.7-mile-long, 7-foot-deep trapezoidal canal; (4) a 0.79-mile-long, 66-inch-diameter penstock; (5) a powerhouse containing a generator with a rated capacity of 5MW and an average annual output of 38.61 GWh; (6) a tailrace discharging into the Snake River at elevation 2,735 feet; (7) a 0.25-mile-long transmission line; and (8) a total of one mile of new road. The estimated cost of the project is \$9,424,166 in 1984 dollars. The Applicant proposes to restore a historic wagon bridge and the Kelton Trading Post to enhance recreational use of the project area.

k. Purpose of Project: Project power would be sold to the Idaho Power Company.

INDEXED & FILED

SEP 28 1988

- a. Type of Application: Major License
- b. Project No. 3407-004
- c. Date Filed: July 24, 1984
- d. Applicant: Cook Electric, Inc.
- e. Name of Project: Magic Dam
- f. Location: At the Big Wood Canal Company's Magic Dam, effecting Bureau of Reclamationland, on Big Wood River in Blaine County, Idaho
- g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§791(a) - 825(r)
- h. Contact Person: Mr. Warren P. Chapman
Cook Electric, Inc.
P.O. Box 1071
2356 Beryl Avenue
Twin Falls, Id 83301
- i. Comment Date:
- j. The Project description should be modified to read as follows:

Description of Project: The existing project facilities at the site consist of: (1) a 128-foot-high, 3,100-foot-long earthfill dam; (2) a 400-foot-long spillway; (3) a dike, located adjacent to the spillway, approximately 800 feet long, (4) a 36.5-foot-high outlet tower; (5) a 620-footlong, 132-inch-diameter outlet conduit; (6) a bifurcation; (7) 2 emergency gates and 2 outlet valves in a valvehouse,; and (8) a 3,740-acre reservoir with a capacity of 191,500 acre-feet at a normal maximum surface elevation of 4,935 feet. In addition the project would consist of the following proposed facilities: (1) a 800-foot-long additional spillway; (2) raise the crest of the dike to elevation 4,945 feet mean sea level; (3) a new bifurcation, approximately 40 feet upstream of the existing bifurcation; (4) a 170-foot-long, 132-inch-diameter penstock; (5) a powerhouse containing 3 generating units with a combined capacity of 9.0 MW; (6) the 4.16-kV generator leads; (7) a 4.16/46-kV step-up transformer; (8) a 2.8-mile-long transmission line which would connect to existing 46-kV Idaho Power Lines; and (9) appurtenant facilities.

RECEIVED

SEP 28 1988

- a. Type of Application: Major License (5MW)
b. Project No: 8468-000
c. Date Filed: July 30, 1984
d. Applicant: Clearwater Hydro Limited Partnership
e. Name of Project: Clearwater
f. Location: On Orofino Creek, in Clearwater County, Idaho
g. Piled pursuant to: Federal Power Act 16 U.S.C. §§791(a) - 825(r)
h. Contact Person: Charles D. Cuddy, 125 Johnson Ave.
P.O. Box 64, Orofino, Idaho 83544
i. Comment Date: September 3, 1985
j. Description of Project: The proposed run-of-river project would consist of: (1) a 6-foot-high, 65-foot-long concrete dam at elevation 1990 feet with negligible impoundment; (2) a 6,200-foot-long, 6.5-foot-diameter low pressure steel conduit on the right slope of the canyon; (3) a surge tank; (4) an 800-foot-long, 34-inch-diameter steel penstock; (5) a powerhouse containing four generating units with a combined capacity of 2.063 MW and an average annual generation of 9 GWh; and (6) a 3-mile-long transmission line, along an existing right-of-way north of Orofino Creek, to a Washington Water Power Company line. Project construction cost would be \$2,600,000.
k. Purpose of Project: Project power would be sold.

MICROFILMED

SEP 28 1988

- a. Type of Application: Minor License
- b. Project No.: 7447-002
- c. Date Filed: August 30, 1985, supplemented January 16, 1986
- d. Applicant: Commercial Energy Management, Inc.
- e. Name of Project: Portneuf River Hydroelectric
- f. Location: On the Portneuf River in Bannock County, Idaho,
in Section 22, Township 9 South, Range 18 East of
the Boise Meridian.
- g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §791(a) - 825
- h. Contact Person: Mr. Robert Bird
Commercial Energy Management, Inc.
175 La Belle Drive
Rigby, ID 83442
(208) 745-7625
- i. Comment Date: May 1986
- j. Description of Project: The proposed run-of-river project would consist of: (1) a 40-foot-long, 4-foot-high reinforced concrete diversion dam with a crest elevation of 5089.4 feet and a gated penstock intake; (2) a 1,350-foot-long, 72-inch-diameter steel penstock; (3) a 25-foot by 57-foot reinforced concrete powerhouse containing three generating units rated at 107 kW, 214 kW, and 423 kW at an average head of 49.2 feet and a total hydraulic capacity of 210 cfs, and discharging into the Portneuf River at a normal tailwater elevation of 5035 feet; and (4) a 0.5-mile-long, 12.5-kV transmission line connecting to a Utah Power and Light Company distribution line.
- k. Purpose of Project: Project energy would be sold to Utah Power and Light Company. Applicant estimates that the average annual energy generation would be 4.1 GWh and that the total project cost would be \$1,080,000.

MICROFILMED
SEP 28 1988

EXHIBIT B

MICROFILMED

SEP 28 1988



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:

Statehouse

Boise, Idaho 83720

(208) 334-4440

November 20, 1986

Mr. Einar S. Olsen
Federal Energy Regulatory Commission
Washington, D.C. 20426

Dear Mr. Olsen:

Pursuant to Mr. Hunt's letter of November 6, 1986 regarding your agency's action on Project Nos. 3924-002, 3407-004, 8468-000, and 7447-002; the accompanying information may be of some assistance.

The Idaho State Constitution (Article XV, Section 3; copy attached) provides that the state may regulate and limit the use of the state's water when such use is for power purposes. Idaho Code (Title 42, Chapter 2, Section 203; copy attached) spells out how these constitutional authorities are to be implemented.

The four projects cited above are all on tributaries to the Snake River. Policy 32 of the State Water Plan (copy attached) addresses the use of water within the Snake River Basin. The water allocations for consumptive purposes within the basin are premised on the assumption that, as per Idaho Law, water rights for hydropower purposes are subordinate to upstream consumptive uses.

Very truly yours,

A. Kenneth Dunn
Director

AKD:cjk
Attachments

MICROFILMED

SEP 28 1988

EXHIBIT C

MICROFILMED

SEP 28 1988

RECEIVED

OCT 9 1986

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Department of Water Resources

Before Commissioners: Anthony G. Sousa, Acting Chairman;
Charles G. Stalon, Charles A. Trabandt
and C. M. Naeve.

Boise Cascade Corporation)

Project No. 5376-002,
and -003

ORDER GRANTING REHEARING FOR
PURPOSE OF FURTHER CONSIDERATION

(Issued September 29, 1986)

The Petitioners 1/, pursuant to 18 C.F.R. § 385.713 (1986), have filed separate applications for rehearing in the above-captioned proceedings. 2/ In order to review more fully the arguments raised, the Commission grants rehearing of the order solely for the purpose of further consideration. This action does not constitute a grant or denial of the applications on their merits in whole or in part.

The Commission orders:

Rehearing of the Commission order in the above-captioned proceedings is granted solely for the purpose of further consideration. Because this order is not a final order on rehearing, no responses to the applications for rehearing will be entertained by the Commission. See Section 385.713(d) of the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kenneth F. Plumb

Kenneth F. Plumb,
Secretary.

1/ The Idaho Department of Water Resources and the Idaho Power Company.

2/ Boise Cascade Corporation, 36 FERC ¶ 61,135 (1986)

RECEIVED
SEP 28 1986

DC-A-63



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

July 15, 1981

Mr. Kenneth F. Plumb, Secretary
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, D.C. 20426

Dear Mr. Plumb:

RE: Project No. 4488-000 "COMMENT"

We are in receipt of a Notice of Application for Preliminary Permit for the above referenced project, in the name of the Big Wood Canal Company and American Falls Reservoir District No. 2.

A review of our water right records reveals that on February 20, 1981, the Big Wood Canal Company and American Falls Reservoir District No. 2 submitted to this department an Application for Permit to appropriate the public waters of the State of Idaho, for the above referenced project. This application, identified as No. 37-7881, is currently being reviewed by this office.

In addition, Cook Electric, Inc. filed a water right application on essentially the same project on August 14, 1980. The Cook Electric application, numbered 37-7848, refers to an application for a preliminary FERC permit numbered 3407-000.

We are deeply concerned about how the competing applications for preliminary FERC permits will interface with the competing applications for water right permits. To prevent a potentially confusing situation regarding which applicant has superior development rights, we request that FERC develop a procedure for coordinating issuance of preliminary permits with water appropriation permits issued by the state.

MAILED

SEP 28 1981

AKD:alw
cc: Fred Springer

Sincerely,

for
A. KENNETH DUNN
Director

INTER-DEPARTMENT MEMO — 1

FROM Bob Fleener

DATE 2-4-81

TO File 37-7343

SUBJECT Hearing delay

Dennis Voorhes, applicants attorney has a trial that will continue through Thursday and therefore asks that pre-hearing conference be postponed. We agreed and will call the other parties involved.

I HAVE CALLED ALL PARTIES INVOLVED

SEP 28 1988

GARY

DDF

SIGNATURE

AMPCO Electric Controls

Manufactured by

COOK ELECTRIC, Inc.

P. O. Box 1071, 2356 Beryl Ave., Twin Falls, Idaho 83301

Phone (208) 734-3252

WARREN P. CHAPMAN

Res. 734-6825

COOK ELECTRIC, Inc.

PHONE:
734-3252

P. O. BOX 1071
TWIN FALLS, IDAHO
83301

Maddox Job - Oregon.....500 HP & 200 HP panels, pumps, motors
& wiring
Kilgore Job - Oregon.....400 HP panel, pump, motor & wiring
Simtag Job - Oregon.....2-1000 HP, 2-500 HP, 4160V, 35-pivots & wiring
Allied Chemical Corp. - Wyoming.....600 HP motor starter, 3-motor control centers
City of Teton Pump Station - Idaho....60 HP special panel
City of Mountain Home Pump - Idaho....400 HP panel, pump, motor & wiring
L & LL Farms - Washington.....2-60 HP, 2-100 HP pumps & motors
Badger Mountain Irrigation District...3-1500 HP, 2-1000 HP, 14-200 HP, 12-boosters
& wiring
Stansbury Coal Co. - Wyoming.....250 HP control panel
Arch Mineral Corp. - Wyoming.....Low voltage distribution center
T Lazy S Farms - Nevada.....1-400 HP magnetic autotransformer, 3-300 HP
part-wind, 2-100 HP panels
Blue Tag Farms - Nevada.....1-400 HP magnetic autotransformer, 5-300 HP
part wind, 2-125 HP panels
Van Dyke Project - Montana.....33 boosters
City of Middleton - Idaho.....1-100 HP, 1-50 HP special panels
City of Nampa - Idaho.....1-200 HP, 4-50 HP, 4-40 HP, 1-100 HP panels
Boise Water Corporation - Idaho.....2-200 HP special panels
Idaho State Penitentiary - Idaho.....1-500 HP panel & wiring
Ore-Ida Foods-Idaho.....Relay cabinet
Pali-Baba, Sabzab - Westinghouse-Iran...2-DS breakers and bus duct
Phillips Petroleum Co. - New Mexico...Neutral switching & grounding equipment
Delamar Silver Mines - Oregon.....5 KV AWP switch
King Hill Project - Idaho.....6-900 HP, 5-400 HP, 1-600 HP with DHP
breakers, ampgard panels 10-200 HP w/480 Volt
control
SimTag Project - Washington.....2-500 HP, 2-1000 HP with AWP 1200 Amp disconnect
and ampgard starters
Morrison-Knudsen - Wyoming.....Tire-mounted DHP 4160 volt air circuit breaker
F.M.C. Corp. - Wyoming.....15 KV 1200 Amp DHP breaker

Note: Horsepower above 400 HP is normally either 2400 V or 4160 V.

SEP 26 1968

COOK ELECTRIC, Inc.

PHONE
734-3252

P. O. BOX 1071
TWIN FALLS, IDAHO
83301

PARTIAL LIST OF MINING, INDUSTRIAL AND IRRIGATION PROJECTS FOR WHICH
COOK ELECTRIC, INC. HAS FURNISHED MOTOR CONTROLS AND SWITCHGEAR

Irrigro Project - Washington.....3-1000 HP-500 HP & misc. panels
Grindstone Butte Project - Idaho.....16-1500 HP-35 boosters-50-200 HP & wiring
Winnemucca Farms - Nevada.....55-250 & 200 HP & wiring
K2H Farms - Washington.....12-1000 HP & wiring
Prior Land Co. - Oregon.....Purchasing & design on 51,000 acres
Bell Rapids Project - Idaho.....24-1500 HP-200 individual panels & wiring
Flying H Project - Idaho.....4-200 HP-4-600 HP-26-150 HP & wiring
Murdock Farms - Nevada.....20-200 & 400 HP & wiring
Chalk Flats Project - Idaho.....4-600 HP panels & wiring
Bureau of Indian Affairs - Idaho.....13 boosters & wiring
Powell-Goodin Farms - Oregon.....6-1000 HP & wiring
Mikami Brothers - Oregon.....8-800 HP & wiring
Blaine Mecham Project - Idaho.....400 HP & below
Chet Tindall Project - Idaho.....400 HP & below
Nicholson Job - Idaho.....5-250 HP & wiring
Sand Dunes Project - Idaho.....4-400 HP & boosters
Bevens Bros. Project - Idaho.....4-300 HP & boosters
Billy Rio Farms - Idaho.....10 boosters
Nevada-Garvey Project - Nevada.....Panels & wiring
Bob Rhead Project - Idaho.....4-600 HP & wiring
Minidoka Irrigation District - Idaho..Booster panels & wiring
Kosmo Project - Oregon.....4-800 HP panels
Salmon Dam Water Storage - Idaho.....Panel & wiring
Growth Management - Washington.....3-1000 HP-4-250 HP
Morrison-Knudsen - Wyoming.....Special panel for 1500 KVA transformer w/
24,900 V to 4160 V switchgear, skid mount
Westinghouse - City of Lewiston.....High voltage switches, starters & MCC
Westinghouse - J. R. Simplot Co.....AWP switches, switchgear & starters
Westinghouse - Morrison-Knudsen.....Bus duct for Pali-Baba & Sabzab, Iran
Sailor Creek - Idaho.....6-1250 HP and breakers
Morrison-Knudsen - Wyoming.....Utilities control panel
Westinghouse - Amalgamated Sugar.....7-DS 416 breakers
T & M Farms - Idaho.....3-800 HP-1-600 HP-boosters and wiring
Byron Jackson Pump - Twin City Foods..Motor control equipment
Smoky Valley Mining - Nevada.....Load centers, switchgear & motor starters
Westinghouse - Idaho Portland Cement..1200 A, 2400 V switchgear
Westinghouse - American Potato Co.....2500 A & 3000 Amp outdoor switchboard
Monsanto Co. - Idaho.....DS breaker
A. L. Casey Job - Washington.....2-500 HP, boosters & wiring, panels,
pumps, motors
Ely-Crawford Project - Washington.....AWP switch, 5-1000 HP, 7-300 HP, 10 boosters,
panels, pumps, motors & wiring
Gehrke Job - Oregon.....4-500 HP, 14-boosters, panels, pumps, motors
& wiring

AMPCO

"ELECTRICAL CONTROLS CUSTOM ENGINEERED FOR YOU"



DESIGNED AND MANUFACTURED BY

COOK ELECTRIC, INC.

Pumping Plant Panels
Power Distribution Centers
Reduced Voltage Panels
Industrial Control Panels

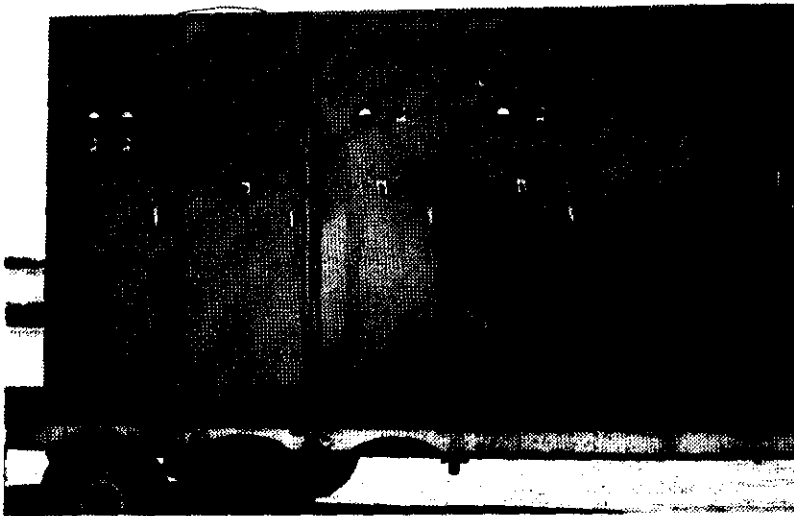
P. O. BOX 1071
TWIN FALLS, IDAHO 83301
PHONE 208-734-3252

High Voltage Panels
Motor Control Centers
Telemetry Panels
Control Consoles

AMPCO

ELECTRICAL CONTROLS

High Voltage
Industrial Power Centers

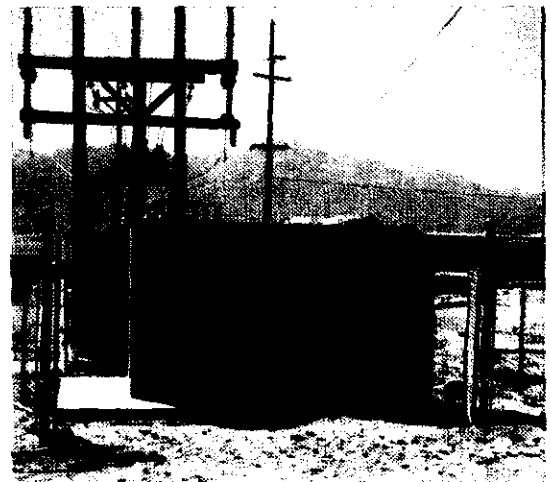


INDUSTRIAL CONTROL PANELS

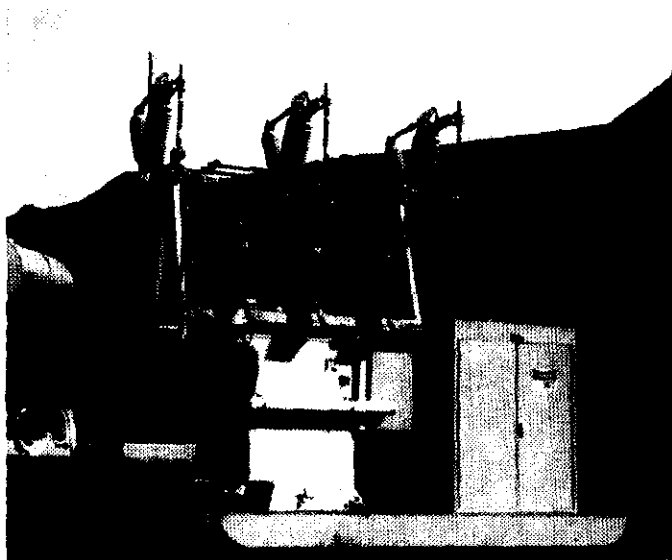
The exclusive use of major brand components assures you of dependability as well as availability of parts.

High voltage starters and switchgear by direct quote.

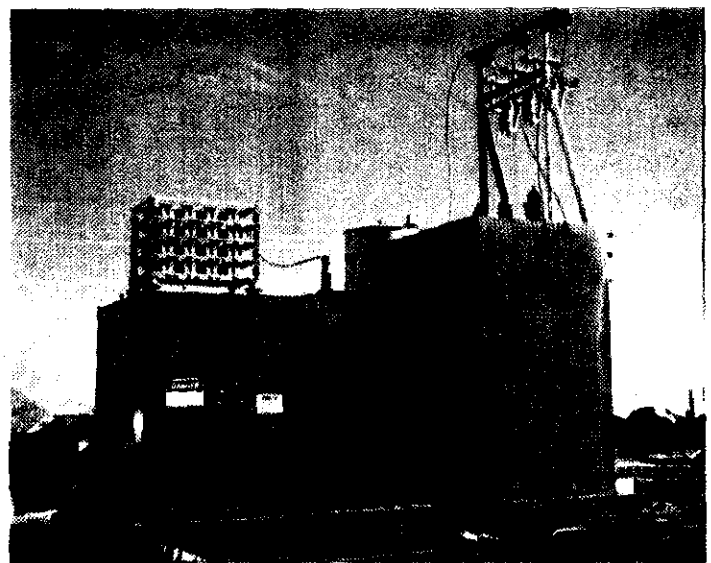
Complete systems consultation and design available on request.



**CENTRAL MINING POWER CENTER
ON JOB SITE**
5 KV DISTRIBUTION SYSTEM



46 KV to 7.2 KV

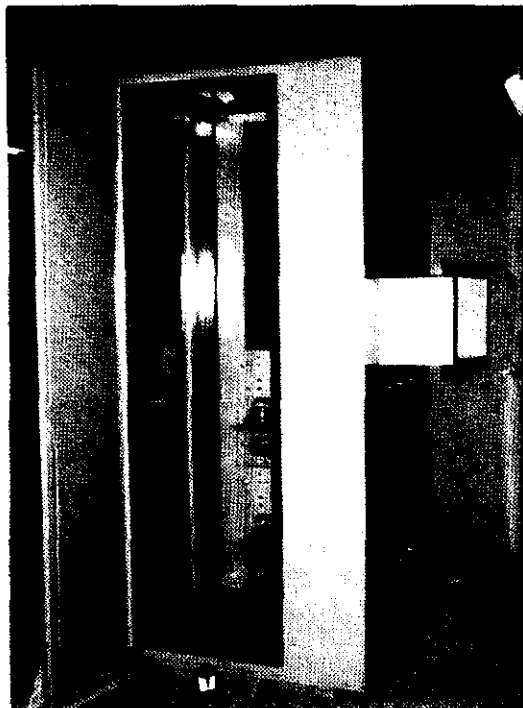


24.9 KV to 5 KV

PORTABLE SKID MOUNT "MINE" POWER CENTERS

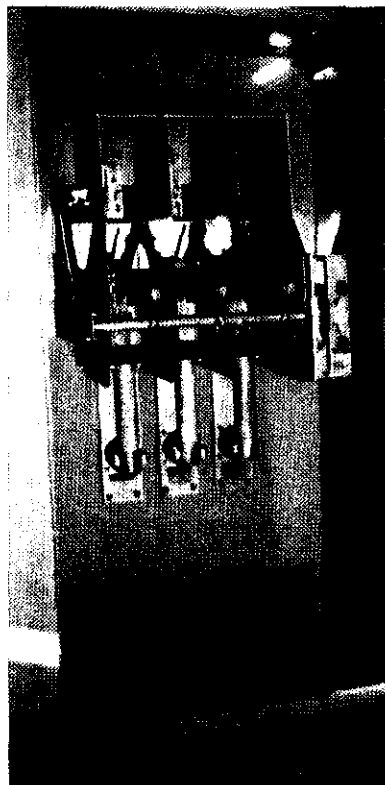


**480 VOLT TYPE D S BREAKER AND ENCLOSURE
DISTRIBUTION CENTER FOR PROCESS AREAS**



AMPCO

**POWER
DISCONNECTS
AND
ENCLOSURES**

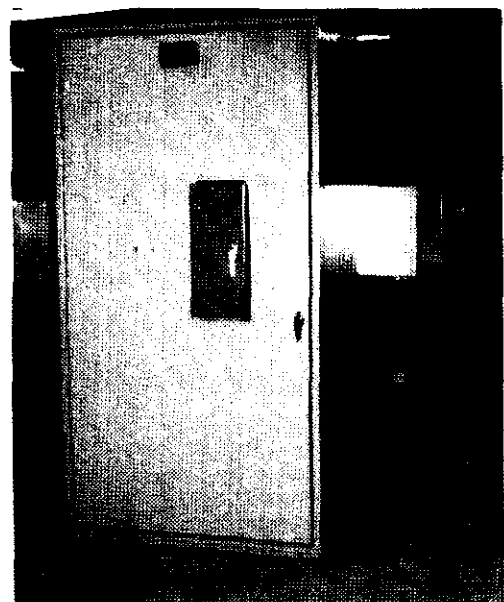


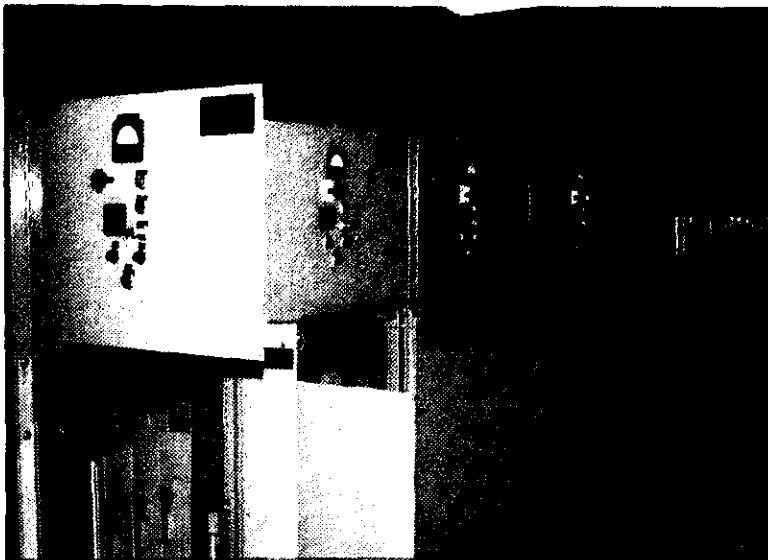
**TYPE AWP SWITCH ENCLOSURE
FOR TRANSFORMER
PRIMARY DISCONNECT**

**AVAILABLE IN VOLTAGES FROM
2300 thru 34.5 KV**

**DESIGNED AND
MANUFACTURED BY**

COOK ELECTRIC, INC.

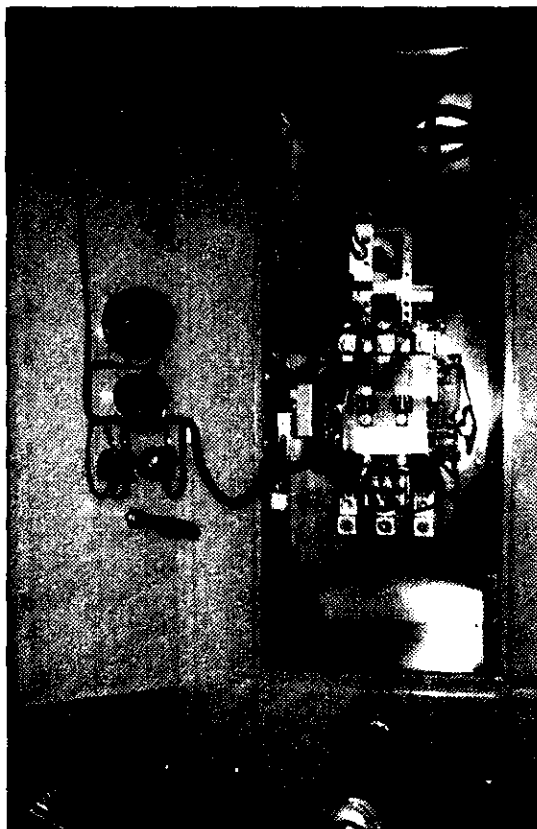




**MEDIUM VOLTAGE MOTOR CONTROL CENTER
AMPGARD STARTERS**

Available from 2300 Volt thru 7200 Volt

Panels engineered for your voltage and control requirements.

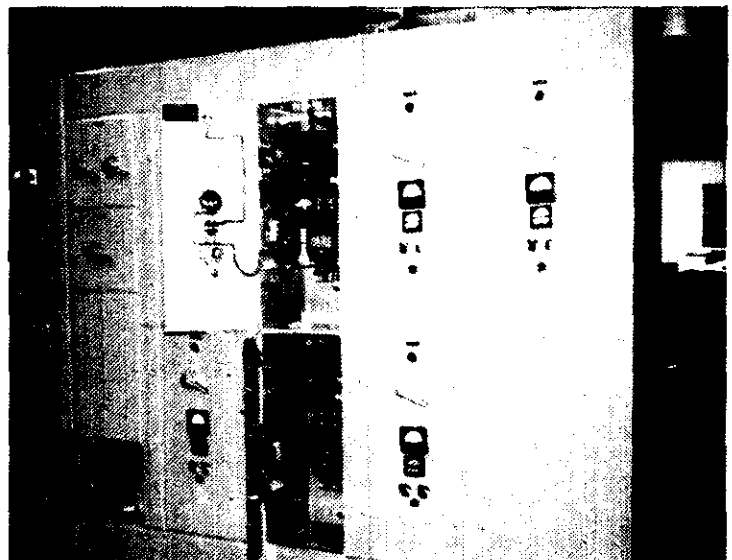


AMPCO

MOTOR CONTROL CENTERS

Major components are interchangeable
with Westinghouse.

If you need panels to control motors, conveyor systems, relay systems, etc., let us at COOK ELECTRIC, INC. supply you with quality AMPCO panels built to your specific requirements.



**480 VOLT MOTOR CONTROL FOR
200 HP BOOSTER STATION**

AMPCO

CONTROL PANELS

DESIGNED AND MANUFACTURED BY
COOK ELECTRIC, INC.



"ELECTRICAL CONTROLS CUSTOM ENGINEERED FOR YOU"

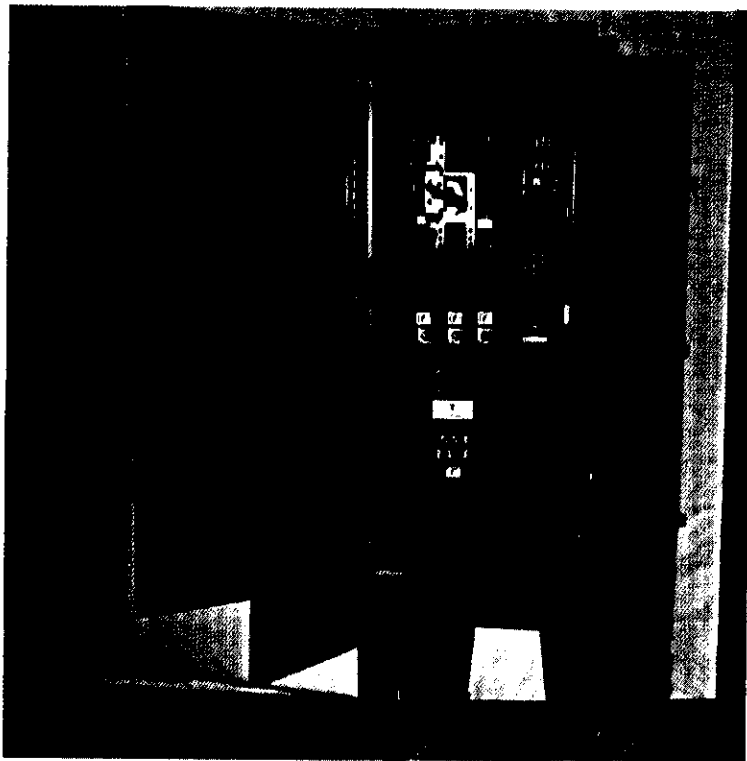
Pumping Plant Panels
Power Distribution Centers
Reduced Voltage Panels
Industrial Control Panels

Custom Enclosures

High Voltage Panels
Motor Control Centers
Telemetry Panels
Control Consoles

P. O. BOX 1071
TWIN FALLS, IDAHO 83301
PHONE 208-734-3252

DISTRIBUTED BY:



200 H.P. 480 V. Panel

PUMPING PLANT PANELS

AMPCO pumping plant panels are designed to provide trouble free, long life and dependability.

The unique design of our enclosures allows us to offer a panel that is rain-tight, drip proof and dust resistant — all without gasketing!

The exclusive use of major brand components assures you of dependability as well as availability of parts.

Panels engineered for your voltage and control requirements.

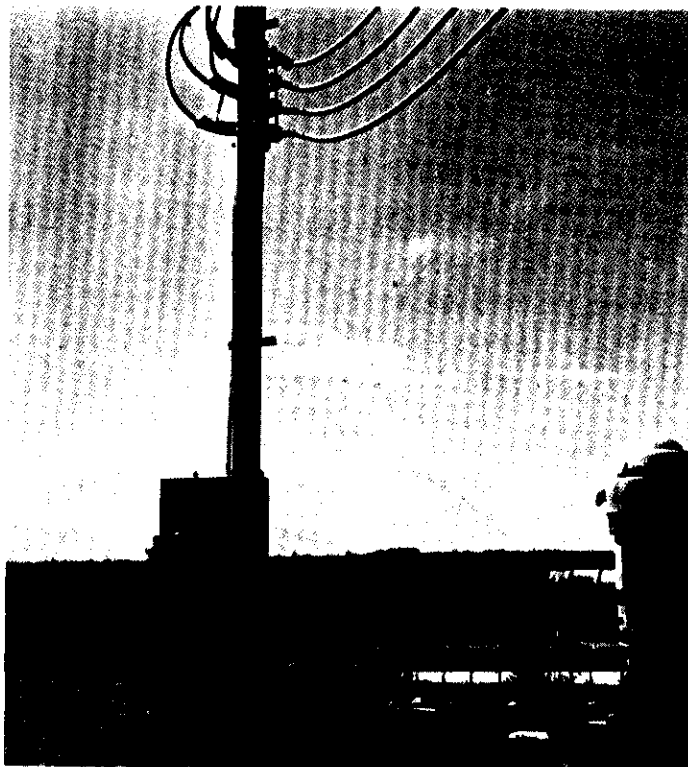
Part winding and autotransformer panels through 700 H. P.

High voltage starters and switchgear by direct quote.

Complete systems consultation and design available on request.

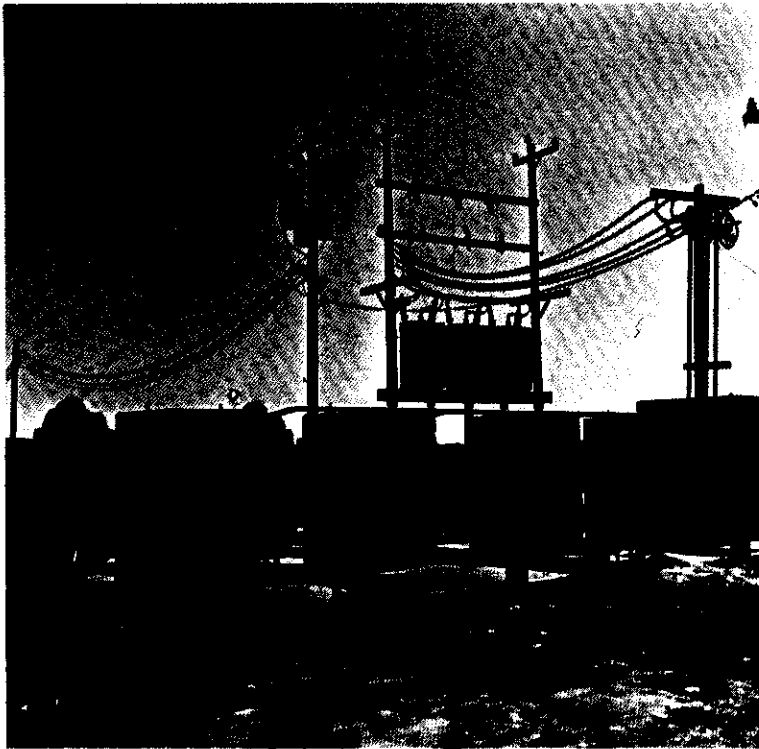


Two 150 H.P. and Two 200 H.P. 480 V. Panels



350 H.P. 480 V. Panel

CONTROL CONSOLES AND PANELS



Four 600 H.P. 2300 V. Panels and One 1200 Amp. Air Breaker Panel

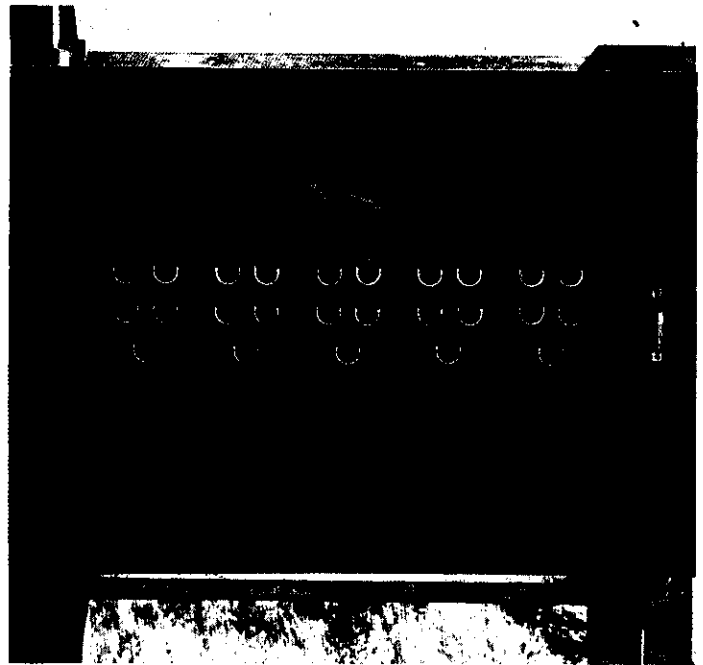
For controlling a number of operations from a central remote point, push buttons, switches, pilot lights, meters, etc., can be mounted on the control console. Wiring, relays and other control devices can be mounted inside the console, which is convenient for operation and repair.



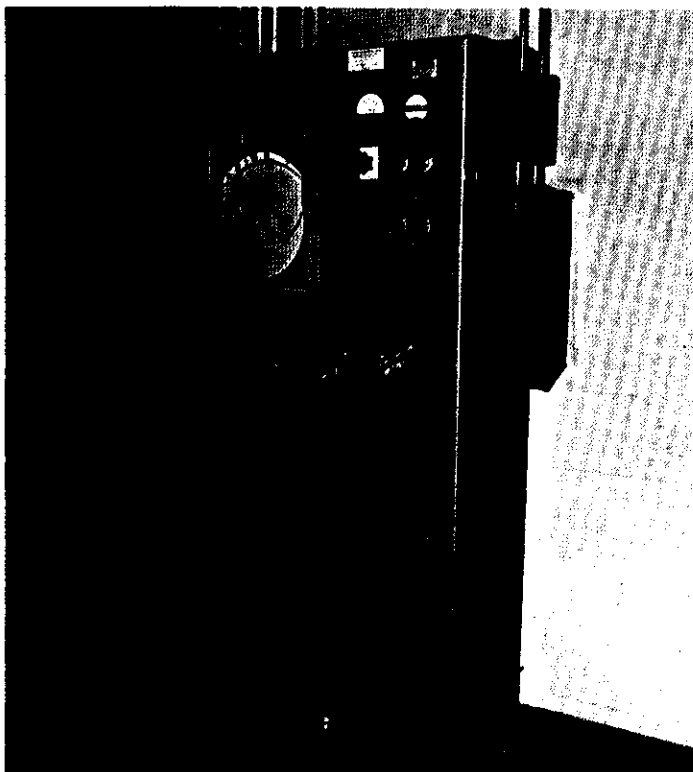
Four 2000 H.P. 2300 V. Panels and One 2000 Amp. Air Breaker Panel

INDUSTRIAL CONTROL PANELS

If you need panels to control motors, conveyor systems, relay systems, etc., let us at AMPCO supply you with quality panels built to your specific requirements.



Vertical Gate Control Panel



Control Panel for City Water System



200 H.P. 480 V. Autotransformer Panel

Call on us at AMPCO for help if you need consultation on any control needs.

COOK ELECTRIC, INC.
P. O. Box 1071
Twin Falls, Idaho 83301
Phone 208-734-3252

Major Components
Are Interchangeable
With Westinghouse



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

Copy

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:

Statehouse
Boise, Idaho 83720
(208) 334-4440

37-7848

July 24, 1981

RE: Application for Permit No.

Dear Applicant:

The 1981 Idaho Legislature made a change in Section 42-205, Idaho Code, that may affect the above referenced application. The change requires that if a proposed hydropower project will use existing irrigation facilities, the approval of the owner of the facilities must be obtained before an application for permit to develop a water right can be approved.

Please find enclosed an affidavit which we must receive before we can complete the review of your application. Please complete the affidavit, sign it before a notary, and return it to this office at your earliest convenience, no later than August 15, 1981.

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL JR., P. E.
Supervisor, Water Allocation Section

DRT:jg

Enclosure

MICROFILMED

SEP 28 1988

1 IN THE DEPARTMENT OF WATER RESOURCES
2 OF THE STATE OF IDAHO

3 * * * * *

4 IN RE APPLICATION OF)
5 COOK ELECTRIC, INC.,)
6 IDENT. NO. 37-7848)

PETITION FOR ORDER
PERMITTING INTERVENTION

7 * * * * *

8 COME NOW Twin Falls Canal Company and North Side
9 Canal Company, Ltd., (hereinafter referred to as "Inter-
10 venors") and petition for entry of order permitting them to
11 intervene in all proceedings relative to the above-captioned
12 application. In support of this Petition, Intervenor state:

13 1. Petitioners are the Twin Falls Canal Company and
14 North Side Canal Company, Ltd. Their addresses for purposes
15 of this proceeding is c/o Nelson, Rosholt, Robertson, Tolman
16 & Tucker, P. O. Box 1906, Twin Falls, Idaho 83301.

17 2. Intervenor are Carey Act operating companies,
18 owning and operating extensive canal and lateral systems for
19 the delivery of water to over 350,000 acres in south central
20 Idaho. Within such systems are a number of sites which may
21 have potential for hydroelectric generation, including Milner
22 Dam, where Cook Electric, Inc., has also filed an application.

23 3. Applicant Cook Electric, Inc., has filed a
24 number of applications similar to the above-captioned appli-
25 cation. In most, if not all of those applications, Cook
26 Electric, Inc., has no interest in any property where the
27 water is to be used, nor any authorization from government
28 agencies to construct the facilities necessary to use the
29 water.

30 4. The decision in this proceeding will adversely
31 affect the interests of Intervenor in what the issues of
32 speculation and financial ability will have to be decided in

RECEIVED

JAN 30 1981

Department of Water Resources
Southern District Office

SEP 28 1988

1 this proceeding, but will be based on facts common to all or
2 most of Cook Electric, Inc.'s applications. The Department's
3 decision in this proceeding will, as a practical matter, set
4 the stage for later decisions on those same issues in other
5 cases on other applications.

6 5. If permitted to intervene, Intervenor will
7 present evidence concerning the number of other applications
8 filed by Cook Electric, Inc., in Idaho and elsewhere; the
9 financial capability of Cook Electric, Inc., to complete
10 those proposed projects to use the water applied for and the
11 speculative nature of Cook Electric, Inc.'s interest in
12 hydroelectric generation. Such evidence would not take more
13 than 1/2 hearing day to present.

14 6. By this Petition, Intervenor seek an order
15 permitting intervention. Thereafter, Intervenor will
16 request entry of an order denying and dismissing the above-
17 captioned application on the grounds of good faith, specula-
18 tion, and the financial inability of Cook Electric, Inc., to
19 construct a project to utilize the water applied for.

20 WHEREFORE, Twin Falls Canal Company and North Side
21 Canal Company, Ltd., pray that an order be entered permitting
22 them to intervene as parties in the above-captioned proceed-
23 ing.

24 DATED this 30th day of January, 1981.

25 NELSON, RSHOLT, ROBERTSON,
26 TOLMAN & TUCKER

27 *Thomas A. Rosholt*
28 By: _____
for Thomas G. Nelson

29
30
31 **RECORDED**

32 SEP 28 1988

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of January, 1981, I served a copy of the foregoing PETITION FOR ORDER PERMITTING INTERVENTION, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Mr. Cecil D. Hobdey
James, Hobdey & Varin
P. O. Box 176
Gooding, Idaho 83330

Mr. Dennis Voorhees
Attorney at Law
P. O. Box 1923
Twin Falls, Idaho 83301

Cook Electric, Inc.
P. O. Box 1071
Twin Falls, Idaho 83301

Big Wood Canal Company
P. O. Box C
Shoshone, Idaho 83352

Department of Water Resources
Statehouse
Boise, Idaho 83720

for Thomas A. Rossmore
Thomas G. Nelson

RECORDED

SEP 28 1988

37-7848 -- COOK ELECTRIC, INC.

PRE-HEARING CONFERENCE _

Thursday, February 5, 1981 - 10:00 a.m.

Court room - Lincoln County Courthouse - Shoshone, Idaho

Hearing Officer _____

Assisted By _____

Name

Address

Representing

*This Conference was cancelled at request of Applicant's
attorney. LPH.*

MICROFILMED

SEP 28 1988

INTER-DEPARTMENT MEMO — 1

FROM Jim Stanton

DATE 1-29-1981

TO File

SUBJECT Copy of Protested Application For Permit 37-7848, Cook Electric Co.

Cecil Hobday, attorney for the protestant, requested a copy of this application by telephone today. I sent a copy as requested.

RECEIVED

SEP 28 1988


SIGNATURE

Mr. Kenneth F. Plumb
Secretary,
Federal Energy Regulatory Commission
825 North Capitol Street, NE.
Washington, D. C. 20426

April 6, 1981

RE: Project No. 3407-000 "COMMENTS"

Gentlemen:

We are in receipt of a Notice of Application for Preliminary Permit for the above referenced project, in the name of Cook Electric Company, for the Magic Dam Project.

A review of our water right records reveals that on August 14, 1980, Cook Electric, Inc. submitted to this Department an Application for Permit to appropriate the public waters of the State of Idaho, for the above referenced project. This application, identified as No. 37-7848, has been protested by the Big Wood Canal Company, et.al The protestants have since, on February 20, 1981, filed Application for Permit No. 37-7881, which includes a number of points of diversion including Magic Dam. No action has been taken on Application No. 37-7848 pending a conference/hearing to be scheduled by this office.

We wish to express a concern that any hydropower development must comply with Idaho water law. Processing by this Commission and by this Department must be coordinated to avoid conflicting approvals. The Department will protest any subsequent applications for preliminary permit if the applicant does not hold a valid water right for the proposed project.

At the present time we will make no specific objections, but we wish to be appraised of significant developments regarding this project.

Sincerely,

C. STEPHEN ALLRED
Director

CSA:DRT:jg

c.c. Fred Springer

SEP 28 1980

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

IN THE MATTER OF PROTEST AGAINST }
APPLICATION FOR PERMIT NO. 37-7848 }
IN THE NAME OF COOK ELECTRIC, INC. }

NOTICE OF PRE-HEARING
CONFERENCE

On August 14, 1980, Cook Electric, Inc. of Twin Falls, Idaho filed with the Department of Water Resources an Application for Permit to appropriate 800 cubic feet per second of water from the Big Wood River for the purpose of generating power. The application proposes to use the existing Magic Dam and reservoir as a part of the project.

On August 28, 1980, the Department received a protest against the application from the Big Wood Canal Company.

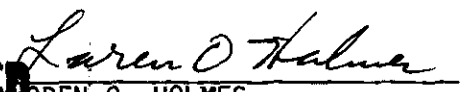
The Department has set a pre-hearing conference in the matter for Thursday, February 5, 1981, at 10:00 a.m., in the court room of the Lincoln County Courthouse, 111 West B, Shoshone, Idaho.

The conference has been scheduled for the purpose of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arrainging for the exchange of proposed exhibits or prepared expert testimony, limitations of the number of witnesses and consolidation of the examination of witnesses, procedure at any future hearing, and such other matters which may expedite orderly conduct and dispositions of the proceedings or settlements thereof.

The parties may agree at such conference to a disposition of the matter by the Director without further proceedings pursuant to Section 67-5209d, Idaho Code. In the event such action is taken the conference will be deemed to satisfy the requirements of law requiring the holding of a hearing.

The action taken at the conference and the agreements made thereat by the parties concerned will be recorded and shall be approved by the parties. When so approved such action will control the course of subsequent proceedings unless modified at a later hearing.

DATED This 21 day of January, 1981.


UNRECORDED LOREN O. HOLMES
Southern Region Supervisor

SEP 28 1988

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

NDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

- ☒ Show to whom and date delivered.....¢
☐ Show to whom, date and address of delivery.....¢
☐ RESTRICTED DELIVERY
 Show to whom and date delivered.....¢
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.\$_____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Dennis S. Voorhees - Attorney at Law
 Box 1923
 Twin Falls, Idaho 83301

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	429	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized Agent

Chris Collette
 DATE OF DELIVERY
 JAN 23 1981

5. ADDRESS (Complete only if requested).

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

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



SEP 28 1988

IDAHO DEPARTMENT OF WATER RESOURCES
SOUTHERN DISTRICT OFFICE
1041 BLUE LAKES BLVD. NORTH
TWIN FALLS, IDAHO 83301

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

RECEIVED
JAN 27 1989
Department of Water Resources
Southern District Office

COOK 37-7848

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

DER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

- ☒ Show to whom and date delivered. \$
☐ Show to whom, date and address of delivery. \$
☐ RESTRICTED DELIVERY
 Show to whom and date delivered. \$
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$ _____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Cecil Hobday - Attorney at Law
 P. O. Box 176
 Gooding, Idaho 83330

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	428	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

DATE OF DELIVERY

POSTMARK

1-22-81

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

CJ

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

POSTAGE WILL BE PAID BY ADDRESSEE
TO AVOID PAYMENT
OF POSTAGE, \$300



RETURN
RECEIVED

IDAHO DEPARTMENT OF WATER RESOURCES
SOUTHERN DISTRICT OFFICE
1041 BLUE LAKES BLVD. NORTH
TWIN FALLS, IDAHO 83301

(Name of Sender)

JAN 23 1981

(Street or P.O. Box)

Department of Water Resources
Southern District Office

(City, State, and ZIP Code)

COOK 37-7848

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

NDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

- ☒ Show to whom and date delivered.....¢
☐ Show to whom, date and address of delivery.....¢
☐ RESTRICTED DELIVERY
 Show to whom and date delivered.....¢
☐ RESTRICTED DELIVERY
 Show to whom, date, and address of delivery.\$____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Cook Electric, Inc.
 Box 1071
 Twin Falls, Idaho 83301

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	426	

(Always obtain signature of addressee or agent).

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY

JAN 23 1981

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

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



**RETURN
TO**



IDAHO DEPARTMENT OF WATER RESOURCES
SOUTHERN DISTRICT OFFICE
1041 BLUE LAKES BLVD. NORTH
TWIN FALLS, IDAHO 83301

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

RECEIVED
JAN 27 1981

Department of Water Resources
Southern District Office

COOK 37-7848

PS Form 3811, Jan. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

DER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)

- ☒ Show to whom and date delivered. *
- ☐ Show to whom, date and address of delivery. *
- ☐ RESTRICTED DELIVERY
Show to whom and date delivered. *
- ☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery. \$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:

Big Wood Canal Company
P. O. Box C
Shoshone, Idaho 83352

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	427	

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

4. *Gerald A. Threes*
DATE OF DELIVERY
1/22/81

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

POSTMARK
JAN 22 1981
CLERK'S INITIALS

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, and 3 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

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



**RETURN
TO
RECEIVED**

IDAHO DEPARTMENT OF WATER RESOURCES
SOUTHERN DISTRICT OFFICE
1041 BLUE LAKES BLVD. NORTH
TWIN FALLS, IDAHO 83301

(Name of Sender)

1968

Department of Water Resources
Southern District Office

(Street or P.O. Box)

(City, State, and ZIP Code)

NAME AND ADDRESS OF SENDER

Cock electronics 12/18/88 37-0000

Indicate type of mail
☐ REGISTERED ☐ COD
☐ INSURED ☐ CERTIFIED

I certify that we have
☐ Commercial Insurance
☐ A deductible clause of \$

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.
 POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (if Registered)	IF C.O.D.	R. R. FEE	S. D. FEE	S. H. FEE	REST. DEL. FEE	REMARKS
1	426 <i>Cock electronics</i>	15	45	80							
2	427 <i>Liquidated Canal Co.</i>	15	45	80							
3	428 <i>Reel Holiday - attorney</i>	15	45	80							
4	429 <i>Dennis members - attorney</i>	15	45	80							
5											
6											
7											
8											
9											
10											
11											
12											
13											
14											
15											
16											
17											
18											
19											
20											
21											
22											
23											
24											
25											
26											
27											
28											
29											
30											
31											
32											
33											
34											
35											
36											
37											
38											
39											
40											
41											
42											
43											
44											
45											
46											
47											
48											
49											
50											
51											
52											
53											
54											
55											
56											
57											
58											
59											
60											
61											
62											
63											
64											
65											
66											
67											
68											
69											
70											
71											
72											
73											
74											
75											
76											
77											
78											
79											
80											
81											
82											
83											
84											
85											
86											
87											
88											
89											
90											
91											
92											
93											
94											
95											
96											
97											
98											
99											
100											

RECEIVED

SEP 28 1988

NUMBER OF ARTICLES LISTED BY SENDER
 4

TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE

POSTMASTER, PER (Name of receiving employee)

The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full registry is required on articles valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum indemnity payable is \$10,000 for insured mail, \$300 for fourth-class parcels. Special delivery charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

INTER-DEPARTMENT MEMO — 1

FROM *Helen*
Western Region

TO *Mary*
Southern Region

SUBJECT Cook Electric Heavy

RECEIVED

JAN 19 1981

Department of Water Resources
Southern District Office

DATE 1-14-81

Please put a note in the Cook Electric Co. Magic Reservoir filing to send a copy of the Heavy notice to:

Marc Auth
Barber Engineering
250 S. Beechwood
Boise, ID 83709

Thanks —

Helen

SIGNATURE

(he is an interested party.)

LLOYD J. WALKER, P.A.
ATTORNEYS AND COUNSELORS AT LAW

131 SECOND STREET WEST
POST OFFICE BOX 1923

Twin Falls, Idaho 83301
TELEPHONE (208) 733-3083

LLOYD J. WALKER
DENNIS S. VOORHEES

RECEIVED

OCT 9 1980

October 8, 1980

Department of Water Resources
Southern District Office

ATTENTION: Mr. Loren O. Holmes

State of Idaho
Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Re: Application for Permit
No. 37-7848

Dear Mr. Holmes:

Our offices represent Cook Electric, Inc., a Twin Falls corporation, in its application for a water permit as referenced above. Negotiations are under way to alleviate the concerns voiced by the Big Wood Canal Company in its letter of protest on file herein.

I have enclosed a copy of the letter I sent today to the attorney for the Big Wood Canal Company.

Sincerely yours,

LLOYD J. WALKER, P.A.

Dennis S. Voorhees

DENNIS S. VOORHEES

DSV:cr

Enclosure

RECEIVED

SEP 28 1988

LLOYD J. WALKER, P.A.
ATTORNEYS AND COUNSELORS AT LAW

131 SECOND STREET WEST
POST OFFICE BOX 1923

Twin Falls, Idaho 83301
TELEPHONE (208) 733-3083

LLOYD J. WALKER
DENNIS S. VOORHEES

October 7, 1980

Mr. Cecil B. Hobdey
James, Hobdey and Varin
Post Office Box 176
Gooding, Idaho 83330

Dear Cecil:

Our offices represent Cook Electric, a Twin Falls corporation, in its efforts to generate electric power at various water impoundments in Idaho. One of the sites at which it plans to construct a generating facility is the Magic Dam and Reservoir in Blaine County, Idaho. Cook Electric has taken a flexible approach to developing generating facilities at the several sites in Idaho. It has felt that the surest means of accomplishing any given project successfully is through a cooperative arrangement with other water users at the impoundments. I am made to understand, however, that the directors of the Big Wood Canal Company are inalterably opposed to a cooperative arrangement. Accordingly, Cook Electric has no choice but to exercise its right of eminent domain. Pursuant to its statutory obligation, Idaho Code 7-707(6), Cook Electric requests your cooperation in convening a meeting wherein the parties can begin good faith negotiations for the purchase and sale of a right-of-way from the Big Wood Canal Company for purposes of constructing an electric power generating facility.

Cook Electric has made application to the Department of Water Resources to acquire the right to beneficial use of public waters from the Magic Dam for use in electric power generation. Also, it has applied for a permit from the Federal Energy Regulatory Commission for priority status in generating electric power at Magic Dam. I have before me a letter of protest filed with the Department of Water Resources by the Big Wood Canal Company signed by Mr. J. Leon Grieve.

MAILED

SEP 28 1988

Mr. Cecil B. Hobdey
October 7, 1980
Page 2

In his letter, Mr. Grieve objects to the application for a water right on the following grounds: first, Magic Dam is the private property of the Big Wood Canal Company; second, the project is unfeasible; and third, the permit is sought for speculative purposes. For your consideration I include in this letter an assessment of the merit in each of these claims. I would hope that with a careful and reasoned analysis of the legal issues early on we can avert a wholly unproductive expenditure of time and money in a protest hearing.

C
O
P
Y

FEASIBILITY. Leaving the issue of private property aside for the moment and examining the objection on feasibility, I would indicate that though feasibility may have been a barrier two years ago, that is no longer the case. The Idaho Public Utilities Commission in Order No. 15746, issued on the 8th of August, 1980, after extensive consideration of cogeneration and small power production, ordered that the Idaho Power Company submit offerings detailing the prices and conditions under which it would purchase power from cogenerators and small power producers. Recent federal legislation, specifically, the Public Utilities Regulatory Policies Act of 1978, requires that small power producers be compensated on the basis of "avoided costs" of the larger purchasing utility. Avoided costs refer to the savings in total utility power costs made possible when a utility purchases power from a small power producer rather than producing or purchasing the power itself. With the ever-increasing cost of thermal power plant construction, the feasibility of small power production continually improves. With hydro generation being so much less costly to construct and operate than thermal plants and with the Magic Dam being a prime candidate for hydro power generation, the feasibility of low-head hydro at Magic Dam becomes an easy case to prove. I am told that both the Idaho Water Resources Board and the Water Power and Resources Service (formerly Bureau of Reclamation) have so found.

SEP 25 1980

Mr. Cecil B. Hobday
October 7, 1980
Page 3

C
O
P
Y

SPECULATIVE PURPOSES. In Mr. Grieve's letter he indicates that there is a speculative purpose to the application. An application made in bad faith, or for purposes of delay, or for speculative purposes, should be rejected. Idaho Code, 42-203. The only case I could find construing speculation under that statutory provision is the case of Lemmon v. Hardy, 95 Idaho 778 (1974). There the Idaho Supreme Court held that where an applicant for a water permit had no possessory right in the land designated as the place of use, the application amounted to speculation and should be denied. Lemmon involved an application by an irrigator. The Court distinguished its holding in that case from earlier decisions involving power companies, Marshall v. Niagra Springs Orchard Co., 22 Idaho 144 (1912) and Bassett v. Swenson, 51 Idaho 256 (1931). Regarding power company-applicants, in Marshall and Bassett the Court stated:

Both cases involved power companies that filed applications for the use of water before obtaining the land for the point of diversion and power facilities by condemnation. It was held that filing an application without land ownership did not invalidate the application as long as the description of the diversion works was not obtained through trespass. The Marshall and Bassett cases are distinguishable from this action. The power companies possessed the power of condemnation which permitted them to acquire the necessary land. They were not seeking land upon which to beneficially use the water, but solely for the power site generation purposes. The appellants in this action had shown no means of acquiring the lands stated in their original application. Lemmon, 95 Idaho at 780-81.

SEP 28 1980

Mr. Cecil B. Hobdey
October 7, 1980
Page 4

Bassett is particularly instructive as regards the Cook Electric filing since it affirmed the principle that a private enterprise need not be a public utility to utilize the powers of eminent domain under Sec. 14, art. 1 of the Idaho Constitution to generate electric power. In so holding, the Court stated:

C
The right of eminent domain in this state is not determined by the character of the business developing the natural resource. It is enough that the use is necessary in the development of one of the state's important resources. Bassett, 51 Idaho at 263-64.

O
P
PRIVATE PROPERTY. At the heart of Big Wood Canal Company's protest is the issue of property rights. Mr. Grieve emphasizes in his letter that the Magic Dam is the private property of the Big Wood Canal Company and is located on land deeded to the company. To be sure, an unfettered right to use one's property - or not to use it as the case may be - is deeply rooted in the culture and tradition of these western United States. Nonetheless, against this tradition is art. 1, Sec. 14 of the Idaho Constitution. It reads as follows:

Y
The necessary use of lands for the construction of resevoirs or storage basins, for the purpose of irrigation, or for rights-of-way for the construction of canals, ditches, flumes, or pipes, to convey water to the place of use for any useful, beneficial or necessary purpose, or for drainage; or for the drainage of mines, or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoasting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the materials resources of the state or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state.

RECORDED

OCT 11 1980

Mr. Cecil B. Hobday
October 7, 1980
Page 5

Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor. (Emphasis supplied.)

C
O
P
Y
Under this provision, the furnishing of electricity for lighting, transportation, power and other purposes has been held to be a public use for which land may be taken. Hollister v. State, 9 Idaho 8 (1903). It has also been held that a corporation organized to generate and furnish electrical energy is authorized to exercise the right of eminent domain though it furnishes electricity for distribution by other persons and corporations rather than as a utility in and of itself. Washington Water Power Co. v. Waters, 186 F. 572 (D.Idaho 1910). And though the rights of eminent domain as are stated in Idaho's constitution are liberal enough in themselves, the Idaho Supreme Court has held in construing the provision that it is to be broader in its terms, and consequently entitled to receive a more liberal construction, than constitutional provisions of a somewhat similar character found in a majority of state constitutions. Blackwell Lumber Company v. Empire Mill Co., 29 Idaho 421 (1916).

Surely there will be some members of the Big Wood Canal Company who will be dismayed by the contention that a power company has a right through eminent domain to situate itself at the Magic Dam and generate power merely by undertaking a legal proceeding and paying reasonable compensation for the taking. There were delegates at the proceedings and debates of the Constitutional Convention of Idaho in 1889 who objected vehemently to the adoption of Section 14 of Article 1. Following is an except of the debates involving Mr. O.B. Batten, delegate from Alturas County and Mr. Alex E. Mayhew, delegate from Shoshone County:

SECRETARY reads Section 14.

Mr. Batten. I move that this section be stricken out.

RECEIVED
SEP 26 1980

Mr. Heyburn. I second the motion.

C
O
P
Y

Mr. Batten. Mr. Chairman, I gave some few reasons when this section was under discussion in committee of the Whole. I do not know that I can add very much now to what I said then. I think it is attacking one of the most sacred of all rights which are guaranteed to us. I do not propose to enter into any great spread-eagleism or anything of that sort, but we cherish with a great deal of earnestness and a great deal of jealousy our right to private property, and I honestly believe that this section invades that right. It is directly upon one of the most sacred of our rights, in that it permits Mr. A, or John Doe, by setting up some little flimsy pretext, to public use, to take the property of Richard Roe. For that reason I am opposed to the section. The mere declaration in the constitution that a certain thing shall constitute a public use, does not make it such. What does constitute public use? What sort of taking constitutes it for public use? I think it must be such a taking as will redound in effect to the benefit of the public or of the government--beneficial and necessary to the entire public or to some portion of the public. That I think is the rational construction of what constitutes public use. The property must be taken for use by the general government or by the general public or some portion of the general public, and not for the pleasure or benefit of any particular individuals or any particular societies. I say this section is obnoxious inasmuch as it undertakes to and will permit and sanction the taking by a private individual for his own private benefit and use, for his own individual gain and aggrandizement, of the property of his neighbor, and does it under the constitutional sanction that it is for public use. By parity of

RECEIVED

SEP 28 1988

C
O
P
Y
reasoning, I may pick my neighbor's pocket and say my necessity was very urgent and I had to construe my necessity into something of a public necessity to gain immunity for my felonious act by this constitutional provision here. For that reason I say it is wrong and should not be incorporated here in our constitution. We see what harm it has done already. One of the ablest members of this body--I allude to Judge Hagan of Kootenai County--left in voicing the spirit of disgust when the committee of the Whole adopted this section, and said he could not approve of the constitution with any provision like this embodied in it. Likely this is a small matter, though seemingly that dose of only one section of one article was a sufficient dose for him to justify in taking a stand against the whole constitution.

Mr. Beatty. I would ask you if Judge Hagan didn't go home to go fishing? That is what he told me.

Mr. Batten. Well, probably he did.

Mr. Mayhew. He did not go home for that purpose at all.

Mr. Beatty. I stated what he told me.

Mr. Mayhew. He went home exactly for the purpose as stated--he did not care about being a member of a constitutional convention that had this provision in it.

Constitutional Convention Proceedings, Vol. II, pp. 1596-97.

SEP 28 1988

Mr. Cecil B. Hobdey
October 7, 1980
Page 8

I include this somewhat lengthy passage only for the purpose of demonstrating how similar Mr. Grieve's objection is to Mr. Batten's. However, it was the will of the majority that the material resources of our state be developed, even though some injury to individual property rights would inevitably follow.

C
O
P
Y

The numerous decisions under the constitutional provision on eminent domain indicate that though the proponents of a development-minded provision carried the day, the controversy raged on. The most recent case of substance on the issue of eminent domain in Idaho is Canyon View Irrigation Co. v. Twin Falls Canal Co., 27 ICR 144, decided on the 9th of September 1980. On behalf of amicus curie Bell Rapids Mutual Irrigation Company, I had an opportunity to participate in the case. To the spaceholders here on the Twin Falls tract, the proposition that Idaho law conferred the right of one canal company to condemn into the canal of another was unthinkable. Understandably so, for the concept of an inalienable right to the exclusive possession of one's property is sacrosanct. Still, the constitutional commitment to complete economic development of the entire state figured as the overriding consideration. The Court in Canyon View stated that a condemnor need not demonstrate a "more necessary public use" as would appear to be required by Idaho Code 7-703(3) and -704 when condemning only the right to the common use of an existing right-of-way previously appropriated for public use. The party seeking to condemn an easement must show a more necessary public use only if the existing owner's use "will be defeated or seriously interfered with . . .". 27 ICR at 1005. The principles of law applied in Canyon View are pertinent in the condemnation sought here.

I have taken the time to write at some length in order that you might be better able to assess Big Wood Canal Company's rights in relationship to the application of Cook

RECEIVED
SEP 28 1980

Mr. Cecil B. Hobdey
October 7, 1980
Page 9

C
O
P
Y
Electric for water rights now before the Department of Water Resources. Although it is clear beyond argument that Cook Electric does have the legal right and capability of going forward with a condemnation proceeding incident to installing a power generating facility at Magic Dam, Cook Electric has at the same time always felt and continues to feel that the better way to go is through a cooperative venture with local water users. Unfortunately, the Big Wood Canal Company stands inalterably opposed to cooperative development and has chosen to accept a one-time payment for loss through condemnation over a continuous stream of income. That decision is wholly within the purview of the Big Wood Canal Company and Cook Electric can do nothing to change that. Accordingly, I request that representatives of the Big Wood Canal Company agree to meet at a convenient time and place for good faith negotiations on the settlement of damages resulting from the taking of real property at Magic Dam.

I look forward to your anticipated cooperation. Please feel free to call upon me with any questions or comments you might have. If the directors could see fit to allow a meeting to be convened within twenty days, it would surely help in moving the project along to its successful completion.

Sincerely yours,

LLOYD J. WALKER, P. A.

DENNIS S. VOORHEES

DSV:gb

ccs: Cook Electric
Department of Water Resources

SEP 26 1980



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

September 15, 1980

Mr. Warren P. Chapman, President
Cook Electric, Inc.
P. O. Box 1071
Twin Falls, Idaho 83301

Re: Application for Permit No. 37-7848

Dear Mr. Chapman:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to your Application No. 37-7848. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (Section 42-203, Idaho Code):

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

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

Very truly yours,

LOREN O. HOLMES
Southern Region Supervisor

LOH:marya

Encl:

RECEIVED

SEP 26 1980



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

September 15, 1980

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

Mr. J. Leon Grieve, Manager
Big Wood Canal Company
P. O. Box C
Shoshone, Idaho 83352

Re: Application for Permit No. 37-7848

Dear Mr. Grieve:

Your protest against the approval of the above-referenced application submitted in behalf of Big Wood Canal Company has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (Section 42-203, Idaho Code):

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

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

Sincerely,

LOREN O. HOLMES
Southern Region Supervisor

LOH:marya

RECEIVED

SEP 28 1980

Big Wood Canal Company

P.O. BOX C

SHOSHONE, IDAHO 83352

August 27, 1980

Mr. Loren Holmes
State of Idaho
Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Department of Water Resources
Southern District Office

Dear Loren:

This is to protest the application of Permit No. 37-7848 by Cook Electric, Inc. for 800 second feet of water from Magic Reservoir. Magic Dam is the private property of the Big Wood Canal Company and is located on land that is deeded to this company.

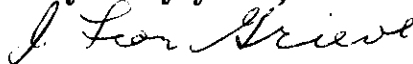
A few year ago, two land owners proposed to the company that they generate power they needed for sprinkling. The board decided it best if the company were to develop the power. Mr. Jim Patrick of Hillsborough, California was employed to make a preliminary survey of the potential power there. We have that report in the office. In 1978, I filled out applications for four sites one of which was Magic but deferred on Magic and two others because the costs were excessive. The costs are doubled now.

We have never planned to negotiate with anyone for the power at Magic. For one thing, it would take a complete change in the set up of the gate house and controls. Since our primary purpose is irrigation, we do not plan to let someone else have any say in the mangement of that facility.

The permit application came as a complete surprise. If Cook Electric had mentioned negotiation, they would have been stopped then and there. As of now, we have not heard one word from them.

It looks to us as though Cook Electric is in this for speculative purposes since they have also filed for permits at other places similar to Magic.

Very truly yours,



J. Leon Grieve, Manager

JLG/cb

MICROFILMED

SEP 28 1980

9/5



STATE OF IDAHO

DEPARTMENT OF LANDS

STATEHOUSE, BOISE, IDAHO 83720

GORDON C. TROMBLEY
DIRECTOR

STATE BOARD OF LAND COMMISSIONERS

JOHN V. EVANS
GOVERNOR AND PRESIDENT
PETE T. CENARRUSA
SECRETARY OF STATE
DAVID H. LEROY
ATTORNEY GENERAL
JOE R. WILLIAMS
STATE AUDITOR
JERRY L. EVANS
SUP'T OF PUBLIC INSTRUCTION

August 26, 1980

Department of Water Resources
Southern Region
1041 Blue Lakes Blvd. N.
Twin Falls, ID 83301

Department of Water Resources
Southern District Office

RE: 37-7848
Cook Electric

Gentlemen:

Thank you for the opportunity to review the above numbered application.

A permit from this department will not be required.

Very truly yours,

William A. Scribner
WILLIAM A. SCRIBNER, Chief
Bureau of Navigable Waters

WAS:bv

RECEIVED

SEP 28 1980

EQUAL OPPORTUNITY EMPLOYER



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

August 28, 1980

Mr. Warren Chapman, President
Cook Electric, Inc.
P. O. Box 1071
Twin Falls, Idaho 83301

Re: Applications for Permits No. 01-7057 and 37-7848

Dear Mr. Chapman:

This office is currently processing the two applications submitted by Cook Electric for power generating plants at Milner Dam and Magic Dam. Before any final Department action can be taken on the applications it will be necessary for the following additional information to be submitted and made part of the applications:

- 1) Copies of contracts or agreements with the owners of the two facilities allowing Cook Electric to construct power plants at the sites.
- 2) A statement of the financial resources of the corporation and how funds are to be provided for construction of the power plants.
- 3) Cost estimates for the projects and plans showing the proposed locations and elevations of intakes, generating units and discharges on the existing facilities at each site.

Since construction of these projects would involve modifications of large dams as defined by Sec. 42-1712 of the Idaho Code, engineering plans for the modifications must be submitted and approved by the Department prior to any construction. However, these plans need not be submitted until a decision has been issued on the water right permit. Application forms and a copy of Rules and Regulations for Safety of Dams are enclosed for this purpose.

If you have any questions about the additional information required please do not hesitate to contact me.

Very truly yours,

LOREN O. HOLMES
Southern Region Supervisor

LOH:marya
Encl:

MICROFILMED

SEP 28 1980



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

C. Stephen Allred
Director

August 21, 1980

Mr. John Rosholt
Attorney at Law
P. O. Box 1906
Twin Falls, Idaho 83301

Re: Application for Permit No. 37-7848 and 01-7057

Dear Mr. Rosholt:

Enclosed are copies of the above referenced applications for your information and files.

Sincerely,

Mary A. Hill
Secretary

for

Loren O. Holmes
Southern Region Supervisor

Encl:

MICROFILMED

SEP 28 1988



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

C. Stephen Allred
Director

August 21, 1980

Mr. Reid Newby
Watermaster District 37
Box T
Shoshone, Idaho 83352

Re: Application for Permit No. 37-7848

Enclosed is a copy of the above referenced application for permit
for your information and files.

Sincerely,

Mary A. Hill
Secretary

for

Loren O. Holmes
Southern Region Supervisor

Encl:

MICROFILMED

SEP 28 1988



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

August 21, 1980

Mr. Bill Scribner
Department of Lands
Statehouse
Boise, Idaho 83720

Re: Application for Permit No. 37-7848

Dear Mr. Scribner:

Enclosed is a copy of the above referenced application for permit
for your information and files.

Sincerely,

Mary A. Hill
Secretary

for

Loren O. Holmes
Southern Region Supervisor

Encl:

MICROFILMED

SEP 28 1988



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

August 21, 1980

Mr. Bob Bell, Regional Fisheries Biologist
Idaho Fish & Game Department
Region #4
P. O. Box 428
Jerome, Idaho 83338

Re: Application for Permit No.

Dear Mr. Bell:

Please find enclosed a copy of the above referenced application for permit for your information and files.

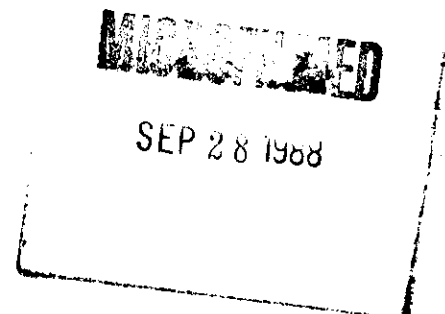
Sincerely,

Mary A. Hill
Secretary

for

Loren O. Holmes
Southern Region Supervisor

Encl:





STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

John V. Evans
Governor

1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301
(208) 734-3578

C. Stephen Allred
Director

August 21, 1980

Mr. Leon Grieve
Big Wood Canal Company
P. O. Box C
Shoshone, Idaho 83352

Re: Application for Permit No. 37-7848

Dear Mr. Grieve:

Enclosed please find an application for permit for power purposes at Magic Dam on Magic Reservoir.

Please advise this office of any negotiations which are being made to allow the applicant access to these facilities.

Sincerely,

Loren O. Holmes
Southern Region Supervisor

LOH:marya

Encl:

MICROFILMED

SEP 28 1988

NOTICE OF APPLICATION FOR WATER RIGHT

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

32-2848-

COOK ELECTRIC, INCORPORATED

P.O. BOX 1071, TWIN FALLS, ID 83301

Source: BIG WOOD RIVER tributary to SNAKE RIVER

Date Filed: 08/14/1980

Amount: 800.00 CFS

Diversion Point: NENE Sec 18 T 02S R 18E, BLAINE Co.

Use: POWER (800.00 CFS) from 04/01 to 10/01

Place of Use: NENE Sec 18 T 02S R 18E

Diversion Means: MAGIC DAM ON MAGIC RESEVOIR

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301 and received on or before SEPTEMBER 15, 1980.

C. STEPHEN ALLRED

Director

Published 8/28 & 9/4.

MICROFILMED

SEP 28 1980

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Southern Region

1041 Blue Lakes Blvd N.
Twin Falls, Idaho 83301
(208) 734-3578

AUGUST 21, 1980

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. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before SEPTEMBER 15, 1980.

Yours truly,


Mary A. Hill
Secretary

Encl.

MICROFILMED

SEP 28 1988

IDENT. NO. 37-7848

IDENT. NO. 37-7848

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

WATER RIGHT
DATA ENTRY LOG

Initials

Date _____

Item

M.M.

8-19-80

Original form entered

Wesley

8-21-80

Edit Report Correct

Date Protested

Date of Hearing

Date Approved/Denied
(Proof due date, stage and/or status,
conditions of approval, water district)

kw

9/8/87

Record Verified

Amendment Approved

Extension Approved

Partial Proof

Proof Complete

Field Exam Received

Field Exam Accepted
and changes entered

License Signed

Transfer Approved

Keypunched by State Office