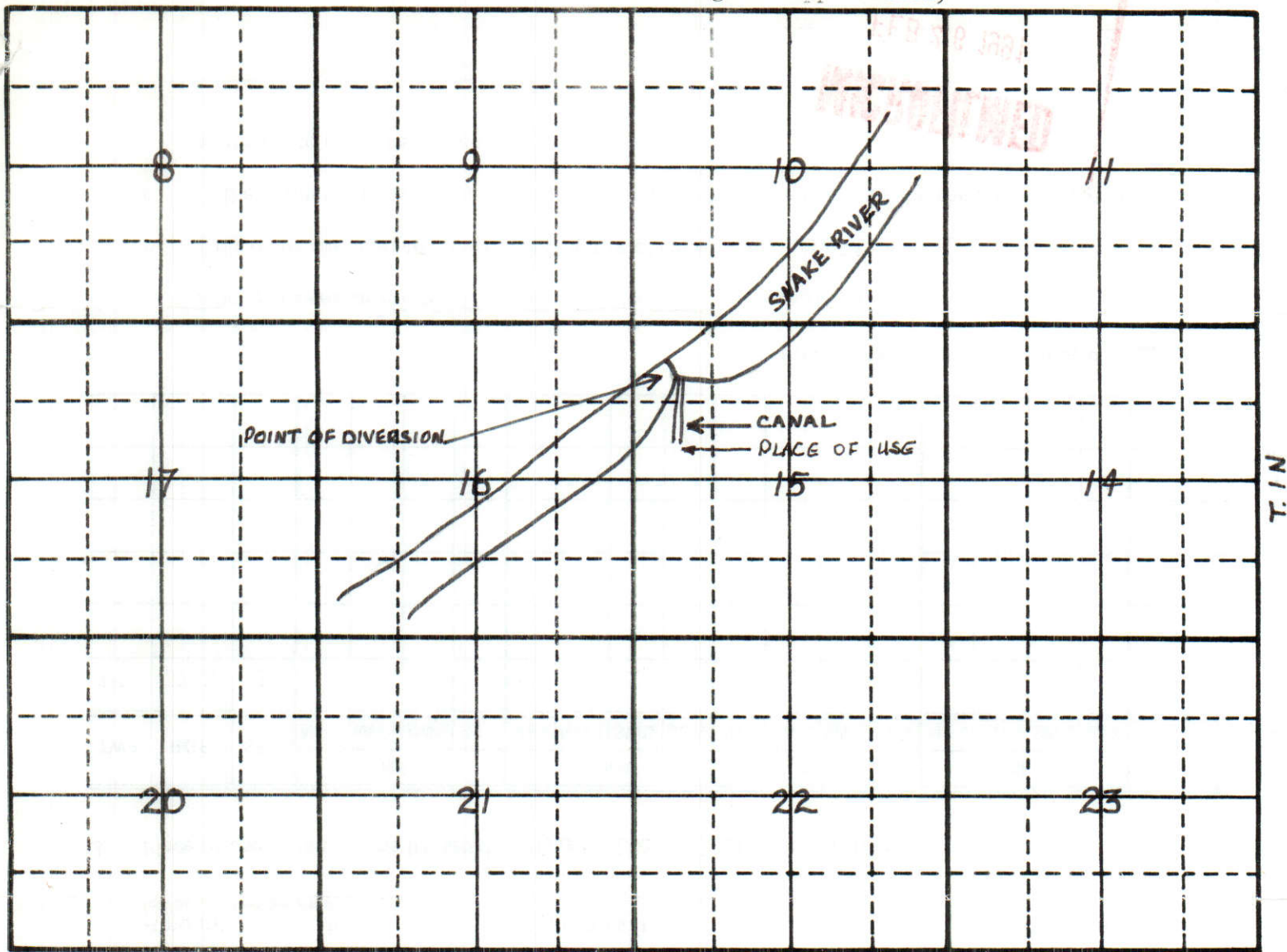


Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches. (This is the same point of diversion as original application)



Scale: 2 inches equal 1 mile.

R. 37 E

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

Signed at Salt Lake City, Utah, this 26th day of March, 19 86.

[Signature]
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by JW Fee = \$20.00 Received by CCW Date 4-9-86 #37589
Publication prepared by _____ Date _____ Published in _____
Publication dates _____

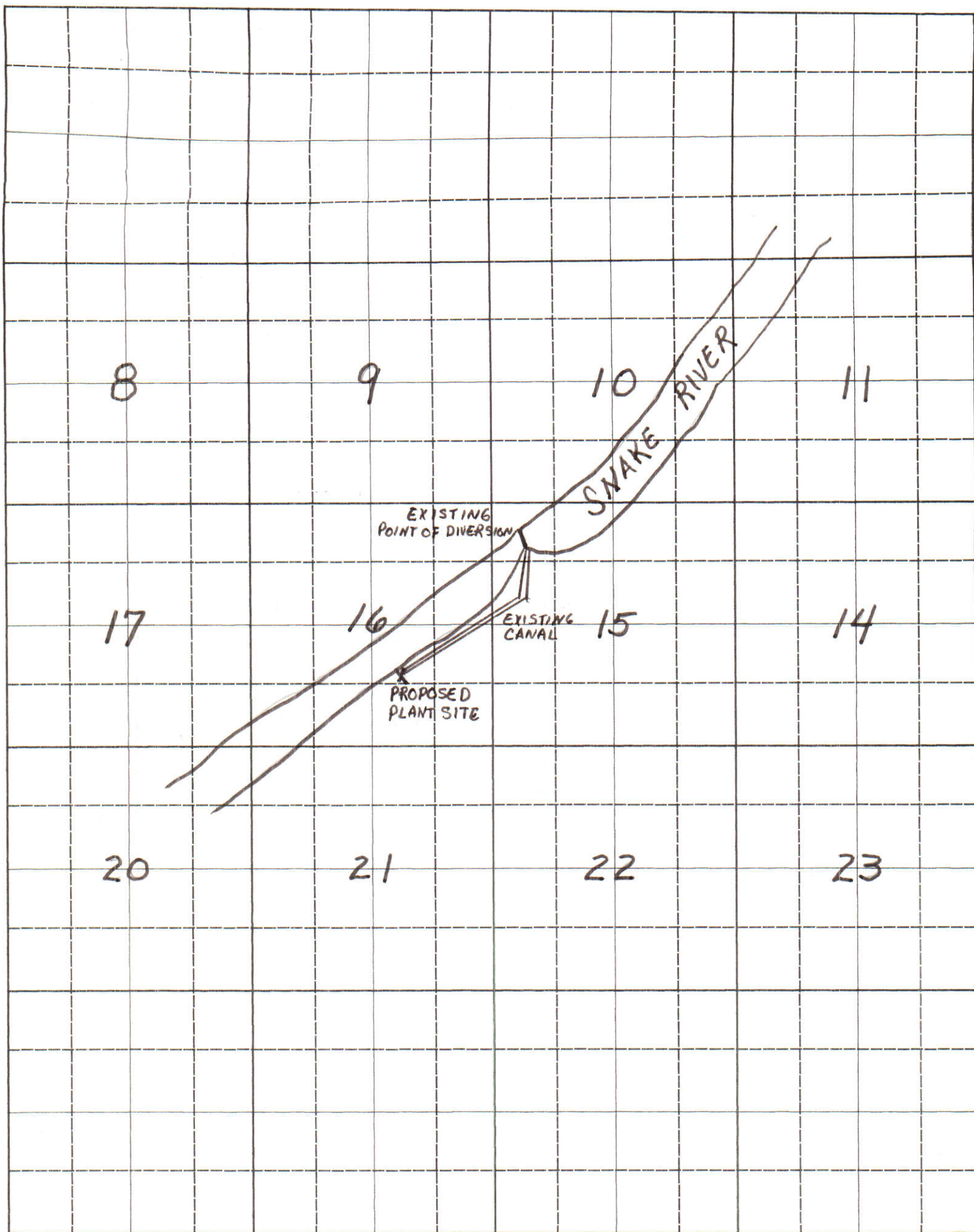
ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, L. GLEN SAXTON, of the Department of Water Resources hereby
Approve the above referenced Amendment provided the conditions as set forth on
page 4 of Permit No. 01-7051 are met.

Witness my hand this 29th day of April, 19 86.

[Signature]
Chief, Operations Bureau

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.

R. 37 E

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.

[Signature]

(Applicant)

MICROFILMED

APPROVED
TO
[Signature]

Proof of Publication

The Post-Register

State of Idaho, }
County of Bonneville } ss.

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

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for two consecutive weeks, first publication having been made on the 24th day of April, 1980, last publication having been made on the 1st day of May, 1980, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Subscribed and sworn to before me, this 5th day of May, 1980

Dean R. Johnston
Notary Public

My commission expires April 5, 1983

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:

01-7051

UTAH POWER & LIGHT COMPANY,
P.O. BOX 899, SALT LAKE CITY,
UT 84110

Source: SNAKE RIVER tributary to
COLUMBIA RIVER

Date Filed: 04/09/1980

Amount: 3000.00 CFS 3000.0 AC-FT

Diversion Point: NWNW Sec 15 T 01N
R 37E, BONNEVILLE Co.

Use: POWER (3000.00 CFS) from
01/01 to 12/31, POWER STORAGE
(3000.0 AC-FT) from 01/01 to 12/31,
POWER FROM STORAGE (3000.0 AC-
FT) from 01/01 to 12/31

Place of Use: NWSE Sec 16 T 01N R
37E

Diversion Means: DIVERSION DAM,
CANAL & HYDRO ELECTRIC
PLANT.

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, 1515 Lincoln Road, Idaho Falls, Idaho 83401 on or before MAY 12, 1980.

C. STEPHEN ALLRED
Director

Published: April 24 & May 1, 1980

ok
kw
5/19/80

RECEIVED

MAY 16 1980

Department of Water Resources
Eastern District Office

MICROFILMED

**NOTICE OF
APPLICATION FOR
WATER RIGHT**

The following application has been filed to appropriate the public waters of the State of Idaho and is being readvertised to allow evaluation of the public interest criteria under Section 42-203C, Idaho Code.

01-7051

UTAH POWER & LIGHT
COMPANY

P.O. Box 899, Salt Lake
City, UT 84110

Source: SNAKE RIVER
tributary to COLUMBIA
RIVER

Date Filed: 04/09/1980

Amount: 3000.00 CFS
3000.0 AC-FT

Diversion Point:

NWNW Sec 15 T 01N R
37E, BONNEVILLE Co.

Use: POWER (3000.00
CFS) from 01/01 to 12/31

Power Storage (3000.0
AC-FT) from 01/01 to
12/31

Power From Storage
(3000.0 AC-FT) from 01/
01 to 12/31

Place of Use: NWSE
Sec 16 T 01N R 37E

Diversion Means: Diver-
sion Dam, Canal &
Hydro Electric Plant.

The permit(s) will be
subject to all prior water
rights. Protests are
limited to the public in-
terest criteria under
Section 42-203C, Idaho
Code. Protests must be
filed with the Director,
Dept. of Water
Resources, 150 Shoup
Ave., Suite 15, Idaho
Falls, Idaho, 83402 on or
before November, 25,
1985.

KEN DUNN

Director

PUBLISH: **Thursdays**
November 7, and 14
1985.

Affidavit of Publication

STATE OF IDAHO,

COUNTY OF TWIN FALLS

ss.

No 15629

I, Linda Capps McSwain being first duly sworn upon
oath, depose and say that I am Print Clerk of the TIMES-NEWS,
published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of
the notice of advertisement, as per clipping attached, was published in the regular and
entire issue of said newspaper, and not in any supplement thereof, for Two
consecutive Weeks, commencing with the issue dated
November 7, 1985, and ending with the issue dated
November 14, 1985.

And I do further certify that said newspaper is a consolidation, effective February 16,
1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin
Falls News, published theretofore daily except Monday, both of which newspapers prior to
consolidation had been published under said names in said city and county continuously and
uninterruptedly during a period of more than twelve consecutive months, and said TIMES-
NEWS, since such consolidation, has been published as a daily newspaper except Saturday,
until July 31, 1978, at which time said newspaper began daily publication under said name
in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week
has been designated as the day on which legal notice by law or by order of any court of com-
petent jurisdiction within the state of Idaho, to be published weekly, will be published; and
that at the head of the editorial column of said combined newspapers, and in each issue there-
of, Thursday is announced as the day on which said legal notices will be published.

Subscribed and sworn to before me on this

15

day of

October

1985.

Linda Capps McSwain
Notary Public in and for the County of Twin Falls,
State of Idaho, residing at Twin Falls, Idaho

MICROFILMED

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

**LEGAL ADVERTISING
INVOICE**

Date 111485 INVOICE No. 100061451
Account No. 44660
Description 61451NOTIC
Times 2 Lines 42
Tab Lines _____

SOLD TO:

STATE OF IDAHO
DEPT. OF WATER RESOURCES
150 SHOUP AVE. SUITE 15
TWIN FALLS
ID 83402

\$ 36.75

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

AFFIDAVIT OF PUBLICATION

NOV 21 1985

STATE OF IDAHO,
County of Nez Perce

SS. Department of Water Resources
Eastern District Office

**NOTICE OF APPLICATION
FOR WATER RIGHT**

The following application has been filed to appropriate the public waters of the State of Idaho and is being readvertised to allow evaluation of the public interest criteria under Section 42-203C, Idaho Code.

01-7051

UTAH POWER & LIGHT COMPANY
P.O. BOX 899, SALT LAKE CITY,
UT 84110

Source: SNAKE RIVER tributary
to COLUMBIA RIVER

Date Filed: 04/09/1980

Amount: 3000.00 CFS 3000.0 AC-
FT

Diversion Point: NWNW Sec 15 T
01N R 37E, BONNEVILLE Co.

Use: POWER (3000.00 CFS) from
01/01 to 12/31

POWER STORAGE (3000.0 AC-
FT) from 01/01 to 12/31

POWER FROM STORAGE (3000.0
AC-FT) from 01/01 to 12/31

Place of Use: NWSE Sec 16 T 01N
R 37E

Diversion Means: DIVERSION
DAM, CANAL & HYDRO ELEC-
TRIC PLANT.

The permit(s) will be subject to all prior water rights. Protests are limited to the public interest criteria under Section 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402, on or before November 25, 1985.

KEN DUNN
Director

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

NOTICE OF APPLICATION FOR WATER RIGHT
attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication beginning on 110785, or once a week for two consecutive weeks, the first publication thereof being on the 110785, and the last publication thereof being on the 111485, and said

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

SUBSCRIBED AND SWORN BEFORE ME THIS THE 18
day of November 1985

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

MICROFILMED

Proof of Publication

The Post-Register

RECEIVED

NOV 18 1985

Department of Water Resources
Eastern District Office

State of Idaho, }
County of Bonneville } ss.

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

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for two consecutive weeks, first publication having been made on the 7th day of November, 1985, last publication having been made on the 14th day of November, 1985, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Subscribed and sworn to before me, this 15th day of November, 1985.

[Signature]
Notary Public

My commission expires September 30, 1988.

B10, 1M,

**NOTICE OF APPLICATION
FOR WATER RIGHT**

The following application has been filed to appropriate the public waters of the State of Idaho and is being readvertised to allow evaluation of the public interest criteria under Section 42-203C, Idaho Code.

01-7051
UTAH POWER & LIGHT COMPANY
P.O. BOX 899, SALT LAKE CITY, UT 84110
Source: SNAKE RIVER tributary to COLUMBIA RIVER
Date Filed: 04/09/1980
Amount: 3000.00 CFS 3000.0 AC-FT
Diversion Point: NWNW Sec 15 T 01N R 37E, BONNEVILLE Co.
Use: POWER (3000.00 CFS) from 01/01 to 12/31; POWER STORAGE (3000.0 AC-FT) from 01/01 to 12/31; POWER FROM STORAGE (3000.0 AC-FT) from 01/01 to 12/31
Place of Use: NWSE Sec 16 T 01N R 37E
Diversion Means: DIVERSION DAM, CANAL & HYDRO ELECTRIC PLANT.

The permit(s) will be subject to all prior water rights. Protests are limited to the public interest criteria under Section 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, 83402 on or before November 25, 1985.

KEN DUNN
Director

Published: November 7, 14, 1985

MICROFILMED

Company Name ID. Dept. of Water Resources, E.Account Number 100564Cost: \$ 38.72

STATE OF IDAHO)
) ss.
 COUNTY OF ADA)

RECEIVED

NOV 18 1985

Department of Water Resources
Eastern District Office

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

November 7, 19 85, and ending with the issue of November 14, 19 85.

Laura Gay Barnes

Subscribed and sworn to before me this 14th day of November, 19 85.

Jeanne M Hawk

Notary Public for Idaho, Residing at Boise, Idaho.

NOTICE OF APPLICATION
FOR WATER RIGHT

The following application has been filed to appropriate the public waters of the State of Idaho, and is being readvertised to allow evaluation of the public interest criteria under Section 42-203C, Idaho Code.

01-7051

Utah Power & Light Company
P.O. Box 899
Salt Lake City, UT 84110

Source: Snake River tributary to Columbia River

Date Filed: 04/09/80

Amount: 3000.00 CFS, 3000.0 AC-FT

Diversion Pt: NWNW Sec. 15 T 01N

R 37E, Bonneville Co.

Use: Power (3000.00 CFS) from

01/01 to 12/31

Use: Power Storage (3000.0 AC-FT)

from 01/01 to 12/31

Use: Power From Storage (3000.0

AC-FT) from 01/01 to 12/31

Place of Use: NWSE Sec. 16 T 01N R

37E

Diversion Means: Diversion Dam,

Canal & Hydro Electric Plant.

The permit(s) will be subject to all prior water rights. Protests are limited to the public interest criteria under Section 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, 83402 on or before November 25, 1985.

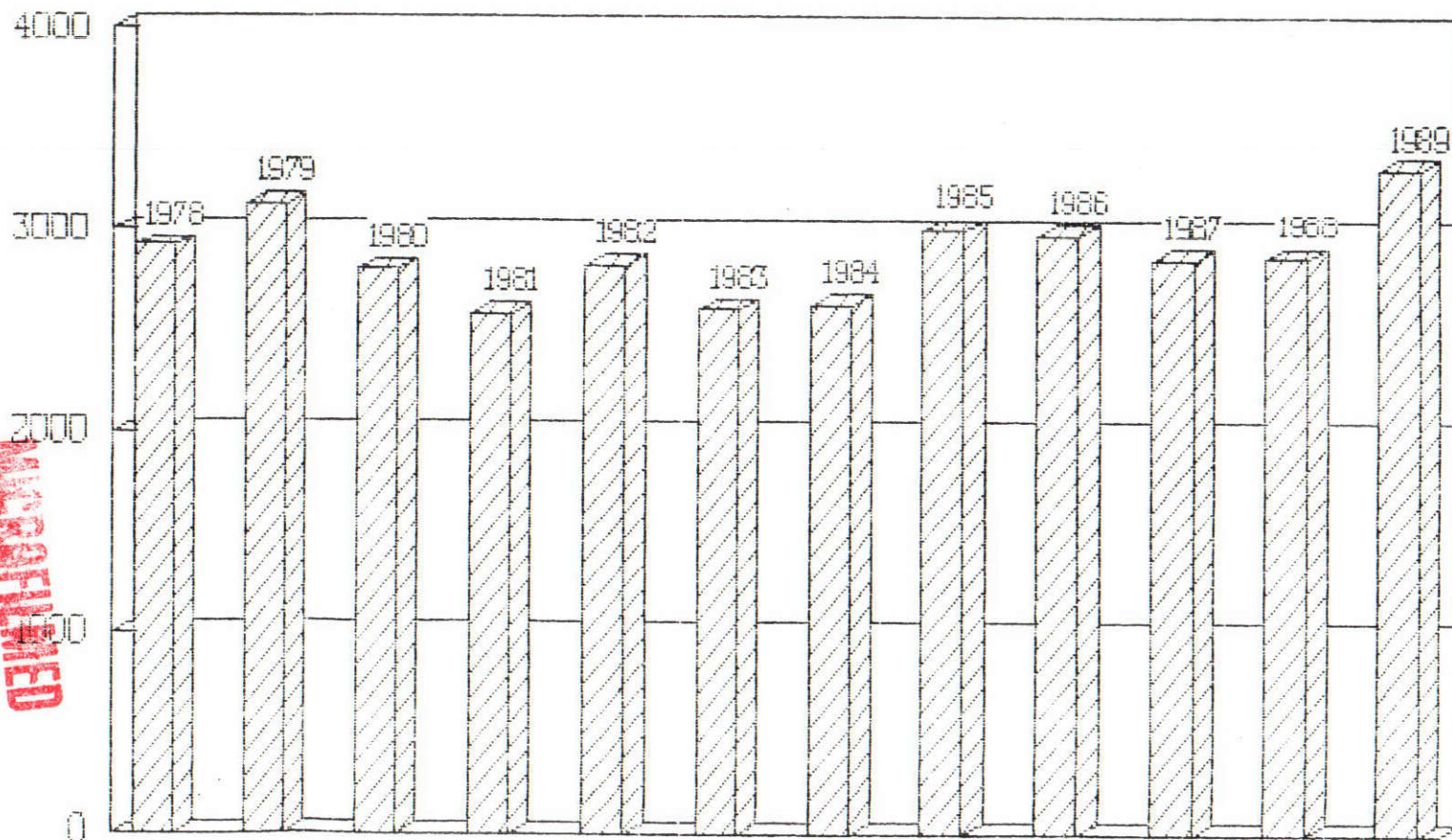
KEN DUNN
Director

Pub. Oct. 7, 14, 1985

9572

MICROFILMED

City of Idaho Falls Wastewater Treatment Plant



M.G.

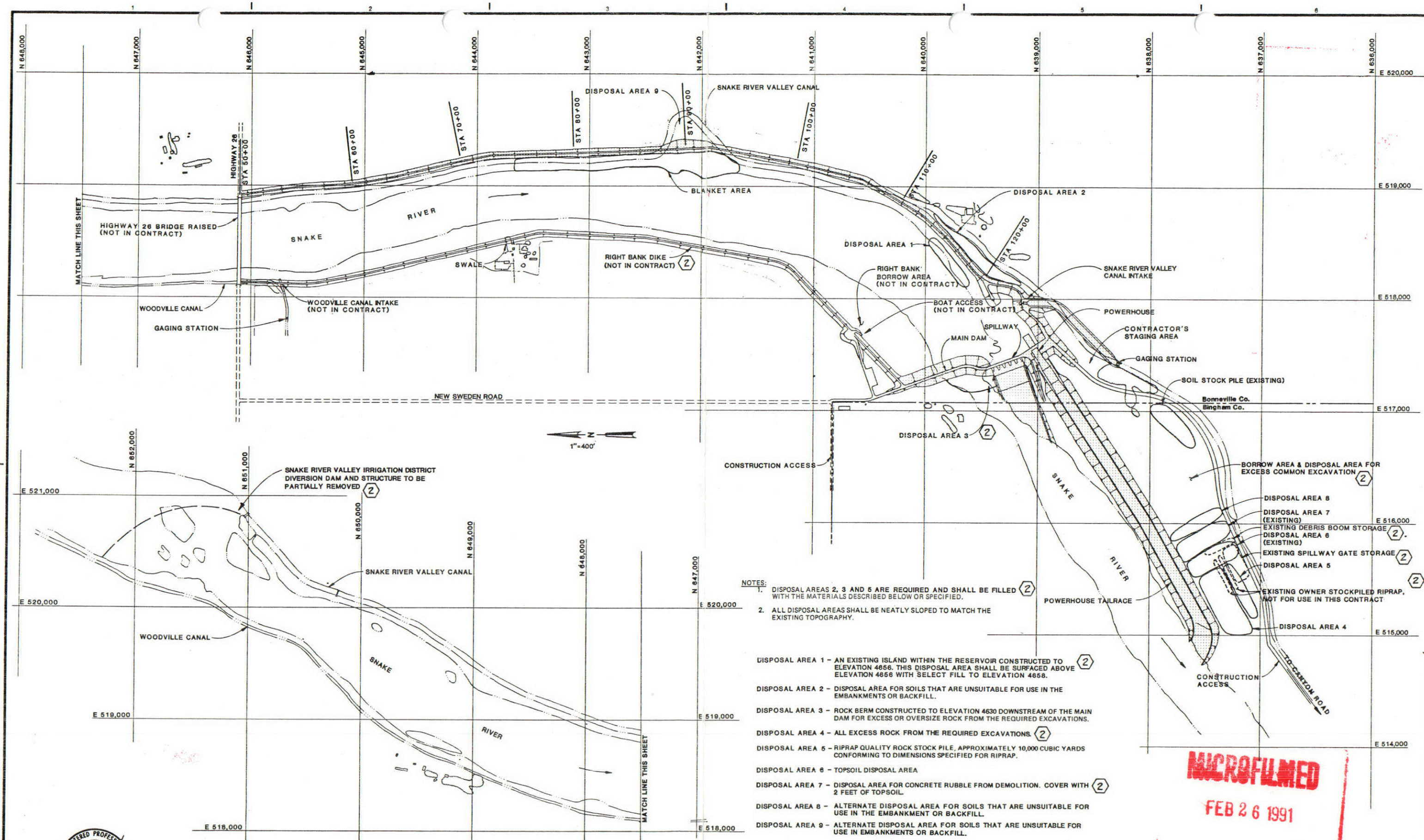
Total Flow

FEB 26 1991

RECEIVED

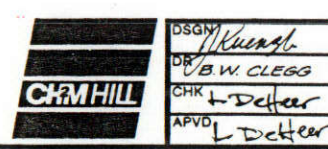






- NOTES:**
- DISPOSAL AREAS 2, 3 AND 5 ARE REQUIRED AND SHALL BE FILLED WITH THE MATERIALS DESCRIBED BELOW OR SPECIFIED.
 - ALL DISPOSAL AREAS SHALL BE NEATLY SLOPED TO MATCH THE EXISTING TOPOGRAPHY.
- DISPOSAL AREA 1** - AN EXISTING ISLAND WITHIN THE RESERVOIR CONSTRUCTED TO ELEVATION 4656. THIS DISPOSAL AREA SHALL BE SURFACED ABOVE ELEVATION 4656 WITH SELECT FILL TO ELEVATION 4658.
- DISPOSAL AREA 2** - DISPOSAL AREA FOR SOILS THAT ARE UNSUITABLE FOR USE IN THE EMBANKMENTS OR BACKFILL.
- DISPOSAL AREA 3** - ROCK BERM CONSTRUCTED TO ELEVATION 4630 DOWNSTREAM OF THE MAIN DAM FOR EXCESS OR OVERSIZE ROCK FROM THE REQUIRED EXCAVATIONS.
- DISPOSAL AREA 4** - ALL EXCESS ROCK FROM THE REQUIRED EXCAVATIONS.
- DISPOSAL AREA 5** - RIPRAP QUALITY ROCK STOCK PILE, APPROXIMATELY 10,000 CUBIC YARDS CONFORMING TO DIMENSIONS SPECIFIED FOR RIPRAP.
- DISPOSAL AREA 6** - TOPSOIL DISPOSAL AREA.
- DISPOSAL AREA 7** - DISPOSAL AREA FOR CONCRETE RUBBLE FROM DEMOLITION. COVER WITH 2 FEET OF TOPSOIL.
- DISPOSAL AREA 8** - ALTERNATE DISPOSAL AREA FOR SOILS THAT ARE UNSUITABLE FOR USE IN THE EMBANKMENT OR BACKFILL.
- DISPOSAL AREA 9** - ALTERNATE DISPOSAL AREA FOR SOILS THAT ARE UNSUITABLE FOR USE IN EMBANKMENTS OR BACKFILL.

MICROFILMED
FEB 26 1991



DESIGN	CHK	APVD	NO.	DATE	REVISION	BY	APVD
J. Kuentz	B. W. Clegg	L. Decker	2	6/10/86	ADDENDUM NO. 2	J. Kuentz	
				5/21/86	MINOR REVISIONS	J. Kuentz	

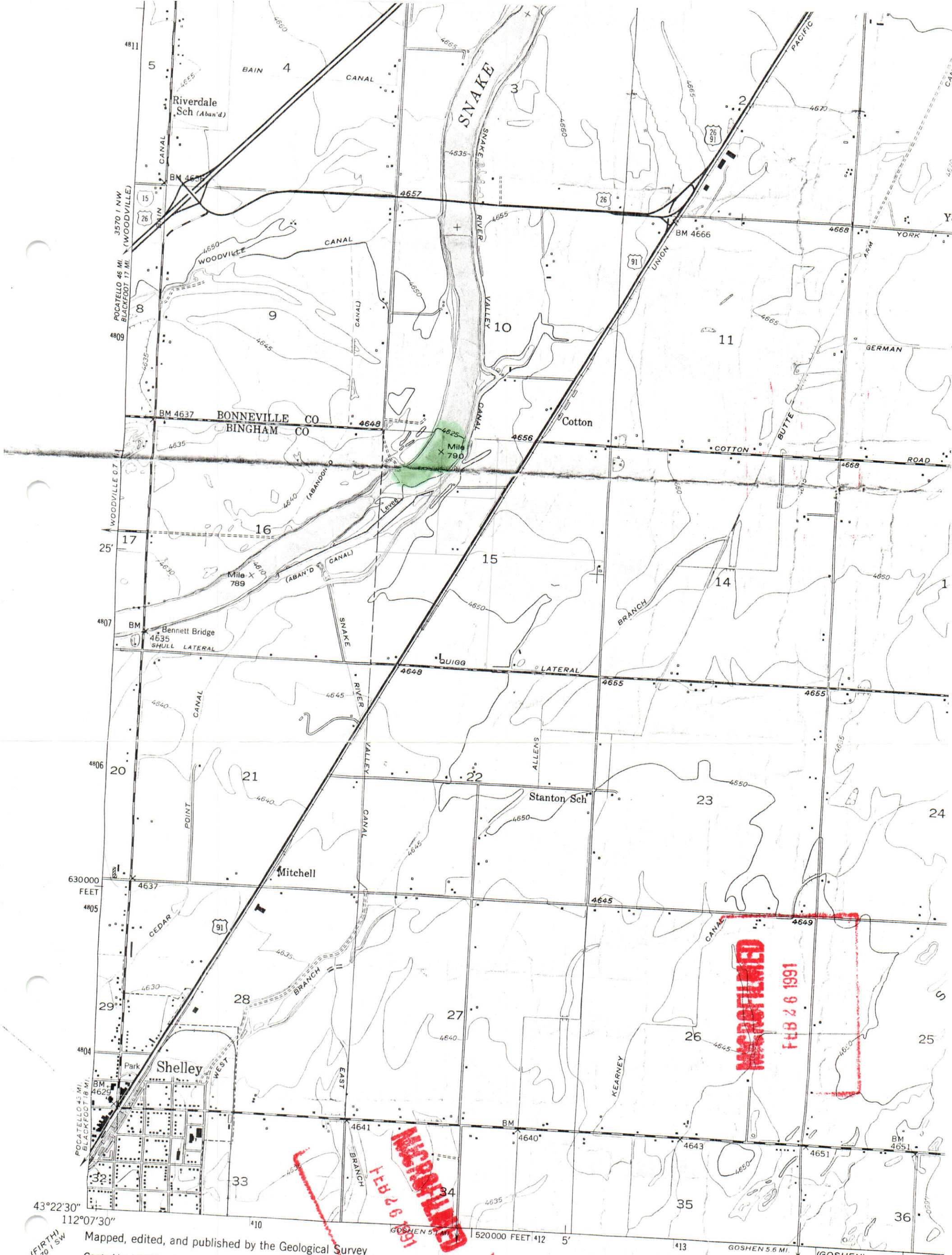
REUSE OF DOCUMENTS
THIS DOCUMENT, AND THE IDEAS AND DESIGNS INCORPORATED HEREIN, AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF CH2M HILL AND IS NOT TO BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF CH2M HILL.

VERIFY SCALES
BAR IS ONE INCH ON ORIGINAL DRAWING.
IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY.

GEM STATE HYDROELECTRIC PROJECT
CITY OF IDAHO FALLS, IDAHO
GENERAL CONTRACT

SHEET	G-4
DWG NO.	0-4
DATE	MAY 1986
PROJ NO.	B18980

SITE MAP



43°22'30"
112°07'30"
(FIRTH)
3570' SW

Mapped, edited, and published by the Geological Survey

Control by USGS and NOS/NOAA

Culture and drainage by multiplex methods
from aerial photographs taken 1946

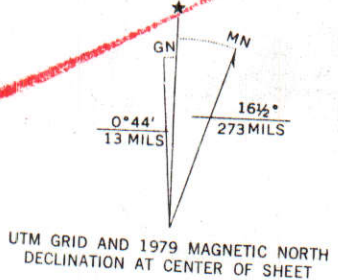
Topography by plane-table methods 1948

Polyconic projection. 1927 North American datum
10,000-foot grid based on Idaho coordinate system,
east zone

1000-meter Universal Transverse Mercator grid ticks,
zone 12, shown in blue

To place on the predicted North American Datum 1983,
move the projection lines 12 meters north and
66 meters east as shown by dashed corner ticks

Red tint indicates areas in which only landmark
buildings are shown

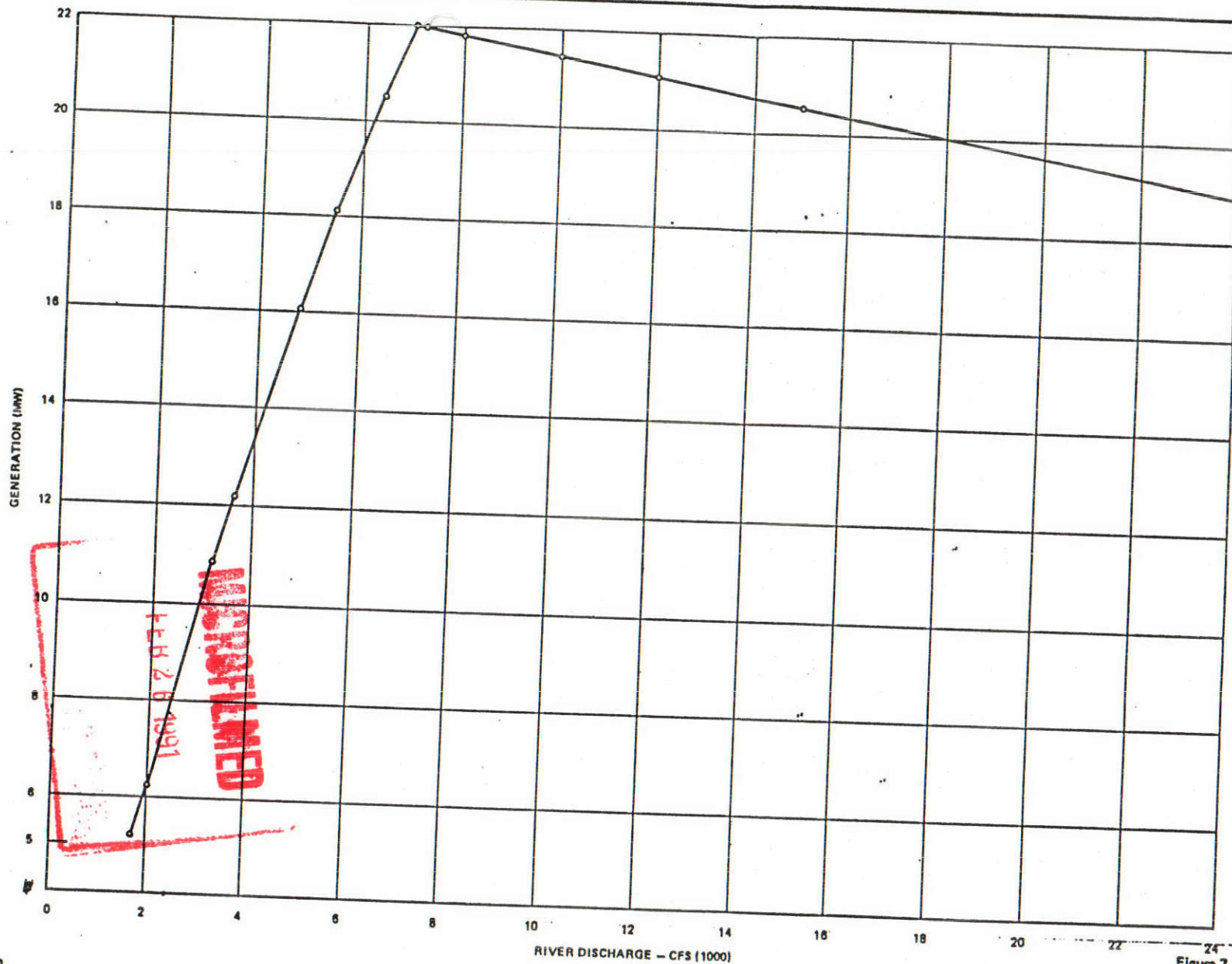


UTM GRID AND 1979 MAGNETIC NORTH
DECLINATION AT CENTER OF SHEET



SCALE 1:24 000
CONTOUR INTERVAL 5 FEET
NATIONAL GEODETIC VERTICAL DATUM OF 1929

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR RESTON
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON R

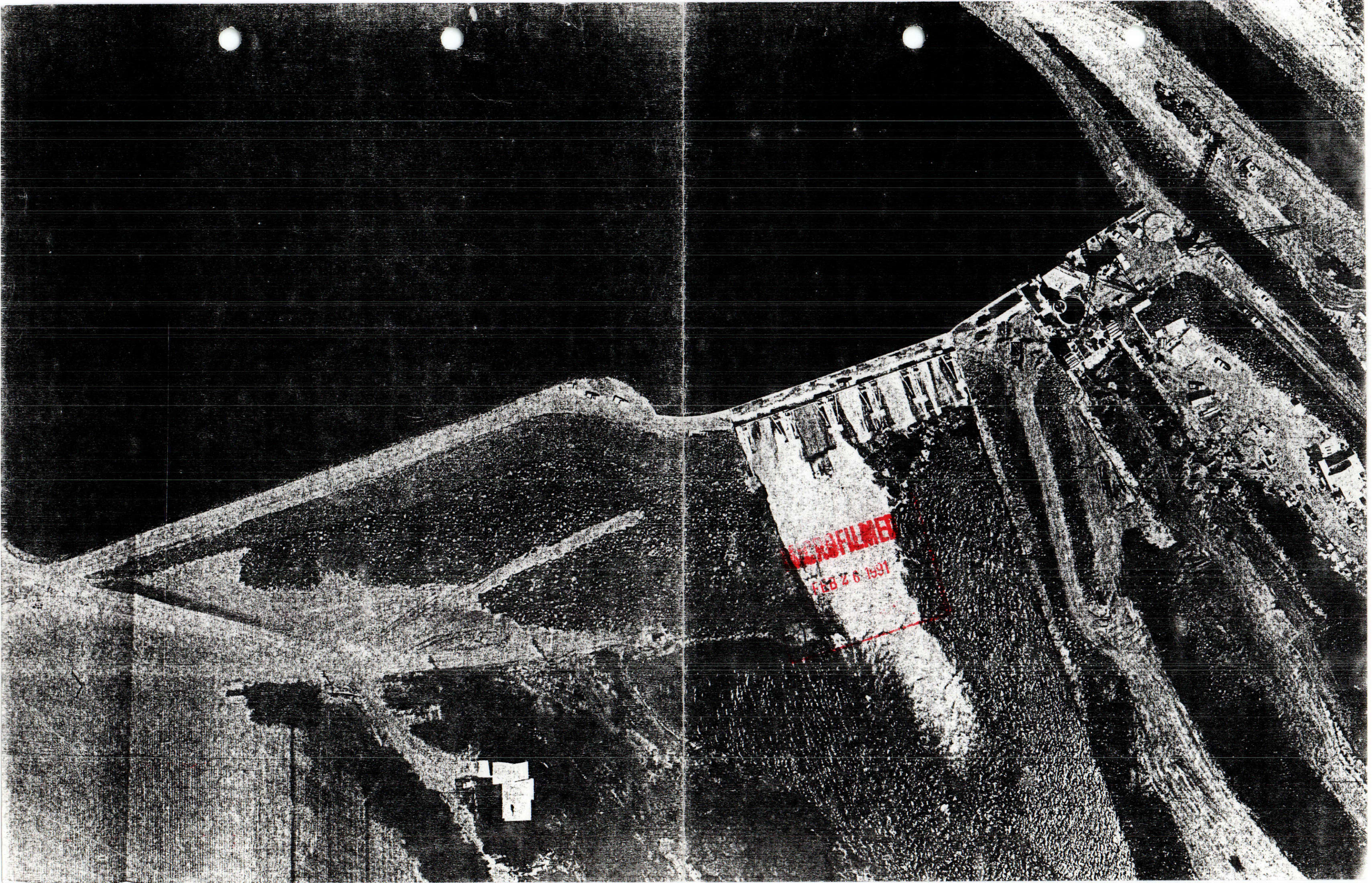


812261.00

Figure 7
DISCHARGE vs. PLANT OUTPUT
GEM STATE HYDROELECTRIC PROJECT
CITY OF IDAHO FALLS, IDAHO



Draft



State of Idaho
Department of Water Resources

AMENDED

WATER RIGHT LICENSE
WATER RIGHT NO. 01-07051

AMENDED

Priority: April 9, 1980

Maximum Diversion Rate:

3000.00 CFS

This is to certify, that UTAH POWER & LIGHT CO
1407 W N TEMPLE

SALT LAKE CITY UT 84140 has complied with the terms and conditions
of the permit, issued pursuant to Application for Permit dated April 9, 1980; and
has submitted Proof of Beneficial Use on June 30, 1989. An examination indicates
that the works have a diversion capacity of 8000.000 cfs of water from:

SNAKE RIVER

tributary to **COLUMBIA RIVER**

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
POWER	01/01 to 12/31	3000.00 CFS	
POWER STORAGE	01/01 to 12/31		3000.0 AF
POWER FROM STORAGE	01/01 to 12/31		3000.0 AF
	Totals	3000.00 CFS	

LOCATION OF POINT(S) OF DIVERSION:

NWNW , Sec. 15, Township 01N, Range 37E
BONNEVILLE County

PLACE OF USE: POWER
TWN RGE SEC

01N 37E 15 SWNW

PLACE OF USE: POWER FROM STORAGE, same as POWER use

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. The water right confirmed in this license 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 license and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this license.

RECEIVED

NOV 12 1992

State of Idaho
Department of Water Resources**WATER RIGHT LICENSE**
WATER RIGHT NO. 01-07051CONDITIONS/REMARKS:

5. Use of water under this water right is under control of the watermaster of State Water District No. 01.
6. Use of water under this license shall not cause fluctuation in the flows of the Snake River which impairs the ability of prior right holders to divert their water.
7. Five (5) cfs of treated effluent from the new Anheuser-Busch malting plant is dedicated to replacement of losses to the Snake River caused by this power facility. Any loss to the Snake River resulting from conveyance and use pursuant to this license not mitigated by treated malted plant effluent shall be mitigated with other replacement water.
8. The diversion and use of water under this license is subject to review by the Director after the date of expiration of license 2952 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.
9. Water for the project authorized by this license is also diverted pursuant to Water Right No. 01-07018.
10. This license is subject to revocation pursuant to Section 42-350, Idaho Code.
11. This power facility is known locally as the Gem State Project.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 2nd day of NOVEMBER, 1992.


Acting for R. Keith Higginson, Director

RECEIVED

NOV 12 1992

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 01-07051

Priority: April 9, 1980

Maximum Diversion Rate:

3000.00 CFS

This is to certify, that UTAH POWER & LIGHT CO.

1407 W. N. TEMPLE

SALT LAKE CITY, UT 84140

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated April 9, 1980; and has submitted Proof of Beneficial Use on June 30, 1989. An examination indicates that the works have a diversion capacity of 5500.000 cfs of water from:

SNAKE RIVER

tributary to **COLUMBIA RIVER**

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
POWER	01/01 to 12/31	3000.00 CFS	
POWER STORAGE	01/01 to 12/31		3000.0 AF
POWER FROM STORAGE	01/01 to 12/31		3000.0 AF
Totals		3000.00 CFS	

LOCATION OF POINT(S) OF DIVERSION:

NWNW , Sec. 15, Township 01N, Range 37E
BONNEVILLE County

PLACE OF USE: POWER

TWN RGE SEC

01N 37E 15

SWNW

PLACE OF USE: POWER STORAGE, same as POWER use

PLACE OF USE: POWER FROM STORAGE, same as POWER use

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.

MICROFILMED

FEB 4 6 1991

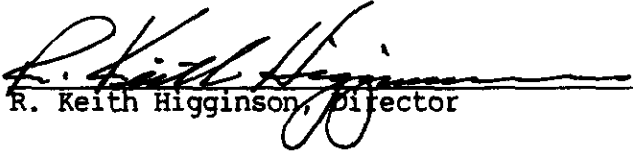
State of Idaho
Department of Water Resources**WATER RIGHT LICENSE**

WATER RIGHT NO. 01-07051

CONDITIONS/REMARKS:

4. The water right confirmed in this license 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 license and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this license.
5. Use of water under this water right is under control of the watermaster of State Water District No. 01.
6. Use of water under this license shall not cause fluctuation in the flows of the Snake River.
7. Five (5) cfs of treated effluent from the new Anheuser-Busch malting plant is dedicated to replacement of losses to the Snake River caused by this power facility.
8. Any loss to the Snake River resulting from conveyance and use pursuant to this license shall be mitigated with replacement water.
9. The diversion and use of water under this license is subject to review by the Director after the date of expiration of license 2952 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.
10. Water for the project authorized by this license is also diverted pursuant to Water Right No. 01-7018.
11. This license is subject to revocation pursuant to Section 42-350, Idaho Code.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 6th day of February, 1991.


R. Keith Higginson, Director

RECORDED

FEB 13 1991

UTAH POWER & LIGHT COMPANY

1407 WEST NORTH TEMPLE STREET
SALT LAKE CITY, UTAH 84140

LEGAL DEPARTMENT
JODY L. WILLIAMS
ATTORNEY AT LAW
801-220-2851

RECEIVED
APR 4 1990

Department of Water Resources

April 2, 1990

RECEIVED
APR 16 1990

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

Re: Notice to Change Mailing Address

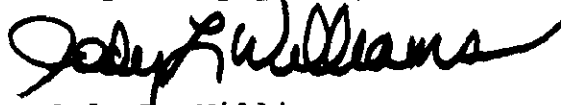
Dear Dept. of Water Resources representative:

Please change your mailing records (~~which are currently as shown on the attached mailing label~~) to reflect the following corrected address (P.O. Box 899 is no longer being used by our Company):

Ms. Jody L. Williams
Utah Power & Light Company
1407 W. North Temple
Salt Lake City, Utah 84140

Thank you.

Very truly yours, .


Jody L. Williams

JLW:cld

21-7363
25-7403
01-7051
11-2081
2084
4004

13-4128
4129
21-4060
27-7018
35-2830

NOT FILMED

FEB 26 1991

+ misc. decreed files - computer updated 4-17-90
SC

STATE OF IDAHO

RECEIVED
APR 9 1986

APPLICATION FOR AMENDMENT OF A PERMIT

Department of Water Resources

To change the point of diversion and/or the place of use

APPROVED

Comes now UTAH POWER & LIGHT COMPANY Phone (801) 535-2174

of (address) Room 145, P. O. Box 899, Salt Lake City, Utah 84110, and represents to the
Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho
No. 01-7051, and requests that the permit and permit map be changed as follows:

1. Point of diversion: NW ¼ NW ¼, Section 15, Township 1N, Range 37E, B.M.,
County of Bonneville. Other points of diversion: (this is the same location
as original application)

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Amount 3000 for power purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs)

Amount 3000 for storage purposes from Jan 1 to Dec 31 (both dates inclusive)
(acre feet per annum)

Amount 3000 for power from storage purposes from Jan 1 to Dec 31 (both dates inclusive)
(acre feet per annum)

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

3. Place of use or land to be irrigated: (new place of use as follows:)

TWP	RGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
1N	37 E	15						X											

Total number of acres to be irrigated =

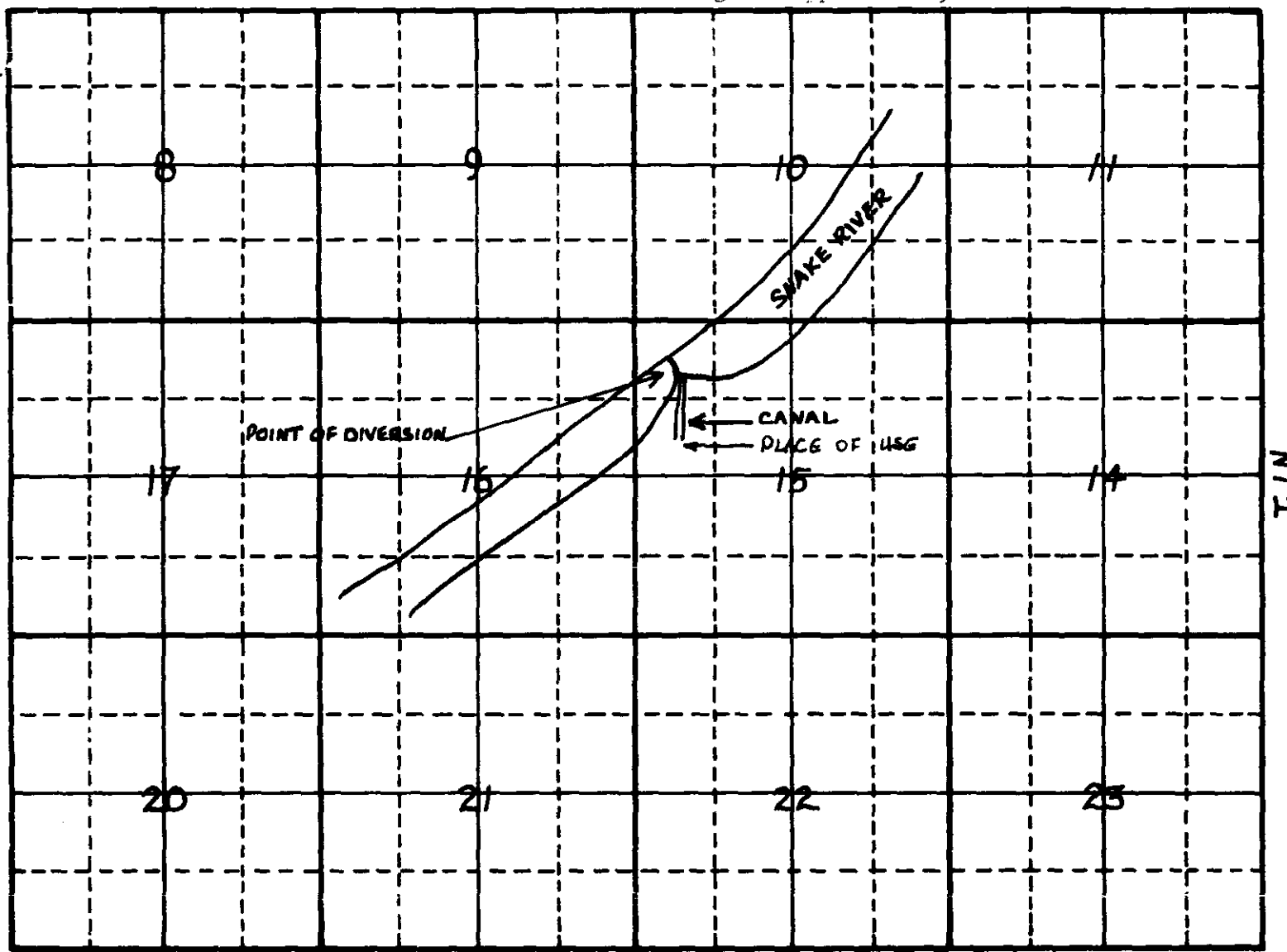
4. a. Who owns the property at the point of diversion? applicant
b. Who owns the land to be irrigated or the place of use? applicant
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

MICROFILMED

FEB 26 1991

Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches. (This is the same point of diversion as original application)



Scale: 2 inches equal 1 mile.

R. 37 E

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

Signed at Salt Lake City, Utah, this 26th day of March, 1986.

[Signature]
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by JW Fee = \$20.00 Received by CCW Date 4-9-86 #37589
Publication prepared by _____ Date _____ Published in _____
Publication dates _____

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, L. GLEN SAXTON, of the Department of Water Resources hereby

Approve the above referenced Amendment provided the conditions as set forth on page 4 of Permit No. 01-7051 are met.

MICROFILMED

FEB 26 1986

Witness my hand this

29th day of

April

1986

[Signature]
Chief, Operations Bureau

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 UTAH POWER & LIGHT COMPANY Phone 535-2174

Post office address P. O. Box 899 - Salt Lake City, Utah 84110

2. Source of water supply SNAKE RIVER which is a tributary of COLUMBIA RIVER

3. Location of point of diversion is NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 15 Township IN.

Range 37 E.B.M. Bonneville County, additional points of diversion if any: _____

4. Water will be used for the following purposes:

As per telecon with Thomas Forsgren 4/17/80 *imo*

Amount 3000 cfs for Power purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 3000 ac ft for Power Storage purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 3000 AF for Power from storage purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)

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

5. Total quantity to be appropriated:

a. 3,000 cubic feet per second and/or b. 3000 acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Rehabilitate existing 3,000 acre foot capacity diversion dam, rehabilitate existing 3,700' power canal, construct 10-12 MW hydro electric generating plant at abandoned plant site.

b. Height of storage dam 30 feet, active reservoir capacity 3,000 acre-feet; total reservoir capacity 3,000 acre-feet, materials used in storage dam: Timber and rock

Period of year when water will be diverted to storage Jan. 1 to Dec. 31 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: NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 16 Township IN.

Range 37 C. B.M.

(2) Amount of power to be generated: 7,800 horsepower under 28 feet of head.

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

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

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

MICROFILMED

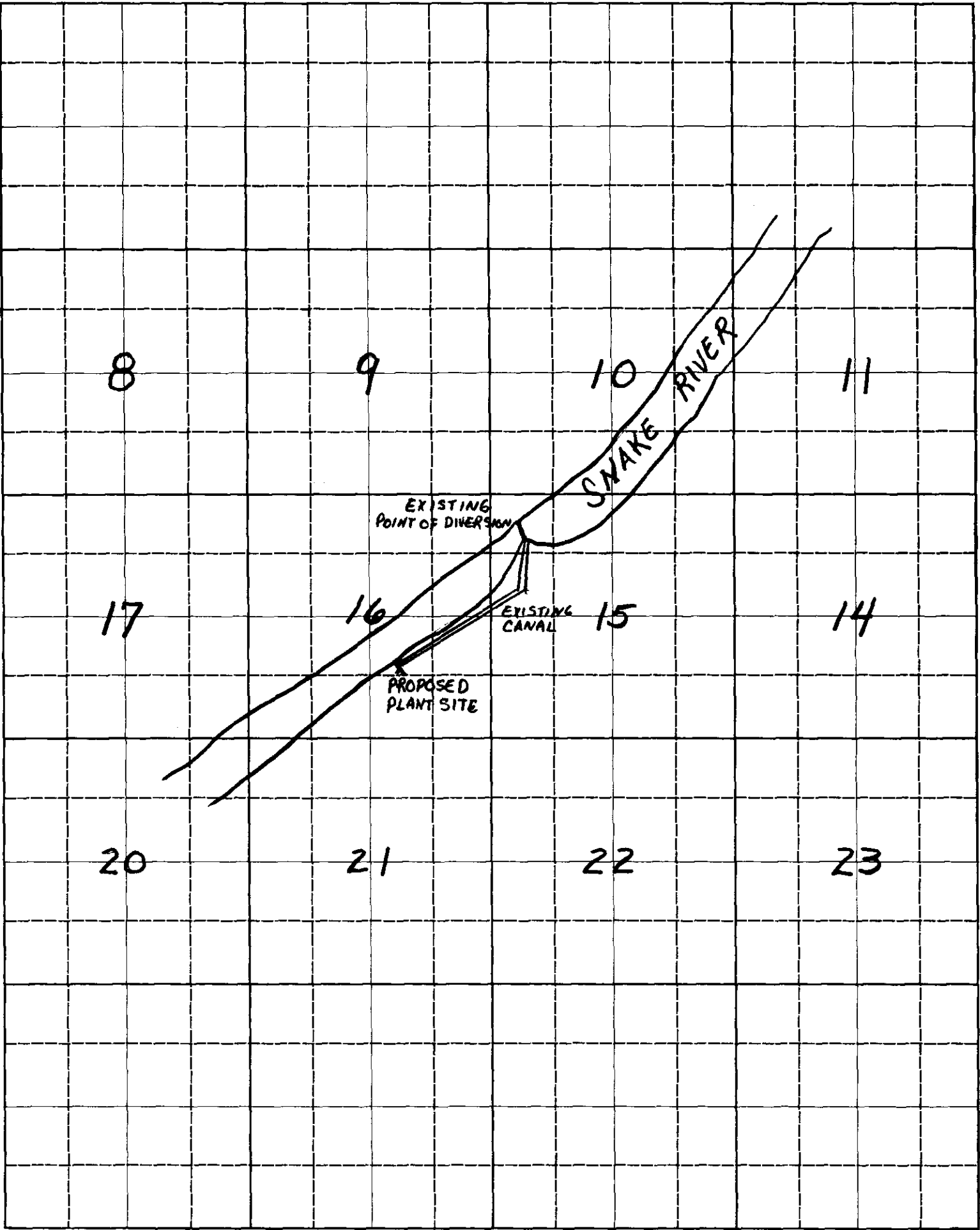
b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

Total number of acres to be irrigated

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

10. Remarks The applicant proposes to rehabilitate the existing diversion dam and power canal with subsequent installation of a new powerhouse of 10-12 MW capacity. Estimated average annual energy output is 79 million kilowatt hours.

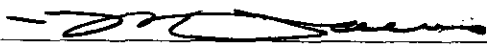
11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

R. 37E

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.


(Applicant)

MICROFILMED

Proposed Priority 4/9/80

MICROFILMED

Received by kw Date 4/9/80 Time 1:20

Preliminary check by jo Fee \$ 1,925.00

Received by kw Date 4/15/80 # 13936

Publication prepared by kw MD Date 4/17/80 19/80

Published in Post Register / Idaho Statesman, Lewiston TR. Bunk
Times News, Post Register

Publication dates 4/24 & 5/1/80 11/7 & 11/4 1985

Publication approved MD Date 11/15/85

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by EMC Jm

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. 01-7051, 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 December 1, 19 90.
- 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 k.

Witness my hand this 18 day of December, 19 85.

A. Glen Saxton
Chief, Operations Bureau

ATTACHMENT TO CONDITIONS OF APPROVAL

For Permit No. 01-7051

- d. This permit in combination with Permit No. 01-7018 requires replacement water at the rate of 5.0 cubic feet per second from a source other than a new appropriation or a non-consumptive appropriation of the natural flow of the Snake River or tributaries.
- e. Prior to the diversion of water under this permit, the permit holder must notify and receive the approval of the Director for the replacement source of water.
- f. The Director retains jurisdiction of this permit to assure compliance with these conditions.
- 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. 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.
- i. The Director retains jurisdiction of this permit in order to limit the use of water for hydropower generation purposes to a specific term of years as required by Section 42-203B(7), Idaho Code.
- j. The storage of water under this permit is contingent upon the certification of the dam and authorization of storage per the dam safety provisions of the Idaho Code.
- k. Use of water under this permit is subject to control by the watermaster of State Water District No. 01, Snake River.

Witness my hand this 18th day of December, 1985.


Chief, Operations Bureau

MICROFILMED

RECEIVED

UTAH POWER & LIGHT COMPANY

1407 WEST NORTH TEMPLE STREET

P. O. BOX 899

SALT LAKE CITY, UTAH 84110

801 535-4261

SEP 23 1981

Department of Water Resources

THOMAS W. FORSGREN

ASSISTANT CORPORATE SECRETARY

September 21, 1981

Mr. David R. Tuthill, Jr., P.E. *DRT*
Supervisor, Water Allocation Section
State of Idaho
Department of Water Resources
450 West State St.
Boise, Idaho 83720

Re: Application No. 01-7051

Dear Mr. Tuthill:

Enclosed please find our signed copy of the Affidavit for Water Rights to be used for Power Purposes.

If you have any questions, please contact us at your convenience.

Very truly yours,

Thomas W. Forsgren
THOMAS W. FORSGREN

TWF:ckb
Encl.

MICROFILMED

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

RECEIVED

SEP 23 1981

Ownership of Facilities: (To be completed for hydropower projects only) ^{Department of Water Resources}

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

(check one)

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

UTAH POWER & LIGHT COMPANY

By: Thomas W. Ferguson
Applicant
Attorney for Applicant

State of Utah)
County of Salt Lake) ss.

On this 21st day of September, 1981, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged
to me that he (she) (they) executed the same.

Carol K. Booth
Notary Public residing at

seal

Salt Lake City, Utah

My commission expires:

Sept 28, 1981

MICROFILMED

Proof of Publication

The Post-Register

State of Idaho, {
County of Bonneville { ss.

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

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for two consecutive weeks, first publication having been made on the 24th day of April, 1980, last publication having been made on the 1st day of May, 1980, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Subscribed and sworn to before me, this 5th day of May, 1980.

Dean R. Johnson
Notary Public

My commission expires April 5, 1983.

ok
kw
5/19/80

RECEIVED

MAY 16 1980

Department of Water Resources
Eastern District Office

MICROFILMED

NOTICE OF
 APPLICATION FOR
 DIVERSION PERMIT
 The following applica-
 tion has been filed to
 appropriate the public
 waters of the State of
 Idaho and is being
 recorded to allow
 inspection of the public
 interest criteria under
 Section 42-203C, Idaho
 Code.
 OF THE
 UTAH POWER & LIGHT
 COMPANY
 P.O. Box 809, Salt Lake
 City, UT 84110
 Source: BRANE RIVER
 tributary to COLUMBIA
 RIVER
 Date Filed: 04/09/1985
 Amount: 3000.00 CFS
 3000.0 AC-FT
 Diversion Point:
 NEAR Sec 15 T 01N W
 37E, BURNING LEE Co.
 Use: POWER (3000.00
 CFS from 01/01 to 12/31
 Power Storage (3000.0
 AC-FT) from 01/01 to
 12/31
 Power From Storage
 (3000.0 AC-FT) from 01/
 01 to 12/31
 Place of Use: NWSE
 Sec 16 T 01N R 37E
 Diversion Means: Diversion
 Dam, Canal &
 Hydro Electric Plant
 The permit(s) will be
 subject to all prior water
 rights.
 This application is
 filed with the Director,
 Dept. of Water
 Resources, 150 Shoup
 Ave., Suite 15, Idaho
 Falls, Idaho, 83402 on or
 before November 25,
 1985.
 KEN DUNN
 Director
 PUBLISH: Thursdays
 November 7, and 14
 1985.

Affidavit of Publication

STATE OF IDAHO,
 COUNTY OF TWIN FALLS } ss.

No 15629

I, Linda Capps McSwine, being first duly sworn upon
 oath, depose and say that I am Print Clerk of the TIMES-NEWS,
 published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of
 the notice of advertisement, as per clipping attached, was published in the regular and
 entire issue of said newspaper, and not in any supplement thereof, for Two
 consecutive Weeks, commencing with the issue dated
November 7, 1985, and ending with the issue dated
November 14, 1985.

And I do further certify that said newspaper is a consolidation, effective February 16,
 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin
 Falls News, published theretofore daily except Monday, both of which newspapers prior to
 consolidation had been published under said names in said city and county continuously and
 uninterruptedly during a period of more than twelve consecutive months, and said TIMES-
 NEWS, since such consolidation, has been published as a daily newspaper except Saturday,
 until July 31, 1978, at which time said newspaper began daily publication under said name
 in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week
 has been designated as the day on which legal notice by law or by order of any court of com-
 petent jurisdiction within the state of Idaho, to be published weekly, will be published; and
 that at the head of the editorial column of said combined newspapers, and in each issue there-
 of, Thursday is announced as the day on which said legal notices will be published.

Linda Capps McSwine
 Subscribed and sworn to before me on this 15 day of
October, 1985.

Dorcas L. Lunn
 Notary Public in and for the County of Twin Falls,
 State of Idaho, residing at Twin Falls, Idaho

MICROFILMED

TRIBUNE PUBLISHING COMPANY, INC.

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

Date 111485 INVOICE No. 100061451Account No. 44660Description 61451NOTICTimes 2 Lines 42

Tab Lines _____

**LEGAL ADVERTISING
INVOICE**

SOLD TO:

STATE OF IDAHO
DEPT. OF WATER RESOURCES
150 SHOUP AVE. SUITE 15
TWIN FALLS
ID 83402

\$ 36.75

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

AFFIDAVIT OF PUBLICATION

NOV 21 1985

STATE OF IDAHO,
County of Nez Perce

SS. Department of Water Resources
Eastern District Office

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

NOTICE OF APPLICATION FOR WATER RIGHT
attached hereto and which is made a part of this affidavit was published in
the said Lewiston Morning Tribune, 2 time(s). Publication be-
ing on 110785, or once a
week for two consecutive weeks, the first
publication thereof being on the 110785, and the last pub-
lication thereof being on the 111485, and said

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

S. L. Stone
SUBSCRIBED AND SWORN BEFORE ME THIS THE 18
day of November 1985

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

MICROFILMED

Proof of Publication The Post-Register

RECEIVED

NOV 18 1985

Department of Water Resources
Eastern District Office

State of Idaho, }
County of Bonneville } ss.

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

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for two consecutive weeks, first publication having been made on the 7th day of November, 1985, last publication having been made on the 14th day of November, 1985, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Subscribed and sworn to before me, this 15th day of November, 1985.

Frank Nopier
Notary Public

My commission expires September 30, 1988.

B10, 1M,



MICROFILMED

Weekly Insertion

Company Name ID. Dept. of Water Resources, E.
Account Number 100564

Cost: \$ 38.72

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

RECEIVED
NOV 11 1985

Department of Water Resources
Eastern District Office

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

November 7, 1985, and ending with the issue of November 14, 1985.

Laura Gay Barnes

Subscribed and sworn to before me this 14th day of November, 1985.

Jeannie M. Hawk

Notary Public for Idaho, Residing at Boise, Idaho.

NOTICE OF APPLICATION
FOR WATER RIGHT

This application has been filed for record in the Office of the County Clerk, Ada County, Idaho, and is subject to the provisions of the Idaho Water Right Act, Chapter 12, Title 60, Idaho Code, and the rules and regulations of the Idaho Department of Water Resources.

APPROVED:

County Clerk, Ada County, Idaho

RECEIVED
NOV 11 1985

1972

MICROFILMED

UPPER PLANT located 3 miles north of Idaho Falls with diversions in Sec. 25, T. 3 N., R. 37 E., B.M.

Water Right No.	Type of Water Right or Decree Name	Decree Date, File No., & Page No. in Decree	Priority Date	Flow in cfs	Subordination Permit License/Decree
01-02047	Permitted 12-19-1927 Licensed 2-11-1939		10-28-1927	500 ¹	No No
01-04003	Idaho Falls Decree	9-03-1980, 01-B-4, p. 3	5-03-1930	580	No
01-02049	Permitted 5-15-1936 Licensed 3-14-1939		1-14-1936	1,080 ¹	No No
01-07013	Permitted 3-05-1979 Field exam 3-17-1988		11-09-1977	2,600	For diversion to beneficial uses ²
01-07023	Permitted 3-16-1979 Field exam 3-17-1988		2-15-1979	1,240	For diversion to beneficial uses ²
Subtotal of non-subordinated water rights				2,160 cfs	
Total (using permitted quantities)				6,000 cfs	

The footnotes are numbered consecutively for the group of four powerplants operated by the city of Idaho Falls.
Revised on June 12, 1997.

¹ See City of Idaho Falls vs Carlson, 9-03-80, File 01-B-4; the Stipulation makes no change in license 01-02047, but it reduces the subsequent licensed right 01-02049 from 1,500 cfs to 1,080 cfs.

² Idaho Code 42-203B(6) allows for subordination to upstream "depletionary uses." Water Appropriation Rules, July 1, 1993, Rule 10.16 (010.16) defines a subordinated water right to be subject to depletion "for a purpose other than hydropower generation" (which appears to include recharge and non-hydropower storage). This type of language, which may clarify the status of recharge and non-hydropower storage, likely will be used at license time. A recent example is the condition placed on water license 01-07051 at Idaho Fall's Gem State Project which was licensed on 11-2-92 with the condition of subordination to future rights "other than hydropower." Idaho Code 42-4201A which states subsequent recharge rights are to be secondary to prior rights would have no bearing since the prior water right noted in this text would be a limited right in itself.

CITY PLANT located in the city of Idaho Falls with diversions in Sec. 24, T. 2 N., R. 37 E., B.M.

Water Right No.	Type of Water Right or Decree Name	Decree Date, File No., & Page No. in Decree	Priority Date	Flow in cfs	Subordination Permit License/Decree	
01-00197	Rexburg Decree	12-16-1910, 01-B, p. 59	11-18-1898	(75) ³	No	
01-00040	Rexbury Decree	12-16-1910, 01-B, p. 10	4-20-1900	140 ⁴	No	
01-00041	Rexburg Decree	12-16-1910, 01-B, p. 11	10-22-1904	48 ⁴	No	
01-02014	Permitted 12-14-1907 Licensed 2-11-1918		12-03-1907	485 ⁵	No	No
01-00360	Idaho Falls Decree	9-03-1980, 01-B-4, p. 2	2-05-1915	388	No	
01-00361	Idaho Falls Decree	9-03-1980, 01-B-4, p. 3	7-18-1919	394	No	
01-04002	Idaho Falls Decree	9-03-1980, 01-B-4, p. 3	10-05-1923	485	No	
01-07015	Permitted 3-05-1979 Field exam 3-17-1988		11-09-1977	2,600	For diversion to beneficial uses ²	
01-07024	Permitted 3-16-1979 Field exam 3-17-1988		2-15-1979	1,460	For diversion to beneficial uses ²	
Subtotal of non-subordinated water rights				1,940 cfs		
Total (using permitted quantities)				6,000 cfs		

³ This Rexburg Decree water right in the name of G. G. Wright has not had an adjudication claim filed on it. This water right was not mentioned in the City of Idaho Falls vs Carlson Decree, 9-03-80, File 01-B-4, Findings of Fact and Conclusions of Law or the Stipulation. No transfer of ownership information or confirmation of this place of use is available. Evidently this power plant was dismantled; however, its exact location is unknown. Quantity not used in the totals.

⁴ Also see City of Idaho Falls vs Carlson, 9-03-80, File 01-B-4, Findings of Fact and Conclusions of Law, p. 4.

⁵ See City of Idaho Falls vs Carlson, 9-03-80, File 01-B-4; the Stipulation reduces the licensed right from 600 cfs to 485 cfs.

LOWER PLANT located 1/2 mile south of Idaho Falls with diversions in Sec. 25, T. 2 N., R. 37 E., B.M.

Water Right No.	Type of Water Right or Decree Name	Decree Date, File No., & Page No. in Decree	Priority Date	Flow in cfs	Subordination Permit License/Decree
01-00281	Woodville Decree ⁶	6-29-1929, 01-K, p. 26	12-29-1905	1,500 ⁴	No
01-00282	Woodville Decree ^{6,7}	6-29-1929, 01-K, P. 26	9-07-1915	(100)	No
01-04001	Idaho Falls Decree	9-03-1980, 01-B-4, p. 3	10-05-1940	1,240	No
01-07014	Permitted 3-05-1979 Field exam 3-17-1988		11-09-1977	(5,100) ⁸ 4,800 ⁹	For diversion to beneficial uses ²
01-07025	Permitted 3-16-1979 Field exam 3-17-1988		2-15-1979	(900) ⁸ (860) ¹⁰ 0 ⁹	For diversion to beneficial uses ²
Subtotal of non-subordinated water rights				2,740 cfs	
Total (using permitted quantities)				(8,740 cfs) ⁸	
Total (using turbine capacity)				(8,700 cfs) ¹⁰	
Total				7,540 cfs	

⁶ Listed in the name of Utah Power and Light Co.

⁷ This water right was issued for the Shelley power plant located 1 1/2 miles downstream from the Lower Plant in Sec. 34, T. 2 N., R. 37 E., B.M. The water right for this site now removed could not be transferred to the City's Lower Plant because an expansion of a water right is not allowed.

⁸ Permitted amount. See water right file 01-07013 for most related data.

⁹ Total of new flow, 4,800 cfs recommended for new license. Add 1,500 cfs + 1,240 cfs for old plant.

¹⁰ Maximum amount needed. City of Idaho Falls "preliminarily determined turbine flow capacities to be" 8,700 cfs. See letter of October 4, 1994, to their private attorney, Kent Foster, located in water right file 01-07025.

GEM STATE PROJECT located 4 miles south of Idaho Falls with diversions in Sec. 15, T. 1 N., R. 37 E., B.M.

Water Right No.	Type of Water Right or Decree Name	Decree Date, File No., & Page No. in Decree	Priority Date	Flow in cfs	Subordination	
					Permit	License/Decree
01-00283	Woodville Decree ⁶	6-29-1929, 01-K, p. 26	11-14-1924	(1,500) ¹¹	No	
01-07051	Permitted 12-18-1985 Licensed 11-2-1992 ⁶		4-09-1980	3,000	Yes	Yes ¹²
01-07018	Permitted 7-21-1982 Licensed 11-02-1992		3-17-1978	5,000	Yes	Yes ¹²
Subtotal of non-subordinated water rights				none		
Total (using permitted and turbine capacity quantities)				8,000 cfs ¹³		

¹¹ The Decree refers to a water permit number that never was developed into a license.

¹² This water right was licensed on 11-2-92 with the condition that it is subordinate to future rights "other than hydropower."

¹³ October 14, 1992, Memorandum to File 01-07051 indicates the turbine capacity found during the field examination is 8,000 cfs.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

25 FERC 162,345

City of Idaho Falls, Idaho) Project No. 2952-001

ORDER ISSUING LICENSE (MAJOR)

(December 12, 1983)

The City of Idaho Falls, Idaho (City) has filed an application for a license under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Gem State Project No. 2952. 1/ The project would be located on the Snake River, a navigable waterway of the United States, located in Bingham and Bonneville Counties, Idaho, and would occupy lands of the United States administered by the Bureau of Land Management. 2/

Public notice of the application has been published and comments have been received from interested Federal, State, and local agencies. In response to this notice, the Snake River Valley Irrigation District (SRVID) and the Shoshone-Bannock Tribes (S-BT) filed for, and were granted intervention. The significant concerns of the intervenors and commenting agencies are discussed below. 3/

The Commission's staff has prepared a final Environmental Impact Statement ("FEIS"). 4/ The environmental impacts associ-

- 1/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations 18 C.F.R. §375.308 (1983). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, (47 Fed. Reg. 19014 promulgating 18 C.F.R. §385.1902, See FERC Statutes and Regulations §29,502). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application action for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.
- 2/ The Gem State Project No. 2952 is located on the Snake River in a stretch of the river found navigable by the Commission See Idaho Power Company, 14 FPC 52 (Aug. 4, 1955).
- 3/ The Shoshone-Bannock Tribes had filed a protest in this proceeding, but later withdrew it, stating that it was filed by mistake. See March 22, 1982 letter to Chief Applications Branch, Federal Energy Regulatory Commission.
- 4/ FERC/EIS - 0034, Gem State Project No. 2952 - Idaho, Final Environmental Impact Statement, (Issued Apr. 1983).

- 2 - Department of Water Resources

ated with construction, operation, and maintenance of the project have been fully considered, after reviewing the FEIS and all other relevant materials in the record. Taking into account the anticipated environmental impacts of the project and mitigation measures thereof, it is concluded that approval of the City's proposed Gem State development is in the public interest.

PROJECT DESCRIPTION AND OPERATION

A. Project Description

The proposed Gem State Project would be located on the Snake River at river mile 75.76 approximately 5.5 miles southwest of the City of Idaho Falls in Bonneville and Bingham Counties, Idaho. The proposed project will consist of: (1) a proposed 4,300-foot-long, 40-foot-high earthfill dam, impounding a reservoir with a storage capacity of 5,000 acre-feet and a surface area of 305 acres; (2) a four-bay spillway; (3) a 3,300-foot-long power canal; (4) a powerhouse containing one generating unit with an installed capacity of 22.3 MW; (5) a 1,080-foot-long tailrace; (6) a 7,300-foot-long dike, upstream from the spillway on the right bank, and a 10,400-foot-long dike, upstream from the powerhouse on the left bank; (7) improvements to two existing access roads; and (8) a 3.75-mile-long, 44-KV transmission line from the powerhouse to the City's West Side substation. 5/

B. Operation

The proposed Gem State Project would be operated as a run-of-river plant. Flows less than the powerplant's minimum capacity of 1,500 cubic feet per second (cfs) would be discharged by the spillway. The need for a long-term minimum flow release will be determined after consultation with appropriate Federal and State agencies, as specified in Article 46.

JURISDICTION

The project would be located on a navigable waterway of the United States and would affect 3.13 acres of United States lands administered by the Bureau of Land Management. Accordingly, Section 23(b) of the Act requires that the project be licensed.

SAFETY AND ADEQUACY

The earthfill dikes and dam would be similar in construction, consisting of an impervious silt core protected on the downstream side by a two-zone filter system comprised of an 8-foot-wide sand

- 5/ A more detailed project description is contained in ordering paragraph (B).

filter and a gravel shell. A gravel shell would protect the upstream side of the core. A slurry cutoff wall at least 3 feet wide would extend from the impervious core through the overburden to bedrock.

Since the dikes would line the river banks for a distance in excess of 7,300 feet, surface drainage would be prevented from running into the river. The Applicant proposes to construct a drainage ditch along the toe of the dikes and bury 3-foot-diameter drain pipe in the overburden beneath the toe of the dikes to accommodate the drainage. The geology of the project site may present a number of operational and construction problems. During the formation of the bedrock of the region, the lava (basalt) flowed over layers of silt, covering the older underlying beds of lava creating inner beds of silt. Additionally, sink holes through the formation were formed due to the uneven flow of lava. The basalt is also columnar and vertically jointed, providing for greater movement of groundwater. This project will create about 44 feet of hydraulic head and may have a significant effect on reservoir water losses and the ground water tables of the area.

The Applicant has conducted a preliminary subsurface investigation in the area originally proposed for the location of the powerhouse and power canal. The investigation revealed that an inner bed of silt of varying thickness existed, requiring the Applicant to relocate the powerhouse approximately 350 feet downstream where the inner bed of silt was found to be one foot thick.

The inner bed of silt extends under the spillway and may cause some problems for the post tensioning of the radial gate piers, and may result in cost overruns as had been the case with the Applicant's Idaho Falls Project (FERC Project No. 2842).

The Probable Maximum Flood ("PMF") has not been calculated for the project site nor has the hazard classification been determined. A preliminary assessment indicates the hazard will be either significant or high. The spillway would be designed to pass all flood flows up to the PMF unless it can be demonstrated that failure of the dam during flood flows would not result in loss of life or significant property damage.

These concerns have been evaluated and it appears that, although the project poses design considerations which have not been completely addressed or resolved at this time, these problems can be remedied by the application of sound engineering principles and theories. Because the design of the project structures is preliminary and adequate only for cost estimating and planning purposes, additional conditions are included in this license to insure that the final design of the project

is safe and adequate. Specifically, Article 42 requires the licensee to retain a board of independent engineering consultants to review the design, specifications and construction of the project for overall safety and adequacy, inter alia: (1) possible foundation problems in the basalt bedrock; (2) potential groundwater problems; (3) length of earthfill dam and dikes and slurry cutoff wall; (4) lack of PMF determination; and (5) possible inadequate spillway capacity.

Additionally, Article 43 requires the licensee to submit, for approval, the final design drawings and supporting design report which shall include the findings and recommendations of the board of consultants. Particularly in view of the design considerations that are posed, no project construction may commence until these drawings and report are approved.

NEED FOR POWER

The Gem State Project will utilize a renewable resource, providing 10 MW of firm capacity and capable of generating an average annual energy output of approximately 125,100 MWH. The project power, which represents a moderate portion of the Applicant's needs, 6/ will be used to supply customers within the Applicant's system, and may be sold to outside customers. 7/

The Applicant and Bonneville Power Administration ("BPA") have entered into a long-term power sales agreement, which provides that the Applicant as a preference customer will be entitled to receive up to 100 percent of its energy needs. 8/

6/ In 1979, the Applicant's total power requirements amounted to approximately 442,100 MWH, with a peak demand of 102 MW. It is projected that by 1986 the Applicant's power requirements will increase more than forty percent, totaling about 620,200 MWH. See FEIS p. 1-2.

7/ See footnotes 16 and 17, infra.

8/ Presently, the BPA supplies all of the Applicant's energy needs. This includes the power from the Applicant's Idaho Falls Project that has been sold to BPA. However, under the terms of the power sales agreement, BPA may reduce the Applicant's load requirements during a regional curtailment if the Applicant's load growth exceeds the amount of resources which has been dedicated to meet its needs. This reduction, however, would not occur if the Applicant had planned for such curtailments by bringing new generating plants on line to offset the increased load growth. See Section 11(b)(4) of Amended Agreement to Contract No. DE-MS79-81BP90447, dtd. June 3, 1982 between BPA and the Applicant.

As discussed in the FEIS 9/ the need for the power was evaluated on a regional basis. Staff, while recognizing that the region is presently experiencing an energy surplus, determined that the additional capacity generated by this project nevertheless would be needed in the early 1990's. 10/ However, that does not mean that there is no need for the project until that time. The Gem State Project would provide a reliable power source owned and controlled by the Applicant to meet increasing load requirements of the Applicant's electrical system. 11/ It would reduce the Applicant's reliance on RPA power to meet its needs. 12/ The project would also provide a hedge against delays experienced in bringing new generating plants on line to meet future capacity needs. As noted in the Northwest Power Planning Council's Plan, there will be a need for additional power over the 1981-2002 period, ranging from 2,310 average annual MW for the low growth scenario to 10,721 average annual MW for the high growth scenario. 13/ In examining the region's needs, the Council concluded that the most cost-effective resources that could be added to the existing power system within that period were conservation and hydropower. The presence of the Gem State Project, which would comprise less than .06 percent of the region's electric resource capabilities, thus could be used to meet the Council's forecasted energy needs as well. 14/ Accordingly, it is concluded that the power from the Gem State Project is needed.

9/ See FEIS pp. 1-1 - 1-3.

10/ Since the issuance of the FEIS, the Northwest Power Planning Council ("NPPC") published its final report, projecting energy surpluses beyond the period projected in the FEIS. These projections, however, largely assumed that the Washington Public Power Supply System ("WPPSS") nuclear projects 1,2 and 3 would be completed on schedule and that unprecedented conservation measures would be undertaken. Since the timely construction of these projects is now in doubt and since it is too early for an evaluation of the conservation measures, it is believed that the projection is not sufficiently conservative to be the sole basis for planning new generation.

11/ See footnote 6, *supra*.

12/ See footnote 8 *supra*.

13/ See Northwest Conservation and Electric Power Plan p. 4-2 (Apr. 27, 1983).

14/ See FEIS p. 1-4.

ECONOMIC FEASIBILITY

The energy generated from this project would represent a savings of approximately 205,200 barrels of oil or 57,900 tons of coal annually. The value of project power was based on the costs of a coal-fired, steam electric plant, which was found to be the most economically feasible non-hydroelectric alternative source of energy for the Applicant's system. The findings revealed that the equivalent power from the coal-fired alternative would cost approximately 50 percent more than the power from the Gem State Project. Similarly, these findings indicated that the Gem State Hydroelectric alternative design would cost approximately 25 percent more than the Gem State Project as well. 15/

The Applicant has signed a letter of intent 16/ with the Utah Power and Light Company ("UP&L") for the purchase of 25 percent 17/ of the annual power generated by the project. Generally, the terms of this letter provide that UP&L will pay 25 percent of the project's cost and will reimburse the Applicant up to an amount equal to five percent of these costs to cover the financial risk in undertaking the project. Therefore, it is concluded that the Gem State project is economically feasible and should be licensed.

ENVIRONMENTAL CONSIDERATIONS

The comments made by the Federal, State and local agencies, as well as other commenters are incorporated in the FEIS, the significant concerns of which are addressed below.

A. Minimum Flows

The Applicant has proposed to operate the Gem State Project in a run-of-river mode, providing a minimum flow release of 20 cfs at the proposed dam for maintenance of downstream aquatic habitat. Operation of the Gem State Project during

15/ See FEIS pp. 1-15, 1-24 and 1-25.

16/ See Letter dtd. April 7, 1982 from UP&L to Mayor, Idaho Falls, Idaho.

17/ More recently, the Applicant has advised staff that UP&L has expressed an interest in purchasing a larger share of the project's power. Since negotiations have just begun, a final decision has not been reached on the terms of the agreement.

nonspill conditions (approximately 75 percent of the time), would result in the following: (1) a 4,000-foot-long backwater reach of the Snake River between the proposed dam and tailrace; and (2) a 100 to 300-foot-long dewatered reach between the toe-of-the-dam and the backwater reach, which would be subject to the Applicant's proposed 20 cfs minimum flow.

The U. S. Fish and Wildlife Service ("FWS") and the U. S. Environmental Protection Agency ("EPA") expressed concern about the Applicant's minimum flow proposal, noting that: (1) the backwater reach had the potential for stagnation and resultant degradation of water quality; and (2) the proposed 20 cfs minimum flow release was not adequate to maintain aquatic habitat in portions of the dewatered reach.

The provisions of a memorandum of agreement between the Applicant and the Idaho Department of Fish and Game ("IDFG") would require the Applicant to establish a water quality monitoring program in the backwater reach and to determine the minimum flow requirements for water quality maintenance. A minimum flow requirement for the dewatered reach was not made a condition of the agreement by IDFG because of the short length of the reach involved.

Staff has evaluated the proposal for monitoring the water quality of the backwater reach. Based on this evaluation, it is concluded that the proposal is appropriate in order to determine the need for specific measures to ensure the maintenance of state water quality standards. Therefore, Article 45 is included to require water quality monitoring. However, in light of the fact that the FWS and IDFG maintain different positions concerning what instream flow, if any, should be established in the dewatered reach, it is concluded that the establishment of a flow regime at this time would be premature. Accordingly, Article 46 requires the Applicant to undertake studies necessary to determine the instream flow needs, if any, for the 100 to 300-foot-long dewatered river reach.

B. Water Quality

Section 401 of the Clean Water Act requires water quality certification for federally authorized activities that include construction or operation of facilities that may result in any discharge into navigable waters. That section also provides that, if the certifying state agency does not act on a request for certification within a reasonable time (which shall not exceed one year) after receipt, the certification requirement shall be waived with respect to Federal authorization.

The Applicant had applied to the Idaho Department of Health and Welfare ("IDHW") for water quality certification on June 30, 1981. To date the IDHW has not acted on the Applicant's request. Accordingly, it is concluded that the certification requirements have been waived.

The EPA has informed ^{18/} the Commission of a potential hazardous waste problem within the project reach of the Snake River, which was unknown to EPA at the time it commented on the draft environmental impact statement. The 1976 failure of the Grand Teton Dam, upstream from the Gem State Project, reportedly had resulted in containerized pesticides and other toxicants being washed into the Snake River. EPA believes the containers and their contents would be considered hazardous waste under the Resource Conservation and Recovery Act of 1976.

EPA further believes that the containers could be located in the river within the project area. Consequently, EPA has recommended that, for the protection of the water quality of the Snake River, the Applicant should: (1) survey the river bottom to assure that no hazardous waste containers exist in or near the project construction site; and (2) prior to any sediment disturbance activity, sample the sediments to determine the presence of hazardous materials. EPA's concerns have been evaluated and it is determined that the presence of hazardous wastes should be determined prior to construction. Therefore, Article 47 provides for the testing for hazardous wastes in the Gem State Project river reach.

Construction of the project would involve extensive excavation and earth moving, particularly for the 40-foot-high, 4,300-foot-long earthfill dam and the 3.4 miles of dike. These activities would occur in, or immediately adjacent to, the Snake River. The Applicant has not, however, advanced a specific plan for mitigating erosion, sedimentation, and soil mass movement.

Therefore, Article 48 requires the Licensee to prepare, prior to the commencement of construction and after consultation with the FWS, Bureau of Land Management (BLM), Soil Conservation Service (SCS), and the IDFG, a detailed erosion, sedimentation, and slope stability control plan for all areas affected by projected construction, operation, and maintenance.

^{18/} Letter dated June 20, 1983

C. Fishery Resources

The movement, recruitment, and size of fish populations in the Snake River would be altered due to construction and operation of the proposed project. The project dam would present a barrier to upstream and downstream movement, thus reducing the number of fish that move between the Gem State Project site and the base of the City of Idaho Falls' Lower Power Plant. Diversion of water from the Snake River into the project powerhouse would result in entrainment of fish and, subsequently, some mortality associated with passage through the turbines and draft tube. In addition, altered hydraulic parameters, including depth and velocity, above and below the dam would likely contribute to a reduction in populations of trout and whitefish, and increased numbers of nongame fish.

Staff's analysis of the Applicant's proposal indicates that the minimum flow (20 cfs) may not be sufficient to prevent increases in water temperature and decreases in levels of dissolved oxygen. Further the analysis shows that violations of state water quality standards for temperature and dissolved oxygen, which would adversely affect fish growth and survival, may occur downstream of the dewatered area during project operation. Therefore, the temperature and dissolved oxygen monitoring and instream flow studies required under Article 45, and implementation of appropriate minimum flows pursuant to Article 46, would ensure that any water quality degradation would be of short duration. Consequently, it is concluded that impacts due to degraded water quality on fish populations downstream of the dewatered area below the project dam are not expected to be significant during project operation.

An Environmental Mitigation Plan, filed on June 3, 1983, as a supplement to the Exhibit E - "Report on Fish, Wildlife, and Botanical Resources," proposes mitigative measures for each of the fishery issues identified above. The Fish Mitigation Plan to be financed by the Applicant, provides for the stocking of 6,000 hatchery-reared rainbow trout per year, and specifies size of fish, stocking times, frequency, location, and duration of the stocking program. The plan would adequately mitigate project-related impacts to the fishery resources. The supplement to the Exhibit E, entitled, "Environmental Mitigation Plan-FISH," is therefore approved herein.

D. Wildlife and Botanical Resources

Approximately 55 acres of riparian vegetation would be lost or altered due to the construction and operation of the proposed project. The loss of food, cover, and nesting and den sites for associated wildlife would also result from the project. This would include habitat for four to seven pairs of Canada geese.

The provisions of a memorandum of agreement between the Applicant and the IDFG would require the Applicant, for riparian mitigation purposes, to: (1) replace up to a maximum of 44.4 acres of riparian habitat; (2) monitor the quality of 10.3 acres of existing riparian vegetation between the spillway and powerhouse and replace the vegetation if significant changes occur to the riparian vegetation; (3) replace lost wildlife habitat of a greater value at a ratio greater than 1 to 1; and (4) purchase and preserve existing riparian habitat.

Staff has reviewed this agreement and believes that it appears reasonable, except that the agreement did not provide for: a schedule implementing the plan; the location or number of acres to be purchased; the specific methods to be used in replacing riparian vegetation within the project boundary; and consultation with all the concerned agencies. In addition the goose island mitigation, which is proposed in the Exhibit E, could be used in calculating the number of acres of riparian habitat, although the Applicant did not specifically mention it in the Supplement to its Exhibit E.

Therefore, Article 49, requires the Licensee to consult with IDFG, BLM, FWS, and SCS, to finalize the riparian habitat and goose island mitigation proposal and develop a mitigation plan for wildlife and botanical resources for the Gem State Project.

No known Federally listed endangered or threatened species would be affected by this project.

Recreation

The City of Idaho Falls has a long range plan for developing a greenbelt on both sides of the Snake River. This plan, when implemented, would be compatible with the BLM long-range proposal for a hike-bicycle-horseback-trail along the river.

The Idaho Department of Parks and Recreation (IDPR) expressed concern about the: (1) potential boating hazards from submerged objects that would exist in the reservoir; (2) location of the swimming area; (3) location of parking lots and facilities; and (4) need for a reservoir zoning plan for the designation of areas of specific water activity, including boating operations.

Similarly, the U. S. Department of Interior ("DOI") commented about the need for a zoning plan in the reservoir in order to insure that the recreational use potential of the reservoir was completely developed.

The Applicant has indicated a willingness to work with appropriate authorities to finalize a revised recreation plan for the Gem State Project. Therefore, Article 50 is included which would require the Licensee to consult with BLM, IDPR,

and the National Park Service, as appropriate, to finalize the revised recreational proposal and develop a revised Report on Recreation Resources for the Gem State Project.

Cultural Resources

The project would have an impact on portions of the historic Woodville Canal and the Snake River Valley Canal, properties potentially eligible for the National Register of Historic Places. These impacts can be mitigated with the implementation of the components of a cultural resources management plan if carried out prior to any construction that would affect these properties. Staff has requested an eligibility determination for the Woodville Canal and the Snake River Canal from the Secretary of Interior. The Advisory Council on Historic Preservation has submitted its comments. Therefore, Article 51 is included to require the implementation of the cultural resources management plan.

OTHER ENVIRONMENTAL CONSIDERATIONS

Acting pursuant to Section 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §839 et seq., the Northwest Power Planning Council ("NPPC") developed the Columbia River Basin Fish and Wildlife Program ("Program") to protect, mitigate, and enhance fish and wildlife resources in the Columbia River Basin associated with the development of hydroelectric projects. This program contains a framework for assessing the impacts of new hydroelectric development on fish and wildlife resources and lists a number of general mitigative measures that should be implemented for any new development.

The Program requires that fish and wildlife agencies, the Indian Tribes and NPPC be consulted during the study, design, construction and operation of new hydroelectric projects. The Commission's regulations currently require applicants to initiate pre-filing consultation with these entities, and gives them the postfiling opportunity to review and comment on the license application. The consultation process has occurred.

The Program states that authorization for new hydroelectric projects should include conditions of development that would mitigate project impacts on fish and wildlife resources. Development of the Gem State Project would result in adverse impacts on fish and wildlife resources due to the impoundment of approximately 24,000 feet of the free-flowing river, inundation of approximately 24,000 feet of land abutting the Snake River, dewatering of about 300 feet of the river, blockage of fish migration and loss of about 55 acres of riparian habitat.

The Applicant, however, has proposed measures to mitigate these impacts, and has signed an agreement with IDFG, implementing many of these measures. Further, license articles are included herein that require additional mitigation, and thus satisfy the intent of the Program that adequate mitigation be provided. Moreover, Article 53 reserves to the Commission the authority to order, where practical, alterations of project structures and operations in order to take into account NPPC's Fish and Wildlife Program. Accordingly, it is concluded that the proposed project does not appear to conflict with applicable provisions of the NPPC's Fish and Wildlife Program.

OTHER ASPECTS OF COMPREHENSIVE DEVELOPMENT

The planning Status Report for the Upper Snake River Basin shows no other planned or proposed projects in the vicinity that would affect or be affected by the Gem State Project. It is concluded that, subject to the terms and conditions provided herein, the Gem State Project would be best adapted to the comprehensive development of the Upper Snake River Basin for the improvement and utilization of water power development and for other beneficial public uses, including recreational purposes.

It is ordered that:

(A) This license is issued to the City of Idaho Falls, Idaho (Licensee), under Part I of the Federal Power Act (Act), for a period of 50 years, effective the first day of the month in which this order is issued, for the construction, operation, and maintenance of the Gem State Project No. 2952, located in the Counties of Bingham and Bonneville, Idaho, on the Snake River, a navigable waterway of the United States, and occupying lands of the United States administered by the Bureau of Land Management. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Gem State Project No. 2952 consists of:

(1) All lands, to the extent of the Licensee's interests in those lands, constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by certain exhibits that form part of the application for license and that are designated and described as:

<u>Exhibit G</u>	<u>FERC No. 2952-</u>	<u>Titled</u>
G-1	1	Location Map
G-2, Sheet 1	2	Detail Project Map
G-2, Sheet 2	3	Detail Project Map
G-2, Sheet 3	4	Detail Project Map
G-2, Sheet 4	5	Detail Project Map

<u>Exhibit G</u>	<u>PERC No. 2952-</u>	<u>Titled</u>
G-2, Sheet 5	6	Detail Project Map
G-2, Sheet 6	7	Detail Project Map
G-2, Sheet 7	8	Detail Project Map
G-3, Sheet 1	9	Detail Property Map
G-3, Sheet 2	10	Detail Property Map
G-3, Sheet 3	11	Detail Property Map
G-3, Sheet 4	12	Detail Property Map
G-3, Sheet 5	13	Detail Property Map
G-3, Sheet 6	14	Detail Property Map
G-3, Sheet 7	15	Detail Property Map

(2) Project works consisting of:

(a) a 40-foot-high, 4,300-foot-long earthfill dam; (b) a 305-acre reservoir with a storage capacity of 5,000 acre-feet at the normal pool elevation of 4,655 feet NGVD; (c) a four-bay spillway, each bay 40 feet-wide and 32 feet high; (d) a 3,300-foot-long power canal, narrowing in width from 620 feet to 200 feet; (e) a 172 foot by 42.5-foot powerhouse containing one generating unit with an installed capacity of 22.3 MW; (f) a 1,080-foot-long, 170-foot-wide tailrace; (g) a 7,300-foot-long dike upstream from the spillway on the right bank and a 10,400-foot-long dike upstream from the powerhouse on the left bank; (h) two access roads; (i) a 3.75-mile-long, 44-kV transmission line from the powerhouse to the City's Westside substation; and (j) appurtenant facilities.

The location, nature, and character of these project works are generally shown and described by the exhibits cited above and more specifically shown and described by certain other exhibits that also form a part of the application for license and that are designated and described as:

Exhibit A

Section 3, pages A-6 and A-7, entitled "Turbines and Generators;" Section 4, pages A-7 and A-8, entitled "Primary Transmission lines;" and Section 5, pages A-8 and A-9, entitled "Appurtenant Mechanical, Electrical, and Transmission Equipment".

<u>Exhibit</u>	<u>PERC No. 2952-</u>	<u>Showing</u>
F-1	16	Spillway Plan and Sections
F-2	17	Right and Left Bank Dike Profiles and Sections
F-3	18	Power Canal Dike and Access Road Profile and Sections
F-4	19	Powerhouse Plan and Sections
F-5	20	Tailrace and Tailrace Dike Profiles and Sections

<u>Exhibit</u>	<u>PERC No. 2952-</u>	<u>Showing</u>
F-6	21	Hwy. 26 Bridge Plan and Profile
F-7	22	Bascule Gate Plan and Sections
F-8	23	Woodville Canal Irrigation Company Intake Structure Plan and Sections
F-9	24	Snake River Valley Irrigation Company Intake Structure Plan and Section

Exhibit E

Gem State Hydroelectric Project Plan for Environmental Mitigation-FISH (Supplement to application filed June 3, 1983 Attachment 1).

(3) All of the structures, fixtures, equipment, or facilities used or useful in the operation or maintenance of the project and located within the project boundary, all portable property that may be employed in connection with the project, located within or outside the project boundary, as approved by the Commission, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) Exhibits A, E, F, and G, showing the preliminary design outlay of the project, designated in ordering paragraph (B) above, are approved and made a part of the license.

(D) This license is also subject to the terms and conditions set forth in Form L-6, (revised October, 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States" attached to and made a part of this license. The license is also subject to the following additional articles:

Article 38. The Licensee shall, within 90 days of completion of construction file, for approval by the Director, Office of Electric Power Regulation, revised Exhibits F, G, and A to describe the project as-built.

Article 39. The Licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the Licensee shall file with the Commission's Regional Engineer and Director, Office of Electric Power Regulation, one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 40. The Licensee shall commence construction of the project works within two years from the issuance date of the license and shall complete construction of the project within five years from the issuance date of the license.

Article 41. The Licensee shall file with the Commission's Regional Engineer and the Director, Office of Electric Power Regulation, one copy each of the contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse and water conveyance structures, at least 60 days prior to the start of construction. The Director, Office of Electric Power Regulation, may require changes in the plans and specifications to assure a safe and adequate project.

Article 42. The Licensee shall retain a Board of three or more qualified, independent, engineering consultants to review the design, specifications and construction of the project for safety and adequacy. The names and qualifications of the Board members shall be submitted to the Director, Office of Electric Power Regulation for approval, with a copy to the Commission's Regional Engineer. Among other things, the Board shall assess the geology of the project site and surroundings, including the basalt bedrock, and groundwater problems; the design, specifications, and construction of the dams, spillway, powerhouse, electrical and mechanical equipment, and emergency power supply; instrumentation; the filling schedule for the reservoir and plans for surveillance during the initial filling; PMF determination; and construction procedures and progress. The Licensee shall furnish to the Board, with a copy to the Regional Engineer and two copies to the Director, Office of Electric Power Regulation prior to each meeting, allowing sufficient time for review, documentation showing details and analyses of design and construction features to be discussed, significant events in design and construction that have occurred since the last Board of Consultants meeting, drawings, questions to be asked, a list of items for discussion, an agenda, and a statement indicating the specific level of review to be performed by the Board. Within 30 days after each Board of Consultants meeting, the Licensee shall submit to the Commission copies of the Board's report and a statement of intent to comply with the Board's recommendations, or a statement identifying a plan to resolve the issue(s). In the event of noncompliance, the Licensee shall provide detailed reasons for not doing so. The Board's review comments for each portion of the project shall be submitted prior to, or simultaneously with, the submission of the corresponding Exhibit F final design drawings and design memoranda. The Licensee shall also submit a final report of the Board upon completion of the project. The final report shall contain a statement indicating the Board's opinion with respect to the construction, safety, and adequacy of the project structure(s).

Article 43. The Licensee shall file revised Exhibit F drawings showing the final design of the project structures for approval by the Director, Office of Electric Power Regulation. The revised Exhibit F drawings shall be filed at least 60 days prior to start of construction and shall be accompanied by a supporting design report. The Licensee shall not commence construction of any project structure until the revised Exhibit F therefore has been approved.

Article 44. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and to ensure compliance with the covenants of the instrument of conveyance for any interests that it has conveyed under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls,

the Licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

(d) The Licensee may convey fee titles to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational

resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Electric Power Regulation, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

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

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

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

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

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

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

Article 45. The Licensee shall, after consultation with the U. S. Environmental Protection Agency, the U. S. Fish and Wildlife Service and the Idaho Department of Fish and Game, develop a plan for monitoring dissolved oxygen and water temperature in the backwater reach of the Snake River between the project dam and tailrace. Within 4 months from the date of issuance of this license, the Licensee shall file the monitoring plan with the Commission for approval. Documentation of agency consultation shall be included in the filing. Copies of the monitoring plan shall also be filed with the agencies consulted.

The Licensee shall conduct water quality monitoring according to the plan approved by the Commission. Monitoring results shall be maintained by the Licensee and provided to the agencies consulted and the Commission in the form of annual data summaries, filed within 3 months after the completion of each annual cycle. Data summaries shall include observed daily minimum, maximum and average dissolved oxygen concentrations and water temperature levels. Should the results contained in any annual summary indicate that changes in project structures or operations are necessary to maintain State water quality standards, the Licensee shall, within 6 months after the date of annual summary submission, file with the Commission for approval, with copies to the agencies consulted, recommendations for necessary project modifications, and a schedule implementing the specific changes in project structures or operations. Documentation of agency consultation on the project modifications and schedule shall be included in the filing.

Article 46. The Licensee shall, after consultation with the U. S. Fish and Wildlife Service and the Idaho Department of Fish and Game, conduct studies as needed, to determine the minimum flow releases necessary for the protection and enhancement of aquatic resources immediately downstream from the project dam. Further, the Licensee shall, within 1 year following the date of issuance of this license, file a report on the results of the studies, with copies to the consulted agencies, and, for Commission approval, any necessary minimum flow recommendations. Documentation of agency consultation on the report and recommendations shall be included in the filing.

Article 47. The Licensee shall, after consultation with the U. S. Environmental Protection Agency and the Idaho Department of Health and Welfare, and prior to any sediment disturbing activity, survey the Snake River bottom in the project construction area, to ensure that no containers of hazardous materials exist, and sample the bottom sediments to determine whether detectable levels of hazardous materials are present. The results of the surveys and sampling shall be provided to the consulted agencies.

Should the results of the survey or sampling indicate the need for hazardous material removal, the Licensee shall in cooperation with the consulted agencies develop a removal plan, to be filed with the Commission, for approval. Hazardous material removal, if needed, shall be completed prior to any project construction or operation related sediment disturbing activity.

Article 48. The Licensee, after consultation with the U. S. Fish and Wildlife Service, Bureau of Land Management, and Soil Conservation Service, and the Idaho Department of Fish and Game, shall prepare and file with the Commission's Regional Engineer in Fort Worth, Texas, and the Director, Office of Electric Power Regulation, at least 60 days prior to any ground disturbing activity at the Gem State Project, a detailed plan to control erosion, dust, and slope stability and to minimize the quantity of inorganic sediment or other potential water pollutants resulting from construction and operation of project facilities. This plan shall include an implementation schedule, monitoring and maintenance programs for the project construction and operation, and a summary and evidence of agency consultation. The Director, Office of Electric Power Regulation, may require changes in the plan to minimize dust, erosion sedimentation, water pollution, or slope stability problems.

Article 49. The Licensee, after consultation with the Idaho Department of Fish and Game, U. S. Fish and Wildlife Service, Bureau of Land Management, and Soil Conservation Service, shall prepare and file for Commission approval, within 1 year from the date of issuance of this license, a mitigation plan (Plan) for wildlife and botanical resources. The Plan shall include, but not be limited to: a schedule of implementation; the location and number of acres of riparian habitat to be acquired outside the project boundary; number of acres and location of the riparian habitat, including the goose nesting islands to be replaced within the project boundary; and specific construction and maintenance techniques to be used for on-site mitigation of riparian habitat. Documentation of agency consultation on the report and recommendations shall be included in the filing.

Article 50. The Licensee shall, after consultation with the Bureau of Land Management, ("BLM") the National Park Service, and the Idaho Department of Parks and Recreational (IDPR), prepare a revised Report on Recreation Resources for Project No. 2952, which shall include, but not be limited to: (1)

the location of appropriate facilities to be developed for Recreational Sites, A, G, and H, as designated in the application, filed September 11, 1981; (2) a plan for removal of rock outcroppings and submerged features that could pose a boating hazard; (3) the location and type of markers to warn boaters of hazardous areas that would remain within the project reservoir; (4) compatible treatment of the shoreline greenbelt and BLM river trail; (5) a schedule for the development, operation, and maintenance of the proposed recreational facilities; and (5) copies of any letters received from consulted agencies and any agreement entered into for the development and operation of the project recreation facilities. Further, the Licensee shall coordinate with IDPR in the preparation of a reservoir zoning plan that would designate areas for specific recreational uses. Further, the Licensee shall, within 1 year from the date of issuance of this license, file with the Commission a copy of the zoning plan for the project reservoir, and for approval, the revised Report on Recreational Resources.

Article 51. The Licensee shall, prior to the initiation of any construction that will impact the historic Woodville Canal and the Snake River Valley Canal, and after consultation with the Idaho State Historic Preservation Officer (SHPO) and the Historic American Engineering Record (HAER) of the U. S. Department of the Interior, implement a cultural resources management plan to avoid and mitigate impacts to these properties. The plan shall consist of the following: (1) documentation of the impact areas of the canals according to the standards of the HAER, and (2) filing of copies of any existing engineering drawings or photographs of these facilities with the SHPO. A report documenting the mitigation, and its acceptance in writing by the SHPO and HAER, shall be filed with the Commission at least 60 days prior to any construction at the project that would impact the significant historical attributes of these canals. The Licensee shall make available funds in a reasonable amount for any such work as required.

If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO to develop a mitigation plan for the protection of significant archeological or historical resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

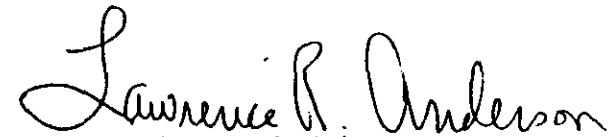
Article 52. The Licensee shall pay the United States the following annual charges effective the first day of the month in which this license is issued:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 29,700 horsepower.

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 3.13 acres of its lands other than for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 53. The Commission reserves the authority to order, upon its own motion or upon the recommendation of Federal or State fish and wildlife agencies or affected Indian Tribes, alterations of project structures and operations to take into account to the fullest extent practicable at each stage of the decision-making process the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

(E) The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this license. In acknowledgement of acceptance of this license and its terms and conditions, it shall be signed by the licensee and returned to the Commission within 60 days from the date of this order.


Lawrence R. Anderson
Director, Office of Electric
Power Regulation

PROJECT NO. 2952-001

Form L-6
(Revised October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, the City of Idaho Falls this _____ day of _____, 19____, has caused its name to be signed hereto by _____ its _____ Mayor, and its seal to be affixed hereto and attested by _____ its _____ Secretary, pursuant to a resolution of its City Council duly adopted on the _____ day of _____ 19____, a certified copy of the record of which is attached hereto.

By _____
Mayor

Attest:

Secretary

(Executed in quadruplicate)

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED
MAJOR PROJECT AFFECTING NAVIGABLE WATERS
AND LANDS OF THE UNITED STATES

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission; Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 4. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alteration thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or 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. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States 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 Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting; Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall consult with the appropriate State and Federal agencies and, within one year of the date of issuance of this license, shall submit for Commission approval a plan for clearing the reservoir area. Further, the Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. Upon approval of the clearing plan all clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the

project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: Provided, That timber

so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.

Article 27. The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 28. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 29. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 30. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 31. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 32. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 33. The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the trans-

mission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 34. The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, et seq.), of mineral and vegetative materials from lands of the United States occupied by the project or any part thereof: Provided, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the Licensee for the purposes of the license: Provided further, That in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.

Article 35. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 36. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 37. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 3, 1992

Kent Foster, Attorney at Law
P.O. Box 50130
Idaho Falls, ID 83405

RE: Gem State Hydropower Project for the City of Idaho Falls,
Licenses Nos. 01-7018 & 01-7051

Dear Mr. Foster:

After we conversed, and I reread your letter dated October 23, 1992, I looked at the licenses which were issued November 2, 1992. It appears that the licenses were probably signed at the same time I was initially reviewing your letter.

I spoke with Norm Young about the concerns of your letter. We have determined that there is no need for a change in the license. I will attempt to clarify the intent of the condition.

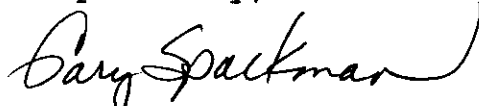
Reasonableness is implied in condition number six, which states: "Use of water under this license shall not cause fluctuation in the flow to the Snake River which impairs the ability of prior right holders to divert their water." You requested that the word "unreasonably" be placed between the words "which" and "impair." The Department believes there are circumstances where a prior right holder must modify his diversion works to insure continued delivery of water. He should not be required to repeatedly adjust his headgate to compensate for fluctuations caused by an upstream power plant, however.

Reasonableness will be determined by looking solely at impairment to prior water rights, and not by determining what is reasonable power plant operation. For instance, if water levels fluctuate dramatically because of an internal problem with the power plant, even though the fluctuation of water may be reasonable to alleviate the power plant problem, it may impair the ability of downstream irrigators to divert their water. As a

Kent Foster
December 3, 1992
Page - 2

result, the Department will not add the word "unreasonable" in the condition because its inclusion might be used at a later time to justify unreasonable fluctuations of Snake River flow below the project.

Respectfully,

A handwritten signature in cursive script, reading "Gary Spackman". The signature is written in dark ink and is positioned above the printed name and title.

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc: Eastern Region



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

November 9, 1992

UTAH POWER & LIGHT CO
1407 W N TEMPLE
SALT LAKE CITY UT 84140

RE: WATER RIGHT NO. 01-07051

Dear Water Right Holder(s):

Enclosed herewith is a copy of the Amended Water Right License issued on the above referenced permit.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Skaggs".

PAMELA SKAGGS
Water Resource Agent

PS:cz

Enclosure

RECEIVED
NOV 12 1992

MEMORANDUM

TO: File No. 01-07018 in the Name of City of Idaho Falls, and
File No. 01-07051 in the Name of Utah Power & Light Company
FROM: Gary Spackman *Gary*
DATE: October 14, 1992

RE: Issuance of Licenses

Application for permit no. 01-07018 was filed by the City of Idaho Falls in March of 1978. It sought diversion of 5,000 cfs from the Snake River for power purposes. Utah Power & Light subsequently filed an application for permit in April of 1980 seeking to divert 3,000 cfs from the Snake River for power purposes at the same location as the application filed by the City of Idaho Falls. A third conflicting application for permit was filed by the Snake River Irrigation District, but is not critical to the issues that confront us today.

Utah Power & Light and the City of Idaho Falls reached an agreement regarding power sales, and lease of property. In a letter of intent dated April 7, 1992, the City and Utah Power & Light tentatively agreed to cooperate "in perfecting water rights in the amount required for the project. Neither of the parties shall be required to compensate the other for the use of any water rights supplied by the other party." The ownership of the two water right applications did not change. In February of 1991, the Department licensed water right no. 01-07051 for 3,000 cfs, naming Utah Power & Light Company as the permittee. It also stated the capacity of the hydropower facility as 5,500 cfs. The Department did not license permit no. 01-07018 at the same time. Permit 01-07018 names the City of Idaho Falls as the owner of the permit. One of the issues raised when licensing was attempted was inconsistency in ownership.

I find nothing in our files that dictates consistent ownership of the two permits. In fact, the letter of intent almost suggests that each of the parties retain ownership, at least by name, of the water rights which each had filed, respectively. Since the rights are perfected, I also wonder whether it is important, since the water right is now appurtenant to the land. This may or may not be a critical issue, since the power project was actually built by the Lessee, City of Idaho Falls. The City might argue that since it expended money for the development, it should be entitled to own the license if the lease with Utah Power & Light is ever lost.

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NOV 12 1992

MEMORANDUM

Files Nos. 01-07018 and 01-07051

Page - 2

I spoke with Kent Foster, attorney for the City of Idaho Falls. While I suspect the City of Idaho Falls would like to have both licenses issued in their name, neither he nor I find any document that allows us to change the name on the license. I suggest that we issue a license for permit no. 01-07018, naming the City of Idaho Falls as the current owner. I also suggest that we issue an amended water right license for water right no. 01-07051, naming Utah Power & Light as the owner, and specifying the capacity of the system at 8,000 cfs. The field examination states that the capacity of the entire system is 8,000 cfs.

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NOV 12 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

June 19, 1992

Kent Foster, Attorney at Law
P.O. Box 50130
Idaho Falls, ID 83405

RE: City of Idaho Falls, Permits Nos. 01-7018 and 01-7051

Dear Kent:

I acknowledge receipt of your letter dated June 2, 1992, inquiring about the status of the two water rights for the Gem State Project. I remember the negotiations resulted in agreement that 5.0 cfs from the Anheiser Busch plant would be dedicated to losses caused by the power facility.

I drafted two licenses which were reviewed by administration and sent back to me for further refinement. In the interim, I became busy with other matters and did not complete the licensing. As I have indicated to you before, licensing of water uses in place sometimes takes a lesser priority. I will attempt to concentrate on licensing of these permits in the near future.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc: Eastern Region

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NOV 12 1992

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FALLS OFFICE

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KUMEN L. TAYLOR
JAMES K. SLAVENS

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TELEFAX (208) 523-9518

KEY FINANCIAL CENTER
702 W. IDAHO SUITE 610
BOISE, IDAHO 83702

TELEPHONE (208) 343-0820
TELEFAX (208) 343-8078

BOISE OFFICE

WM. LYMAN BELNAP, P.A.
RANDALL B. REED
RONALD D. CHRISTIAN

ARTHUR W. HOLDEN
(1877-1967)
ROBERT B. HOLDEN
(1911-1971)
TERRY L. CRAPO
(1939-1982)
WILLIAM S. HOLDEN
(1907-1988)

June 2, 1992

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JUN 3 1992

Department of Water Resources

R. Keith Higginson, Director
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: City of Idaho Falls -- Permits Nos. 01-7018
and 01-7051

Dear Mr. Higginson:

My file notes in this matter indicate that I met with you and Norm Young in Mackay, Idaho, on May 30, 1990, and that it was determined that sewage effluent discharge increases that had occurred since 1980 and that were anticipated to occur in the future would be considered acceptable to satisfy the replacement water requirements under the above-referenced permits. I understood that Norm Young or someone under his direction would make the first effort to draft the license condition to this effect and send it to us for review.

If it is appropriate, we would like to inquire about the status of the draft. We understand everyone has been extremely busy, and there is probably no great urgency from our standpoint. But we ought to try to move the matter in a positive direction when we can.

In the meantime, there have been developments as the Anheuser-Busch Plant has started up. We have obtained and

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NOV 12 1992

R. Keith Higginson, Director
June 2, 1992
Page 2

enclosed up-dated information from the city on effluent discharges from the system into the river.

Please let us know if there is anyway we might be of assistance.

Yours very truly,



Kent W. Foster

#0518.00/srs

Enclosure

cc: G. S. Harrison

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NOV 12 1992



City of Idaho Falls

SEWER DEPARTMENT

P.O. BOX 50220
IDAHO FALLS, IDAHO 83405
PHONE: (208) 529-1108

RECEIVED JUN 2 1992

June 1, 1992

Mr. Kent Foster
Holden Kidwell Hann & Crapo
P.O. Box 50130
Idaho Falls, ID. 83405

Dear Mr. Foster,

You had requested, via of telephone, information on the Wastewater Treatment Plant discharge volumes.

Since October of 1991 when Bush Agriculture Resources Incorporated started full time operations the total amount of water entering the Snake River from the Wastewater Treatment Facilities has averaged 9.893 million gallons per day which equates to 15.304 cubic feet per second.

I hope this information will be useful to you. Please feel free to contact this office if I can be of further assistance.

Respectfully,

A handwritten signature in cursive script that reads "Don Holverson".

Don Holverson
Sewer Dept. Superintendent

DH:ac

MICROFILMED
NOV 12 1992

February 7, 1991

UTAH POWER & LIGHT CO.
1407 W. N. TEMPLE
SALT LAKE CITY, UT 84140

RE: WATER RIGHT NO. 01-07051

Dear Water Right Holder(s):

Enclosed herewith is a copy of the Water Right License issued on the above referenced permit.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:blm

Enclosure

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FEB 26 1991

MEMORANDUM

TO: Files Nos. 01-7018 and 01-7051
FROM: Gary Spackman *Gary*
DATE: November 6, 1990

RE: Term of License

Idaho Code § 42-203(b) requires that the Department establish a license term of years. It requires that the Department consider four criteria: (1) the FERC license; (2) the term of years for the power sales contract; (3) the policy of the PUC; and (4) downstream water uses.

The FERC license was issued for a term of 50 years in 1983. Power is being sold to Utah Power and Light pursuant to a 35 year contract with Utah Power and Light executed in 1985. The PUC has shortened the period of time for power sales contracts, but this particular contract was executed pursuant to PUC's old policy. Finally, there are many downstream users of the Snake River to whom this water supply will be delivered. As a result, flows in the Snake River will not be reduced significantly by upstream development.

I recommend that the Department place the following condition on the license:

The diversion and use of water under this license is subject to review by the Director upon expiration of license 2952 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.

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FEB 26 1991

June 6, 1990

Norm -
Is this OK?

Kent W. Foster
Attorney at Law
P.O. Box 50130
Idaho Falls, ID 83405

RE: Permits to Appropriate Water Nos. 01-7018 and 01-7051;
Condition Requiring Mitigation Water for Losses

Dear Mr. Foster:

I understand that you, Norm Young, and perhaps other Department personnel, discussed the mitigation for loss requirements of the above listed permits, and reached an agreement. I understand that additional flows equal to the 5.0 cubic feet per second required as compensation will discharge into the Snake River from additional sources of water, the primary source being the new Anheiser-Busch plant in the Idaho Falls area.

With the compensation impass resolved you may expect issuance of the license.

Respectfully,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc: Eastern Region

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FEB 26 1991

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WILLIAM S. HOLDEN (1907-1968)

R. VERN KIDWELL, OF COUNSEL

May 10, 1990

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MAY 11 1990

Department of Water Resources

R. Keith Higginson, Director
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Boise, Idaho 83720

RE: City of Idaho Falls--Permits Nos. 01-7018, 01-7051,
and 25-07182

Dear Mr. Higginson:

Although we have spoken to you by telephone since, we have never received any response to our letter to you dated February 5, 1990 regarding Permits Nos. 01-0718 and 01-0751. We did send some additional information on February 8, 1990 in response to a suggestion we had received by telephone from Gary Spackman, but have since received his letter dated March 2, 1990 indicating that the suggestion was no longer being pursued.

From our perspective, we have proposed a most appropriate replacement water source and while the Department appears to be resisting that, we have never received any reasonably articulated reason why the proposal is not satisfactory. Now we have received a lapse notice on Permit No. 25-07182. That particular permit appears to have been an application to appropriate the effluent discharge for power purposes and I believe it is fair to say that the city has postponed doing anything further with respect to this permit pending the outcome of the resolution of the replacement requirements under 01-7018 and 01-7051.

We have previously requested an opportunity to visit with you in person and had hoped that you would be in the Idaho Falls area when that could be done without the expense of the city sending a delegation to Boise or some other place. That would still be our preference, but the added pressure of the lapse notice with respect to Permit No. 25-07182 is also relevant and puts additional time

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FEB 26 1991

R. Keith Higginson, Director
May 10, 1990
Page 2

pressures on this matter. If there is no likelihood that you will be in Idaho Falls by the end of this month, would you please advise us and suggest a time that we might come to Boise to meet with you to see if we cannot resolve these items in an acceptable manner.

Thank you for your kind attention to this matter.

Yours very truly,



Kent W. Foster

#0518.00/srr

cc: G. S. Harrison, Manager
Dale Storer, Esq.

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FEB 26 1991

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HOLDEN, KIDWELL, HAHN & CRAPO

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ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

R. VERN KIDWELL, OF COUNSEL

February 8, 1990

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FEB 9 1990

Keith Higginson, Director
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Department of Water Resources

RE: The City of Idaho Falls--Permits Nos. 01-7018 and 7051

Dear Mr. Higginson:

We have now received some information from the superintendent of the city's sewage treatment plant regarding the discharges from 1978 through 1989. We have enclosed copies with this letter of both the chart and the bar graph.

In addition, the city will apparently begin accepting waste water for treatment in its sewage treatment plant from Anheuser Busch perhaps as soon as next fall. Initially, this will increase the discharge from the city's sewage treatment plant by 2.42 cfs and when Anheuser Busch is at full capacity, it will increase to about an additional 4.83 cfs of discharge over and above that presently shown.

We hope this information will be helpful and we will still look forward to an opportunity to meet and visit with you as soon as possible.

Yours very truly,



Kent W. Foster

#0518.00/srr

Enclosure

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FEB 26 1990



City of Idaho Falls

COPY

SEWER DEPARTMENT

P.O. BOX 50220
IDAHO FALLS, IDAHO 83405
PHONE: (208) 529-1108

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FEB 9 1990

Office of:

Mr. Don E. Holverson
Sewer Superintendent

Department of Water Resources

Mr. Kent Foster
Attorney
P.O. Box 50130
Idaho Falls, Idaho 83405

February 6, 1990

Dear Mr. Foster,

Please find enclosed the Wastewater Discharge information that you requested.

Respectfully,

Don Holverson

Mr. Don E. Holverson Supt.
City Sewer Dept.

DEH/nf

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FEB 26 1991

WASTEWATER: Average wastewater discharge is based on

Quantity:	2.42	4.83
	Initial	Future
Avg. Daily	1.582 MGD	3.123 MGD
Annual WW Flow	1,750 Ac-Ft/Yr	3,500 Ac-Ft/Yr
Avg. Daily Flow	1,080 GPM	2,170 GPM
Peak Flow	2,710 GPM *	5,420 GPM *
	* w/ tanks	

About 95% of water

Character:

	Initial	Future
BOD (300 mg/l)	3,910 lb/d	7,810 lb/d
COD (680 mg/l)	8,860 "	17,710 "
TSS (160 mg/l)	2,080 "	4,170 "
pH	6 - 8	6 - 8

NATURAL GAS: Average fuel usage is based on

	Initial	Future
Annual Use	710 MM CF	1,420 MM CF
Avg. Summer (7 mo)	55 MM CF/Mo	110 MM CF/Mo
Avg. Winter (5 mo)	85 MM CF/Mo	170 MM CF/Mo

ELECTRICAL: Average electrical usage is based on

	Initial	Future
KW Peak Demand	5-6000	9-11000
KWH	32 MM/yr	64 MM/yr
Load Factor	75%	75%
Desired Voltage	4,160	4,160

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FEB 26 1991

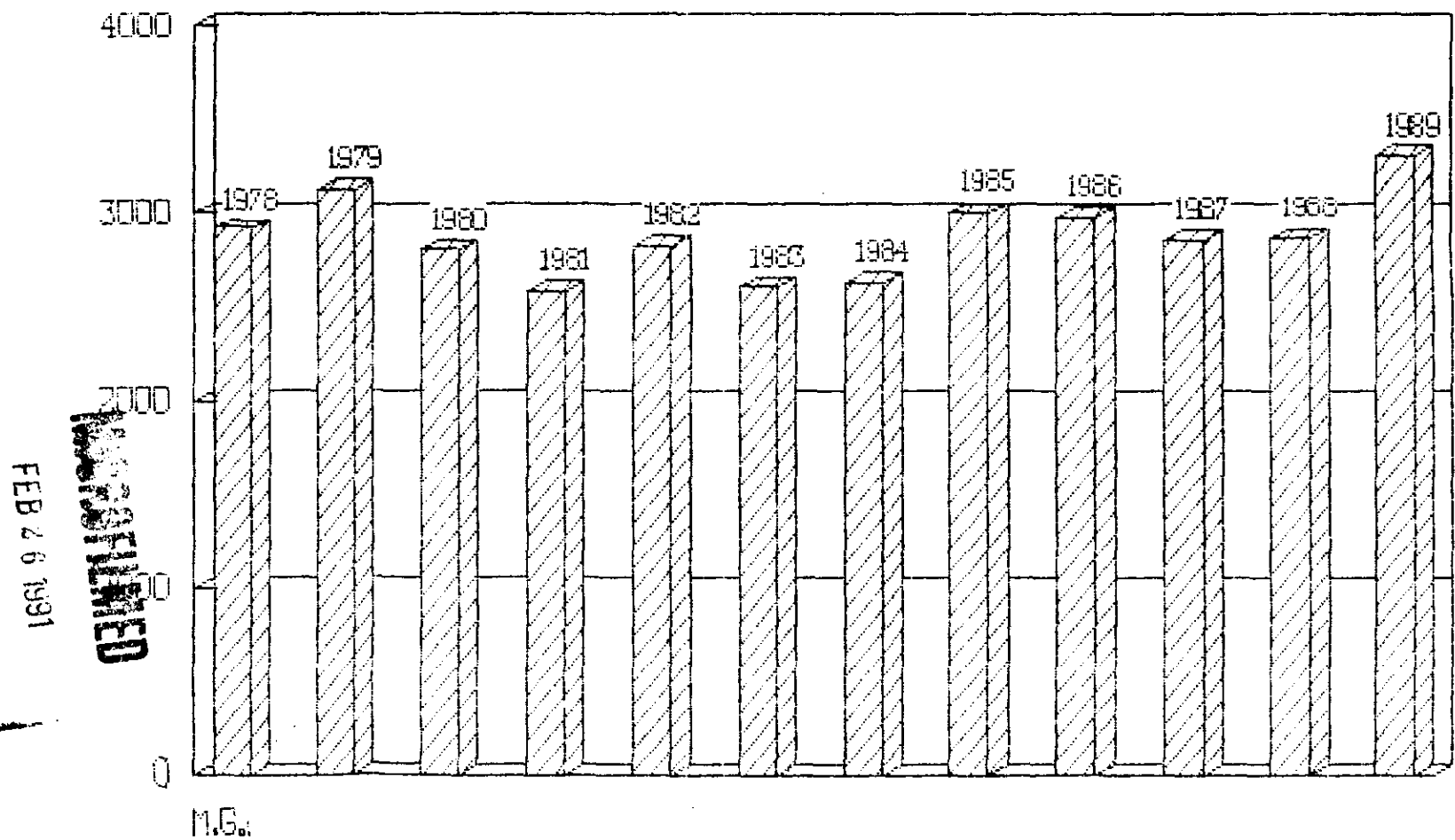
CITY OF IDAHO FALLS
WASTEWATER TREATMENT PLANT
TOTAL MONTHLY FLOW
MILLIONS OF GALLONS

	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
JANUARY	251.4	284.8	254.2	198.2	221.0	222.7	220.5	220.3	285.7	251.6	239.5	257.4
FEBRUARY	226.4	298.5	246.3	181.3	225.3	202.6	204.4	280.1	268.9	228.8	227.2	282.4
MARCH	252.3	280.5	255.1	196.4	229.3	215.0	225.3	299.0	241.4	237.4	225.0	285.1
APRIL	246.9	259.1	247.2	187.5	215.6	207.8	208.3	246.6	231.0	239.3	217.5	250.9
MAY	252.3	285.2	277.8	216.7	237.8	225.1	221.0	264.3	253.6	252.8	239.8	275.2
JUNE	269.6	285.4	257.3	216.7	251.4	248.4	245.8	257.7	247.8	230.1	246.0	281.9
JULY	247.3	275.1	244.4	244.0	260.7	252.1	237.3	265.1	252.1	255.5	252.8	298.9
AUGUST	219.9	244.1	216.7	244.3	258.2	226.8	213.6	259.7	259.0	261.1	250.1	295.4
SEPT.	211.5	223.3	207.3	228.4	253.6	212.9	213.4	238.1	244.7	247.8	249.1	288.9
OCTOBER	249.5	245.6	208.7	236.8	237.6	207.9	216.6	217.3	236.9	225.6	238.6	275.2
NOVEMBER	240.6	237.3	196.2	216.8	215.4	193.7	201.4	205.8	230.0	207.5	236.7	249.3
DECEMBER	249.0	212.6	197.9	221.0	225.7	198.3	225.8	249.2	231.1	221.3	245.9	263.6
TOTAL	2916.7	3131.5	2809.1	2588.1	2831.6	2613.3	2633.4	3003.2	2982.2	2858.8	2868.2	3304.2
AVERAGE	243.1	261.0	234.1	215.7	236.0	217.8	219.5	250.3	248.5	238.2	239.0	275.4
C.F./S.	12.3	13.28	11.88	10.97	12.00	11.08	11.13	12.73	12.64	12.12	12.13	14.01

1991

FILED

City of Idaho Falls Wastewater Treatment Plant



Total Flow

MEMORANDUM

TO: Files Nos. 01-7018 and 01-7051
FROM: Gary Spackman *Gary*
DATE: February 8, 1990

RE: Condition Requiring Replacement Water to the Snake River

I spoke with Kent Foster on February 2, 1990, about the condition on the above permits requiring that losses in the hydropower facility be replaced by a source other than the city's municipal discharge to the Snake River. We discussed a proposal to credit the city for any increases in the wastewater treatment discharges to the Snake River that have occurred since the filing of the hydropower application. I have also discussed this proposal with Ron Carlson.

Ron told me that he did not object to my proposal. Kent is also interested, although he does not know how much the flows from the treatment plant have increased since the hydropower application was filed.

As Kent and I discussed my proposal, he mentioned that he and the director had been corresponding about this issue. He stated that he needs to respond to a letter from Keith, dated December 12, 1989, which rejected another proposal for the use of all the wastewater treatment effluent as replacement water.

I wonder if my proposal should be discussed with Keith prior to initiating more action. I do not want to pursue a proposal that will not be viewed with favor.

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FEB 26 1991

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R. VERN KIDWELL, OF COUNSEL

February 5, 1990

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FEB 7 1990

Keith Higginson, Director
IDAHO DEPARTMENT OF WATER
RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Department of Water Resources

RE: Examination of Diversion Works for Permit No. 01-07018
in the Name of the City of Idaho Falls, and 01-07051
in the Name of the Utah Power & Light Company

Dear Mr. Higginson:

We appreciated receiving your letter of December 12, 1989, in response to ours of November 17, 1989. We have reviewed it with our clients and were directed to write to you again. Before getting my schedule together sufficiently to be able to do so, I received a call from Gary Spackman of your office.

Gary was apparently unaware of our letter to you in November and your response in December. He had been considering a similar letter we wrote to Ron Carlson about the same subject matter in January of 1989, but to which we had not had a response. He indicated that he had also discussed the matter with Norm Young and he asked for our reaction to an idea that had been suggested.

As I understood Gary, he had been searching for an appropriate middle ground solution and wondered if perhaps increases in discharges from the city's sewage treatment plant had occurred since 1978, the year of the city's application, 01-7018. He was aware that additional wells had come on to the city's system since that time and thought perhaps if discharges had increased sufficiently, such increases might satisfy the replacement requirement of Permits Nos. 01-7018 and 01-7051.

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FEB 26 1991

Keith Higginson, Director
February 5, 1990
Page 2

We are, of course, most willing to discuss and explore this as a possible solution to the problem. Part of our previous complaint has been that while the director appeared to object strenuously to the identification of water discharged into the river from the city's sewage treatment plant as replacement water for theoretical increased seepage and/or evaporation losses from the river caused by the city's Gem State Hydroelectric Project, we were never advised and have thus far been unable to learn what particular "source other than a new appropriation or a nonconsumptive appropriation of the natural flow of the Snake River or tributaries" the director had in mind.

Although you have apparently agreed with our legal analysis that the character of the water being discharged from the city's sewage treatment plant at the Snake River is, under Idaho law, the type of waste water to which no one can ever gain a right as against the city, you have declared that the city may recapture its sewage effluent and apply it to beneficial use for "municipal purposes", but municipal purposes does not include hydropower use.

The §50-323 definition of "domestic water systems" and "domestic water" is not necessarily the exclusive definition of "municipal purposes". Nor do we understand why the §50-325 authorization for cities to own and operate electric power plants would not be within the scope of an appropriate definition of "municipal purposes". What is the logical connection between the "unique treatment" that cities receive under the law permitting appropriations allowing for future growth and the perceived need to limit the scope of such rights "to satisfying only the water-related needs of the city's inhabitants"? Why? Is there some compelling public policy expressed somewhere by the legislature, or the courts, or even the executive branch, that the definition of "municipal" must be limited in the specific way suggested? There may be a good reason for the apparent strong feelings on this subject, but we confess; it continues to escape us.

We are not convinced any very specific or definite limitations were ever intended by whomever was responsible for using the term "municipal purpose" to describe the nature of use of the city's water rights. ~~On the contrary~~, it seems to us much more likely that the term was used because of its

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Keith Higginson, Director
February 5, 1990
Page 3

broadness, including that it is a term of much greater breadth than "domestic purposes". Even a cursory look at what courts have said about the legal meaning of the phrase clarifies that the term "municipal purposes" is used to distinguish public or governmental purposes from private purposes (Georgia Ry. & Power Co. v. City of Atlanta, 115 SE.263) and comprehends every legally legitimate activity of a city or other municipality relative to the comfort, convenience, safety, happiness, health, morals, protection and welfare of the public. Gardner v. City of Hamilton, 536 SW.2d 422; Cape Motor Lodge, Inc. v. City of Cape Girardeau, Mo., 706 SW.2d 208. Without having made any attempt to do exhaustive research for this analysis, we note however that at least in one case, Orlando Utilities Commission v. Milligan, 229 S.2d 262, at least one other state's court (Florida) has held that furnishing of electricity, power and water is a municipal purpose.

It may not be very important, but is the 5.0 cfs replacement water really for hydropower production? It seems there could be a theoretical increased seepage or evaporation loss just as easily if the city had constructed the same reservoir for recreation or aesthetics or some other municipal purpose.

Even if we were to concede, for the sake argument, that the use or purpose of the required replacement water is not municipal, are you suggesting it would be legally impossible to change the nature of the use of an appropriate number or amount of the city's water rights or to add an additional use so that the sewage effluent could be used for the replacement water? Again, perhaps we are not in tune with the correct thinking, but what legal or practical impediments do you envision?

In any event, identification of a portion of the sewage effluent to satisfy the replacement requirement makes good sense to us. We honestly fail to see significant legal or practical reasons not to do so. However, if they exist and can be articulated so that they can be understood by the city, then we are anxious to know what alternatives you would prefer. I had thought that by the time this letter was completed we would have received some records on any increases in effluent discharge since 1978 so we could followup on Gary Spackman's suggestion. As soon as we have that information, we will forward it to you for review.

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FEB 26 1991

Keith Higginson, Director
February 5, 1990
Page 4

We believe we do need to visit and would like to explore with you first whether you will be on this side of the State in the foreseeable future so a meeting here could be arranged rather than us planning to send a delegation to Boise. Would you let us know if a convenient opportunity can be arranged. We offer one of our conference rooms as a place to meet if that is satisfactory.

We will look forward to hearing from you.

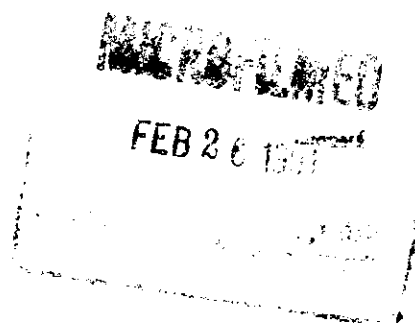
Yours very truly,



Kent W. Foster

#0518.00/srr

cc: Dale Storer
Steve Harrison





State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

March 2, 1990

Kent Foster, Attorney at Law
P.O. Box 50130
Idaho Falls, ID 83405

RE: City of Idaho Falls - Permits Nos. 01-7018 and 01-7051

Dear Kent:

I have reviewed the information you sent regarding discharges from the Idaho Falls sewage treatment plant. I cannot detect a trend of increasing flows from the sewage plant. Although 1989 discharge is higher than any other year, many of the other years leading up to 1989 actually show a decrease, or at least maintenance of, traditional flows. I am sorry that my proposal was not supported by the data.

Our legal staff is reviewing your letter, and a response will probably be forthcoming.

Respectfully,

A handwritten signature in cursive script that reads "Gary Spackman".

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc. Eastern Region

NOT REFILED

FEB 26 1991

MEMORANDUM

TO: Files Nos. 01-7018 and 01-7051
FROM: Gary Spackman *Gary*
DATE: February 8, 1990

RE: Condition Requiring Replacement Water to the Snake River

I spoke with Kent Foster on February 2, 1990, about the condition on the above permits requiring that losses in the hydropower facility be replaced by a source other than the city's municipal discharge to the Snake River. We discussed a proposal to credit the city for any increases in the wastewater treatment discharges to the Snake River that have occurred since the filing of the hydropower application. I have also discussed this proposal with Ron Carlson.

Ron told me that he did not object to my proposal. Kent is also interested, although he does not know how much the flows from the treatment plant have increased since the hydropower application was filed.

As Kent and I discussed my proposal, he mentioned that he and the director had been corresponding about this issue. He stated that he needs to respond to a letter from Keith, dated December 12, 1989, which rejected another proposal for the use of all the wastewater treatment effluent as replacement water.

I wonder if my proposal should be discussed with Keith prior to initiating more action. I do not want to pursue a proposal that will not be viewed with favor.

MAILED
FEB 26 1991



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

December 12, 1989

Kent Foster
Holden, Kidwell, HAHN & CRAPO
P. O. Box 50130
Idaho Falls, ID 83405

RE: EXAMINATION OF DIVERSION WORKS FOR PERMIT NO. 01-7018 IN THE
NAME OF THE CITY OF IDAHO FALLS AND PERMIT NO. 01-7051 IN THE
NAME OF UTAH POWER AND LIGHT COMPANY

Dear Mr. Foster:

I reviewed your letter dated November 17, 1989 regarding the Gem State Hydro-Electric project owned by the City of Idaho Falls and the conditioned approval of Permit Nos. 01-7018 and 01-7051 to supply "replacement water at a rate of 5.0 cfs from a source other than a new appropriation or a non-consumptive appropriation of the natural flow of the Snake River or tributaries". The department's legal staff has also reviewed your letter.

The department concurs with your description of the law on the right of an appropriator to recapture waste water, but does not agree that the law allows for the recapture of municipal sewage effluent for the purpose of making up for water lost through evaporation and seepage from a hydropower project.

The city may recapture its sewage effluent and apply it to beneficial use for "municipal" purposes, but municipal purposes does not include hydropower use.

Section 50-323, Idaho Code, in setting forth the authority of cities to maintain domestic water systems, provides: "domestic water systems" and "domestic water" includes by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses."

The authority under Section 50-325, Idaho Code, for cities to own and operate electric power plants and to provide for the distribution of electricity to the residents of the city appears to be a separate authority not intended to expand the scope of municipal water rights.

Cities receive unique treatment under Idaho water law in that they apparently have the authority to appropriate more water than is immediately needed, thus allowing for the growth of the city. See Beus

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FEB 26 1991

Kent Foster

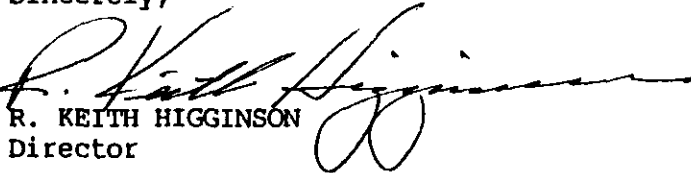
-2-

December 12, 1989

v. City of Soda Springs, 62 Idaho 1, 107 P.2d 154 (1940); Village of Peck v. Denison, 92 Idaho 747, 450 P.2d 340 (1969). Given this unique status of municipal water rights it appears important that the scope of such rights be limited to satisfying only the water-related needs of the city's inhabitants. Extending the breadth of municipal water rights to include a use such as hydropower production goes beyond the rationale supporting the special treatment accorded municipalities under Idaho water law.

I am willing to meet with you relative to this matter as you have requested.

Sincerely,


R. KEITH HIGGINSON
Director

c: IDWR - E. Region
Phil Rassier

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FEB 2 1990

NCH
MEMORANDUM

TO: Norman C. Young and L. Glen Saxton

FROM: Phillip J. Rassier PJZ

RE: Permits 01-7018 (City of Idaho Falls) and 01-7051
(UP&L); Kent Foster letter dated Nov. 17, 1989

DATE: December 5, 1989

At your request, I have reviewed Kent Foster's letter regarding the Gem State Hydro-Electric Project owned by the City of Idaho Falls. I concur with Kent's description of the law on the right of an appropriator to recapture waste water, but am doubtful that the law allows for the recapture of municipal sewage effluent for the purpose of making up for water lost through evaporation and seepage from a hydropower project.

It is probably correct that the city is entitled to recapture its sewage effluent and put it to additional beneficial purposes which are recognized as "municipal" uses. I, however, have been unable to find any authority recognizing hydropower as a municipal water use. Recognized municipal uses include the use of water by and for a city's inhabitants, within its geographic limits, for domestic, commercial and industrial uses and for the watering of yards, parks and golf courses.

I.C. § 50-323, in setting forth the authority of cities to maintain domestic water systems, provides: "domestic water systems" and "domestic water" "includes by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses."

The authority under I.C. § 50-325 for cities to own and operate electric power plants and to provide for the distribution of electricity to the residents of the city appears to be a separate authority not intended to expand the scope of municipal water rights.

Cities receive unique treatment under Idaho water law in that they apparently have the authority to appropriate more water than is immediately needed, thus allowing for the growth of the city. See Beus v. City of Soda Springs, 62 Idaho 1, 107 P.2d 154 (1940); Village of Peck v. Denison, 92 Idaho 747, 450 P.2d 340 (1969). Given this unique status of municipal water rights it appears important that the scope of such rights be limited to satisfying only the water-related needs of the city's inhabitants. Extending the breadth of municipal water rights to include a use such as hydropower production goes beyond the rationale supporting the special treatment accorded municipalities under Idaho water law.

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R. VERN KIDWELL, OF COUNSEL

November 17, 1989

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NOV 20 1989

Department of Water Resources

Mr. Keith Higginson, Director
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard
Statehouse Mail
Boise, Idaho 83720

RE: Examination of Diversion Works for Permit #01-07018
In the Name of the City of Idaho Falls, and #01-07051
In the Name of Utah Power & Light Company

Dear Mr. Higginson:

The City of Idaho Falls has recently been in the process of having the field exam completed for licensing of the above numbered rights. In connection with the issuance of Permit #01-7018, the previous director, Mr. A. Kenneth Dunn, made a determination that there would be seepage and evaporation losses from the Gem State Reservoir and included a requirement to "supply replacement water at the rate of 5.00 cubic feet per second from a source other than a new appropriation or a non-consumptive appropriation of the natural flow of the Snake River or tributaries".

The specific source of the replacement water was not determined at that time, or for that matter where and how it was to be supplied. However, Mr. Dunn was apparently very concerned about one potential source for the replacement water and gratuitously included in the Memorandum Decision and Order accompanying the approved permit that water discharged as effluent from the city's sewage treatment plant could not be used to satisfy the replacement requirement.

We disagreed with Mr. Dunn's statement and provided him with our analysis of the legal principles involved, together with some suggested alternative sources. We never received a

Mr. Keith Higginson, Director
November 17, 1989
Page 2

response, and for a number of reasons, the city chose not to press this specific item at that time. The financial and other pressures involved in the project compelled the city to proceed with construction without further delays; Mr. Dunn, of course, became embroiled with the "Swan Falls controversy" almost immediately thereafter, and the statements in the Memorandum Decision and Order regarding use of the sewage effluent as replacement water were dicta anyway.

Now, however, it is time to resolve the matter of the replacement water. From the city's standpoint, use of the sewage effluent to satisfy the replacement requirement makes a great deal of sense. We were asked by the city to review our previous analysis of the applicable legal principles and to advise whether we felt the matter was worth pursuing. After doing so, we have again concluded that there is no legal impediment to this proposal. We therefore request your consideration and an opportunity to discuss the matter with you at your convenience.

To assist you in your consideration, we have included much of our analysis of the issue in this letter and hope that you will submit it to your legal staff for their scrutiny as well.

Without intending to misstate Mr. Dunn's thoughts expressed in the 1982 Memorandum Decision and Order, we understood his position to basically be that since the waste water from the sewage treatment plant had historically been discharged into the Snake River, the city had lost control of it and must continue the discharge to help satisfy existing water rights. We think that after reviewing applicable Idaho waste water law principles, it will be seen that this waste water is of a particular classification that never becomes legally tributary to Snake River, regardless of the length of time it may have been discharged therein.

The City of Idaho Falls pumps all water used in and through its city water system from a number of deep wells, the first of which was drilled in about 1927 and the remainder of which have been added since as needed. A certain amount of the water diverted into the city water system ends up in the city's sewage system after it has been used, laden with the various sewage pollutants. It is then brought to the city's sewage

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FEB 26 1991

Mr. Keith Higginson, Director
November 17, 1989
Page 3

treatment plant and the water remaining, after treatment to make it comply with applicable standards, is discharged through a single outlet pipe into the Snake River. The average discharge appears to exceed 14 cubic feet per second.

Waste water from these wells has thus been discharged into the river ever since water was first pumped for municipal purposes. The discharge has increased incrementally with each addition to the total supply diverted.

From our research into the legal principals relating to "waste water" and "tributary water" it appears to us that while the two concepts are related, this particular matter is a "waste water" issue, and not a "tributary water" issue. All Idaho cases we have examined which hold that any given water source (whether it is a stream, spring, seepage, or whatever) is tributary to a larger stream or river, dealt only with sources of supply which, in their natural state, (emphasis added) unmolested and unassisted by man, would reach or flow into and contribute to the supply of water in the larger stream or river. We have found no case or other authority for the proposition that groundwater, pumped from deep wells, a portion of which, after it has been used for the purposes for which it was appropriated, is discharged into a river, ever, regardless of the length of time involved, becomes legally tributary to the river. Among the authorities we have examined are the following:

IDAHO SUPREME COURT CASES

Malad Valley Irrigation Co. v. Campbell, 2 Idaho 411, 18 P. 52 (1888);

Cartier v. Buck, 9 Idaho 571, 75 P. 612 (1904);

Josslyn v. Daly, 15 Idaho 137, 96 P. 568 (1908);

Jackson v. Cowan, 33 Idaho 525, 196 P. 216 (1921);

United States v. Haga, 276 Fed. 41 (D. Idaho 1921);

The Union Central Life Ins. Co., v. Albrethsen, 50 Idaho 196, 294 P. 842 (1930);

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Mr. Keith Higginson, Director
November 17, 1989
Page 4

Fairview v. Franklin Maple Creek Pioneer Irr. Co., 59 Idaho 7, 79 P.2d 531 (1938);

Ward v. Kidd, 87 Idaho 216, 392 P.2d 183 (1964); and

Martiny v. Wells, 91 Idaho 215, 419 P.2d 470 (1966).

TREATISES

Long on Irrigation, Sec. 60 at pp.106-108;

Clark, "Waters and Water Rights", Vol.I, Sec.3.2(A) and 52.3(B);

Hutchins, "Idaho Law of Water Rights", Vol.V, Idaho Law Review I, Fall 1968, p.52;

Hutchins, "Selected Problems in the Law of Water Rights in the West", United States Department of Agriculture, Miscellaneous Publication No. 418, p.371.

A typical statement from the treatises is the one contained in the last mentioned treatise listed above at page 371 under the heading "Natural Accretions to the Stream become a Part of the Stream":

The appropriated right applies to the natural flow of the stream and its tributaries, not only at the time of making the appropriation, but as augmented by subsequent and natural causes.

Hutchins then quotes from a Montana case, Beaverhead Canal Co. v. Dillon Electric Light & Power Co., 34 Montana 135, 85 P. 888 (1906). That case holds that natural accretions or augmentations to the flow of a stream are tributary, or in other words, form a part of the stream or source of supply itself; but artificial augmentations, that is, those which occur and are maintained only as a result of the activities of men, as opposed to nature, are not tributary. Artificial augmentations would be treated as a separate source of supply and are appropriable as such. See the language of the decision

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Mr. Keith Higginson, Director
November 17, 1989
Page 5

commencing at page 881 as report in Volume 85 of the Pacific Reporter.

The water added to Snake River by the City of Idaho Falls is not a natural, but an artificial increase or contribution. It comes from a source other than Snake River or its natural tributaries and enters Snake River only through artificial means. It does not appear that the discharge from the City of Idaho Falls sewage treatment plant has or will become legally tributary to the Snake River.

As we have indicated, we believe the present issue is a "waste water" issue rather than a "tributary water" issue. It appears that the term "waste water" has been used to describe a number of types of different situations. The applicable legal rules appear to vary to some extent with the type of "waste water" involved.

Many of the treatises lump the discussion of "waste waters" under a general heading such as "Waste, Seepage and Return Waters". However, they are not all the same, as the authorities point out. Kinney says:

Waste water may have three meanings, as follows: (1) water that is actually wasted or is not needed by the claimant thereto; (2) water which, after it has served the purpose of the lawful claimant thereto, has been permitted to run to waste or to escape; and (3) water which, from unavoidable causes, escapes from the ditches, canals or other works of the lawful claimant.

Kinney on Irrigation and water Rights, Second Ed., Vol. I, Sec. 322 at p.523.

An even better statement is contained in Hutchins, Water Rights Laws in the Nineteen Western States, Vol. II at p.568:

Waste, seepage and return water are closely related. To some extent, their classifications overlap.

FEB 13 1990

Mr. Keith Higginson, Director
November 17, 1989
Page 6

As discussed in this topic, waters of all three classes usually originate on irrigation projects or irrigated lands as a result of the conveyance, distribution, and application of irrigation waters. Where considered separately, the following distinctions are herein made:

looking

Waste Waters are taken to include (1) water purposefully discharged from the project works, because of operation and necessities, (2) water leading from ditches and other works, and (3) excess water flowing from irrigated lands, either on the surface or seeping under it.

Seepage Waters are waters seeping through the soil from ditches or other works and from irrigated lands and entering stream channels or appearing elsewhere on the surface.

Return Waters are waters diverted for irrigation or other uses that are returned to the stream from which they were diverted, or to some other stream, or that would do so if not intercepted by some obstacle. Thus, return waters include both waste water and seepage water.

Being more specific now with respect to "waste water", we quote from another publication of Mr. Hutchins, "Selected Problems in the Law of Water Rights in the West," United States Department of Agriculture, Miscellaneous Publication No. 418, at p.362:

Appropriations may generally be made of waste water which has been abandoned by the original appropriators, but with important qualifications. Generally, an independent

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Mr. Keith Higginson, Director
November 17, 1989
Page 7

right to the use of abandoned or waste water can be acquired only if the water has not yet returned to the stream from which it was diverted. If such water after abandonment has reentered a portion of the stream system from which it was originally appropriated, as noted in greater detail below, it becomes a part of that water source in legal contemplation as well as physically, and from the standpoint of rights of use, it is just as much a part of the flow as is the water with which it is mingled; hence, appropriated rights which before the mingling have attached to the waters of the stream, attach with equal effect to the waste waters originally diverted from the stream and then abandon into it, so that an independent appropriation cannot then be made on the waste waters as such.

To the same effect, Kinney states:

It often happens that the prior appropriator, in irrigating the lower portion of his land, is compelled by the lay of the land to let the water run off from his property to the lands of others, in places where it is impossible to return the water to the natural stream. And it often happens that the water flows upon lands of those who are either not appropriators from the stream or are appropriators much later than others, who in point of time are entitled to the use of the water. This water is deemed by the courts to be waste water. And the question now arises can the owners of the lands on which it runs secure a permanent right therein to its continuous use? The authorities hold that while the water so denominated as waste water, may be used after it escapes, no permanent right can be acquired to have the discharge kept

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Mr. Keith Higginson, Director
November 17, 1989
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up, either by appropriation or a right by prescription, estoppel, or acquiescence in its use while it is escaping, and that, too, even though expensive ditches or works were constructed for the purpose of utilizing such waste water, unless some other element enters into the condition of affairs other than the mere use of the water. In other words, the original appropriators have the right, and in fact it is their duty to prevent, as far as possible, all waste of the waters which they have appropriated, in order that the others who are entitled thereto may receive the benefit thereof.

When such water escapes and returns to the stream or its tributaries, it becomes a part of the water of the stream and subject to reappropriation as though it never had been diverted, and inures to the benefit of the other appropriators in the order of their appropriations

The better authorities hold that a claimant to waste water acquires a temporary right only to whatever water escapes from the works or the lands of others, and which cannot find its way back to the natural stream from which it was taken; that such a use of the water does not carry with it the right to any specific quantity of water, nor the right to interfere with the water flowing in the ditches or works of others lawfully appropriating it, and the appropriators are under no obligation nor have they the right to permit any specific quantity of water to be discharged as "waste water" for his benefit.

Kinney on Irrigation and Water Rights, Second Ed., Vol. II, Sec. 661, at pp.1151-1153.

It appears to us from these and other authorities that the term "waste water" is frequently used to cover a number of

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situations. It is, for instance, used to describe a class of water which is more properly designated "return flows". If one diverts water from a stream or source of supply and applies it to a beneficial use pursuant to a valid right, but because of the circumstances of the diversion and use there is some water left over after it is used and such water returns to the same stream or source of supply, it appears that it is part of that stream or source of supply, the same if it had never been taken therefrom. It may be a waste which the right holder can legally cease or reduce, for instance, by making a more efficient use of it, but it is not a separate source of water which may be appropriated. On the other hand, if the water remaining after the right holder has completed his use would not find its way back into the original stream or other source from which it was diverted, it is a species of "waste water" which can legally be appropriated, albeit subject to the right of the holder of the paramount water right to cease or reduce the waste.

The Idaho cases appear to be in accord. The Idaho Court has established that water left over after one holding a valid right has diverted it and applied it to a beneficial use is waste water which may be subject to appropriation and use by another, subject always to the right of the first to cease wasting. Sebern v. Moore, 44 Idaho 410, 258 P. 176 (1927); Strong v. Twin Falls Canal Co., 44 Idaho 427, 258 P. 173 (1927); Crawford v. Inglin, 44 Idaho 663, 258 P. 541 (1927); Gerber v. Nampa & Meridian Irr. Dist., 16 Idaho 1, 100 P. 80 (1908); Nampa & Meridian Irr. Dist. v. Petrie, 37 Idaho 45, 233 P. 531 (1923); Colthorp v. Mountain Home Irr. Dist., 66 Idaho 173, 157 P.2d 1005 (1945); Reynolds Irr. Dist. v. Sprunt, 70 Idaho 217, 214 P.2d 880 (1950); Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952); Thompson v. Bingham, 78 Idaho 305, 302 P.2d 948 (1956); Franklin Cub River Pumping Co. v. Le Febre, 79 Idaho 107, 311 P.2d 763 (1952); Jones v. Big Lost River Irr. Dist., 93 Idaho 227, 459 P.2d 1009 (1969). To the same effect, see also, Twin Falls Canal Co. v. Damman, 277 Fed. 331 (D. Idaho 1920); and United States v. Haga, 276 Fed. 41 (D. Idaho 1921).

Further, the rule appears to be well established in Idaho that if the waste water is of the variety which, without interference, would return to the stream from which it was

Mr. Keith Higginson, Director
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originally diverted (return flow), it is a variety of waste water that the right holder originally diverting it cannot be compelled to continue wasting, but instead of being appropriable as other waste water, it is considered still a part of the stream available only to supply the rights of other appropriators thereof, the same as if it had never left the stream. Brayer v. Baker, 31 Idaho 387, 171 P. 1135 (1918); Milner Lowlift Irr. Dist. v. Eagan, 49 Idaho 184, 286 P. 608 (1930); Application of Boyer, *supra*.

With respect to the city discharge from the sewage treatment plant, it appears such discharge commenced several years ago, and then underwent incremental increases, until now there is a total of some 14 or more cfs being regularly discharged into the Snake River. It does not appear that such discharges are a result of nature, but are artificial and therefore not legally tributary. We think the fact that the water has "historically been discharged into the Snake River and is considered part of the river", is probably not legally relevant. At least we have been able to find no authority for the proposition that if such water were allowed to run into the river for a long enough period of time it would become legally tributary.

It seems that if this water which has been discharged into the river from the city's sewage treatment plant were legally tributary to the river, the same as a natural spring or stream would be, the city would have no right as against other appropriators of the waters of the Snake River (including all of its other tributaries) to do anything which might result in the reduction or termination of such a tributary source. Such a rule would place all those who drill wells and install pumps to divert groundwater and to apply it to beneficial use, when any portion of that water remaining after the beneficial use, finds its way into the river, in the untenable position of being required to continue pumping and wasting for the benefit of all the right holders. It would be of course contrary to public policy and established law.

We believe that the correct designation for this water is "waste water". If the waste water were of the variety which merely returned to the stream or other source of supply from which it was diverted in the first instance (we have called this variety "return flow") ~~it would be~~ **RECEIVED**

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considered a part of that stream or other source of supply the same as if it had never been diverted therefrom. It would still be subject to the right of the appropriator to cease or reduce whatever practice resulted in the return flow, but it could not be appropriated as such because it is subject to all prior rights in the stream or source of supply from which it was taken originally.

However, the discharge from the city's sewage treatment plant appears to be from an original source different and separate from the Snake River and its tributaries; i.e., groundwater. This discharge would seem to be within that class of "waste water" which can be appropriated by others, subject always to the right of the paramount right holder to cease such waste or to recapture it and put it to a beneficial use. If the discharge from the city's sewage treatment plant is waste water which the city has a right to reduce or cease wasting or to recapture and apply to another beneficial use, we wonder to what uses the city might apply the recaptured water? Applicable cases make statements such as:

The original appropriator may at any time recapture waste water remaining on his land and apply it to a beneficial use.

Thompson v. Bingham, supra. at p.308 at the Idaho Reports;

We conclude that surface waste and seepage water may be appropriated under the provisions of C.S., Sec. 5562, subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use. His control is not dependent upon continuous actual possession, and in the absence of abandonment or forfeiture of his right to choose, he may assert his right, which is not affected by his once having applied it to a beneficial use.

Sebern v. Moore, supra., at p. 418 of the Idaho Reports.

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Other jurisdictions appear to concur. Wyoming Hereford Ranch v. Hammond Packing Co., 33 Wyo. 14, 236 P. 764 (1925); Reynolds v. City of Roswell, 99 N.M. 84, 654 P.2d 537 (1982); Arizona Public Service Co v. Long, 773 P.2d 988 (Ariz. 1989). We quote from this most recent Arizona case:

Sewage effluent is water that is left over after having been put to use. Regardless of whether the water used to treat sewage was originally groundwater or surface water, the water remaining after treatment is waste water . . . Waste water exists only as long as there is waste. No appropriator can compel any other appropriator to continue the waste of water which benefits the former. If the senior appropriator, through scientific and technical advances, can utilize his water so that none is wasted, no other appropriator can complain . . . The junior appropriator, using waste water "takes his chance" on continued flow . . .

We therefore hold that the Cities may discontinue the discharge of sewage effluent without violating the rights of those persons or entities which have previously appropriated it. The right to appropriate effluent comes into existence only when and if that effluent flows in the geological structures described . . . Because the "producer" of the effluent is a senior appropriator, those who have appropriated the effluent gain no right to compel continued discharge . . .

Thus, the Cities are free to contract for the disposition of that effluent and the utilities, having purchased the right to use the effluent, may continue to use it.

Arizona Public Service Co. v. Long, supra., at pp.996-997.

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Page 13

The city's licenses and permits for the wells from which the water is diverted, a portion of which ends up discharged from the sewage treatment plant, list, as the beneficial use to which the water may be applied "municipal purposes". This seems to be a very broad classification; is it not broad enough to include replacement water for the Gem State Hydro-Electric Project?

Even if there have been constitutional appropriations of waste water from the city's sewage treatment plant since 1927 which, for whatever reason, are not subject to the right of the city to cease wasting or recapture the water and apply it to some other beneficial use, we are unaware of any specific appropriations of this water since 1971 when the mandatory permit system took effect. If we understand it correctly, it would have been impossible for any increase in the waste water discharged from the city's sewage treatment plant occurring after May 23, 1971, to have been appropriated, except through formal application, permit and license. If there are none, it appears that it would be appropriate for the city to propose use of increases in effluent discharge that have occurred since that time to be used as replacement water. Likewise, we could see no objection to use by the city at future increases in the discharge for replacement purposes. As we say, we would very much appreciate the opportunity to visit with you in some detail about the potential use of the waste water discharged from the city sewage treatment plant into the Snake River as replacement water under Rights Nos. 01-7018 and 01-7051.

We will look forward to hearing from you as soon as it is convenient.

Yours very truly,



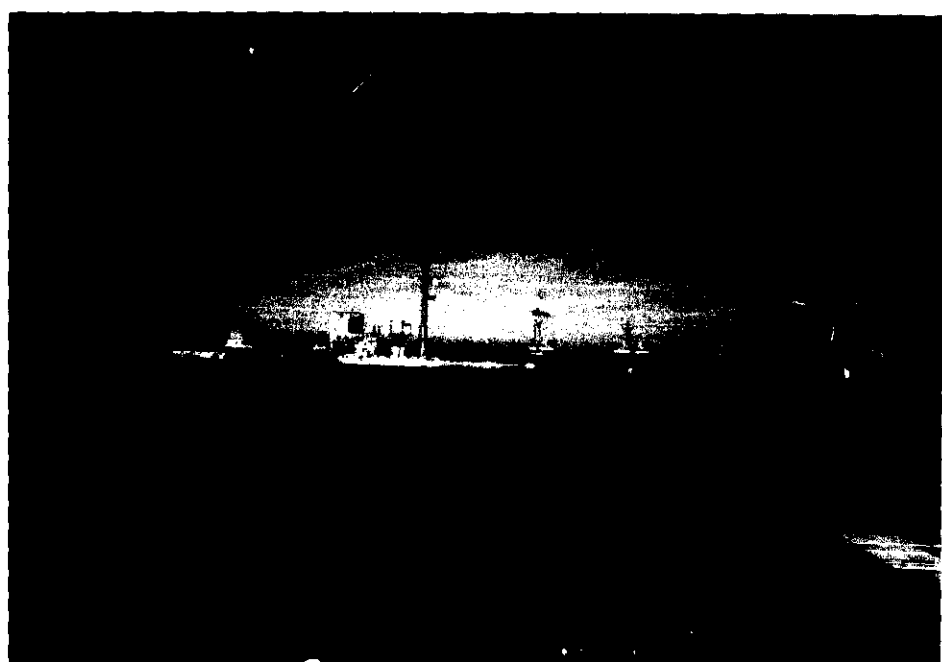
Kent W. Foster

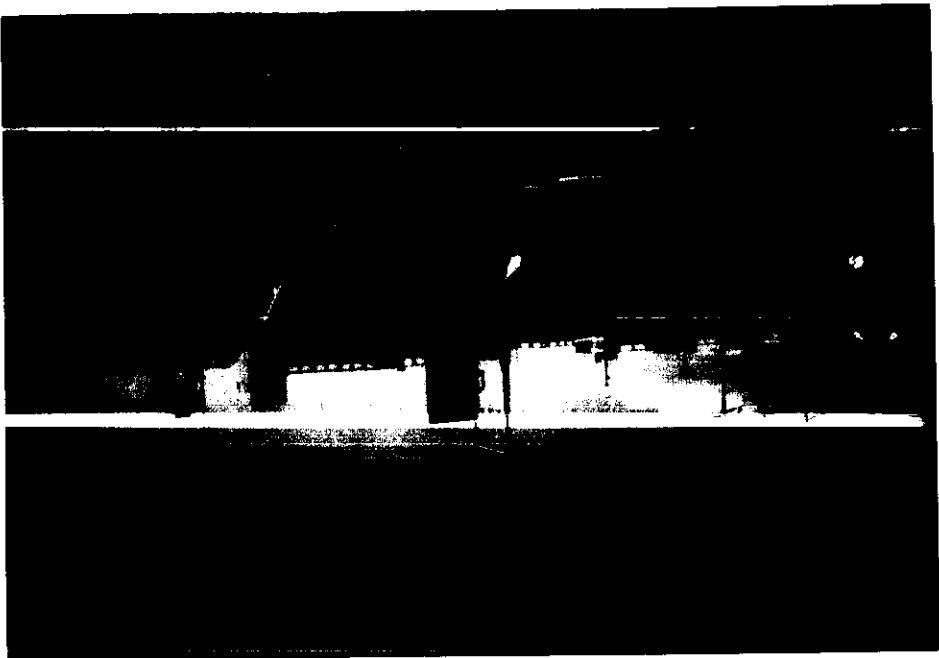
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cc: Dale Storer, Esq.
Mr. Steve Harrison

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

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Department of Water Resources

A. GENERAL INFORMATION

Permit No. 01-07051

1. Owner: Utah Power & Light Company Phone No. (208) 356-7366

Current Address: 25 E. Main Street, Rexburg, Idaho 83440

2. Accompanied by: Boyd Stewart, Electric Division EXAM. DATE: June 19, 1989

Address: P.O. Box 50220, Idaho Falls, Idaho 83405 Phone No. 529-1430

Relationship to Permit Holder: Employee, City of Idaho Falls

3. Source: Snake River tributary to Columbia River

B. OVERLAP REVIEW

1. Other water rights with same place of use: 01-07018

☐ Copies Attached

2. Other water rights with same point of diversion: 01-07018

☐ Copies Attached

☒ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached

See attached site map, Sheet 6-4 and General Arrangement-Powerhouse, Sheet 6-10. Complete plans are available at the City of Idaho Electric Department.

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Scale: 1" = N/A

2. ☒ Copy of U.S.G.S. Quadrangle Attached
Showing location(s) of point(s) of diversion and
place(s) of use (required).

☒ Photo of Diversion and System Attached

(required for all but single household domestic groundwater, and stockwater.

☒ Aerial Photo Attached
(required for irrigation of 10 acres or more).

System Description (continued)

3. **Narrative:** Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)
 Measurements were observed on June 19, 1989. The Gem State Power Plant operates with a constant lake elevation of 4655±0.3. The power plant accepts water up to 7200-8000 CFS. Excess water is diverted through the spillway. In flow conditions less than 8000 CFS, a 20' steel pipe delivers approximately 75 CFS through the old channel to prevent stagnation. At the time of observation, the flow was 5500 CFS.

☐ See Remarks on page 4 for continuation

4. **Power Plant**

XXXXXXXXXXXX Identification No.*	Motor Make	XXX	Generator XXXXXXXXXXXX	Pump Make	Pump Serial No. or Discharge Size
City of Idaho	Hitachi	22.6MW	152561-1	N/A	N/A
Falls - Gem					
State Plant					

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

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

Ident. No.	Gov't. Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
					15	1N	37E	Bonneville	Land Survey

6. **Place(s) of Use:**

Indicate Method of Determination _____

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
1N	37E	15																	N/A

Do not use this space

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Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
Hitachi-Kaplan Turbine	N/A	N/A	N/A	145281-1	24MW	1989
Generator	N/A	N/A	N/A	152561-1	24MW	1989

2. Measurements:

Flow was determined by the powerhouse meter & checked against the power output and the Shelley gauge.

5500 CFS

E. FLOW CALCULATIONS

☒ Additional Computation Sheets Attached

1. Measured Method: Power Output: 18 Megawatts (from CH²M/Hill)
Figure 7 Discharge vs Plant Output Curve
18 MQ = 5500 CFS±

2. Alternate Method for Checking Purposes:

At 1:30 p.m. on this date the Shelley gauge read 5490 CFS

F. PUMP EFFICIENCY DATA (Optional) N/A

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)

Total Head: (1) + (2) = _____ (3) ; Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)

Meter Input HP: (6) x 1.34 = _____ (7)

Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Ampsx .001732 = _____ (6)

Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS N/A

1. Volume Calculations for Irrigation:

$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$ _____

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

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

2. Volume Calculations for Other Uses:

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H. REMARKS AND OVERLAP REVIEW ANALYSIS

The correlation between power generation and river flow is accurate and compares closely with the Shelley gauge. Monthly power production will be available for review at the end of 1989. The plant produces 22.6 MW at a flow of 7200 CFS. Figure 7 relates up to 7200 CFS. Between 7200 & 8000 CFS additional power can be produced for short intervals. All 8000 CFS are used for this condition. For flows above 8000 CFS output falls as the flow increases. The plant still utilizes approximately 8000 CFS but the loss of head caused by raised tailwater decreases power output.

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
Power Generation	Jan. 1	Dec. 31	Available flow to 3000 CFS	
Totals:				

2. Recommended Amendments

☐ Change P.D. as reflected above

☐ Add P.D. as reflected above

☐ None

☐ Change P.U. as reflected above

☐ Add P.U. as reflected above

☐ Other

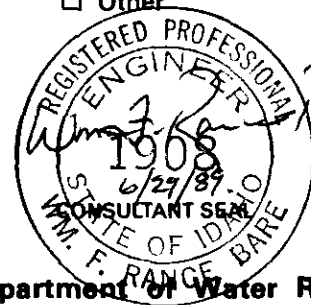
J. AUTHENTICATION

Field Examiner's Name Daryl Kofoed

Signature *Daryl Kofoed*

Certification Date JUNE 29, 1989

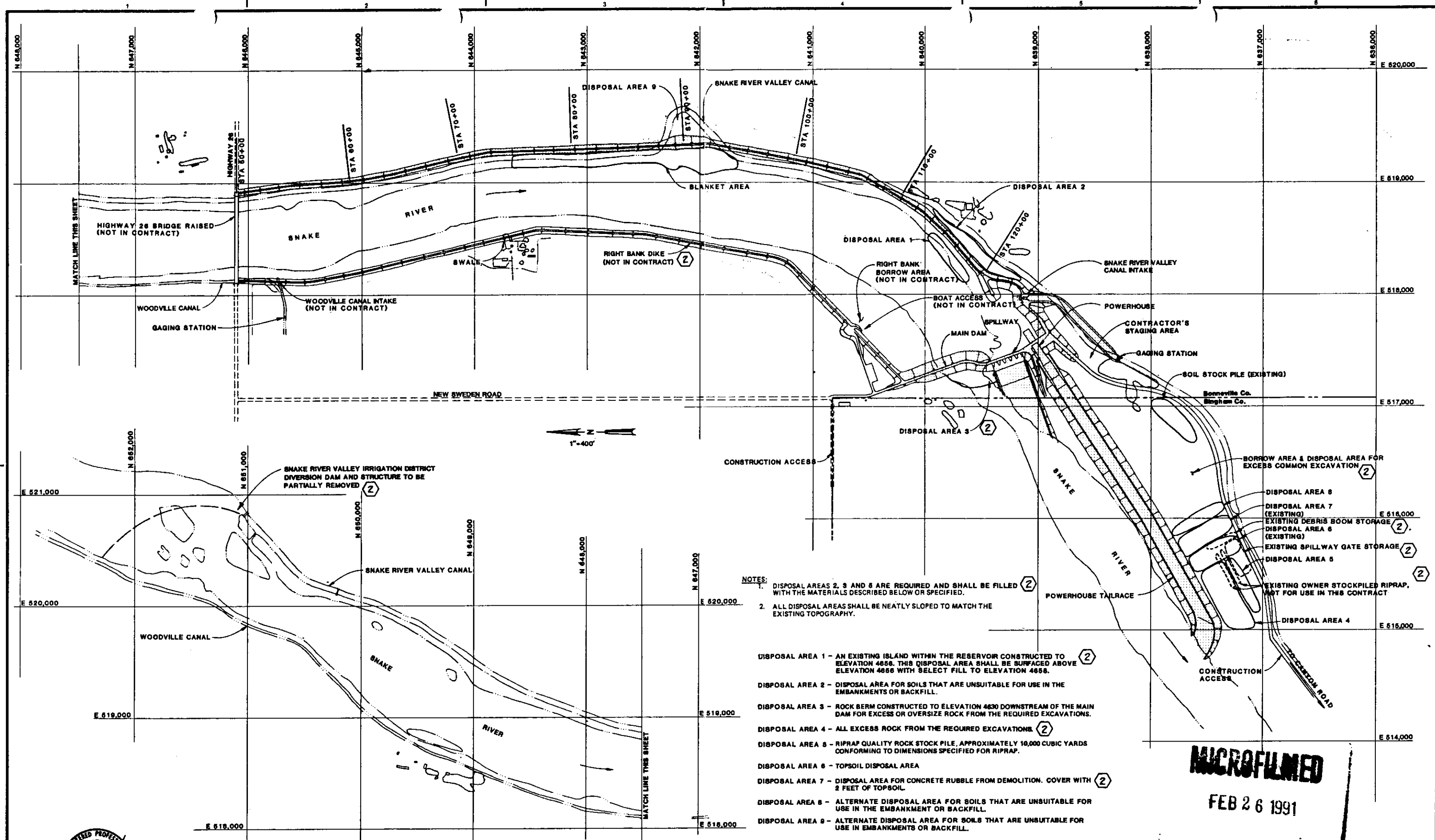
Field Report Preparation Date June 26, 1989



K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

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- NOTES:**
- DISPOSAL AREAS 2, 3 AND 8 ARE REQUIRED AND SHALL BE FILLED WITH THE MATERIALS DESCRIBED BELOW OR SPECIFIED.
 - ALL DISPOSAL AREAS SHALL BE NEATLY SLOPED TO MATCH THE EXISTING TOPOGRAPHY.
- DISPOSAL AREA 1 - AN EXISTING ISLAND WITHIN THE RESERVOIR CONSTRUCTED TO ELEVATION 4656. THIS DISPOSAL AREA SHALL BE SURFACED ABOVE ELEVATION 4656 WITH SELECT FILL TO ELEVATION 4656.
- DISPOSAL AREA 2 - DISPOSAL AREA FOR SOILS THAT ARE UNSUITABLE FOR USE IN THE EMBANKMENTS OR BACKFILL.
- DISPOSAL AREA 3 - ROCK BERM CONSTRUCTED TO ELEVATION 4630 DOWNSTREAM OF THE MAIN DAM FOR EXCESS OR OVERSIZE ROCK FROM THE REQUIRED EXCAVATIONS.
- DISPOSAL AREA 4 - ALL EXCESS ROCK FROM THE REQUIRED EXCAVATIONS.
- DISPOSAL AREA 5 - RIPRAP QUALITY ROCK STOCK PILE, APPROXIMATELY 10,000 CUBIC YARDS CONFORMING TO DIMENSIONS SPECIFIED FOR RIPRAP.
- DISPOSAL AREA 6 - TOPSOIL DISPOSAL AREA.
- DISPOSAL AREA 7 - DISPOSAL AREA FOR CONCRETE RUBBLE FROM DEMOLITION. COVER WITH 2 FEET OF TOPSOIL.
- DISPOSAL AREA 8 - ALTERNATE DISPOSAL AREA FOR SOILS THAT ARE UNSUITABLE FOR USE IN THE EMBANKMENT OR BACKFILL.
- DISPOSAL AREA 9 - ALTERNATE DISPOSAL AREA FOR SOILS THAT ARE UNSUITABLE FOR USE IN EMBANKMENTS OR BACKFILL.

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DESIGN: *[Signature]*
CHECKED: *[Signature]*
APPROVED: *[Signature]*

ADDENDUM NO. 2
MINOR REVISIONS

NO. DATE REVISION

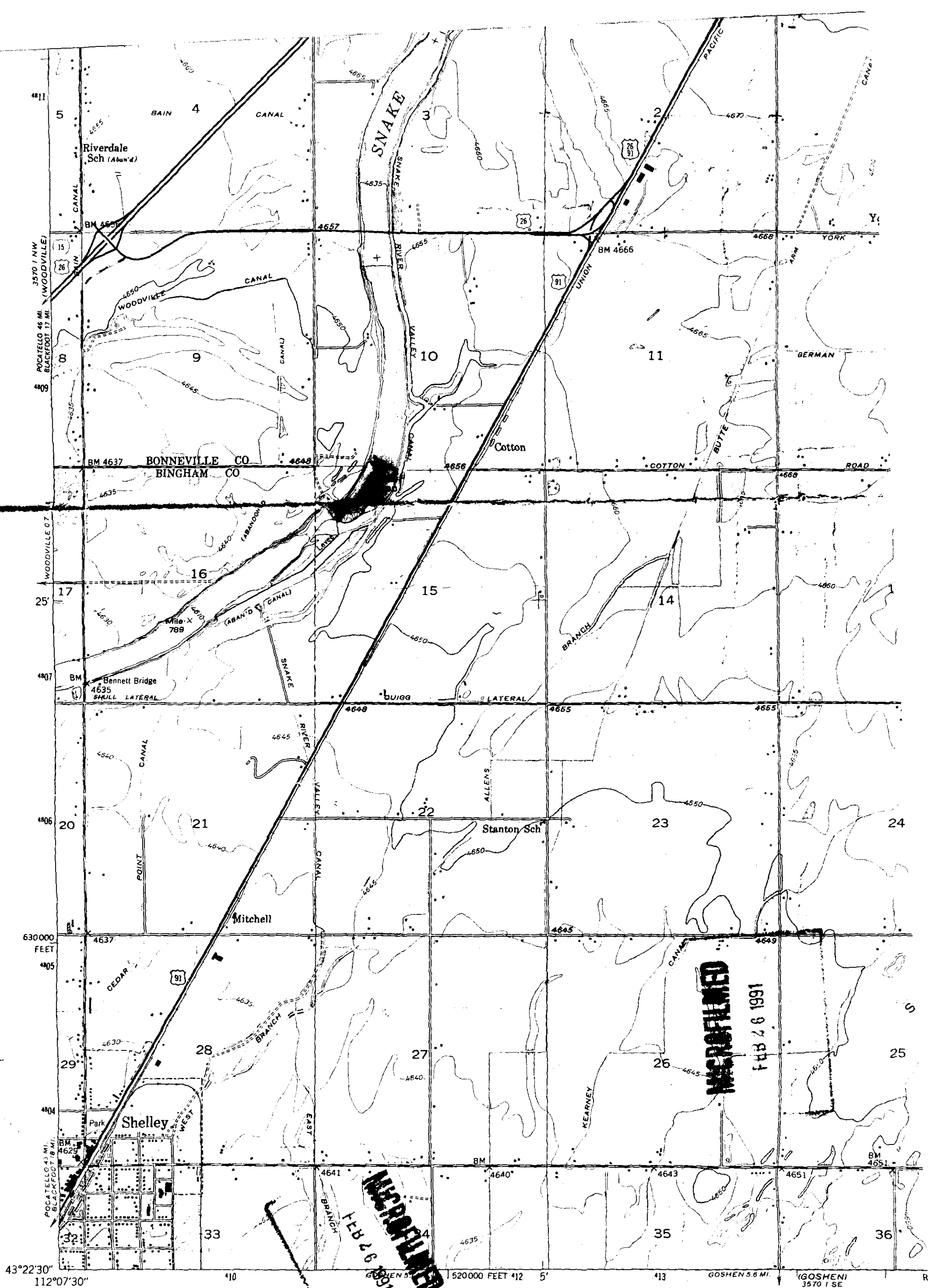
REUSE OF DOCUMENTS
THIS DOCUMENT, AND THE IDEAS AND DESIGNS INCORPORATED HEREIN, AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF CH2M HILL AND IS NOT TO BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF CH2M HILL.

VERIFY SCALES
BAR IS ONE INCH ON ORIGINAL DRAWING.
IF NOT ONE INCH ON THIS SHEET, ADJUST SCALES ACCORDINGLY.

GEM STATE HYDROELECTRIC PROJECT
CITY OF IDAHO FALLS, IDAHO
GENERAL CONTRACT

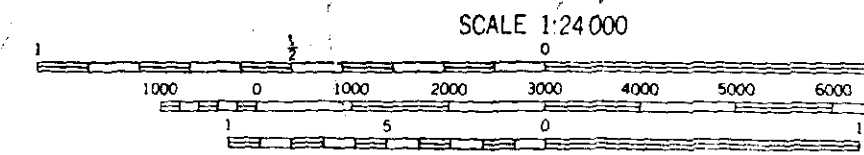
SITE MAP

SHEET	G-4
DWG. NO.	0-4
DATE	MAY 1986
PROJ. NO.	816980



Mapped, edited, and published by the Geological Survey
 Control by USGS and NOS/NOAA
 Culture and drainage by multiplex methods
 from aerial photographs taken 1946
 Topography by plane-table methods 1948
 Polyconic projection. 1927 North American datum
 10,000-foot grid based on Idaho coordinate system,
 east zone
 1000-meter Universal Transverse Mercator grid ticks,
 zone 12, shown in blue
 To place on the predicted North American Datum 1983,
 move the projection lines 12 meters north and
 66 meters east as shown by dashed corner ticks
 Red tint indicates areas in which only landmark
 buildings are shown

UTM GRID AND 1979 MAGNETIC NORTH
 DECLINATION AT CENTER OF SHEET



CONTOUR INTERVAL 5 FEET
 NATIONAL GEODETIC VERTICAL DATUM OF 1929

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
 FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR RESTON
 A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON A

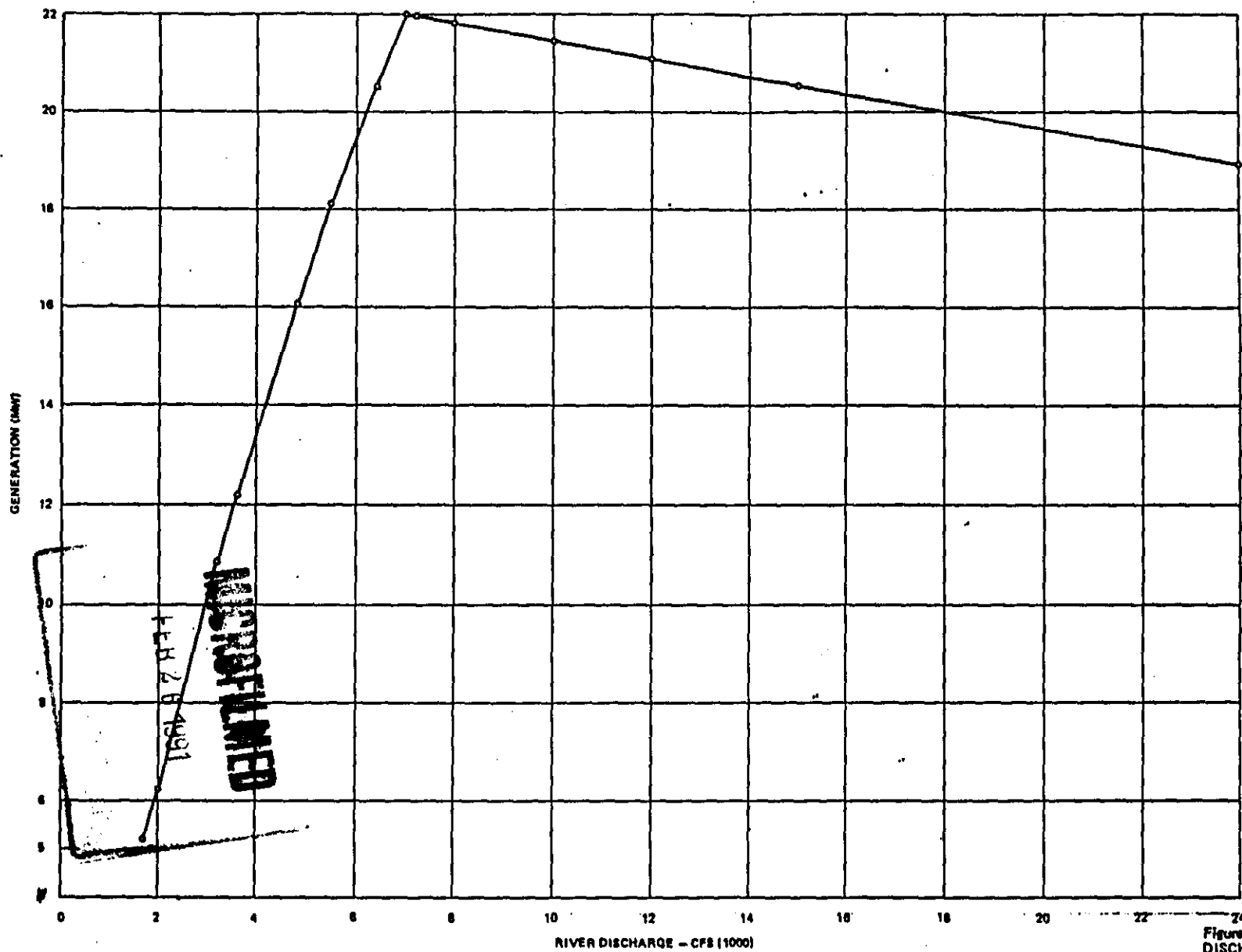
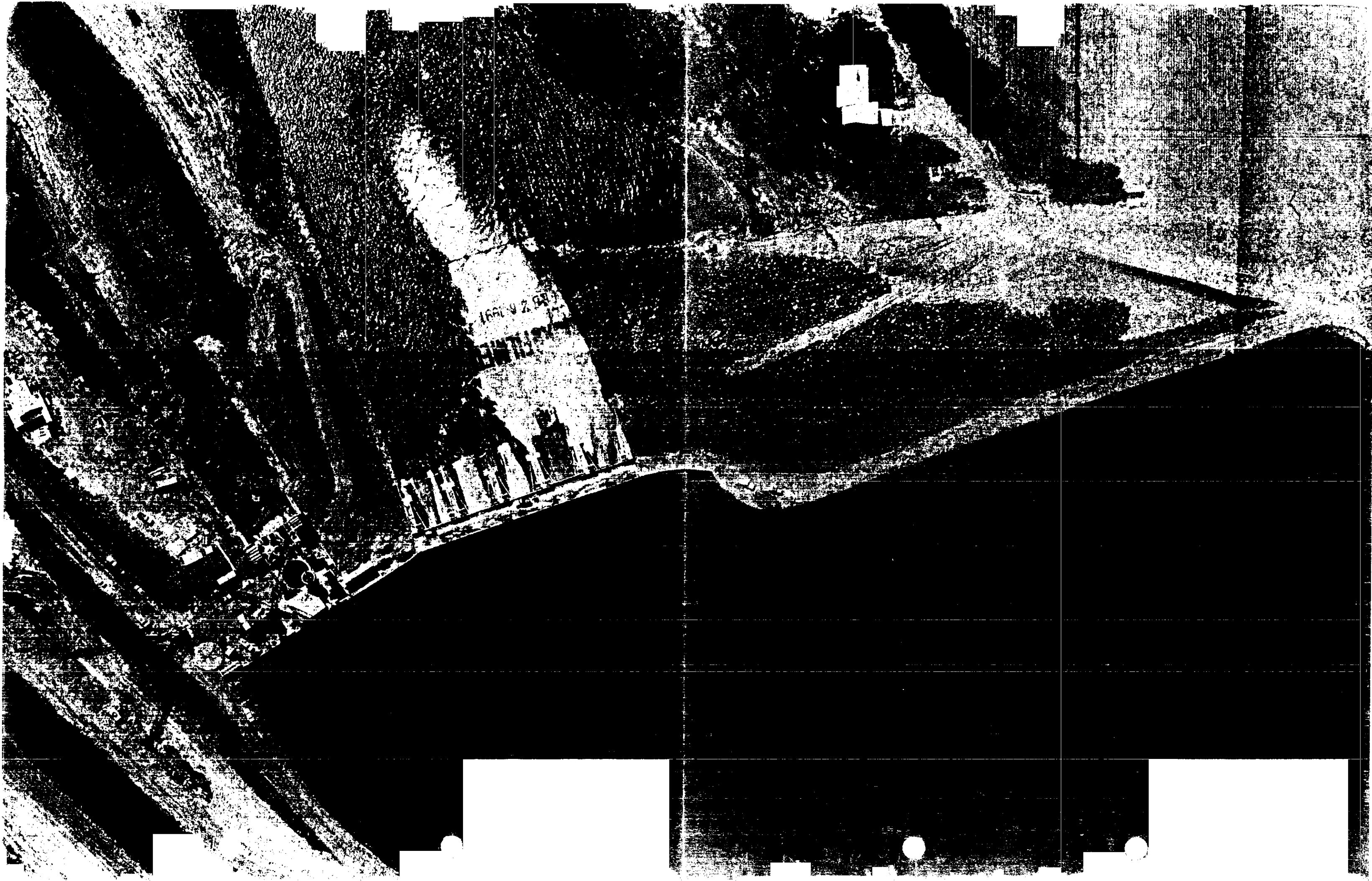


Figure 7
DISCHARGE vs. PLANT OUTPUT
GEN STATE HYDROELECTRIC PROJECT
CITY OF IDAHO FALLS, IDAHO

CENTRAL

Draft



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Department of Water Resources

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JUN 30 1989

STATE OF IDAHO

Department of Water Resources

DEPARTMENT OF WATER RESOURCES

Eastern District Office

For Office Use Only

Fee Received _____

Date _____

Receipt \$ _____

Receipt by _____

Reviewed by _____

Sent to region _____

PROOF OF BENEFICIAL USE

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

Permit No. 01-07051
01-07018

Name(s) of Permit Holder: Utah Power & Light Company

Post Office Address: 25 E. Main Street, Rexburg, Idaho 83440

Telephone No. (208) 356-7366

Source of Water: Snake River

Extent of Use:

Domestic N/A (number of households) Stockwater N/A (number and type of stock)

Irrigation N/A (acres) Other/Remark Power Generation

Total acre and/or volume for which proof is submitted 3000 cfs _____ acre-foot

Show the date water was first diverted and beneficially used under this permit: 10/17/88 then 11/2/88

Measuring Device: Required? X Yes X No
Installed? X Yes No Fee enclosed \$ N/A
(See License Examination Fee Schedule)

Pipe Measurement Port: Required? X Yes X No
Installed? X Yes No

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

Field Exam by Private Consultant (208) 524-6175
(Name) (Telephone Number)

Mountain River Engineering 140 N. Corner Avenue Idaho Falls, Idaho 83402
(Address)

The above information is my true statement of the extent to which the above numbers have been used and I relinquish any undeveloped portion of the permit to the state of Idaho.

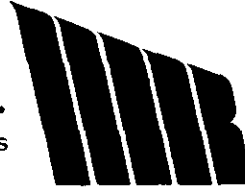
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Date

Signature of Permit Holder (and title, if appropriate)

Mountain River, Inc.
CONSULTING ENGINEERS AND LAND SURVEYORS



September 2, 1989

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NOV 07 1989

Gary Spackman, Manager
Water Rights Division
1301 North Orchard Street
Boise, Idaho 83720

Department of Water Resources

Re: Examination of Diversion Works for Permit No. 01-07018 in the name
of the City of Idaho Falls and 01-07051 in the name of Utah Power
& Light Company

August 15, 1989 letter from Gary Spackman to Rance Bare

Dear Mr. Spackman:

As we discussed by phone, this letter will serve as an attachment to the
referenced permits.

Item 1. Rule 5-1-4. The City of Idaho Falls owns and operates the Gem State
Power Plant and associated dam and tailrace. Through agreement, Utah Power &
Light purchases up to 39% of the power produced.

Item 2. Rule 5-1-5. The point of discharge is located approximately 3100
feet downstream of the powerhouse through a tailrace described as: A portion
of the northwest quarter, Section 15 and the northeast quarter and southeast
quarter of Section 16, Township 1 North, Range 37 East of the Boise Meridian,
more particularly described as:

Beginning at the Northwest corner of Section 15, Township 1 North,
Range 37 East of the Boise Meridian; running thence S.0°35'07"W.
1006.52 feet along a straight line between said Northwest section
corner and the West quarter corner of Section 15; thence S.33°17'46"E.
917.41 feet to the centerline of the Gem State Dam and the centerline
of the dam axis; thence S.56°42'14"W. 132.17 feet to the powerhouse
discharge; said point being the TRUE POINT OF BEGINNING of the centerline
of the tailrace; thence S.56°42'14"W. 1732.83 feet; thence S.61°33'14"W.
1105.84 feet; thence N.73°26'46"W. 280 feet more or less to the left bank
of the old river course; said tailrace being 50 feet each side of the
described centerline.

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FEB 26 1991

Gary Spackman
September 2, 1989
Page 2



Item 3. Rule 5-1-6. The attorney for the City of Idaho Falls is Kent Foster, an attorney with the law firm Holden, Kidwell, Hahn & Crapo. Mr. Foster will address this item for the City. Please forward all correspondence concerning this item to him.

Item 4. Rule 5-1-10. The total volume for ideal power production would be 5,800,000 acre-feet per year.

3,625,000 acre-feet/year to 01-07018
2,175,000 acre-feet/year to 01-07051

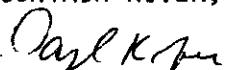
Item 5. The point of diversion is in the northwest quarter of the northwest quarter of Section 15, Township 1 North, Range 37 East of the Boise Meridian; and the place of use is in the southwest quarter of the northwest quarter of Section 15, Township 1 North, Range 37 East of the Boise Meridian. This is the same as in the original application.

Item 6. The highest power production to date was during testing. The level of maximum power produced was approximately 25 MW.

Thank you for the opportunity to submit the requested information. Please advise us if you require anything additional.

Sincerely,

MOUNTAIN RIVER, INC.


Daryl Kofoed, P.E.

cc: Mark Gendron

RECEIVED

FEB 26 1991



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

August 15, 1989

Wm. F. Rance Bare
Daryl Kofoed
Mountain River, Inc.
140 N. Corner Ave.
Idaho Falls, ID 83402

RE: Examination of Diversion Works for Permit No. 01-07018 in
the Name of the City of Idaho Falls and 01-07051 in the Name
of Utah Power and Light Company

Dear Gentlemen:

I have reviewed the field examination for permits nos.
01-07018 and 01-07051. I find the examinations to be neatly
prepared and easy to read. Several deficiencies in the
information required by the beneficial use examination rules and
regulations have been identified, however:

1. Rule 5,1,4. requires that any inter connection of the
water use being examined with other water rights or with other
conveyance systems shall be described on the field report. The
description must be in the form of a concise word picture and
should include a schematic diagram.

2. Rule 5,1,5. requires that the location of the point of
discharge back into the river must also be described. A point of
discharge is not described, although I assume it is in the same
location as the dam and power plant.

3. Rule 5,1,6. requires that the method of compliance with
each condition of approval shall be shown on the field report. I
find no reference in the field report to the conditions of
approval contained in the memorandum decision of the Director for
permit 01-07018, or to the conditions printed on the back page
attached to permit 01-07051. In particular, the permits require
a replacement of water to the river of five (5.0) cfs. The 5.0
cfs must be supplied to the project from a source other than the
natural flow of the Snake River. The condition also states that
the source of water can be groundwater or storage water. It
cannot be wastewater from the sewage treatment plant that has
historically been discharged into the Snake River. This
condition must be complied with prior to approval of the
examination, and licensing.

4. Rule 5,1,10. implies that an annual volume must be 6 1991

MICROFILMED

defined in the field examination, and included as part of licensing. The total amount of volume to be licensed must be recommended.

5. The field examination describes the point of diversion and place of use as being located in Section 15, T1N, R37E, Bonneville County. The locations must be more precisely described within a 40 acre tract. The permit defines the point of diversion in the NW1/4NW1/4 of Section 15, T1N, R37E, and the place of use in the SW1/4NW1/4, Section 15, T1N, R37E. If there is a change in the place of use or point of diversion, you must recommend that the permit holders file an amendment.

6. Please obtain, if possible, a reading of the highest hydroelectric production of the power plant to date. You should be able to determine the maximum flow that has been diverted through the generators from the maximum electrical production.

Upon submittal of the information requested, the Department will act upon the permits.

Respectfully,



GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc. Eastern Region
Rex Harrison, City of Idaho Falls

MICROFILMED

FEB 26 1991



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

May 5, 1986

RE: Permit No. 01-7051

Utah Power & Light Co.
P.O. Box 899
Salt Lake City, UT 84110

Gentlemen:

Enclosed is a copy of the approved Application for Amendment submitted in connection with the above referenced permit.

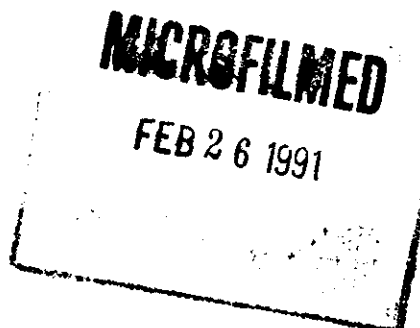
If you have any questions concerning this matter, please feel free to contact our office.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure



UTAH POWER & LIGHT COMPANY

1407 WEST NORTH TEMPLE STREET

P. O. BOX 899

SALT LAKE CITY, UTAH 84110

LEGAL DEPARTMENT
JODY L. WILLIAMS

ATTORNEY AT LAW

801 - 555-2851

RECEIVED

APR 9 1986

April 3, 1986

Department of Water Resources

Mr. Kenneth Dunn
Idaho Dept. of Water Resources
Statehouse
Boise, Idaho 83720

Re: Permit No. 01-7051

Dear Mr. Dunn:

Enclosed please find Utah Power & Light Company's application for amendment of a permit and check for processing the application for the Gem State hydroelectric project.

As I am sure your office is aware, both Utah Power & Light Company and the City of Idaho Falls have permits for use in the Gem State hydro project. Since the time the application was filed, the City of Idaho Falls has changed the location of the hydro project slightly. Utah Power & Light Company's application for amendment of a permit will make the place of use for the water consistent with the City's permit.

If you have questions or need further information, please do not hesitate to contact me as quickly as possible.

Thank you very much.

Very truly yours,



Jody L. Williams

JLW:sce

cc: Margaret Johnson
C. B. Burton

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FEB 26 1986

RECEIVED

NOV 6 1985

MERRILL & MERRILL
CHARTERED
COUNSELORS AND ATTORNEYS AT LAW
SPAULDING BUILDING
POCATELLO, IDAHO 83204

Department of Water Resources

P. O. BOX 991

TELEPHONE
208-232-2286

A. L. MERRILL (1886-1961)
R. D. MERRILL (1893-1972)
W. F. MERRILL
E. J. BERRETT
G. T. DANCE
D. R. GALLAFENT
S. S. DUNN
D. R. WIGHT
N. R. SMITH
K. B. LOVELAND

November 4, 1985

Mr. Norm Young
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Utah Power & Light Company Gem State Water Right Application
No. 01-7051

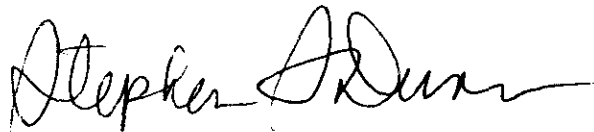
Dear Mr. Young:

Enclosed please find a letter recently received from CH₂M Hill, the project engineers for the Gem State Project, indicating the planned amount of water resource necessary to operate this project. We trust that this information will be helpful in completing approval of UP&L's water right application as it relates to this project. Your cooperation is appreciated.

Very truly yours,

MERRILL & MERRILL, CHARTERED

By


Stephen S. Dunn

SSD:em

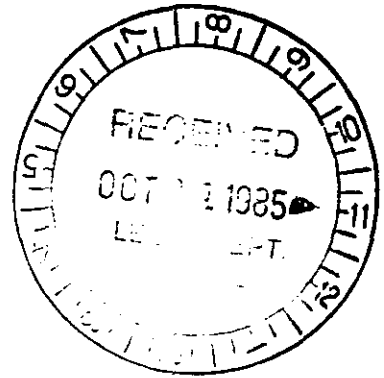
Enclosure

cc: Jody Williams

MICROFILMED



Engineers
Planners
Economists
Scientists



October 25, 1985

B12261.A0

Jody L. Williams
Utah Power & Light Company
1407 West North Temple Street
P.O. Box 899
Salt Lake City, Utah 84110

Dear Jody:

This is to confirm your information on the amount of water which could be run through the Gem State turbine. The project is designed to run at 7-1/2% over the nameplate capacity during periods of high water, and the maximum amount of water which can be used to generate electricity under those conditions is 7,525 cfs. I hope that this is sufficient information for submittal to your state engineer for approval of the water application. If you need further information, please feel free to contact me.

Sincerely,

M. P. Elliott, Manager
Electrical and Hydropower Engineering

BOT21/055

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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

December 18, 1985

RE: Permit No. 01-7051

Utah Power & Light Co.
Box 899
Salt Lake City, UT 84110

Gentlemen:

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

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

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

OCTOBER 30, 1985

The Idaho Statesman
P.O. Box 40
Boise, ID 83707

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. 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 billings to this office before NOVEMBER 25, 1985.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

10/31/85
J. M. [signature]

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

OCTOBER 30, 1985

Times News
P.O. Box 548
Twin Falls, ID 83301

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 NOVEMBER 25, 1985.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.



MICROFILMED

3/1836 LEGL DEPT WATER
RESOURCES I.F. for 11/47 ' 14
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legal PROOF for thurs
11/7 & 14

**NOTICE OF
APPLICATION FOR
WATER RIGHT**

The following applica-
tion has been filed to
appropriate the public
waters of the State of
Idaho and is being
readvertised to allow
evaluation of the public
interest criteria under
Section 42-203C, Idaho
Code.

01-7051

UTAH POWER & LIGHT
COMPANY
P.O. Box 899, Salt Lake
City, UT 84110
Source: SNAKE RIVER
tributary to COLUMBIA
RIVER

Date Filed: 04/09/1980
Amount: 3000.00 CFS
3000.0 AC-FT

Diversion Point:
NWNW Sec 15 T 01N R
37E, BONNEVILLE Co.
Use: POWER (3000.00
CFS) from 01/01 to 12/31
Power Storage (3000.0
AC-FT) from 01/01 to
12/31

Power From Storage
(3000.0 AC-FT) from 01/
01 to 12/31

Place of Use: NWSE
Sec 16 T 01N R 37E
Diversion Means: Diver-
sion Dam, Canal &
Hydro Electric Plant.

The permit(s) will be
subject to all prior water
rights. Protests are
limited to the public in-
terest criteria under
Section 42-203C, Idaho
Code. Protests must be
filed with the Director,
Dept. of Water
Resources, 150 Shoup
Ave., Suite 15, Idaho
Falls, Idaho, 83402 on or
before November 25,
1985.

KEN DUNN

Director

PUBLISH: **Thursdays,**
November 7, and 14,
1 9 8 5

*will be
considered*

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

OCTOBER 30, 1985

Lewiston Morning Tribune
505 "C" Street
Lewiston, ID 83501

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. 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 NOVEMBER 25, 1985.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

Handwritten initials

MICROFILMED

LEGAL00-PRUF

**NOTICE OF APPLICATION
FOR WATER RIGHT**

61451

The following application has been filed to appropriate the public waters of the State of Idaho and is being readvertised to allow evaluation of the public interest criteria under Section 42-203C, Idaho Code.

01-7051

UTAH POWER & LIGHT COMPANY
P.O. BOX 899, SALT LAKE CITY,
UT 84110

Source: SNAKE RIVER tributary
to COLUMBIA RIVER

Date Filed: 04/09/1980

Amount: 3000.00 CFS 3000.0 AC-
FT

Diversion Point: NWNW Sec 15 T
01N R 37E, BONNEVILLE Co.

Use: POWER (3000.00 CFS) from
01/01 to 12/31

POWER STORAGE (3000.0 AC-
FT) from 01/01 to 12/31

POWER FROM STORAGE (3000.0
AC-FT) from 01/01 to 12/31

Place of Use: NWSE Sec 16 T 01N
R 37E

Diversion Means: DIVERSION
DAM, CANAL & HYDRO ELEC-
TRIC PLANT.

The permit(s) will be subject to all prior water rights. Protests are limited to the public interest criteria under Section 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402, on or before November 25, 1985.

KEN DUNN
Director

11/7
11/14

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

OCTOBER 30, 1985

The Post Register
P. O. Box 1800
Idaho Falls, Idaho 83401

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 NOVEMBER 25, 1985.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

10-30-85
11-1-85
MICROFILMED

NOTICE OF APPLICATION

FOR WATER RIGHT

The following application has been filed to appropriate the public waters of the State of Idaho and is being readvertised to allow evaluation of the public interest criteria under Section 42-203C, Idaho Code.

~~01-2051~~

UTAH POWER & LIGHT COMPANY

P.O. BOX 899, SALT LAKE CITY, UT 84110

Source: SNAKE RIVER tributary to COLUMBIA RIVER

Date Filed: 04/09/1980

Amount: 3000.00 CFS 3000.0 AC-FT

Diversion Point: NWNW Sec 15 T 01N R 37E, BONNEVILLE Co.

Use: POWER	(3000.00 CFS)	from 01/01 to 12/31
POWER STORAGE	(3000.0 AC-FT)	from 01/01 to 12/31
POWER FROM STORAGE	(3000.0 AC-FT)	from 01/01 to 12/31

Place of Use: NWSE Sec 16 T 01N R 37E

Diversion Means: DIVERSION DAM, CANAL & HYDRO ELECTRIC PLANT.

The permit(s) will be subject to all prior water rights. Protests are limited to the public interest criteria under Section 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, 83402 on or before November 25, 1985.

KEN DUNN

Director

* Published 11/07 and 11/14/85.

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RECEIVED

OCT 13 1985

MERRILL & MERRILL
CHARTERED
COUNSELORS AND ATTORNEYS AT LAW
SPAULDING BUILDING
POCATELLO, IDAHO 83204

Department of Water Resources

P. O. BOX 991
TELEPHONE
208-232-2286

A. L. MERRILL (1886-1961)
R. D. MERRILL (1893-1972)
W. F. MERRILL
E. J. BERRETT
G. T. DANCE
D. R. GALLAFENT
S. S. DUNN
D. R. WIGHT
N. R. SMITH
K. B. LOVELAND

October 15, 1985

Mr. Norm Young
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Utah Power & Light Company Gem State Water Right Application
No. 01-7051

Dear Mr. Young:

Pursuant to our recent telephone conversations, we understand that the following information is necessary by your office before approval of the water right application referred to above can be completed.

1. Preliminary plans and specifications showing the anticipated amount of water which will be necessary for operation of the project;
2. A withdrawal of the protest previously filed by the Snake River Irrigation Company so that any question concerning such protest may be removed;
3. An indication of the agreement between the City of Idaho Falls and Utah Power & Light Company with regard to ownership of the various water rights to be used in conjunction with this project.

I have visited with Dale Storer, the City Attorney in charge of this project, and it was his understanding that the Department had received from CH₂M Hill all preliminary FERC applications, which should have included preliminary plans and specifications outlining the amount of water necessary for the project. He is checking with those engineers and if those have not been supplied, he will supply a copy directly to you.

Mr. Storer will also contact attorney Joe Anderson, who represents Snake River Irrigation Company, and request either a letter clarifying the stipulation entered into between Snake River Irrigation Company and the City of Idaho Falls or a formal withdrawal of the protest to Utah Power's application. Mr. Storer assures me that the agreement between the City and Snake River was never intended to generate any confusion over the fact that Snake River was, in fact, withdrawing any protest of any kind to Utah Power's application.

MICROFILMED

Mr. Norm Young
October 15, 1985
Page 2

We believe that the agreement between the City and Utah Power regarding water rights is clearly set forth in the documents which we have previously supplied. Pursuant to a letter from our office dated September 18, 1985, to Mr. Dave Tuthill, we attached copies of a Letter of Intent dated April 7, 1982 and a Power Sales Contract entered into between the City of Idaho Falls and Utah Power. Paragraph 8 of the Letter of Intent sets forth the general agreement between the parties as follows:

8. Company will cooperate with city in perfecting water rights in the amount required for the project. Neither of the parties shall be required to compensate the other for the use of any water right supplied by the other party.

This was formally confirmed in the Power Sales Contract itself, particularly Paragraphs 8.1 and 8.3. In Paragraph 8.1, the City of Idaho Falls asserts that it will acquire all necessary permits, licenses, rights, privileges, etc. "except UP&L's water rights." Paragraph 8.3 specifically states:

UP&L will cooperate with Idaho Falls in perfecting all water rights required for the operation of the project. Neither party shall be required to compensate the other for the use of any water rights supplied by the other for the project operation during the term of this Power Sales Contract. Each party shall retain its interest in its water rights used in the operation of the project during the term of this Power Sales Contract and thereafter. Nothing in this contract shall be construed as an abandonment, relinquishment, sale, lease or transfer of the water rights of either of the parties. The operating agreement shall set forth the scheduling of usage of the parties' water rights.

Thus, as you can see, agreement has already been reached between the parties concerning the use of each parties' water right in conjunction with the project. We feel that this clearly spells out those rights and obligations. We trust that this will satisfy the information which you felt was necessary.

Also, as we talked, there was a concern about the notice requirements under the statute. I am informed by Dale Storer, the City Attorney, that the time pressures we have discussed have been resolved with the lender and there does not appear to be a problem until after the first of the year. Therefore, if the Department feels that additional advertising is required by the statute, such advertising will not impair the construction efforts which are ongoing at this time. We would, however, request that any additional advertising be started quickly so that appropriate time periods can be completed before the end of the year.

Hopefully, the submission of the materials referred to above will complete the necessary information required for approval of this application so that

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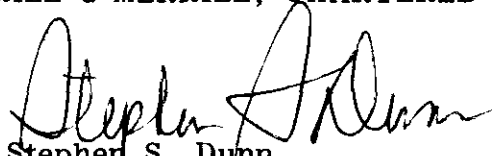
Mr. Norm Young
October 15, 1985
Page 3

the necessary water rights can be available for operation of the project in a timely fashion. Your cooperation is appreciated.

Very truly yours,

MERRILL & MERRILL, CHARTERED

By



Stephen S. Dunn

SSD:em

WILLIAM S. HOLDEN
R. VERN KIDWELL, P.A.
FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEKLE
CURT R. THOMSEN
RANDALL K. BARTON
MICHAEL D. CRAPO

JAMES D. HOLMAN
GAYLE A. SORENSON
DONALD L. HARRIS
BRUCE T. SMITH
GREGOR S. CHVISUK
RANDALL B. REED

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BUILDING
P.O. BOX 129
IDAHO FALLS, IDAHO 83402
—
TELEPHONE 523-0820
AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)

RECEIVED

OCT 8 1985

October 2, 1985

Department of Water Resources

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

RE: Utah Power & Light Company
Application for Permit No. 01-7051

Dear Mr. Dunn:

I believe your office is generally aware that in June of this year the City of Idaho Falls and the Snake River Valley Irrigation District settled all of the litigation pending between those two entities, including condemnation actions in both Bonneville and Bingham Counties and the appeal by Snake River Valley Irrigation District on permit No. 01-7018. We have not yet received the order dismissing that appeal from the Supreme Court, but anticipate that it will be forthcoming soon.

In connection with the settlement of this litigation, the ~~stipulation~~ between the City and Snake River Valley Irrigation District provided as follows:

1. District has agreed to and does hereby waive any protest or right of protest it may now or in the future have to the application for permit No. 01-7051 of Utah Power and Light Company, presently pending before the Idaho Department of Water Resources, to the extent of any permit or portions thereof which may be assigned or licensed or otherwise made available to the City for use in connection with the City's Gem State Hydroelectric Project, ...

As we understand it, the City & Utah Power and Light have agreed that Utah Power & Light Company will take whatever

here
jss
10-8-85

MICROFILMED

Mr. Kenneth Dunn
October 2, 1985
Page 2

action is deemed appropriate for the further processing of application for permit No. 01-7051. We do not know what specific action will be taken; it may take the form of an amended application for permit, and perhaps in light of the recent Supreme Court decision in the Troutco case, perhaps it should. In any event, we have had a recent discussion with Mr. Joe Anderson, the attorney for Snake River Valley Irrigation District, in which we discussed what the appropriate action might be for the Snake River Valley Irrigation District to take now with respect to the protest filed by it to application for permit No. 01-7051. In light of the uncertainty as to how that is to be further processed, and specifically what is going to be done, we understood it to be Mr. Anderson's position that he would probably not take any action in addition to the signing of the stipulation in the entry of the judgment containing the above quoted language, unless and until he receives some specific request, or until he knew exactly what needed to be done, if anything. *2* *withdrew protest* *needs to withdraw protest*

In any event, we have enclosed *where* with this letter a copy of the stipulation which was signed on June 28, for your review. We trust that when something further needs to be done, you or someone else will notify Mr. Anderson or us, so that we can assist in completing this matter.

Thank you for your kind attention and continued assistance.

Yours very truly,



Kent W. Foster

KWF:cl/#0518.00

Enclosure

cc: Stephen S. Dunn, Esq.
Merrill & Merrill
P.O. Box 991
Pocatello, ID 83201

Dale Storer, Esq.
City Attorney
P.O. Box 428
Idaho Falls, Idaho 83401

Jody L. Williams, Esq.
Utah Power & Light Co.
P.O. Box 899
Salt Lake City, UT 84110

W.J. Anderson, Esq.
Sharp, Anderson, Bush
& Nelson
490 Memorial Drive
Idaho Falls, ID 83402

MICROFILMED

MERRILL & MERRILL

CHARTERED

COUNSELORS AND ATTORNEYS AT LAW

SPAULDING BUILDING

POCATELLO, IDAHO 83204

A. L. MERRILL (1886-1961)
R. D. MERRILL (1893-1972)
W. F. MERRILL
E. J. BERRETT
G. T. DANCE
D. R. GALLAFENT
S. S. DUNN
D. R. WIGHT
N. R. SMITH
K. B. LOVELAND

P. O. BOX 991

TELEPHONE
208-232-2286

September 18, 1985

RECEIVED
SEP 20 1985

Mr. Dave Tuthill
Idaho Department of Water Resources
Statehouse
Boise, Idaho 83720

Department of Water Resources
Western Regional Office

Re: Utah Power & Light Gem State Water Right Application
No. 01-7051

Dear Mr. Tuthill:

I apologize for the delay in supplying the information which you requested in order to act on Utah Power & Light's application for water rights associated with the Gem State Hydroelectric Project. As you know, the appeal between the City of Idaho Falls and the Company relative to the contracts involved in this project has just recently been resolved by the Idaho Supreme Court, which has upheld the validity of the contracts.

Enclosed for your review are complete copies of (1) a Letter of Intent between the City of Idaho Falls and Utah Power & Light Co. dated April 7, 1982; (2) a Power Sales Contract which has been approved by both the City of Idaho Falls and the Power Company and will be signed in the near future; (3) the Ground Lease which has also been approved by the City and the Company and will be signed in the near future as well; (4) a copy of an Order issued by the Federal Energy Regulatory Commission, dated December 12, 1983 which approves the Gem State Project and the participation of both the City of Idaho Falls and Utah Power & Light in that project. *where?*

Also, within the near future, you will receive a copy of a letter prepared by CH₂M Hill and supplied to the FERC, which describes some minor modifications to the project, for your information. This will be the latest information submitted to FERC associated with the project.

You expressed some concerns about the actual amount of water which will be necessary in this project. At the present time, and while the project is under construction, the actual needed water resource is an estimate. The Company is informed at the present time that the amount of water needed for the project will run over 7,000, but up to 8,000 cfs. **Therefore, the Company requests that a permit be issued granting the right to UP&L to appropriate up to 8,000 cfs, as needed for this project.** If, when the project is completed, it is determined that less than 8,000 cfs

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Mr. Dave Tuthill
September 18, 1985
Page Two

is needed for the project, we would certainly expect the Department to issue a license approving only the actual amount of water needed. The actual beneficial use required for the project will be proven within the five year period which follows approval of the permit.

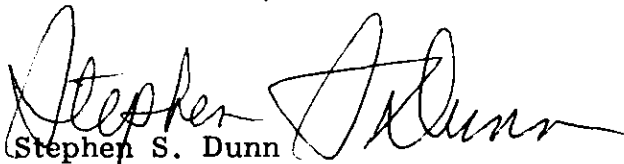
You should also be advised that the Snake River Irrigation District has signed a stipulation with the City of Idaho Falls which indicates that they will not protest this application by Utah Power & Light Co. Therefore, we would anticipate no protest of the Company's application and would request that the permit be issued as soon as possible.

In light of the FERC license, the approval of the contract by the Idaho Supreme Court and the waiver of the protest by the only other interested party, we feel that all potential hurdles to the issuance of this permit have been overcome. Please advise if there is any other additional information which you require in order to proceed on the Company's application. If there is none, we would appreciate it if that permit could be issued as soon as possible so that there is no question as to the availability of the necessary water resource as construction of the project commences. You are probably aware that the groundbreaking on the project has already been held. Your cooperation in this regard is very much appreciated.

Very truly yours,

MERRILL & MERRILL, CHARTERED

By


Stephen S. Dunn

SSD:em

Enclosure

cc: Jody Williams

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RECEIVED

OCT 10 1985

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 129
Idaho Falls, Idaho 83402
Telephone: (208) 523-0620

Department of Water Resources

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CITY OF IDAHO FALLS,	)	Bingham County
	)	Civil Case No. 12823
Plaintiff,	)	
	)	Bonneville County
vs.	)	Civil Case No. 31669
	)	
SNAKE RIVER VALLEY	)	STIPULATION FOR ENTRY OF
IRRIGATION DISTRICT,	)	FINAL JUDGMENT
	)	
Defendant.	)	

IT IS HEREBY STIPULATED AND AGREED by and between the plaintiff herein, City of Idaho Falls (hereafter "City") and the defendant herein, Snake River Valley Irrigation District (hereafter "District"), by and through their respective counsel of record that upon the execution and filing hereof, the Court may enter its final judgment, order and decree in accordance herewith and in the form attached hereto as Exhibit "A." The parties hereto agree as follows:

1. THAT the City have judgment, condemning for its use the following described real property situate in the Counties

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of Bonneville and Bingham, State of Idaho:

Bonneville County: A parcel of land in Lots 2 and 10 of Section 3, Township 1 North, Range 37 East of the Boise Meridian, Bonneville County, Idaho described as follows:

BEGINNING at the Northeast Corner of Section 3, Township 1 North, Range 37 E.B.M. and running thence along the Section Line S 89° 57' 36" W 1112.77 feet; thence S 38° 58' 57" W 266.56 feet; thence S 53° 58' 57" W 175.00 feet to the TRUE POINT OF BEGINNING, thence S 53° 58' 56" W 560.00 feet; thence S 33° 58' 57" W 430.00 feet; thence S 18° 18' 57" W 640.00 feet; thence S 33° 47' 10" W 1168.85 feet to a point on the East-West Centerline of said Section 3, thence along said Centerline S 89° 37' 21" W 100 feet more or less to the Easterly bank of the Snake River thence Northeasterly along said East riverbank 2915 feet more or less to a point that is N 36° 01' 03" W 170.00 feet from the TRUE POINT OF BEGINNING, thence S 36° 01' 03" E 170.00 feet to the TRUE POINT OF BEGINNING, containing 8 acres more or less. All Bearings on City of Idaho Falls Datum.

ALSO:

A parcel of land in Lots 8 and 9 of Section 3, Township 1 North, Range 37 E.B.M. Bonneville County, Idaho, as per Deed No. 125065, recorded in Deed Book No. 36, Page 565, in the office of Bonneville County Recorder and further described as follows:

BEGINNING at the South Quarter Corner of Section 3, Township 1 North, Range 37 E.B.M. and running thence along the Section Line N 89° 53' 06" W (S 89° 45' W in Deed) 818.50 feet to the TRUE POINT OF BEGINNING, and running thence N 2° 42' 34" W 145.08 feet (N 3° W 147.5 feet in Deed); thence N 1° 51' 53" E 437.89 feet (N 1° 30' E 445 feet in Deed); thence N 3° 02' 54" W 354.07 feet (N 3° 20' W 360 feet in Deed); thence N 5° 07' 59" E 319.93 feet (N 4° 43' E 325 feet in Deed); thence N 10° 05' 31" E 386.15 feet (N 9° 36' E 392 feet in Deed); thence N 20° 48' 30" E 784.60 feet (N 20° 10' E 795 feet in Deed); thence N 29° 37' 49" E 262.04 feet (N 28° 53' E 265 feet in Deed) to a point on the East-West Centerline of said Section 3 that is S 89° 37' 21" W 330.00 feet (S 89° 44' W 330 feet in Deed) from the Center Quarter Corner of said Section 3; thence along said Centerline S 89° 37' 21" W 158 feet more or less to the Easterly bank of the Snake River; thence Southerly along said East bank 2673 feet more or less to a

point on the South Line of said Section; thence along said Section Line S 89° 53' 06" E 125 feet more or less to the TRUE POINT OF BEGINNING, containing 8 acres more or less. All Bearings on City of Idaho Falls Datum.

ALSO:

A parcel of land in Lots 1 and 2 of Section 10, Township 1 North, Range 37 E.B.M., Bonneville County, Idaho, as per Deed No. 125064, recorded in Deed Book No. 36, Page 564, in the office of the Bonneville County Recorder and further described as follows:

BEGINNING at the North Quarter Corner of Section 10, Township 1 North, Range 37 E.B.M. and running thence along the Section Line N 89° 53' 06" W (N 89° 50' W on Deed) 818.5 feet to the TRUE POINT OF BEGINNING, thence S 7° 49' 25" E 217.69 feet (S 7° 45' E 218.5 feet on Deed); thence S 8° 58' 40" E 232.64 feet (S 8° 54' E 233.5 feet on Deed); thence S 3° 45' 30" E 592.95 feet (S 3° 42' E 595.2 feet on Deed); thence S 10° 06' 55" E 385.79 feet (S 10° 02' E 387.2 feet on Deed); thence S 12° 22' 24" E 298.92 feet (S 12° 17' E 300 feet on Deed); thence S 15° 54' 09" 324.86 feet (S 15° 48' E 326 feet on Deed); thence S 5° 58' E 289.91 feet (S 5° 54' E 291 feet on Deed); thence S 1° 57' 05" E 351.66 feet (S 1° 54' E 353 feet on Deed) to a point on the East-West Centerline of said Section 10 that is N 89° 25' 52" W 430.00 feet from the Center Quarter Corner of said Section 10, thence along said Centerline N 89° 25' 52" W 128 feet more or less to the East bank of the Snake River, thence Northerly along said East bank 2706 feet more or less to a point on the North Line of said Section 10, thence along the Section Line S 89° 53' 06" E 125 feet to the TRUE POINT OF BEGINNING, containing 9 acres more or less. All Bearings on City of Idaho Falls Datum.

ALSO:

A parcel of land in Lots 3 and 4 of Section 10, Township 1 North, Range 37 E.B.M., Bonneville County, Idaho, described as:

BEGINNING at the B.L.M. Brass Cap Monumented South Quarter Corner of Section 10, Township 1 North, Range 37 E.B.M. and running thence along the Section Line N 88° 28' 11" W 571.35 feet to the Southeast Corner of the parcel of land deeded to the Snake River Valley Irrigation District and

recorded on Page 561 in Book of Deeds No. 36 in Bonneville County Recorders Office, thence along the Easterly boundary of said parcel the following two courses, N 13° 36' 26" E 1022.57 feet (N 12° E 1021 feet on Deed); thence N 46° 22' 51" E 408.82 feet (N 44° 50' E 408 feet on Deed); thence N 40° 33' 28" E 69.34 feet; thence N 0° 26' 49" E 90.00 feet; thence N 43° 11' 28" W 95.49 feet thence N 60° 25' 29" W 85.09 feet; thence N 78° 41' 33" W 117.28 feet; thence N 66° 54' 20" W 73.93 feet; thence N 4° 44' W 581.98 feet; thence N 1° 56' 54" E 446.78 feet to the East-West Centerline of said Section 10, thence along said Centerline N 89° 25' 52" W 128 feet more or less to the East bank of the Snake River, thence Southerly along said East bank 1196 feet more or less to the Northwest Corner of the property now or formerly owned by Theodore Mulberry, thence following the boundary of said property the following 3 courses, S 71° 54' 16" E 322.53 feet; S 44° 03' 40" E 72.94 feet, and S 47° 02' 28" W 526.80 feet to the East bank of the Snake River, thence Southerly along said East bank 1071 feet more or less to the South line of said Section 10, thence along said Section Line S 88° 28' 11" E 175 feet more or less to the TRUE POINT OF BEGINNING, containing 10 acres more or less. All Bearings on City of Idaho Falls Datum.

ALSO:

A parcel of land in Section 15, Township 1 North, Range 37 E.B.M., Bonneville County, Idaho, described as:

BEGINNING at the B.L.M. Brass Cap Monumented North Quarter Corner of Section 15, Township 1 North, Range 37 E.B.M. and running thence along the Section Line N 88° 28' 11" W 604.66 feet to the TRUE POINT OF BEGINNING, thence S 11° 51' 28" W 2.53 feet to an existing B.L.M. Brass Cap Monument at Angle Point No. 2 of Government Lot 6, thence S 11° 51' 28" W 170.50 feet (S 11° 42' W 170.94 feet on Plat) to an existing B.L.M. Brass Cap Monument at Angle Point No. 3 of Government Lot 6, thence S 4° 43' 52" W 69.18 feet (S 4° 44' W 69.30 feet on Plat) to an existing B.L.M. Brass Cap at Angle Point No. 4 of Government Lot 6, thence along the Lot Line of said Government Lot 6 S 0° 27' 41" E (S 0° 27' E on Plat) 113.32 feet to its intersection with the West Line of Lot 3, Block 1, Carriage Row Subdivision, Bonneville County, Idaho, thence along said West Line of Lot 4 S 0° 26' 44" E (S 0° 27' 11" E on Plat) 23.51 feet to an existing iron rod at the Angle Point in the West Line of said Lot 3, thence along said

Westerly Line of Lot 3 S 25° 46' 23" W (S 25° 44' 31" W on Plat) 6.71 feet to its intersection with the Westerly Line of Government Lot 6, thence along said Westerly Line of Government Lot 6 S 26° 36' 09" W (S 26° 34' W on Plat) 262.96 feet to an existing B.L.M. Brass Cap Monument at Angle Point No. 6 of Government Lot 6, thence along the West Line of said Government Lot 6 S 3° 17' 26" E (S 3° 34' E on Plat) 7.83 feet to its intersection with the Westerly Line of Lot 4, Block 1, Carriage Row Subdivision, thence along said Westerly Line of Lot 4 S 25° 46' 23" W (S 25° 44' 31" W on Plat) 16.27 feet to an existing iron rod at the Angle Point in the Westerly Line of said Lot 4, thence along the Westerly Line of Carriage Row Subdivision S 17° 34' 30" W 276.02 feet (S 17° 33' 35" W 275.97 feet on Plat) to an existing iron rod at the Northwest Corner of Lot 8, Block 1, Carriage Row Subdivision, thence along the Westerly Line of said Lot 8 S 40° 08' 20" W 719.69 feet (S 40° 07' 06" W 719.57 feet on Plat) to an existing iron rod at the Angle Point in the Westerly Line of said Lot 8, thence following the Southeasterly bank of the Snake River Valley Canal the following 4 courses S 36° 56' 15" W 603.63 feet; thence S 50° 49' 35" W 522.42 feet; thence S 27° 53' 11" W 271.53 feet; thence S 32° 06' 12" W 797.48 feet to the point where said canal bank intersects the West Line of Section 15 and is S 0° 02' 50" E 567.00 feet along the Section Line from the West Quarter Corner of Section 15, thence along said Section Line N 0° 02' 50" W 130.00 feet to the Northwesterly bank of the Snake River Valley Canal, thence following said Northwesterly bank the following 11 courses N 27° 44' 12" E 918.88 feet; thence N 29° 36' 03" E 53.18 feet; thence N 52° 45' 11" E 456.01 feet; thence N 41° 13' 34" E 268.58 feet; thence N 34° 44' 18" E 531.31 feet; thence N 55° 32' 25" E 115.00 feet; thence N 35° 14' 02" E 562.34 feet; thence N 18° 36' 27" E 209.98 feet; thence N 26° 18' 25" E 198.56 feet; thence N 3° 45' 23" E 198.43 feet; thence N 16° 14' 32" E 186.59 feet to the North Line of Section 15, thence along the Section Line S 88° 28' 11" E 97.34 feet to the TRUE POINT OF BEGINNING, containing 9.5 acres more or less. All Bearings on City of Idaho Falls Datum.

Bingham County: A parcel of land in the Southeast Quarter of Section 16, Township 1 North, Range 37 E.B.M., Bingham County, Idaho described as:

BEGINNING at the B.L.M. Brass Cap Monumented East Quarter Corner of Section 16, Township 1 North, Range 37 E.B.M.

and running thence along the Section Line S 0° 02' 50" E 437 feet more or less to the Northwest bank of the Snake River Valley Canal and the TRUE POINT OF BEGINNING, thence along said Section Line S 0° 02' 50" E 130 feet more or less to the Southeast bank of the Snake River Valley Canal, thence Southwesterly following said Southeast bank 1020 feet more or less to a point that is 70 feet upstream from the Cedar Point Canal Diversion, thence North 72 feet more or less to the Northwest bank of said canal, thence Northeasterly following said canal bank 1064 feet more or less to the TRUE POINT OF BEGINNING, containing 1.7 acres more or less.

ALSO:

A parcel of land in Lot 1 of Section 16, Township 1 North, Range 37 E.B.M. as per Deed No. 35193, recorded in Deed Book No. 15, Page 337, in the office of the Bingham County Recorder and described as follows:

BEGINNING at the Southeast Corner of Section 16, Township 1 North, Range 37 E.B.M. and running thence along the Section Line S 89° 56' 03" W 1316.76 feet to the South 1/16 Corner of the Southeast Quarter of said Section 16, thence along the North-South Centerline of said Southeast Quarter N 0° 00' 41" E 1704.25 feet to the point where the line between Lots 1 and 2 of said Section 16 are crossed by the North bank of the Cedar Point Canal and the TRUE POINT OF BEGINNING, thence along said North Bank N 64° 48' 26" E 445 feet; thence N 44° 26' 04" W 575 feet to the line between said Lots 1 and 2, thence along said Lot Line S 0° 00' 41" W 600 feet to the POINT OF BEGINNING, containing 2.8 acres more or less. All Bearings on City of Idaho Falls Datum. The total area of all parcels is 49 acres more or less.

together with any and all improvements located thereon and pertaining thereto, specifically including without limitation approximately three miles of the District's main feeder canal and its attendant structures and facilities, the diversion dam structure located in the bed of the Snake River within the Southwest Quarter of the Southeast Quarter of Section 34,

Township 2 North, Range 37 East of the Boise Meridian, the headgate or intake structure for said canal, the overflow or waste way structure, and the gauging station located on said canal.

2. THAT the City pay to the District the sum of \$185,000.00 in cash, lawful money of the United States, upon the entry of the judgment herein as and for all damages due the defendant in the form of money, including without limitation any and all interest due or to become due, costs of litigation, attorneys fees or fees of witnesses, experts, and the like. In this regard, it is recognized by the parties that the District shall not be precluded from asserting claims in the future for increased costs of operation and maintenance which may accrue to the District through the design, construction, and operation of the Gem State Hydroelectric Project by the City.

3. THAT the City has a continuing legal obligation from the date of the entry of judgment to plan and construct, and thereafter to operate and maintain, all facilities in connection with the Gem State Hydroelectric Project in such a manner as to provide for the diversion and application to beneficial use, by the District, of water under the District's rights to the use of said water from the Snake River.

4. THAT the City shall construct, and thereafter maintain and operate, said Project in such a manner and with such addi-

tional facilities described herein as is reasonably necessary to provide the functional equivalent of those portions of the diversion and delivery facilities of the District hereby condemned, to the end that the District may continue in the future to divert water from the Snake River at such times and in such amounts as its water rights permit, and to convey the same into that portion of its remaining delivery system not being condemned hereby. In this regard, the City shall:

(a) Design and construct, at its own cost and expense, an irrigation intake structure of adequate capacity at a proper and convenient location to permit delivery of the District's full water rights through said structure from the reservoir on the Snake River to be created by construction of the City's Gem State Hydroelectric Project into the canal system of the District.

(b) Design and construct, at its own cost and expense, such gauging station or stations as may reasonably be required under Idaho law and the rules and regulations of the Idaho Department of Water Resources and Water District No. 1.

(c) Design and construct, at its own cost and expense, such overflow or spillway structure as may be reasonably required and at a proper and convenient location to permit water to be diverted back into the Snake River under normal operation or under operating conditions which require such for safety purposes or to preserve or protect the integrity of the delivery system of the District. Provided, however, that such structure shall not be designed, constructed, or used in such a manner that in the ordinary course of operation of the District's delivery system, water in greater amounts than those to which the District may at any time be entitled is diverted through said new intake structure and wasted back into the river.

In connection with the design and construction of the above described facilities by the City, the City shall not

design or construct any of such facilities in a manner that will in any way impair the use and function for the District's purposes and shall design and construct such facilities with the purpose of providing the District with adequate, satisfactory, and good quality facilities. The District shall have the right to provide appropriate engineering input and to review and approve the plans and designs. Said approval shall not be unreasonably withheld. The District shall have complete and exclusive use (including necessary ingress and egress) and control of and responsibility for the canal and all attendant structures and facilities, including, without limitation, the gauging station and the overflow or spillway structure, from the new intake structure downstream. The District shall also have the operation, control of and responsibility for the new irrigation intake structure, subject to the right of the City to full and free access to and across said structure for the purpose of operating and maintaining all portions of the facilities to be constructed as a part of City's Gem State Hydroelectric Project, and for the purpose of inspecting or monitoring said intake structure. The new intake structure shall be and remain a portion of the Gem State Hydroelectric Project, subject to Federal Energy Regulatory Commission regulations and standards with respect to maintenance and rehabilitation. The ownership of the concrete and earth portions of the basic structure, and the responsibility for

ownership of the concrete and earth portions of the basic structure and the responsibility for maintenance, rehabilitation, and replacement thereof shall be and remain that of the City. The District shall have the right to attach to the basic structure the equipment and devices to be installed and required to be attached thereto such as the gates, control devices, conduits and the like. The District shall have the responsibility and the right to maintain, rehabilitate, replace, construct additional facilities, and install additional equipment at and below the intake structure and attached to the basic structure as deemed necessary by the District. The ownership of all equipment and devices installed or attached thereto shall be and remain that of the District.

5. THAT upon the entry of judgment herein in Bonneville County and the recording of said judgment in Bingham County, this stipulation and such judgment shall be deemed for all purposes to have fully and finally resolved any and all legal or factual issues with respect to said actions, and the parties have and do hereby waive any and all rights of appeal with respect thereto, or with respect to this final judgment. District has agreed to, and shall forthwith, move to withdraw or dismiss with prejudice District's appeal pending in the Supreme Court of the State of Idaho in the case of "In the Matter Application for Permit No. 01-7018 in the name of the

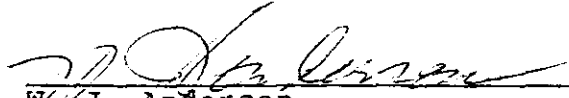
City of Idaho Falls--Snake River Valley Irrigation District,
Appellant, vs. A. Kenneth Dunn, Director of the Idaho
Department of Water Resources and the City of Idaho Falls,
Respondents, Bonneville County Civil No. 30087, Supreme Court
Docket No. 16015." District has agreed to and does hereby
waive any protest or right of protest it may now or in the
future have to the application for permit No. 01-7051 of Utah
Power & Light Company, presently pending before the Idaho
Department of Water Resources, to the extent of any permit or
portions thereof which may be assigned or licensed or otherwise
made available to the City for use in connection with the City's
Gem State Hydroelectric Project, and in the event such permit
is not granted, or cannot for any reason be made available for
such use to the City, then to any application for permit which
may be filed by the City to obtain the additional water rights,
to the extent of 7000 cfs, necessary for use in connection with
the Gem State Hydroelectric Project. District further hereby
waives any right to and agrees not to protest or contest any
applications of City to the Federal Energy Regulatory
Commission for amendments to City's Federal Energy Regulatory
Commission license, unless such proposed amendment materially
affects the terms of this Stipulation and the Judgment to be
entered herein, or to Bonneville or Bingham Counties for zoning
changes or permits which are or may become necessary

to the final designs and specifications, construction and completion of City's Gem State Hydroelectric Project.

6. THAT in the event any action is brought to enforce the terms or conditions of this stipulation, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

DATED this 28th day of June, 1985.


Kent W. Foster
of Holden, Kidwell, Hahn & Crapo
Attorneys for Plaintiff City of
Idaho Falls, Idaho.


W. J. Anderson
of Sharp, Anderson, Bush & Nelson
Attorneys for Defendant Snake
River Valley Irrigation District

6101c/cl

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IDWR

Mr. A. Kenneth Dunn, Director
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Statehouse
Boise, ID 83720

GEM STATE PROJECT
POWER SALES CONTRACT

BETWEEN

THE CITY OF IDAHO FALLS, IDAHO

AND

UTAH POWER & LIGHT COMPANY

DATED: _____, 1985

MICROFILMED

GEM STATE PROJECT
POWER SALES CONTRACT

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GEM STATE PROJECT POWER SALES CONTRACT

1. PARTIES: The Parties to this contract, made this ____ day of _____, 1985, are the CITY OF IDAHO FALLS, a municipal corporation of the State of Idaho ("Idaho Falls") and UTAH POWER & LIGHT COMPANY, a Utah corporation ("UP&L") (sometimes referred to individually as "Party" and jointly as "Parties").
2. RECITALS: This contract is made with reference to the following facts among others:
 - 2.1 On April 7, 1982, the Parties entered into a letter of intent regarding the development by Idaho Falls of the Gem State Hydroelectric Project ("Project") located on the Snake River in Bingham and Bonneville Counties, Idaho pursuant to License No. 2952 ("License"), issued on December 12, 1983, to Idaho Falls by the Federal Energy Regulatory Commission ("FERC").
 - 2.2 Pursuant to the letter of intent, and in partial consideration of the use by Idaho Falls of a portion of the land owned by UP&L which is necessary for the Project, Idaho Falls has agreed to sell Energy to UP&L as provided in this Power Sales Contract.
 - 2.3 Pursuant to this Power Sales Contract and the License, Idaho Falls will design, construct, finance, own, operate and maintain the Project, and UP&L will purchase Energy from the Project for a term of 35 years commencing on the Date of Commercial Operation of the Project.
 - 2.4 This Power Sales Contract supersedes the April 7, 1982

letter of intent and all other prior agreements and negotiations between the Parties and represents the full and total agreement between the Parties.

2.5 Idaho Falls has called, held and conducted a bond election as required by law upon the proposition of Idaho Falls issuing its general obligation bonds in an amount sufficient to pay the costs of development, design and construction of the Project and the payment of interest estimated to fall due prior to the Date of Commercial Operation and the establishment of all necessary reserves required under the Bond Resolution.

3. **AGREEMENT:** In consideration of the mutual covenants herein, the Parties agree as follows:

4. **DEFINITIONS:** The following terms, whether in the singular or in the plural, when used herein and in the exhibits and initially capitalized, shall have the meanings specified:

4.1 Budget: An annual written statement prepared by Idaho Falls and delivered to UP&L pursuant to Section 6.4 hereof, showing the amount to be paid to Idaho Falls by UP&L for UP&L's purchase of Energy from Idaho Falls, generated at the Project.

4.2 Bond Resolution: All ordinances and resolutions adopted by the City Council of Idaho Falls authorizing the

issuance of Bonds.

- 4.3 Bonds: The Electric Bonds issued by Idaho Falls from time to time pursuant to the Bond Resolution to pay the costs of the Project.
- 4.4 Capital Cost Component: An amount sufficient to return to Idaho Falls each Fiscal Year an amount equal to the UP&L Percentage times (i) an amount representing the Debt Service on the Outstanding Bonds for that Fiscal Year, and (ii) any amounts payable under the Bond Resolution for the establishment or re-establishment of reserves, less investment earnings on funds and investments held under the Bond Resolution.
- 4.5 Date of Commercial Operation: 12:01 a.m. on the date (i) when Idaho Falls, based on Prudent Utility Practices, determines that the Project is installed, tested and ready to deliver continuous electrical energy; and (ii) when Idaho Falls represents and warrants to UP&L that construction of the Project is in accordance with Prudent Utility Practices and with the plans and specifications and in compliance with the License, and all laws, ordinances, rules, regulations or orders applicable thereto; and (iii) when Idaho Falls and UP&L have executed the Operating Agreement.

- 4.6 Debt Service: For each Fiscal Year an amount equal to the sum of (i) all interest payable during such Fiscal Year on all Outstanding Bonds plus (ii) the principal installment or installments due and payable during such Fiscal Year on Outstanding Bonds, calculated on the assumption that Bonds outstanding on the day of calculation cease to be Outstanding by reason of, but only by reason of, payment and application of any sinking fund installments required by the Bond Resolution plus (iii) annual credit enhancement fees not capitalized as part of the bond issue.
- 4.7 Delivery Point: The point or points mutually agreed to by the Parties in the Operating Agreement for the delivery of Energy from the Project by Idaho Falls to UP&L pursuant to the provisions of this Power Sales Contract.
- 4.8 Energy: Megawatt-hours (MWh) generated by the Project less Project Station use.
- 4.9 Fiscal Year: The annual accounting period of Idaho Falls from time to time in effect, initially a period commencing on October 1 of each calendar year and ending on the next succeeding September 30.
- 4.10 Idaho Falls System: All facilities now or hereafter owned and operated by Idaho Falls for generation, trans-

mission and distribution of electrical energy, but excluding the Project.

- 4.11 License: The license for FERC Project No. 2952 issued by the Federal Energy Regulatory Commission on December 12, 1983, and expiring on November 30, 2033, and any amendment or modification thereof, which authorizes Idaho Falls to construct, operate and maintain the Project. The license is made a part of this Power Sales Contract.
- 4.12 Nameplate Capacity: The rated capacity of the machine as indicated on the nameplate by the manufacturer.
- 4.13 Nameplate Energy: The annual amount of Energy which is equal to the nameplate capacity of the Project in kW times 8760 hours.
- 4.14 Operating Year: A period commencing on July 1 and ending on the next succeeding June 30.
- 4.15 Operating Agreement: That agreement to be negotiated and executed between the Parties prior to the Date of Commercial Operation of the Project setting forth the Parties' agreement regarding scheduling the delivery of Energy to UP&L from the Project, protection of Project facilities, transmission of Project Energy from the West

Side Substation to the Delivery Point, metering, usage of the Parties' water rights, and other operational issues.

4.16 Operating Contingency: An unplanned event or circumstance, a series of events or circumstances, or any restriction or condition imposed by any governmental authority which reduces the maximum generating capability of the Project or the capability of the Project transmission system.

4.17 Outstanding: As of any date of calculation, all Bonds which have been duly authenticated and delivered by the Trustee under the Bond Resolution except: (i) Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation; (ii) Bonds for the payment or redemption of which cash funds or investment securities (as such investment securities are defined in the Bond Resolution) have theretofore been deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds), provided that, if such Bonds are to be redeemed, notice of such redemption has been duly given pursuant to the provisions of the Bond Resolution or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee; and (iii) Bonds in exchange for or in lieu of which other Bonds have been authenticated or

delivered pursuant to the provisions of the Bond Resolution.

- 4.18 Project: The Gem State Hydroelectric Project to be located on the Snake River at river mile 789.76, including all land and transmission facilities to the West Side substation as further described in the License, including all reconstruction, replacement, extension, expansion, improvement, betterment and addition thereto undertaken in the future by Idaho Falls pursuant to the License.
- 4.19 Prudent Utility Practices: "Prudent Utility Practices" shall mean any of the practices, methods and acts engaged in or approved by a significant proportion of the electrical utility industry, or any practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition, and the requirements of governmental agencies having jurisdiction. Prudent Utility Practices are not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a range of possible practices, methods or acts.
- 4.20 Trustee: The bank, trustee or bank co-trustee, at the time serving as such under the Bond Resolution.

- 4.21 Uncontrollable Forces: Any cause beyond the control of the Party affected, and which, by the exercise of reasonable diligence such Party is unable to prevent or overcome, including, but not limited to, failure of facilities, except failure due to ordinary negligence, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority.
- 4.22 UP&L Percentage: That percentage of Energy from the Project delivered by Idaho Falls to UP&L on an annual basis pursuant to Section 5.2 of this Power Sales Contract.
- 4.23 Variable Cost Component: An amount sufficient to return to Idaho Falls each Fiscal Year an amount equal to the UP&L Percentage times the sum of costs (other than Debt Service) incurred by Idaho Falls as a result of its ownership and operation of the Project, including, without duplication, but not limited to:
- 4.23.1 Governmental taxes, FERC license fees, assessments or other similar charges or payments in lieu thereof lawfully imposed; provided, however, that such monies shall not

be payable by UP&L hereunder if they have been paid directly by UP&L to the taxing or assessing governmental entity.

4.23.2 Reasonable and necessary costs of operation and maintenance of Idaho Falls for the Project.

4.23.3 Idaho Falls' costs of capital improvements, repairs and replacements, net of salvage, to the Project which are in excess of the total of (i) moneys available therefor under the Bond Resolution, (ii) available proceeds from the sale of a series of Bonds, and (iii) proceed from any applicable insurance.

4.23.4 Costs of insurance obtained and maintained by Idaho Falls pursuant to Section 8.5 hereof.

4.23.5 All reasonable and necessary costs applicable to the Project (other than Debt Service) not otherwise included above which have been incurred, irrespective of the actual amount of Energy generated by the Project, but excluding all costs of whatever nature relating to the Idaho Falls System.

4.24 Work Day: A day which the Parties jointly observe as a regular work day.

5. SALE OF ENERGY:

- 5.1 Idaho Falls shall sell to UP&L, and UP&L shall buy, at the Delivery Point, Energy from the Project as set forth in this Section 5.
- 5.2 The UP&L Percentage in each Operating Year shall be equal to 39% of the amount of Energy produced during the Operating Year by the Project; provided, however, Idaho Falls may reduce the UP&L Percentage in stages or at one time to not less than 25% of the amount of Energy produced during the Operating Year by the Project. This reduction shall begin on July 1 of any Operating Year upon not less than 36 months prior written irrevocable notice to UP&L, whenever Idaho Falls shall determine that such Energy is needed and will be used for distribution in the Idaho Falls System. Anything in this Section 5.2 to the contrary notwithstanding, the total amount of Energy delivered to UP&L under this Section 5.2 shall not, within the meaning of 26 C.F.R. §1.103-7(b)(5), exceed, over the entire term of the Bonds, (i) 25% of Nameplate Energy or (ii) 75% of actual Energy generated by the Project, whichever is less.
- 5.3 Delivery of Energy hereunder to UP&L by Idaho Falls at the Delivery Point shall be contingent upon the operation

of the Project, and scheduled deliveries to UP&L shall be subject to reduction due to Project outages, Operating Contingencies, and Uncontrollable Forces. Should such reduction occur, Idaho Falls shall exercise due diligence to restore full operation and scheduled deliveries and to remove Operating Contingencies and Uncontrollable Forces with all reasonable dispatch and shall keep UP&L fully informed of changes and conditions as far in advance as possible.

- 5.4 UP&L shall be obligated to take Energy at the Delivery Point in the amounts specified in Section 5.2 for the term of this Power Sales Agreement, beginning with the Date of Commercial Operation.

6. PAYMENT FOR ENERGY:

- 6.1 Beginning on the Date of Commercial Operation of the Project, UP&L shall pay annual amounts to Idaho Falls for Energy in the manner provided in this Section 6.
- 6.2 For each Fiscal Year, the charge for Energy purchased by UP&L hereunder shall be the sum of (i) the Variable Cost Component, (ii) the Capital Cost Component, and (iii) 5% of the sum of the Capital Cost Component and the Variable

Cost Component, as those components are determined for each Fiscal Year.

6.3 After the Date of Commercial Operation, UP&L's obligation to pay Idaho Falls for Energy hereunder shall not be affected by the operating status of the Project. Such payments shall not be subject to any reduction, whether by offset or otherwise, except as provided in Section 6.5 hereof, and shall not be conditioned upon the performance or non-performance of the Project, the remedy for non-performance being limited to mandamus, specific performance or other legal or equitable remedy. Notwithstanding the foregoing, it is not intended that UP&L by this Power Sales Contract assumes any obligation or liability as guarantor, surety or otherwise with respect to the Bonds or other securities issued by Idaho Falls for the Project or any other debts or obligations incurred by Idaho Falls for the Project. UP&L shall have no payment obligations for the Project except as set forth herein.

6.4 Not later than 60 days prior to the commencement of each Fiscal Year, Idaho Falls shall furnish UP&L with a written Budget for the next succeeding Fiscal Year which shall set forth the amount of the Capital Cost Component payable by UP&L in the forthcoming Fiscal Year and the estimated Variable Cost Component payable by UP&L in the

forthcoming Fiscal Year. Not later than 60 days prior to the estimated Date of Commercial Operation of the Project, Idaho Falls shall file with UP&L an interim Budget for the remaining balance of the Fiscal Year in which Date of Commercial Operation of the Project is scheduled to occur. UP&L agrees to pay the amounts due to Idaho Falls for Energy shown on the yearly Project Budget in 12 equal monthly installments. So long as any of the Bonds remain Outstanding each monthly installment shall be due and payable by UP&L at the principal corporate trust office of the Trustee or at such other place designated by Idaho Falls not later than the 15th day of each month. A final accounting of all Project transactions in each Fiscal Year shall be rendered to UP&L by Idaho Falls on or before the 90th day of the succeeding Fiscal Year. The final accounting shall specify the amount, if any, which UP&L must pay to Idaho Falls to reconcile total monthly payments with actual amounts due Idaho Falls for the purchase of Energy, which amount shall be payable to Idaho Falls no later than 30 days after the receipt of the final accounting. If the final accounting demonstrates an overpayment by UP&L, Idaho Falls shall pay the amount of such overpayment to UP&L no later than 30 days after the delivery to UP&L of the final accounting.

- 6.5 In the event of any dispute as to any portion of any monthly statement or final accounting, UP&L shall never-

theless pay the full amount shown on such statement when due and shall, within 90 days from the date of such statement, give written notice of the dispute to Idaho Falls. Such notice shall identify the disputed statement, state the amount in dispute and set forth a full statement of the grounds on which such dispute is based. No adjustment shall be considered or made for disputed charges unless notice is given as aforesaid. Idaho Falls shall give consideration to such dispute and shall advise UP&L with regard to its position relative thereto within 30 days following receipt of such written notice. Upon agreement or final adjudication, as the case may be, of the correct amount, any difference between such correct amount and such full amount shall be added to or subtracted from UP&L's next monthly installment payment, together with interest on such full amount of UP&L's overpayment, if any, at the rate fixed for interest to be charged UP&L in Section 6.7 hereof.

- 6.6 The Parties and the Trustee on behalf of Idaho Falls, shall have the right from time to time to begin and maintain successive proceedings in law or in equity against the other Party to enforce any of the provisions of this Power Sales Contract, to the extent permitted by law, including but not limited to injunctive relief in case of the violation or threatened violation of this

contract, or a decree concerning performance of any of the provisions of this contract, a judgment for an amount equal to all of UP&L's payments due and owing hereunder, or credits owing to UP&L by Idaho Falls hereunder, or any other remedy.

6.7 If UP&L does not pay in full any installment on or before the close of business on the last day of the month in which such installment is due, an interest charge will be made at the rate of ten per cent (10%) per annum. If such installment remains unpaid subsequent to the last day of the month in which it is due, Idaho Falls may, with the consent of the Trustee, and upon receipt of a written request from the Trustee shall, upon giving 15 days' advance written notice to UP&L, cause the delivery of Energy to UP&L from the Project to be discontinued unless, and shall refuse to resume delivery of Energy to Utah until, said delinquent installment has been paid.

6.8 If any action is brought by either Party for the enforcement of any right or remedy provided for in this contract, including, but not limited to, an action wherein it is determined that UP&L failed to make a payment due at the time of commencement of the action, the Party against which relief is granted shall pay all expenses incurred in connection therewith, including,

without limitation, reasonable attorneys' fees, court costs and expenses.

6.9 No right or remedy herein conferred upon or reserved to either of the Parties, or to the Trustee on behalf of Idaho Falls, is exclusive of any other right or remedy, and each and every right and remedy is cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing. The failure of either of the Parties, or the Trustee on behalf of Idaho Falls, to insist at any time upon the strict observance or performance of any of the provisions of this contract, or to exercise any right or remedy provided for herein, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt by Idaho Falls, the Trustee on behalf of Idaho Falls, or UP&L, of any payment required to be made pursuant to this contract with knowledge of the breach of any provisions of this contract, shall not be deemed a waiver of such breach.

6.10 The Trustee, on behalf of Idaho Falls or the holders of the Bonds, is entitled to enforce any of the rights or remedies provided for in this contract at any time, and the Trustee may proceed, either in its own name and as trustee of any express trust or otherwise, to protect and enforce its rights and those of Idaho Falls

under this contract. Such rights and remedies as are given Idaho Falls hereunder shall also extend to the Trustee; and the Trustee and the holders of the Bonds, subject to the provisions of the Bond Resolution, shall be entitled to the benefit of all covenants and agreements in this contract contained.

- 6.11 Idaho Falls shall have the right to refund all or any part of the Bonds in order to effect cost savings and other policy objectives of Idaho Falls. So long as UP&L is obligated to purchase and pay for Energy pursuant to this Power Sales Contract, the Parties will negotiate in good faith any amendment to this Power Sales Contract necessary in order to accomplish such refunding; provided however, Idaho Falls must acquire UP&L's consent to any refunding which would result in an increase in the annual Capital Cost Component. A refunding issue may provide for scheduled Bond maturities occurring beyond the last maturity date of the issue that is being refunded, but not beyond the date of the termination of this Power Sales Contract, unless said refunding Bond Authorization expressly provides that UP&L's obligation to pay installments on said refunding bonds ceases on the termination date of this contract. Idaho Falls shall act prudently in issuing refunding bonds, and agrees to use its best efforts to issue such refunding bonds at the

lowest practicable costs consistent with Idaho Falls' policy objectives sought to be achieved by the refunding.

7. DELIVERY OF ENERGY:

7.1 Idaho Falls' delivery of Energy to UP&L from the Project shall be scheduled pursuant to the Operating Agreement. The Operating Agreement shall provide that Idaho Falls shall exercise its best efforts to deliver to UP&L all of the Energy produced by the Project during the months of June, July and August. In the event that the Energy production of the Project in the months of June, July and August is less than the UP&L Percentage of Energy UP&L is obligated to purchase hereunder, Idaho Falls shall deliver the remainder of said Energy as scheduled in the Operating Agreement.

7.2 At the request of UP&L, Idaho Falls will negotiate with UP&L and Bonneville Power Administration for a summer-winter exchange for Energy from Idaho Falls' existing low-head hydro projects.

7.3 Idaho Falls shall submit to UP&L by January 1 of each year the following information:

- (1) a schedule of normal maintenance outages for the Project for the ensuing four Operating Years; and

(2) any other operation and maintenance information determined by the Parties to be pertinent to the effective integration of Project Energy into their respective systems.

7.4 Idaho Falls shall report to UP&L as soon as possible any generation or transmission outages, scheduled or emergency, at the Project and shall use best efforts to return such equipment to service as soon as possible.

7.5 Planned maintenance shall be scheduled pursuant to the Operating Agreement in such a manner as to minimize adverse impacts on the Parties' respective systems.

8. GENERAL PROVISIONS:

8.1 Idaho Falls has called, held and conducted a bond election, as required by law, upon the proposition of the issuance of its general obligation bonds in an amount sufficient to pay the costs of development, design and construction of the Project and the interest estimated to fall due prior to the Date of Commercial Operation and to establish all necessary reserves required under the Bond Resolution, and represents that it will acquire all permits, licenses, rights and privileges, structures, equipment, water rights, except UP&L's water rights, and facilities necessary to the development of the Project

and the Parties' performance under this contract. Idaho Falls shall maintain and defend such permits, licenses and rights and privileges and shall not voluntarily permit any change therein impairing Idaho Falls' performance of its obligations hereunder.

8.2 As partial consideration of the sale to it of Energy from the Project by Idaho Falls, UP&L agrees to lease its land necessary for development and operation of the Project to Idaho Falls. The lease shall be subject to renewal on mutually agreeable terms. Said land is described on Exhibit "A" to that certain Ground Lease by and between the Parties dated the date hereof. UP&L grants Idaho Falls access to said land prior to execution of the lease for such Project purposes as Idaho Falls deems necessary. Nothing in this contract shall be construed as an abandonment, relinquishment, sale, lease or transfer of the land or facilities of either of the Parties after the term of this Power Sales Contract.

8.3 UP&L will cooperate with Idaho Falls in perfecting all water rights required for the operation of the Project. Neither Party shall be required to compensate the other for the use of any water rights supplied by the other for Project operation during the term of this Power Sales Contract. Each Party shall retain its interests in its water rights used in the operation of the Project during

the term of this Power Sales Contract and thereafter. Nothing in this contract shall be construed as an abandonment, relinquishment, sale, lease or transfer of the water rights of either of the Parties. The Operating Agreement shall set forth the scheduling of usage of the Parties' water rights.

- 8.4 If by June 12, 1987, Idaho Falls has not issued and sold general obligation bonds in an amount sufficient to pay the costs of Project design and construction together with interest estimated to fall due prior to the Date of Commercial Operation and all necessary reserves required under the Bond Resolution, or if Idaho Falls determines that, using Prudent Utility Practices, it has made its best efforts to complete the development of the Project but cannot reasonably complete such development, then UP&L, upon written notice from Idaho Falls, shall have, subject to applicable law, the first right to purchase whatever interest Idaho Falls may then own in the Project, including all real property, equipment, and the assignment of all rights, permits and licenses, at a price sufficient to reimburse Idaho Falls for all expenditures theretofore made by Idaho Falls in the development of the Project. If UP&L agrees to purchase the interest of Idaho Falls in the Project, UP&L will use its best efforts to complete the development of the Project. UP&L shall exercise its right to purchase Idaho Falls'

interest in the Project within the lesser of 18 months after receipt of notice from Idaho Falls or any limitations imposed by the License or any extension thereof. In addition, UP&L shall offer to sell to Idaho Falls 25% of the annual Energy production of the Gem State Project on a take or pay basis, beginning with the Date of Commercial Operation. If Idaho Falls agrees to purchase 25% of the annual Energy production of the Project, UP&L will make best efforts to deliver said Energy to Idaho Falls during the winter months of each Operating Year under terms similar to those set forth in Section 5 hereof, subject, however, to the receipt by UP&L of approval of all required regulatory authorities. If such regulatory approval cannot be obtained, any Energy supplied to Idaho Falls will be delivered and paid for by Idaho Falls pursuant to UP&L's FERC resale tariff then in effect; provided, however, that nothing herein contained shall be construed as affecting in any way the right of UP&L unilaterally to make application to the FERC for a change in rates, charges, classification or service or any rule, regulation or contract relating thereto under Section 205 of the Federal Power Act and pursuant to the rules and regulations of the FERC promulgated thereunder.

- 8.5 Beginning on the Date of Commercial Operation, Idaho Falls shall procure and thereafter maintain in effect for

the term of this contract, in accordance with Prudent Utility Practices, adequate insurance coverage for the operation of the Project with UP&L and Idaho Falls each as a named assured and loss payee, as their respective interests may appear, to protect and insure against: (i) workmen's compensation and employer's liability (it being understood that UP&L may also self-insure in respect of such risks), (ii) public liability for bodily injury and property damage, (iii) all risks of physical damage to property or equipment, including any such damage caused by the negligence of the Project operator, and (iv) such other insurance required by Prudent Utility Practices, within reasonable limits and subject to appropriate exclusions and deductibles. In addition, UP&L may obtain insurance for its own account, the proceeds of which shall be payable directly to UP&L. Idaho Falls shall promptly deliver to UP&L certified copies of all insurance policies with respect to the Project which Idaho Falls is required to maintain, together with evidence as to the payment of all premiums then due thereon. Idaho Falls shall provide access to its records and accounts so that agents or employees of UP&L shall be able to prepare a report setting forth the pertinent information regarding the insurance obtained by Idaho Falls.

8.6 Idaho Falls shall keep proper books of account showing the Project as a separate utility system segregated from the accounts of the Idaho Falls System, in accordance with the rules and regulations prescribed by any governmental agency authorized to prescribe such rules and in accordance with the FERC's "Uniform System of Accounts Prescribed for Public Utilities and Licensees" now in effect or as such system of accounts may be in effect from time to time, whether or not Idaho Falls is required by law to use such accounts. Idaho Falls shall submit to UP&L such supporting data with respect to all annual Budgets and yearly accounting reconciliations as are reasonably necessary to enable UP&L to effect proper accounting therefor. All books of account and accounting records of Idaho Falls shall be available for audit and utilization by a duly authorized officer or agent of UP&L at all reasonable times. Idaho Falls shall cause such books of account of the Project to be audited annually by independent public accountants experienced in electric utility accounting and of national reputation, as provided in the Bond Resolution. A copy of each such annual audit, including any recommendations of the accountants with respect thereto, shall be promptly made available by Idaho Falls to UP&L.

8.7 It is recognized that Idaho Falls must comply with the requirements of the Bond Resolution and the License, and

all other licenses, permits and regulatory approvals necessary for the ownership, acquisition, construction and operation of the Project, and it is, therefore, agreed that this Power Sales Contract is made subject to the terms and provisions of the Bond Resolution and the License, and all other such licenses, permits and regulatory approvals.

- 8.8 UP&L, its officers, agents and employees, or any of them, shall not be liable for any claims, demands, costs, losses, causes of action, damages or liability of whatsoever kind or nature arising out of or resulting from Idaho Falls' ownership, acquisition, construction and operation of the Project. To the extent permitted by law, Idaho Falls shall indemnify, defend and hold harmless UP&L from any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature arising out of or resulting from Idaho Falls' ownership, acquisition, construction and operation and maintenance of the Project. Idaho Falls, its officers, agents and employees, or any of them, shall not be liable for any claims, demands, costs, losses, causes of action, damages or liability of whatsoever kind or nature arising out of or resulting from the performance by UP&L under this contract.

- 8.9 Idaho Falls will construct, own, operate and maintain electrical facilities from the generator bus and step-up substation to the 44 kV bus at the West Side substation as part of the Project to deliver UP&L's and Idaho Falls' Energy to the West Side Substation. The Operating Agreement shall provide for delivery of Energy over Idaho Falls' facilities from the West Side substation to the Delivery Point. Idaho Falls will make its best efforts to arrange for use of any Bonneville Power Administration facilities which are required.
- 8.10 Neither this Power Sales Contract nor any part thereof shall be assigned by either Party without prior written consent of the other.
- 8.11 Idaho Falls, by entering into this Power Sales Contract, does not hold itself out to furnish wholesale electric or similar service to any other person or entity.
- 8.12 This Power Sales Contract shall be effective as of the date hereof and shall continue in effect until 35 years from the Date of Commercial Operation.
- 8.13 Any notice, demand or request provided for in this Power Sales Contract shall be in writing and shall be deemed

properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

8.13.1 City of Idaho Falls
 Electric Light Division
 P. O. Box 220
 Idaho Falls, Idaho 83402

and

8.13.2 Utah Power & Light Company
 Attn: Corporate Secretary
 P. O. Box 899
 Salt Lake City, Utah 84110

Either Party may, at any time, by notice to the other, designate different or additional persons or different addresses for the giving of notice hereunder.

8.14 This Power Sales Contract shall be interpreted, governed by and construed under the laws of the State of Idaho.

8.15 Execution of this Power Sales Contract is subject to the approval of UP&L's Board of Directors. This Power Sales Contract is subject to acceptance for filing by the Idaho Public Utilities Commission, the Utah Public Service Commission and the Wyoming Public Service Commission. The provisions of this Power Sales Contract shall not be construed to require either Party to submit itself to regulation or review by any governmental entity or agency which does not presently exercise jurisdiction over such Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Power Sales Contract on the date and year herein first above written.

CITY OF IDAHO FALLS, IDAHO

Attest: _____

By: _____

(Title)

(Title)

UTAH POWER & LIGHT COMPANY

Attest; _____

By:  _____

(Title)

(Title)

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Robert Gordon, do hereby certify that I am the duly qualified and acting Vice President and Corporate Secretary of Utah Power & Light Company, a Utah corporation.

I further certify that the above and foregoing constitutes a true and correct copy of the January 29, 1985 draft of that certain Power Sales Contract, as said Power Sales Contract is officially of record in my possession.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the corporate seal of Utah Power & Light Company this 29th day of March, 1985.



Robert Gordon
Vice President & Corporate Secretary

[SEAL]

MICROFILMED

UTAH POWER & LIGHT COMPANY

1407 WEST NORTH TEMPLE STREET

P. O. BOX 899

SALT LAKE CITY, UTAH 84110

J. C. TAYLOR

VICE PRESIDENT
AND
COMMERCIAL MANAGER
801 - 535-4242

April 7, 1982

LETTER OF INTENT

The Honorable Thomas V. Campbell
Mayor, Idaho Falls City
City Hall
Idaho Falls, Idaho 83401

Dear Mayor Campbell:

There have been several meetings in the past months between representatives of Utah Power & Light Company ("Company") and the City of Idaho Falls ("City") regarding the development of the Gem State Hydroelectric Project site ("Site") on the Snake River. During a series of meetings between representatives of the City and Company, agreement was reached on the development of the Site. The following sets forth our mutual intent regarding this development:

1. City will design, construct, finance, own, operate and maintain the Gem State Hydroelectric Project, as described in the City's FERC application ("Project"), in accordance with Prudent Utility Practice.

2. City will sell to Company, on a take-or-pay basis commencing with commercial operation of the Project, 25% of the annual energy production from the Project. Company will pay City for energy on the basis set forth in paragraph 5 below. City will deliver the energy to Company at the time and in the manner mutually scheduled by the parties. Company and City intend that such 25% energy will normally be scheduled for delivery to Company during the months of June, July and August.

3. To the extent permitted by City's contract with Bonneville Power Administration and consistent with paragraph 4 below, City will give Company the right of first refusal to buy the difference between 25% of annual energy production of Project and the annual amount of energy which is equal to 25% of nameplate capacity in KW x 8760 hrs. The purchase price for such energy will be as provided in paragraph 6 herein.

EXHIBIT "A"

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Idaho Falls City
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4. The parties will enter into a Power Sales Agreement for a term of 35 years commencing with the date of commercial operation of the Project, and said agreement shall incorporate the terms of this Letter of Intent. The term of the said agreement may, by mutual agreement of the parties, be reduced to a lesser number of years, not exceeding the longest maturity of the term of the bonds ("Bonds") first issued by the City to finance the Project. The terms of said agreement shall be consistent with maintaining the tax-exempt status of the Bonds including, without limitation, Section 1.103-7(b)(5) of the Internal Revenue Code Regulations.

5. Beginning on the date of commercial operation, Company will pay City annually, in monthly installments, during the term of the agreement, the sum of the following:

(a) 25% of annual debt service on the Bonds (including maintenance of required reserves less investment earnings);

(b) 25% of the annual costs associated with any part of the Project which is financed with funds from any source other than bond proceeds. If the source of such funds is a debt obligation of the City, then the amounts of annual costs shall be computed in the same manner as the City's debt service costs. The actual maturity date of the debt instrument shall be used, but in no event shall it be shorter than the term of the Power Sales Agreement. If City funds are used, then annual cost shall be computed in the same manner as debt service costs using the average rate of interest of all outstanding Bonds issued on the Project and assuming maturities in equal annual amounts over the period of years of the longest maturity of any of the outstanding Bonds.

(c) 25% of the variable costs as budgeted annually and reconciled to actual annually, including, but not necessarily limited to, O & M

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A & G, insurance, taxes, if any, and lease payments to Company for land;

(d) an amount to reimburse City for the financial risk exposure of financing and constructing the Project equal to 5% of (a), (b) and (c) above.

6. In the event Company purchases power under the right of first refusal referred to in paragraph 3 above, Company shall pay for such power on the basis set forth in paragraph 5 above, except that the percent of output purchased shall be substituted for "25%." City and Company will adjust in dollars or in KWH annually for the prior year at a time mutually agreeable to the parties.

7. Company will lease its portion of the Project Site for the term of the Power Sales Agreement, subject to renewal upon mutually agreeable terms. The present value of Company's portion of the Project site is agreed to be \$5,000 per acre. An annual payment or credit will be made to the Company from the Project equal to the value of the land times the effective interest rate of the Bonds.

8. **Company will cooperate with City in perfecting water rights in the amount required for the Project.** Neither of the parties shall be required to compensate the other for the use of any water rights supplied by the other party.

9. Company will give City access to the Site prior to execution of a lease agreement referred to in paragraph 7.

10. If the City determines that it has made "best efforts" using Prudent Utility Practice to complete the Project, but cannot, then Company, after notice from City, shall have the right to purchase Project from City at a price sufficient to reimburse City for all of its costs, and if

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April 7, 1982
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Company agrees to purchase the Project, Company shall make "best efforts" to complete the Project and offer 25% of the annual production to the City on a take-or-pay basis. Company shall exercise its right to purchase the Project within the lesser of 18 months of giving of such notice or any limitations imposed by the FERC License, or any extension thereof received by City. Company will make best efforts to deliver energy to City during the winter months under terms similar to those pursuant to which City has agreed to sell power to Company, subject to approval by appropriate regulatory authorities. If regulatory approval cannot be obtained, any power and energy supplied to City will be delivered pursuant to Company's FERC resale tariffs; provided, however, that nothing contained herein shall be construed as affecting in any way the right of Company to unilaterally make application to FERC for a change in rates, charges, classification, or service, or any rule, regulation, or contract relating thereto, under Section 205 of the Federal Power Act and pursuant to the Commission's Rules and Regulations promulgated thereunder.

11. City will continue to preserve an option with Bonneville Power Administration for a summer-winter exchange with Company for City's first three projects. Term of the exchange shall be flexible to permit benefits for all parties, but not longer than term of power sales agreement regarding Project.

12. City and Company agree that timely completion of the Project is a common interest. City and Company agree to use their best efforts to conclude a power sales agreement incorporating the principles hereof within 75 days of receipt by Company of a fully-executed copy of this Letter of Intent.

13. Execution of the power sales agreement will be conditioned upon approval of the Idaho Public Utilities

Thomas V. Campbell, Mayor
Idaho Falls City
April 7, 1982
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Commission, Company's Board of Directors, and City's governing body.

14. Company will have the right to perform audits of the Project costs at any reasonable time upon reasonable notice to the City.

If the above clearly sets forth our mutual intent, please indicate your acceptance and approval by signing one copy of this letter in the space provided and returning it to me.

Very truly yours,

UTAH POWER & LIGHT COMPANY

By J. C. TAYLOR
Vice President and Commercial
Manager

ACCEPTED

CITY OF IDAHO FALLS, IDAHO

By Thomas Campbell
THOMAS V. CAMPBELL
Mayor

Attest:

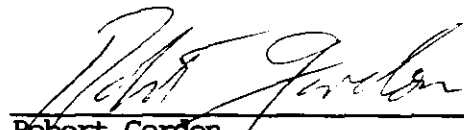
Debra (Phonetic)
City Clerk

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Robert Gordon, do hereby certify that I am the duly qualified and acting Vice President and Corporate Secretary of Utah Power & Light Company, a Utah corporation.

I further certify that the above and foregoing constitutes a true and correct copy of that certain Letter of Intent dated April 7, 1982, by and between Utah Power & Light Company and the City of Idaho Falls, Idaho, as said Letter of Intent is officially of record in my possession.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the corporate seal of Utah Power & Light Company this 29th day of March, 1985.



Robert Gordon
Vice President & Corporate Secretary

[SEAL]

GROUND LEASE

Dated as of January 29, 1985

Between

Utah Power & Light Company, a Utah Corporation, as lessor

and

The City of Idaho Falls, Idaho, as lessee

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(This Table of Contents is not a part of this
Ground Lease, but is
for convenience of reference only.)

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GROUND LEASE

THIS GROUND LEASE, dated as of January 29, 1985, (the "Ground Lease") by and between UTAH POWER & LIGHT COMPANY, a Utah corporation ("UP&L"), and the CITY OF IDAHO FALLS, a municipal corporation of the State of Idaho (the "City"),

WITNESSETH:

WHEREAS, the City wishes to construct, own and operate a hydroelectric generating facility to be located on the Snake River at river mile 789.76 (the "Project"); and

WHEREAS, the City and UP&L have entered into that certain Gem State Project Power Sales Contract (the "Power Sales Contract") dated of even date herewith whereby the City has agreed, among other things, to acquire all rights and privileges, structures, water rights (except UP&L's water rights) and facilities with respect to the acquisition of the Project or otherwise necessary for the performance by the City of its obligations under the Power Sales Contract, including its obligation pursuant to Section 5 thereof to sell to UP&L a portion of the energy generated by the Project; and,

WHEREAS, UP&L is the owner of certain property located in Bonneville and Bingham Counties, Idaho, more particularly described in Exhibit A attached hereto and made a part hereof by this reference (the "Land"); and

WHEREAS, the acquisition of the use of the Land by the City is necessary to enable the City to construct and operate the Project and to perform its obligations under the Power Sales Contract; and

WHEREAS, the City has determined that it is in the best interest of the City to enter into this Ground Lease for the purpose of acquiring the use of the Land in connection with the Project; and

WHEREAS, the City is empowered to enter into this Ground Lease pursuant to applicable law, including particularly Section 50-301 of the Idaho Code, as amended;

NOW, THEREFORE, in consideration of the performance of the mutual promises and agreements herein contained, the parties hereto agree as follows:

SECTION 1. Definitions. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in this Section 1.

"City" shall mean the City of Idaho Falls, Idaho.

"Ground Lease" shall mean these presents as from time to time amended and supplemented.

"Land" shall mean all of the right, title and interest of UP&L now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties belonging or in any wise appurtenant to the real property described in Exhibit A attached hereto, and all buildings and improvements now located thereon.

"License" shall mean the license for Project No. 2952-001, issued to the City by the Federal Energy Regulatory Commission on December 12, 1983, and expiring on November 30, 2033, authorizing the City to operate the Project pursuant to the terms of said license, for a period of fifty years beginning December 1, 1983.

"Permitted Encumbrances" shall mean, as of any particular time, (i) the Mortgage and Deed of Trust, dated as of December 1, 1943, from Utah Power & Light Company to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York) and R. Amundsen (as successor co-trustee) as trustees, as supplemented, modified or amended from time to time or at any time; (ii) liens for taxes and assessments not then delinquent; (iii) this Ground Lease, and the rights of the City hereunder; (iv) utility, access and other easements and rights-of-way, restrictions, and exceptions specified in this Ground Lease or subsequently granted by the City to UP&L which shall not, in the sole

discretion of the City, interfere with or impair the Project; and (v) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to properties similar in character to the Land and as do not, in the opinion of counsel for the City, materially impair the Land for the purpose for which it was acquired.

"Power Sales Contract" shall mean that certain Gem State Project Power Sales Contract between the City of Idaho Falls, Idaho and Utah Power & Light Company dated of even date herewith.

"Project" shall mean the Gem State Power Project to be located on the Snake River approximately 5.5 miles southwest of the City in Bonneville and Bingham Counties, Idaho and consisting of: (1) a proposed 4,300-foot-long, 40-foot-high earthfill dam, impounding a reservoir with a storage capacity of 5,000 acre-feet and a surface area of 305 acres; (2) a four-bay spillway; (3) a 3,300-foot-long power canal; (4) a powerhouse containing one generating unit with an installed capacity of 22.3 MW; (5) a 1,080-foot-long tailrace; (6) a 7,300-foot-long dike, upstream from the spillway on the right bank, and a 10,400-foot-long dike, upstream from the powerhouse on the left bank; (7) improvements to two existing access roads; (8) a 3.75-mile-long, 44-KV transmission line from the powerhouse to the City's West Side substation; and (9) such other improvements as may be required in connection with the Project.

"UP&L" shall mean Utah Power & Light Company, a Utah corporation.

SECTION 2. Demised Premises. UP&L hereby demises and leases the Land to the City, and the City hereby hires, takes and leases the Land from UP&L for the term and on the conditions set forth herein, subject only to Permitted Encumbrances.

SECTION 3. Ownership; Possession. UP&L covenants that it has marketable fee title to the Land and shall forthwith upon execution hereof deliver to the City possession of the Land, and the City hereby agrees to accept such possession upon execution hereof. Upon execution of this Ground Lease, UP&L shall deliver to the City a policy of

title insurance, or a commitment therefor, from such title company and in such amount as shall be satisfactory to the City, insuring the leasehold estate created by this Ground Lease against any and all conditions, restrictions, reservations, exceptions, easements, assessments, profits, limitations, encumbrances, liens, leases, clouds and defects in title, except those to which the City shall specifically consent in writing. The cost of the title policy shall be borne by UP&L.

SECTION 4. Term. This Ground Lease shall commence as of the date hereof and shall continue in effect, subject to the provisions of the next sentence of this Section and subject to the provisions of Section 9 hereof, during the term of the License or of any renewal or extension of the License by the City as licensee under the License or of any successor licensee under the License or the United States of America under the Federal Power Act. This Ground Lease shall terminate if the Project is destroyed or is otherwise rendered permanently inoperable and as a consequence thereof the License or any renewal or extension thereof is terminated.

SECTION 5. Consideration. Upon the execution and delivery of this Ground Lease the City and UP&L shall enter into the Power Sales Contract attached hereto as Exhibit B and incorporated herein and made a part hereof by reference, wherein the City agrees to sell to UP&L a portion of the power generated by the Project. The Power Sales Contract shall govern the terms of such sale, including the amount of power sold to UP&L, the price thereof, the terms of payment and the rights and liabilities of the parties. The obligation on the part of the City to sell power to UP&L pursuant to the terms of the Power Sales Contract shall constitute the sole consideration for this Ground Lease during the term of the Power Sales Contract, and the City shall at no time during the term thereof be or become obligated to UP&L, monetarily or otherwise, except as set forth in the Power Sales Contract. Upon the expiration of the Power Sales Contract, the parties hereto shall renegotiate the consideration to be provided UP&L under this Ground Lease, provided that

under no circumstances shall the renegotiation of the nature or amount of consideration owed by the City to UP&L affect the City's right to possess and occupy the Land during the full term of this Ground Lease.

SECTION 6. Purpose. The Land will be used by the City for the purpose of permitting the construction and operation of the Project pursuant to the terms of the License and for such other purposes as may be incidental thereto. The City may, at its own expense, at any time and from time to time during the term of this Ground Lease, and consistent with the purposes herein stated (i) erect, place or install buildings, structures, improvements, machinery and equipment upon the Land, in addition to or in substitution for those now or hereafter located thereon, (ii) remove or make changes and alterations, structural or otherwise, to any buildings, structures, improvements and equipment now or hereafter located on the Land, whether or not making replacement or substitution for any building, structure, improvement or equipment so removed by the City, it being agreed that the salvage therefrom shall become the property of the City and may be disposed of in such manner as the City may determine and (iii) impound water upon the Land, or any portion thereof, as may be necessary for the proper operation of the Project. Title to all buildings, structures, improvements, machinery and equipment constructed or installed on the Land by the City shall be and remain at all times during the term of the Ground Lease in the City.

SECTION 7. Quiet Enjoyment. The City, by keeping and performing the covenants and agreements herein contained, shall at all times during the term of this Ground Lease peaceably and quietly have, hold and enjoy the Land.

SECTION 8. Taxes. All governmental taxes, assessments or other similar charges or payments in lieu thereof lawfully imposed upon UP&L by virtue of its ownership of the Land shall be treated as a Variable Cost Component of the Project pursuant to Sections 4.23.1 and 6.2 of the Power Sales Contract.

SECTION 9. Damage, Destruction or Condemnation. If, during the term of this Ground Lease, (i) the Project shall be destroyed, in whole or in part, or damaged by fire or other casualty or event so as to render said Project not reasonably usable for the purpose for which it was constructed, (ii) a material defect in the construction of the Project shall become apparent, (iii) the City shall lose its right to operate the Project under the License, (iv) the continued operation of the Project shall have been enjoined or shall otherwise have been suspended or prohibited by, or shall otherwise conflict with, any order, decree, rule or regulation of any court or of any federal, state or local regulatory body, administrative agency or other governmental body, (v) the City, with the consent of UP&L and the Trustee with respect to any bonds issued by the City to acquire the Project if any such bonds are then outstanding, shall have determined that the continued operation of the Project is impracticable, uneconomical or undesirable for any reason, including without limitation changes in technology, environmental standards or legal requirements or in the economic availability of materials, supplies, equipment or labor, (vi) title to or the use of any portion of the Project shall be lost by reason of a defect in title, or (vii) any or all of the City's leasehold estate in the Land or the City's interest in the buildings and improvements thereon shall be permanently or temporarily taken or condemned by exercise of the power of eminent domain or by any person or corporation (municipal, public, private or otherwise), then and in such event the City may terminate this Ground Lease as to all or any portion of the City's leasehold interest in the Land. In the event of a taking described in (vii) above, UP&L shall have no claim to any award, compensation or damages attributable solely to the City's leasehold estate in the Land and/or the City's interest in the buildings, improvements or equipment thereon, and the City shall have no claim to any award, compensation or damages attributable solely to UP&L's ownership or other interest in the Land.

SECTION 10. Inspection. UP&L hereby reserves to itself, its officers, agents and employees, the right to enter onto the Land at any time for the purpose of inspection and when otherwise deemed necessary for the protection of the interests of UP&L, and the City shall have no claim of any character on account thereof against UP&L or any officer, agent or employee thereof, provided that UP&L shall exercise its rights hereunder so as not to interfere with the City's operation of the Project.

SECTION 11. Waste, Nuisance or Contamination. The City shall not commit nor suffer to be committed any waste upon the Land or any contamination, or any illegal activity, public or private nuisance, or other act or thing which may decrease the value of the Land or subject UP&L to legal liability.

SECTION 12. Applications. UP&L agrees, upon the City's written request, to join in the execution (when and to the extent such execution by UP&L as the owner of the Land is required) of all applications and petitions necessary for the construction, maintenance or operation of the Project (including applications and/or petitions for all licenses and for all governmental services relating to the Project). All such applications and petitions shall be prepared at the City's sole cost and expense. The City agrees to indemnify and hold UP&L harmless from any and all liability arising from UP&L's execution of any applications or petitions.

SECTION 13. Assignments. Except for security purposes in connection with any bonds issued by the City for the purpose of acquiring the Project, neither the Ground Lease nor any part thereof shall be assigned by either party without prior written consent of the other.

SECTION 14. Claims for Damages. It is understood and agreed that all rights of UP&L against the City under this Ground Lease shall be limited to the City's leasehold estate in the Land and the City's interest in the buildings and improvements constituting the Project and that no claim for damages may be asserted against the City, its directors,

employees or agents or the successors or assigns of any of them by reason of any provision of this Ground Lease; provided, however, that nothing in this Ground Lease shall be construed as limiting in any way any right or interest accruing to UP&L pursuant to the Power Sales Contract.

SECTION 15. Attorneys' Fees and Legal Costs. If any action is brought by either party with respect to the Land, or for the enforcement of any right or remedy provided for in this Ground Lease, or to interpret the terms hereof, the party against which relief is granted shall pay all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees, court costs and expenses.

SECTION 16. Third Party Beneficiaries. All of the covenants, agreements, conditions and undertakings in this Ground Lease shall extend and inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto in the same manner as if such successors and assigns were in every case specifically named herein, shall be construed as covenants running with the Land during the term of this Ground Lease and shall be automatically extinguished at the expiration of the term of this Ground Lease or in the event of termination hereof.

SECTION 17. Performance of Obligation Under Mortgage and Deed of Trust. UP&L intends that it will fully and faithfully perform all its obligations and covenants required under the Mortgage and Deed of Trust as described under "Permitted Encumbrances" in Section 1 hereof and the Promissory Note secured thereby, provided, however, that UP&L may in good faith contest or defend its rights in any litigation concerning its performance of said obligations and covenants.

SECTION 18. Amendments, Changes and Modifications. This Ground Lease may be amended at any time by written agreement of the City and UP&L.

SECTION 19. Governing Law. This Ground Lease shall be interpreted, governed by and construed under the laws of the State of Idaho.

SECTION 20. Counterparts. This Ground Lease may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

SECTION 21. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

If to UP&L to:

Utah Power & Light Company
Attn: Corporate Secretary
P.O. Box 899
Salt Lake City, Utah 84110

If to the City to:

City of Idaho Falls
Electric Light Division
P.O. Box 220
Idaho Falls, Idaho 83402

SECTION 22. Partial Invalidity. If any one or more of the terms, provisions, promises, covenants or conditions of this Ground Lease, or the application thereof to any person or circumstance, shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Ground Lease, and the application thereof to other persons or circumstances, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

SECTION 23. Time of Essence. Time is of the essence of this Ground Lease.

SECTION 24. Inconsistency. During the term of the Power Sales Contract, in the event that any of the terms, promises, covenants or conditions of this Ground Lease, or the application thereof to any person or circumstance, is inconsistent with the terms of the Power Sales Contract, the terms of the Power Sales Contract shall govern and control.

SECTION 26. Liens. Except as provided in Section 13 hereof, the City shall not, directly or indirectly, by operation of law or otherwise, create or suffer to be created or to remain and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, or pledge of the Project, the Land or the City's leasehold interest in the Land; provided that the existence of any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right thereto shall not constitute a violation of this Section if payment is not yet due under the contract which is the foundation thereof. The City shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided the City shall, at the request of UP&L, first deposit with UP&L or other security satisfactory to UP&L in such amounts as UP&L shall reasonably require.

IN WITNESS WHEREOF, the parties hereto have caused this Ground Lease to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereunto affixed, as of the day and year first above written.

UTAH POWER & LIGHT COMPANY

By [Signature]
Its [Signature]

[Seal]

ATTEST:

By [Signature]
Secretary

THE CITY OF IDAHO FALLS, IDAHO

By _____
Mayor

[Seal]

ATTEST:

By _____
City Clerk

EXHIBIT A

(to Ground Lease)

The Land is located in Bonneville and Bingham Counties, State of Idaho and is more particularly described as follows:

Commencing at a point 255 feet North of the Northwest corner of the Southwest quarter of Section Fifteen (15), Township One (1) North, Range Thirty-seven (37) East, Boise Meridian, and running thence North 63° East 475 feet to Snake River Valley Canal; thence Northeast along said canal a distance of 1240 feet; thence Northwest 115 feet to Snake River; thence Southwesterly along Snake River 1370 feet to the line between Sections Fifteen (15) and Sixteen (16), Township One (1) North, Range Thirty-seven (37) East, Boise Meridian; thence Southwesterly along Snake River 1755 feet to the Subdivision line between Lots One (1) and Two (2) of said Section Sixteen (16); thence South 235 feet; thence North 63° East 1340 feet to the place of beginning.

Commencing at a point 1320 feet West and 2161 feet North of the Southeast corner of Section Sixteen (16), Township One (1) North, Range Thirty-seven (37) East, Boise Meridian, and running thence South 61° West 120 feet; thence North 58° West 350 feet to the South bank of the Snake River; thence in a Northeasterly direction along the bank of said Snake River 419 feet to subdivision line between Lot One (1) and Lot Two (2) in said Section Sixteen (16); thence South 287 feet, to the place of beginning, containing one and three quarters acres of land, more or less.

Commencing at a point 1425 feet West and 2161 feet North of the Southeast corner of Section Sixteen (16), in Township One (1) North, Range Thirty-seven (37) East, Boise Meridian, and running thence South 61° West 827 feet; thence South 69° West 590 feet to the Snake River; thence Northeasterly and parallel with Snake River 1376 feet; thence Southeasterly 280 feet, to the place of beginning; - all in Section Sixteen (16), Township One North, Range Thirty-seven (37) East, Boise Meridian, containing 5.83 acres.

All of Lot Number Three (3), in Section Fifteen (15), Township One (1) North, Range Thirty-seven (37) East, Boise Meridian, containing twenty acres, more or less.

A perpetual right and easement to overflow and to cause to be overflowed with the waters of Snake River (to the extent that such overflow shall be occasioned or caused by the maintenance by the party of the second

part, its successors and assigns, of the dam in Snake River South from and near the Southwest corner of Section Ten (10), Township One (1) North, Range Thirty-seven (37) East, Boise Meridian, or as the said overflow shall be occasioned or caused by the maintenance by the party of the second part, its successors and assigns, of any other dam or dams or other structure, at or near the location of the present dam, at a height no greater than the height of the present dam), the following described premises in Bonneville County, State of Idaho, to-wit:

Commencing at a point 700 feet South of the Northeast corner of Section Nine (9), Township One (1) North, Range Thirty-seven (37) East, Boise Meridian, and running thence East to the Snake River; thence following the West Bank of the Snake River in a Southwesterly direction to the South line of Lot No Seven (7), of Section Ten (10) in said Township and Range; thence West to the West line of said Section Ten (10); thence North to the place of beginning; - said tract being all of Lot Seven (7) and a portion of Lot Eight (8), in Section Ten (10), Township One (1) North, Range Thirty-seven (37) East, Boise Meridian.

That certain power plant and site located in and on Snake River in Bonneville and Bingham Counties, Idaho, at a point in said river between the cities of Shelley and Idaho Falls.

All property represented by dam, intake structures, head works to canal and canal property, with all apparatus and appurtenances thereunto pertaining, including site for proposed power house and tailrace.

All similar rights and property for the proposed additional development on the opposite side of the Snake River.

All franchises, rights, privileges and easements acquired from or granted by the State of Idaho, the Counties of Bonneville and Bingham and all other municipalities and private individuals or corporations; all rights of way.

All personal property owned by the party of the first part, of every description and wherever located.

Generally all property of the party of the first part of every kind and nature, real, personal and mixed, and wherever situate. All franchises, rights, privileges and immunities, whether now owned or hereafter to be acquired.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof.

EXHIBIT B

[Here attach copy of the Gem State Project Power Sales Contract]

STATE OF IDAHO)
) ss:
COUNTY OF _____)

On this _____ day of _____, in the year _____ before
me _____ personally appeared _____ known or identified to
me to be the _____ of the corporation that executed the instrument
attached hereto or the person who executed instrument on behalf of said corporation, and
acknowledged to me that such corporation executed the same.

STATE OF IDAHO)
) ss:
COUNTY _____)

On this _____ day of _____, in the year _____, before
me _____ personally appeared _____ known or identified to me to
be the _____ of the City of Idaho Falls, Idaho that executed the attached
instrument, and acknowledged to me that such executed the same.

PHH/CEB/ps/629873-h

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Robert Gordon, do hereby certify that I am the duly qualified and acting Vice President and Corporate Secretary of Utah Power & Light Company, a Utah corporation.

I further certify that the above and foregoing constitutes a true and correct copy of the January 29, 1985 draft of that certain Ground Lease, as said Ground Lease is officially of record in my possession.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the corporate seal of Utah Power & Light Company this 29th day of March, 1985.


Robert Gordon
Vice President & Corporate Secretary

[SEAL]

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

*full
gem state*

City of Idaho Falls, Idaho

)

Project No. 2952-001

ORDER ISSUING LICENSE (MAJOR)

(December 12, 1983)

The City of Idaho Falls, Idaho (City) has filed an application for a license under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Gem State Project No. 2952. 1/ The project would be located on the Snake River, a navigable waterway of the United States, located in Bingham and Bonneville Counties, Idaho, and would occupy lands of the United States administered by the Bureau of Land Management. 2/

Public notice of the application has been published and comments have been received from interested Federal, State, and local agencies. In response to this notice, the Snake River Valley Irrigation District (SRVID) and the Shoshone - Bannock Tribes (S-BT) filed for, and were granted intervention. The significant concerns of the intervenors and commenting agencies are discussed below. 3/

The Commission's staff has prepared a final Environmental Impact Statement ("FEIS"). 4/ The environmental impacts associ-

-
- 1/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations 18 C.F.R. §375.308 (1983). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, (47 Fed. Reg. 19014 promulgating 18 C.F.R. §385.1902, See FERC Statutes and Regulations §29,502). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application action for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.
- 2/ The Gem State Project No. 2952 is located on the Snake River in a stretch of the river found navigable by the Commission See Idaho Power Company, 14 FPC 52 (Aug. 4, 1955).
- 3/ The Shoeshone-Bannock Tribes had filed a protest in this proceeding, but later withdrew it, stating that it was filed by mistake. See March 22, 1982 letter to Chief Applications Branch, Federal Energy Regulatory Commission.
- 4/ FERC/EIS - 0034, Gem State Project No. 2952 - Idaho, Final Environmental Impact Statement, (Issued Apr. 1983).

MICROFILMED

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ated with construction, operation, and maintenance of the project have been fully considered, after reviewing the FEIS and all other relevant materials in the record. Taking into account the anticipated environmental impacts of the project and mitigation measures thereof, it is concluded that approval of the City's proposed Gem State development is in the public interest.

PROJECT DESCRIPTION AND OPERATION

A. Project Description

The proposed Gem State Project would be located on the Snake River at river mile 789.76 approximately 5.5 miles southwest of the City of Idaho Falls in Bonneville and Bingham Counties, Idaho. The proposed project will consist of: (1) a proposed 4,300-foot-long, 40-foot-high earthfill dam, impounding a reservoir with a storage capacity of 5,000 acre-feet and a surface area of 305 acres; (2) a four-bay spillway; (3) a 3,300-foot-long power canal; (4) a powerhouse containing one generating unit with an installed capacity of 22.3 MW; (5) a 1,080-foot-long tailrace; (6) a 7,300-foot-long dike, upstream from the spillway on the right bank, and a 10,400-foot-long dike, upstream from the powerhouse on the left bank; (7) improvements to two existing access roads; and (8) a 3.75-mile-long, 44-KV transmission line from the powerhouse to the City's West Side substation. 5/

B. Operation

The proposed Gem State Project would be operated as a run-of-river plant. Flows less than the powerplant's ~~minimum~~ **capacity of 1,500 cubic feet per second** (cfs) would be discharged by the spillway. The need for a long-term minimum flow release will be determined after consultation with appropriate Federal and State agencies, as specified in Article 46.

JURISDICTION

The project would be located on a navigable waterway of the United States and would affect 3.13 acres of United States lands administered by the Bureau of Land Management. Accordingly, Section 23(b) of the Act requires that the project be licensed.

SAFETY AND ADEQUACY

The earthfill dikes and dam would be similar in construction, consisting of an impervious silt core protected on the downstream side by a two-zone filter system comprised of an 8-foot-wide sand

5/ A more detailed project description is contained in ordering paragraph (B).

filter and a gravel shell. A gravel shell would protect the upstream side of the core. A slurry cutoff wall at least 3 feet wide would extend from the impervious core through the overburden to bedrock.

Since the dikes would line the river banks for a distance in excess of 7,300 feet, surface drainage would be prevented from running into the river. The Applicant proposes to construct a drainage ditch along the toe of the dikes and bury 3-foot-diameter drain pipe in the overburden beneath the toe of the dikes to accommodate the drainage. The geology of the project site may present a number of operational and construction problems. During the formation of the bedrock of the region, the lava (basalt) flowed over layers of silt, covering the older underlying beds of lava creating inner beds of silt. Additionally, sink holes through the formation were formed due to the uneven flow of lava. The basalt is also columnar and vertically jointed, providing for greater movement of groundwater. This project will create about 44 feet of hydraulic head and may have a significant effect on reservoir water losses and the ground water tables of the area.

The Applicant has conducted a preliminary subsurface investigation in the area originally proposed for the location of the powerhouse and power canal. The investigation revealed that an inner bed of silt of varying thickness existed, requiring the Applicant to relocate the powerhouse approximately 350 feet downstream where the inner bed of silt was found to be one foot thick.

The inner bed of silt extends under the spillway and may cause some problems for the post tensioning of the radial gate piers, and may result in cost overruns as had been the case with the Applicant's Idaho Falls Project (FERC Project No. 2842).

The Probable Maximum Flood ("PMF") has not been calculated for the project site nor has the hazard classification been determined. A preliminary assessment indicates the hazard will be either significant or high. The spillway would be designed to pass all flood flows up to the PMF unless it can be demonstrated that failure of the dam during flood flows would not result in loss of life or significant property damage.

These concerns have been evaluated and it appears that, although the project poses design considerations which have not been completely addressed or resolved at this time, these problems can be remedied by the application of sound engineering principles and theories. Because the design of the project structures is preliminary and adequate only for cost estimating and planning purposes, additional conditions are included in this license to insure that the final design of the project

is safe and adequate. Specifically, Article 42 requires the license to retain a board of independent engineering consultants to review the design, specifications and construction of the project for overall safety and adequacy, inter alia:

(1) possible foundation problems in the basalt bedrock;
(2) potential groundwater problems; (3) length of earthfill dam and dikes and slurry cutoff wall; (4) lack of PMF determination; and (5) possible inadequate spillway capacity.

Additionally, Article 43 requires the licensee to submit, for approval, the final design drawings and supporting design report which shall include the findings and recommendations of the board of consultants. Particularly in view of the design considerations that are posed, no project construction may commence until these drawings and report are approved.

NEED FOR POWER

The Gem State Project will utilize a renewable resource, providing 10 MW of firm capacity and capable of generating an average annual energy output of approximately 125,100 MWH. The project power, which represents a moderate portion of the Applicant's needs, 6/ will be used to supply customers within the Applicant's system, and may be sold to outside cutomers. 7/

The Applicant and Bonneville Power Administration ("BPA") have entered into a long-term power sales agreement, which provides that the Applicant as a preference customer will be entitled to receive up to 100 percent of its energy needs. 8/

6/ In 1979, the Applicant's total power requirements amounted to approximately 442,100 MWH, with a peak demand of 102 MW. It is projected that by 1986 the Applicant's power requirements will increase more than forty percent, totaling about 620,200 MWH. See FEIS p. 1-2.

7/ See footnotes 16 and 17, infra.

8/ Presently, the BPA supplies all of the Applicant's energy needs. This includes the power from the Applicant's Idaho Falls Project that has been sold to BPA. However, under the terms of the power sales agreement, BPA may reduce the Applicant's load requirements during a regional curtailment if the Applicant's load growth exceeds the amount of resources which has been dedicated to meet its needs. This reduction, however, would not occur if the Applicant had planned for such curtailments by bringing new generating plants on line to offset the increased load growth. See Section 11(b)(4) of Amendatory Agreement to Contract No. DE-MS79-81BP90447, dtd. June 3, 1982 between BPA and the Applicant.

As discussed in the FEIS 9/ the need for the power was evaluated on a regional basis. Staff, while recognizing that the region is presently experiencing an energy surplus, determined that the additional capacity generated by this project nevertheless would be needed in the early 1990's. 10/ However, that does not mean that there is no need for the project until that time. The Gem State Project would provide a reliable power source owned and controlled by the Applicant to meet increasing load requirements of the Applicant's electrical system. 11/ It would reduce the Applicant's reliance on BPA power to meet its needs. 12/ The project would also provide a hedge against delays experienced in bringing new generating plants on line to meet future capacity needs. As noted in the Northwest Power Planning Council's Plan, there will be a need for additional power over the 1981-2002 period, ranging from 2,310 average annual MW for the low growth scenario to 10,721 average annual MW for the high growth scenario. 13/ In examining the region's needs, the Council concluded that the most cost-effective resources that could be added to the existing power system within that period were conservation and hydropower. The presence of the Gem State Project, which would comprise less than .06 percent of the region's electric resource capabilities, thus could be used to meet the Council's forecasted energy needs as well. 14/ Accordingly, it is concluded that the power from the Gem State Project is needed.

9/ See FEIS pp. 1-1 - 1-3.

10/ Since the issuance of the FEIS, the Northwest Power Planning Council ("NPPC") published its final report, projecting energy surpluses beyond the period projected in the FEIS. These projections, however, largely assumed that the Washington Public Power Supply System ("WPPSS") nuclear projects 1,2 and 3 would be completed on schedule and that unprecedented conservation measures would be undertaken. Since the timely construction of these projects is now in doubt and since it is too early for an evaluation of the conservation measures, it is believed that the projection is not sufficiently conservative to be the sole basis for planning new generation.

11/ See footnote 6, supra.

12/ See footnote 8 supra.

13/ See Northwest Conservation and Electric Power Plan p. 4-2 (Apr. 27, 1983).

14/ See FEIS p. 1-4.

ECONOMIC FEASIBILITY

The energy generated from this project would represent a savings of approximately 205,200 barrels of oil or 57,900 tons of coal annually. The value of project power was based on the costs of a coal-fired, steam electric plant, which was found to be the most economically feasible non-hydroelectric alternative source of energy for the Applicant's system. The findings revealed that the equivalent power from the coal-fired alternative would cost approximately 50 percent more than the power from the Gem State Project. Similarly, these findings indicated that the Gem State Hydroelectric alternative design would cost approximately 25 percent more than the Gem State Project as well. 15/

The Applicant has signed a letter of intent 16/ with the Utah Power and Light Company ("UP&L") for the purchase of 25 percent 17/ of the annual power generated by the project. Generally, the terms of this letter provide that UP&L will pay 25 percent of the project's cost and will reimburse the Applicant up to an amount equal to five percent of these costs to cover the financial risk in undertaking the project. Therefore, it is concluded that the Gem State project is economically feasible and should be licensed.

ENVIRONMENTAL CONSIDERATIONS

The comments made by the Federal, State and local agencies, as well as other commenters are incorporated in the FEIS, the significant concerns of which are addressed below.

A. Minimum Flows

The Applicant has proposed to operate the Gem State Project in a run-of-river mode, providing a minimum flow release of 20 cfs at the proposed dam for maintenance of downstream aquatic habitat. Operation of the Gem State Project during

15/ See FEIS pp. 1-15, 1-24 and 1-25.

16/ See Letter dtd. April 7, 1982 from UP&L to Mayor, Idaho Falls, Idaho.

17/ More recently, the Applicant has advised staff that UP&L has expressed an interest in purchasing a larger share of the project's power. Since negotiations have just begun, a final decision has not been reached on the terms of the agreement.

nonspill conditions (approximately 75 percent of the time), would result in the following: (1) a 4,000-foot-long backwater reach of the Snake River between the proposed dam and tailrace; and (2) a 100 to 300-foot-long dewatered reach between the toe-of-the-dam and the backwater reach, which would be subject to the Applicant's proposed 20 cfs minimum flow.

The U. S. Fish and Wildlife Service ("FWS") and the U. S. Environmental Protection Agency ("EPA") expressed concern about the Applicant's minimum flow proposal, noting that: (1) the backwater reach had the potential for stagnation and resultant degradation of water quality; and (2) the proposed 20 cfs minimum flow release was not adequate to maintain aquatic habitat in portions of the dewatered reach.

The provisions of a memorandum of agreement between the Applicant and the Idaho Department of Fish and Game ("IDFG") would require the Applicant to establish a water quality monitoring program in the backwater reach and to determine the minimum flow requirements for water quality maintenance. A minimum flow requirement for the dewatered reach was not made a condition of the agreement by IDFG because of the short length of the reach involved.

Staff has evaluated the proposal for monitoring the water quality of the backwater reach. Based on this evaluation, it is concluded that the proposal is appropriate in order to determine the need for specific measures to ensure the maintenance of state water quality standards. Therefore, Article 45 is included to require water quality monitoring. However, in light of the fact that the FWS and IDFG maintain different positions concerning what instream flow, if any, should be established in the dewatered reach, it is concluded that the establishment of a flow regime at this time would be premature. Accordingly, Article 46 requires the Applicant to undertake studies necessary to determine the instream flow needs, if any, for the 100 to 300-foot-long dewatered river reach.

B. Water Quality

Section 401 of the Clean Water Act requires water quality certification for federally authorized activities that include construction or operation of facilities that may result in any discharge into navigable waters. That section also provides that, if the certifying state agency does not act on a request for certification within a reasonable time (which shall not exceed one year) after receipt, the certification requirement shall be waived with respect to Federal authorization.

The Applicant had applied to the Idaho Development of Health and Welfare ("IDHW") for water quality certification on June 30, 1981. To date the IDHW has not acted on the Applicant's request. Accordingly, it is concluded that the certification requirements have been waived.

The EPA has informed 18/ the Commission of a potential hazardous waste problem within the project reach of the Snake River, which was unknown to EPA at the time it commented on the draft environmental impact statement. The 1976 failure of the Grand Teton Dam, upstream from the Gem State Project, reportedly had resulted in containerized pesticides and other toxicants being washed into the Snake River. EPA believes the containers and their contents would be considered hazardous waste under the Resource Conservation and Recovery Act of 1976.

EPA further believes that the containers could be located in the river within the project area. Consequently, EPA has recommended that, for the protection of the water quality of the Snake River, the Applicant should: (1) survey the river bottom to assure that no hazardous waste containers exist in or near the project construction site; and (2) prior to any sediment disturbance activity, sample the sediments to determine the presence of hazardous materials. EPA's concerns have been evaluated and it is determined that the presence of hazardous wastes should be determined prior to construction. Therefore, Article 47 provides for the testing for hazardous wastes in the Gem State Project river reach.

Construction of the project would involve extensive excavation and earth moving, particularly for the 40-foot-high, 4,300-foot-long earthfill dam and the 3.4 miles of dike. These activities would occur in, or immediately adjacent to, the Snake River. The Applicant has not, however, advanced a specific plan for mitigating erosion, sedimentation, and soil mass movement.

Therefore, Article 48 requires the Licensee to prepare, prior to the commencement of construction and after consultation with the FWS, Bureau of Land Management (BLM), Soil Conservation Service (SCS), and the IDFG, a detailed erosion, sedimentation, and slope stability control plan for all areas affected by projected construction, operation, and maintenance.

18/ Letter dated June 20, 1983

C. Fishery Resources

The movement, recruitment, and size of fish populations in the Snake River would be altered due to construction and operation of the proposed project. The project dam would present a barrier to upstream and downstream movement, thus reducing the number of fish that move between the Gem State Project site and the base of the City of Idaho Falls' Lower Power Plant. Diversion of water from the Snake River into the project powerhouse would result in entrainment of fish and, subsequently, some mortality associated with passage through the turbines and draft tube. In addition, altered hydraulic parameters, including depth and velocity, above and below the dam would likely contribute to a reduction in populations of trout and whitefish, and increased numbers of nongame fish.

Staff's analysis of the Applicant's proposal indicates that the minimum flow (20 cfs) may not be sufficient to prevent increases in water temperature and decreases in levels of dissolved oxygen. Further the analysis shows that violations of state water quality standards for temperature and dissolved oxygen, which would adversely affect fish growth and survival, may occur downstream of the dewatered area during project operation. Therefore, the temperature and dissolved oxygen monitoring and instream flow studies required under Article 45, and implementation of appropriate minimum flows pursuant to Article 46, would ensure that any water quality degradation would be of short duration. Consequently, it is concluded that impacts due to degraded water quality on fish populations downstream of the dewatered area below the project dam are not expected to be significant during project operation.

An Environmental Mitigation Plan, filed on June 3, 1983, as a supplement to the Exhibit E - "Report on Fish, Wildlife; and Botanical Resources," proposes mitigative measures for each of the fishery issues identified above. The Fish Mitigation Plan to be financed by the Applicant, provides for the stocking of 6,000 hatchery-reared rainbow trout per year, and specifies size of fish, stocking times, frequency, location, and duration of the stocking program. The plan would adequately mitigate project-related impacts to the fishery resources. The supplement to the Exhibit E, entitled, "Environmental Mitigation Plan-FISH," is therefore approved herein.

D. Wildlife and Botanical Resources

Approximately 55 acres of riparian vegetation would be lost or altered due to the construction and operation of the proposed project. The loss of food, cover, and nesting and den sites for associated wildlife would also result from the project. This would include habitat for four to seven pairs of Canada geese.

The provisions of a memorandum of agreement between the Applicant and the IDFG would require the Applicant, for riparian mitigation purposes, to: (1) replace up to a maximum of 43.9 acres of riparian habitat; (2) monitor the quality of 10.3 acres of existing riparian vegetation between the spillway and powerhouse and replace the vegetation if significant changes occur to the riparian vegetation; (3) replace lost wildlife habitat of a greater value at a ratio greater than 1 to 1; and (4) purchase and preserve existing riparian habitat.

Staff has reviewed this agreement and believes that it appears reasonable, except that the agreement did not provide for: a schedule implementing the plan; the location or number of acres to be purchased; the specific methods to be used in replacing riparian vegetation within the project boundary; and consultation with all the concerned agencies. In addition the goose island mitigation, which is proposed in the Exhibit E, could be used in calculating the number of acres of riparian habitat, although the Applicant did not specifically mention it in the Supplement to its Exhibit E.

Therefore, Article 49, requires the Licensee to consult with IDFG, BLM, FWS, and SCS, to finalize the riparian habitat and goose island mitigation proposal and develop a mitigation plan for wildlife and botanical resources for the Gem State Project.

No known Federally listed endangered or threatened Species would be affected by this project.

Recreation

The City of Idaho Falls has a long range plan for developing a greenbelt on both sides of the Snake River. This plan, when implemented, would be compatible with the BLM long-range proposal for a hike-bicycle-horseback-trail along the river.

The Idaho Department of Parks and Recreation (IDPR) expressed concern about the: (1) potential boating hazards from submerged objects that would exist in the reservoir; (2) location of the swimming area; (3) location of parking lots and facilities; and (4) need for a reservoir zoning plan for the designation of areas of specific water activity, including boating operations.

Similary, the U. S. Department of Interior ("DOI") commented about the need for a zoning plan in the reservoir in order to insure that the recreational use potential of the reservoir was completely developed.

The Applicant has indicated a willingness to work with appropriate authorities to finalize a revised recreation plan for the Gem State Project. Therefore, Article 50 is included which would require the Licensee to consult with BLM, IDPR,

and the National Park Service, as appropriate, to finalize the revised recreational proposal and develop a revised Report on Recreation Resources for the Gem State Project.

Cultural Resources

The project would have an impact on portions of the historic Woodville Canal and the Snake River Valley Canal, properties potentially eligible for the National Register of Historic Places. These impacts can be mitigated with the implementation of the components of a cultural resources management plan if carried out prior to any construction that would affect these properties. Staff has requested an eligibility determination for the Woodville Canal and the Snake River Canal from the Secretary of Interior. The Advisory Council on Historic Preservation has submitted its comments. Therefore, Article 51 is included to require the implementation of the cultural resources management plan.

OTHER ENVIRONMENTAL CONSIDERATIONS

Acting pursuant to Section 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. §839 et seq., the Northwest Power Planning Council ("NPPC") developed the Columbia River Basin Fish and Wildlife Program ("Program") to protect, mitigate, and enhance fish and wildlife resources in the Columbia River Basin associated with the development of hydroelectric projects. This program contains a framework for assessing the impacts of new hydroelectric development on fish and wildlife resources and lists a number of general mitigative measures that should be implemented for any new development.

The Program requires that fish and wildlife agencies, the Indian Tribes and NPPC be consulted during the study, design, construction and operation of new hydroelectric projects. The Commission's regulations currently require applicants to initiate pre-filing consultation with these entities, and gives them the postfiling opportunity to review and comment on the license application. The consultation process has occurred.

The Program states that authorization for new hydroelectric projects should include conditions of development that would mitigate project impacts on fish and wildlife resources. Development of the Gem State Project would result in adverse impacts on fish and wildlife resources due to the impoundment of approximately 24,000 feet of the free-flowing river, inundation of approximately 24,000 feet of land abutting the Snake River, dewatering of about 300 feet of the river, blockage of fish migration and loss of about 55 acres of riparian habitat.

The Applicant, however, has proposed measures to mitigate these impacts, and has signed an agreement with IDFG, implementing many of these measures. Further, license articles are included herein that require additional mitigation, and thus satisfy the intent of the Program that adequate mitigation be provided. Moreover, Article 53 reserves to the Commission the authority to order, where practical, alterations of project structures and operations in order to take into account NPPC's Fish and Wildlife Program. Accordingly, it is concluded that the proposed project does not appear to conflict with applicable provisions of the NPPC's Fish and Wildlife Program.

OTHER ASPECTS OF COMPREHENSIVE DEVELOPMENT

The planning Status Report for the Upper Snake River Basin shows no other planned or proposed projects in the vicinity that would affect or be affected by the Gem State Project. It is concluded that, subject to the terms and conditions provided herein, the Gem State Project would be best adapted to the comprehensive development of the Upper Snake River Basin for the improvement and utilization of water power development and for other beneficial public uses, including recreational purposes.

It is ordered that:

(A) This license is issued to the City of Idaho Falls, Idaho (Licensee), under Part I of the Federal Power Act (Act), for a period of 50 years, effective the first day of the month in which this order is issued, for the construction, operation, and maintenance of the Gem State Project No. 2952, located in the Counties of Bingham and Bonneville, Idaho, on the Snake River, a navigable waterway of the United States, and occupying lands of the United States administered by the Bureau of Land Management. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Gem State Project No. 2952 consists of:

(1) All lands, to the extent of the Licensee's interests in those lands, constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by certain exhibits that form part of the application for license and that are designated and described as:

<u>Exhibit G</u>	<u>FERC No. 2952-</u>	<u>Titled</u>
G-1	1	Location Map
G-2, Sheet 1	2	Detail Project Map
G-2, Sheet 2	3	Detail Project Map
G-2, Sheet 3	4	Detail Project Map
G-2, Sheet 4	5	Detail Project Map

<u>Exhibit G</u>	<u>FERC No. 2952-</u>	<u>Titled</u>
G-2, Sheet 5	6	Detail Project Map
G-2, Sheet 6	7	Detail Project Map
G-2, Sheet 7	8	Detail Project Map
G-3, Sheet 1	9	Detail Property Map
G-3, Sheet 2	10	Detail Property Map
G-3, Sheet 3	11	Detail Property Map
G-3, Sheet 4	12	Detail Property Map
G-3, Sheet 5	13	Detail Property Map
G-3, Sheet 6	14	Detail Property Map
G-3, Sheet 7	15	Detail Property Map

(2) Project works consisting of:

(a) a 40-foot-high, 4,300-foot-long earthfill dam; (b) a 305-acre reservoir with a storage capacity of 5,000 acre-feet at the normal pool elevation of 4,655 feet NGVD; (c) a four-bay spillway, each bay 40 feet-wide and 32 feet high; (d) a 3,300-foot-long power canal, narrowing in width from 620 feet to 200 feet; (e) a 172 foot by 42.5- foot powerhouse containing one generating unit with an installed capacity of 22.3 MW; (f) a 1,080-foot-long, 170-foot-wide tailrace; (g) a 7,300-foot-long dike upstream from the spillway on the right bank and a 10,400-foot-long dike upstream from the powerhouse on the left bank; (h) two access roads; (i) a 3.75-mile-long, 44-kV transmission line from the powerhouse to the City's Westside substation; and (j) appurtenant facilities.

The location, nature, and character of these project works are generally shown and described by the exhibits cited above and more specifically shown and described by certain other exhibits that also form a part of the application for license and that are designated and described as:

Exhibit A

Section 3, pages A-6 and A-7, entitled "Turbines and Generators;" Section 4, pages A-7 and A-8, entitled "Primary Transmission lines;" and Section 5, pages A-8 and A-9, entitled "Appurtenant Mechanical, Electrical, and Transmission Equipment".

<u>Exhibit</u>	<u>FERC No. 2952-</u>	<u>Showing</u>
F-1	16	Spillway Plan and Sections
F-2	17	Right and Left Bank Dike Profiles and Sections
F-3	18	Power Canal Dike and Access Road Profile and Sections
F-4	19	Powerhouse Plan and Sections
F-5	20	Tailrace and Tailrace Dike Profiles and Sections

<u>Exhibit</u>	<u>FERC No. 2952-</u>	<u>Showing</u>
F-6	21	Hwy. 26 Bridge Plan and Profile
F-7	22	Bascul Gate Plan and Sections
F-8	23	Woodville Canal Irrigation Company Intake Structure Plan and Sections
F-9	24	Snake River Valley Irrigation Company Intake Structure Plan and Section

Exhibit E

Gem State Hydroelectric Project Plan for Environmental Mitigation-FISH (Supplement to application filed June 3, 1983 Attachment 1).

(3) All of the structures, fixtures, equipment, or facilities used or useful in the operation or maintenance of the project and located within the project boundary, all portable property that may be employed in connection with the project, located within or outside the project boundary, as approved by the Commission, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) Exhibits A, E, F, and G, showing the preliminary design outlay of the project, designated in ordering paragraph (B) above, are approved and made a part of the license.

(D) This license is also subject to the terms and conditions set forth in Form L-6, (revised October, 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States" attached to and made a part of this license. The license is also subject to the following additional articles:

Article 38. The Licensee shall, within 90 days of completion of construction file, for approval by the Director, Office of Electric Power Regulation, revised Exhibits F, G, and A to describe the project as-built.

Article 39. The Licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the Licensee shall file with the Commission's Regional Engineer and Director, Office of Electric Power Regulation, one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 40. The Licensee shall commence construction of the the project works within two years from the issuance date of the license and shall complete construction of the project within five years from the issuance date of the license.

Article 41. The Licensee shall file with the Commission's Regional Engineer and the Director, Office of Electric Power Regulation, one copy each of the contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse and water conveyance structures, at least 60 days prior to the start of construction. The Director, Office of Electric Power Regulation, may require changes in the plans and specifications to assure a safe and adequate project.

Article 42. The Licensee shall retain a Board of three or more qualified, independent, engineering consultants to review the design, specifications and construction of the project for safety and adequacy. The names and qualifications of the Board members shall be submitted to the Director, Office of Electric Power Regulation for approval, with a copy to the Commission's Regional Engineer. Among other things, the Board shall assess the geology of the project site and surroundings, including the basalt bedrock, and groundwater problems; the design, specifications, and construction of the dams, spillway, powerhouse, electrical and mechanical equipment, and emergency power supply; instrumentation; the filling schedule for the reservoir and plans for surveillance during the initial filling; PMF determination; and construction procedures and progress. The Licensee shall furnish to the Board, with a copy to the Regional Engineer and two copies to the Director, Office of Electric Power Regulation prior to each meeting, allowing sufficient time for review, documentation showing details and analyses of design and construction features to be discussed, significant events in design and construction that have occurred since the last Board of Consultants meeting, drawings, questions to be asked, a list of items for discussion, an agenda, and a statement indicating the specific level of review to be performed by the Board. Within 30 days after each Board of Consultants meeting, the Licensee shall submit to the Commission copies of the Board's report and a statement of intent to comply with the Board's recommendations, or a statement identifying a plan to resolve the issue(s). In the event of noncompliance, the Licensee shall provide detailed reasons for not doing so. The Board's review comments for each portion of the project shall be submitted prior to, or simultaneously with, the submission of the corresponding Exhibit F final design drawings and design memoranda. The Licensee shall also submit a final report of the Board upon completion of the project. The final report shall contain a statement indicating the Board's opinion with respect to the construction, safety, and adequacy of the project structure(s).

Article 43. The Licensee shall file revised Exhibit F drawings showing the final design of the project structures for approval by the Director, Office of Electric Power Regulation. The revised Exhibit F drawings shall be filed at least 60 days prior to start of construction and shall be accompanied by a supporting design report. The Licensee shall not commence construction of any project structure until the revised Exhibit F therefore has been approved.

Article 44. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and to ensure compliance with the covenants of the instrument of conveyance for any interests that it has conveyed under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time where said facility is intended to serve single-family type dwellings; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls,

the Licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

(d) The Licensee may convey fee titles to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational

resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Electric Power Regulation, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

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

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

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

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

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

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

Article 45. The Licensee shall, after consultation with the U. S. Environmental Protection Agency, the U. S. Fish and Wildlife Service and the Idaho Department of Fish and Game, develop a plan for monitoring dissolved oxygen and water temperature in the backwater reach of the Snake River between the project dam and tailrace. Within 4 months from the date of issuance of this license, the Licensee shall file the monitoring plan with the Commission for approval. Documentation of agency consultation shall be included in the filing. Copies of the monitoring plan shall also be filed with the agencies consulted.

The Licensee shall conduct water quality monitoring according to the plan approved by the Commission. Monitoring results shall be maintained by the Licensee and provided to the agencies consulted and the Commission in the form of annual data summaries, filed within 3 months after the completion of each annual cycle. Data summaries shall include observed daily minimum, maximum and average dissolved oxygen concentrations and water temperature levels. Should the results contained in any annual summary indicate that changes in project structures or operations are necessary to maintain State water quality standards, the Licensee shall, within 6 months after the date of annual summary submission, file with the Commission for approval, with copies to the agencies consulted, recommendations for necessary project modifications, and a schedule implementing the specific changes in project structures or operations. Documentation of agency consultation on the project modifications and schedule shall be included in the filing.

Article 46. The Licensee shall, after consultation with the U. S. Fish and Wildlife Service and the Idaho Department of Fish and Game, conduct studies as needed, to determine the minimum flow releases necessary for the protection and enhancement of aquatic resources immediately downstream from the project dam. Further, the Licensee shall, within 1 year following the date of issuance of this license, file a report on the results of the studies, with copies to the consulted agencies, and, for Commission approval, any necessary minimum flow recommendations. Documentation of agency consultation on the report and recommendations shall be included in the filing. ::

Article 47. The Licensee shall, after consultation with the U. S. Environmental Protection Agency and the Idaho Department of Health and Welfare, and prior to any sediment disturbing activity, survey the Snake River bottom in the project construction area, to ensure that no containers of hazardous materials exist, and sample the bottom sediments to determine whether detectable levels of hazardous materials are present. The results of the surveys and sampling shall be provided to the consulted agencies.

Should the results of the survey or sampling indicate the need for hazardous material removal, the Licensee shall in cooperation with the consulted agencies develop a removal plan, to be filed with the Commission, for approval. Hazardous material removal, if needed, shall be completed prior to any project construction or operation related sediment disturbing activity.

Article 48. The Licensee, after consultation with the U. S. Fish and Wildlife Service, Bureau of Land Management, and Soil Conservation Service, and the Idaho Department of Fish and Game, shall prepare and file with the Commission's Regional Engineer in Fort Worth, Texas, and the Director, Office of Electric Power Regulation, at least 60 days prior to any ground disturbing activity at the Gem State Project, a detailed plan to control erosion, dust, and slope stability and to minimize the quantity of inorganic sediment or other potential water pollutants resulting from construction and operation of project facilities. This plan shall include an implementation schedule, monitoring and maintenance programs for the project construction and operation, and a summary and evidence of agency consultation. The Director, Office of Electric Power Regulation, may require changes in the plan to minimize dust, erosion sedimentation, water pollution, or slope stability problems.

Article 49. The Licensee, after consultation with the Idaho Department of Fish and Game, U. S. Fish and Wildlife Service, Bureau of Land Management, and Soil Conservation Service, shall prepare and file for Commission approval, within 1 year from the date of issuance of this license, a mitigation plan (Plan) for wildlife and botanical resources. The Plan shall include, but not be limited to: a schedule of implementation; the location and number of acres of riparian habitat to be acquired outside the project boundary; number of acres and location of the riparian habitat, including the goose nesting islands to be replaced within the project boundary; and specific construction and maintenance techniques to be used for on-site mitigation of riparian habitat. Documentation of agency consultation on the report and recommendations shall be included in the filing.

Article 50. The Licensee shall, after consultation with the Bureau of Land Management, ("BLM") the National Park Service, and the Idaho Department of Parks and Recreational (IDPR), prepare a revised Report on Recreation Resources for Project No. 2952, which shall include, but not be limited to: (1)

the location of appropriate facilities to be developed for Recreational Sites, A, G, and H, as designated in the application, filed September 11, 1981; (2) a plan for removal of rock outcroppings and submerged features that could pose a boating hazard; (3) the location and type of markers to warn boaters of hazardous areas that would remain within the project reservoir; (4) compatible treatment of the shoreline greenbelt and BLM river trail; (5) a schedule for the development, operation, and maintenance of the proposed recreational facilities; and (5) copies of any letters received from consulted agencies and any agreement entered into for the development and operation of the project recreation facilities. Further, the Licensee shall coordinate with IDPR in the preparation of a reservoir zoning plan that would designate areas for specific recreational uses. Further, the Licensee shall, within 1 year from the date of issuance of this license, file with the Commission a copy of the zoning plan for the project reservoir, and for approval, the revised Report on Recreational Resources.

Article 51. The Licensee shall, prior to the initiation of any construction that will impact the historic Woodville Canal and the Snake River Valley Canal, and after consultation with the Idaho State Historic Preservation Officer (SHPO) and the Historic American Engineering Record (HAER) of the U. S. Department of the Interior, implement a cultural resources management plan to avoid and mitigate impacts to these properties. The plan shall consist of the following: (1) documentation of the impact areas of the canals according to the standards of the HAER, and (2) filing of copies of any existing engineering drawings or photographs of these facilities with the SHPO. A report documenting the mitigation, and its acceptance in writing by the SHPO and HAER, shall be filed with the Commission at least 60 days prior to any construction at the project that would impact the significant historical attributes of these canals. The Licensee shall make available funds in a reasonable amount for any such work as required.

If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO to develop a mitigation plan for the protection of significant archeological or historical resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

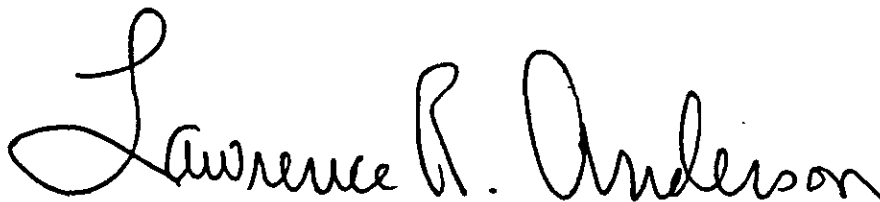
Article 52. The Licensee shall pay the United States the following annual charges effective the first day of the month in which this license is issued:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 29,700 horsepower.

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 3.13 acres of its lands other than for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 53. The Commission reserves the authority to order, upon its own motion or upon the recommendation of Federal or State fish and wildlife agencies or affected Indian Tribes, alterations of project structures and operations to take into account to the fullest extent practicable at each stage of the decision-making process the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

(E) The Licensee's failure to file a petition appealing this this order to the Commission shall constitute acceptance of this license. In acknowledgement of acceptance of this license and its terms and conditions, it shall be signed by the licensee and returned to the Commission within 60 days from the date of this order.



Lawrence R. Anderson
Director, Office of Electric
Power Regulation

PROJECT NO. 2952-001

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, the City of Idaho Falls this _____ day of _____, 19____, has caused its name to be signed hereto by _____ its _____ Mayor, and its seal to be affixed hereto and attested by _____ its _____ Secretary, pursuant to a resolution of its City Council duly adopted on the _____ day of _____ 19____, a certified copy of the record of which is attached hereto.

By _____
Mayor

Attest:

Secretary

(Executed in quadruplicate)

MICROFILMED

99.23

CONVERSATION MEMORANDUM

DATE June 12, 1985

FILE 01-7051

NAME OF PARTY Steve Dunn, Attorney for Utah
Power and Light Co.

EMPLOYEE Dave Tuthill *DT*

RE: Additional Requirements for Approval of Permit

On this day, Mr. Dunn inquired regarding additional requirements of the Department for the approval of the above-referenced Application for Permit. Mr. Dunn indicated that the city of Idaho Falls and Utah Power and Light Company had come to an agreement concerning development of the Gem Hydroelectric Plant, and they intend to use both Water Right No. 01-7018, an approved permit for 5000 cfs, and Water Right No. 01-7051, an application for 3000 cfs, to provide an adequate flow for the plant.

Based on a review of the files for each of the two water rights, I returned Mr. Dunn's call to indicate that although I could not at this time provide an exhaustive list of what requirements the Department will have prior to the approval of the application, submittal of the following four items would serve to initiate our review:

1. A copy of the Agreement between the City of Idaho Falls and Utah Power and Light Company concerning development of the power plant.
2. Current information regarding the status of the FERC filing with respect to the Gem project.
3. Documentation that 8000 cfs is required, as opposed to the 7000 cfs which was anticipated at the time of our correspondence in file No. 01-7051 dated November 29, 1982.
4. The reasons, if any, for approval of the Application for Permit now rather than waiting for approval by FERC of a license.

Mr. Dunn indicated that he would proceed with obtaining and sending to this office the required information.

MICROFILMED

November 29, 1982

City of Idaho Falls
c/o G. S. Harrison
P. O. Box 220
Idaho Falls, ID 83401

Gentlemen:

Re: Permit No. 01-7018

You were recently issued water right Permit No. 01-7018 for the use of 5,000 cfs of water from the Snake River for the generation of power.

The design of your project is based upon the diversion of 7,000 cfs of water. The additional 2,000 cfs was to be obtained thru negotiations with Utah Power and Light Company for the use of their Application No. 01-7051.

We are presently delaying final action on Utah Power and Light's Application No. 01-7051 pending the completion of your negotiations and the assignment of the application, if that is necessary. However, since the design of your project was dependent upon a flow of 7,000 cfs and our approval of your water right permit on a project of that magnitude, you should obtain the additional 2,000 cfs of water as quickly as possible.

If you have any questions concerning this matter, please let us know.

Sincerely,

A. KENNETH DUNN
Director

cc: Kent Foster
Utah Power and Light Co.
bcc: Ron Carlson
File 01-7051

MICROFILMED

RECEIVED

SEP 8 1981

UTAH POWER & LIGHT COMPANY

LEGAL OFFICES

SIDNEY G. BAUCOM
EXECUTIVE VICE PRESIDENT
AND
GENERAL COUNSEL

ROBERT GORDON
VICE PRESIDENT
535-4256

VERL R. TOPHAM
ASSOCIATE GENERAL COUNSEL
535-4259

THOMAS W. FORSGREN
535-4261

SAM F. CHAMBERLAIN
535-4265

P. O. BOX 899
SALT LAKE CITY, UTAH 84110

August 25, 1981

Department of Water Resources

RALPH L. JERMAN
535-4263
ROSEMARY RICHARDSON
535-4263

HELEN J. EDWARDS
535-4255

DAVID LLOYD
535-2885

MARY STIRK
LEGAL ASSISTANT
535-4256

STEVE D. WHITE
CLAIMS SPECIALIST
535-4027

*No response
required at this time.
9-4-81*

Det

Mr. David R. Tuthill, Jr., P.E.
Supervisor, Water Allocation Section
Department of Water Resources
State of Idaho
Statehouse
Boise, Idaho 83720

Re: Application for Permit #01-7051

Dear Mr. Tuthill:

I am taking this opportunity to confirm our conversation of this date in which I indicated that Utah Power & Light Company is very much interested in the continued consideration by the Department of Water Resources of the Company's application for the subject permit. As I indicated to you, the Company is not in a position at the present time to pursue a FERC permit inasmuch as a Preliminary Permit for the proposed project was granted to the City of Idaho Falls on March 25, 1980 (Project No. 2952). The Preliminary Permit, by law, extends for a thirty-six month period commencing on the first day of the month in which the permit was issued.

As you are probably aware, Utah Power & Light is the owner in fee of the lands upon which the proposed hydroelectric facility would be constructed and, as I stated, the Company is very much interested in developing the site individually or jointly with the City of Idaho Falls.

If you have questions regarding this matter, please contact me at your convenience.

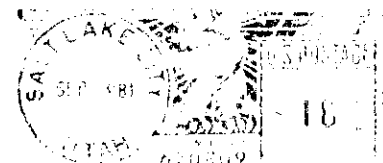
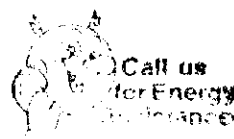
Very truly yours,

Thomas W. Forsgren
THOMAS W. FORSGREN

TWF:ckb

MICROFILMED

UTAH POWER & LIGHT COMPANY
P. O. BOX 899
SALT LAKE CITY, UTAH 84110



MICROFILMED

Mr. David R. Tuthill, Jr., P.E.
Supervisor, Water Allocation Section
Department of Water Resources
State of Idaho
Statehouse
Boise, Idaho 83720

Copy



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

01-7051

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., P. E.
Supervisor, Water Allocation Section

DRT:jg

Enclosure

MICROFILMED

November 4, 1980

Utah Power & Light Company
P.O. Box 899
Salt Lake City, Utah 84110

RE: Application For Permit No. 01-7051

Gentlemen:

We have completed a preliminary review of the above referenced application. This review has included advertising by the regional office and a verification that all required preliminary information has been provided.

At this time we see no reason that the application will not be approved. However, for power projects that are under the jurisdiction of the Federal Energy Regulatory Commission (FERC) and/or the Idaho Public Utilities Commission, we withhold final action on the application pending approval by those agencies.

Our review of this application indicates that approval for the project will be required from both FERC and PUC. The continued validity of the application is contingent on your proceeding with due diligence toward obtaining approval from each agency.

Please keep this office informed of progress in this regard.

Sincerely,

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

DRT:jg

MICROFILMED

State of Idaho
Department of Water Resources

801

01 7051

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: jc
CHECK:

APPLICATION NUMBER: W.P. + L.C. company
01-7051

- ☒ Source.
☒ Point of diversion.
☒ County.
☒ Quantity of water and period of use.
☒ Description of diverting works.
☒ Time required for beneficial use of water.
☒ Place of use or acres irrigated. NWSE 16
☒ 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. Copies sent by: _____ Date: _____
☐ Idaho Fish and Game Department. _____
☐ Idaho Department of Lands. _____
☐ U.S. Bureau of Land Management. _____
☐ U.S. Forest Service. _____
☒ Other Per water master 01 EW 4/21/80

PROCESSING:

- ☒ Yes ☐ No Platted by: jc Map No. Basin 25 Y 42
☐ Yes ☐ No Other rights on same place of use. then state site
☒ Yes ☐ No* In form for advertising.
☐ Yes ☒ No Final date for protests: May 12
☐ Yes ☒ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. Date: May 16, 1980.
☒ 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? 01
4/09/1980. Date of priority recommended.
Special conditions of approval or cover letter.
Condition Code 08A, 17, 18

MICROFILMED

AFFIDAVIT TO DO BUSINESS IN IDAHO SUBMITTED w/ OTHER WATER RIGHTS

By: Ernest Carlson. Date: May 21, 1980.

STATE OFFICE REVIEW: 08A 17K 18 05/01, Snake R

01 W09
☐ See attached sheet for more information.
By: Jmi

RECEIVED
6/2/85 05 1985

Department of Water Resources

WATERMASTER COMMENTS

I have reviewed application for permit No. 01-7051 and have
☒ (1) no objections to the approval of this permit.
☐ (2) the following objections to the approval of this permit:

5/4/80
DATE


RONALD D. CARLSON - WATERMASTER
WATER DISTRICT # 01

MICROFILMED

April 21, 1980

RE: Application for Permit No. 01-7051

Utah Power & Light Company
P. O. Box 899
Salt Lake City, UT 84110

Gentlemen:

Attached herewith is Departmental Receipt No. 13936 in the amount of \$1,925.00 for the above referenced application on the Snake River.

Sincerely,

KAY WALKER
Secretary

KW:k
Attachment

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

APRIL 17, 1980

The Post Register
P. O. Box 1800
Idaho Falls, Idaho 83401

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 MAY 12, 1980.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

MICROFILMED

NOTICE OF APPLICATION FOR WATER R 4T

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

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho 83401 on or before MAY 12, 1980.

C. STEPHEN ALLRED

Director

Published 4/24 & 5/1/80.

MICROFILMED

UTAH POWER & LIGHT COMP. /

P.O. BOX 899, SALT LAKE CITY, UT 84110

Source: SNAKE RIVER tributary to COLUMBIA RIVER

Date Filed: 04/09/1980

Amount: 3000.00 CFS 3000.0 AC-FT

Diversion Point: NWNW Sec 15 T 01N R 37E, BONNEVILLE Co.

Use: POWER	(3000.00 CFS)	from 01/01 to 12/31
POWER STORAGE	(3000.0 AC-FT)	from 01/01 to 12/31
POWER FROM STORAGE	(3000.0 AC-FT)	from 01/01 to 12/31

Place of Use: NWSE Sec 16 T 01N R 37E

Diversion Means: DIVERSION DAM, CANAL & HYDRO ELECTRIC PLANT.

MICROFILMED

UTAH POWER & LIGHT COMPANY

P. O. BOX 899
SALT LAKE CITY, UTAH 84110

LEGAL OFFICES
SIDNEY G. BAUCOM
SENIOR VICE PRESIDENT
AND
GENERAL COUNSEL
ROBERT GORDON
535-4258
THOMAS W. FORSGREN
535-4261
VERL R. TOPHAM
535-4259

SAM F. CHAMBERLAIN
535-4265
ROSEMARY RICHARDSON
535-4263
RALPH L. JERMAN
535-4253
HELEN J. EDWARDS
535-4255
MARY STIRK
LEGAL ASSISTANT
535-4256
STEVE D. WHITE
CLAIMS SPECIALIST
535-4027

April 2, 1980

Idaho Department of
Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Gentlemen:

Transmitted herewith for filing please find Utah Power & Light Company's Application for Permit to appropriate waters, as well as the Company's check in the amount of \$1,925.00 representing the filing fee.

If you have questions, or if the filing is not complete in any way, please contact us at your convenience.

Very truly yours,


THOMAS W. FORSGREN

TWF:ck

Encls.

MICROFILMED

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

[illegible]