



STATE OF IDAHO)

) ss.

COUNTY OF ADA )

Melise Madarick

Two

issue of September 29, 19 77, and ending with the  
issue of October 6, 19 77.

Melise Madarieta

Subscribed and sworn to before me this 6<sup>th</sup>

day of October, 1977.

Sarah E. Eguen  
Notary Public for Idaho, Resid

**NOTICE OF CORRECTION**

**NOTICE OF CORRECTION**  
Notice is hereby given that notice of Application for Permit No. 63-9019 in the name of BOISE PROJECT BOARD OF CONTROL was published in error on September 8 and 15, 1977.

The point of diversion was advertised as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  Sec 11 T2N-R3E B.M. Ada County. WHEREAS, the actual point of diversion is within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  Sec 11 T2N R3E B.M., Ada County.

Any protest against approval of this application must be filed with the Director of the Idaho Department of Water Resources, 92 S. Cole Road Boise, ID 83705, on or before October 17, 1977.

C. STEPHEN ALLRED,  
Director  
Pub. Sept. 29; Oct. 6, 1977

8553

RECEIVED  
OCT 7 1977  
Department of Water Resources  
Western Regional Office

REC'D



ALTERNATIVE #2

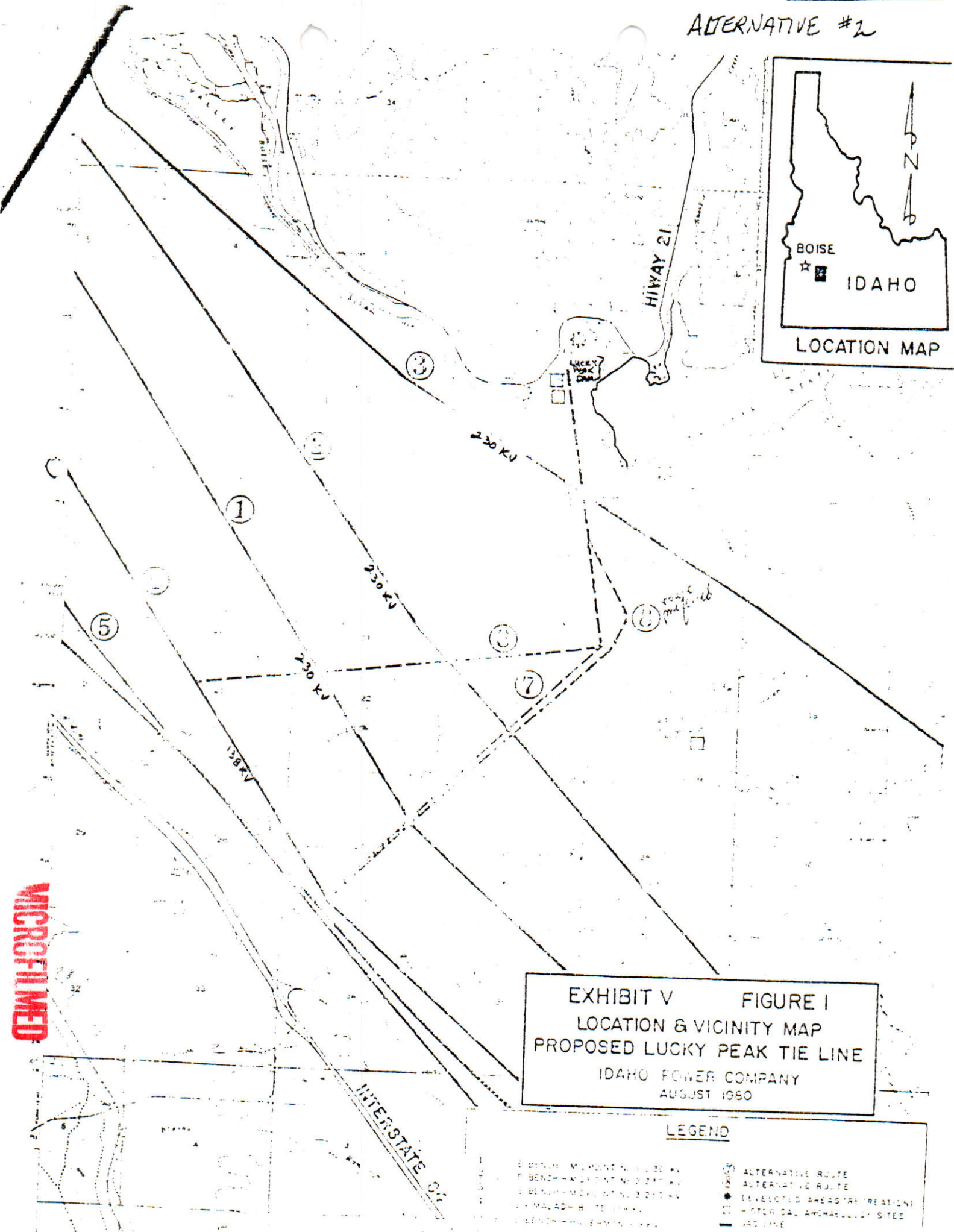
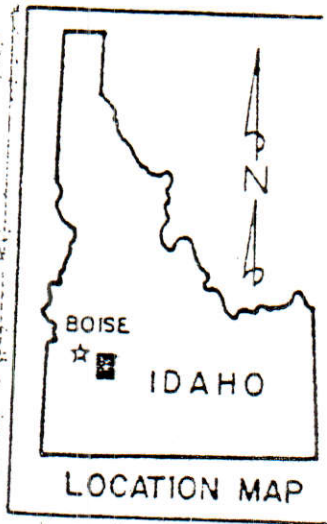


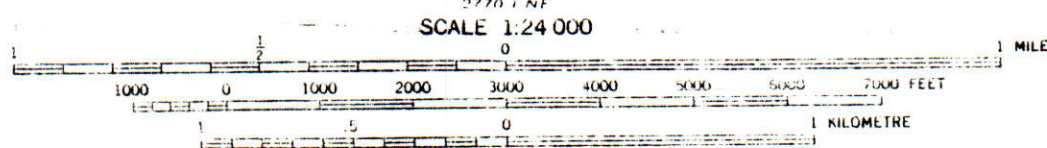
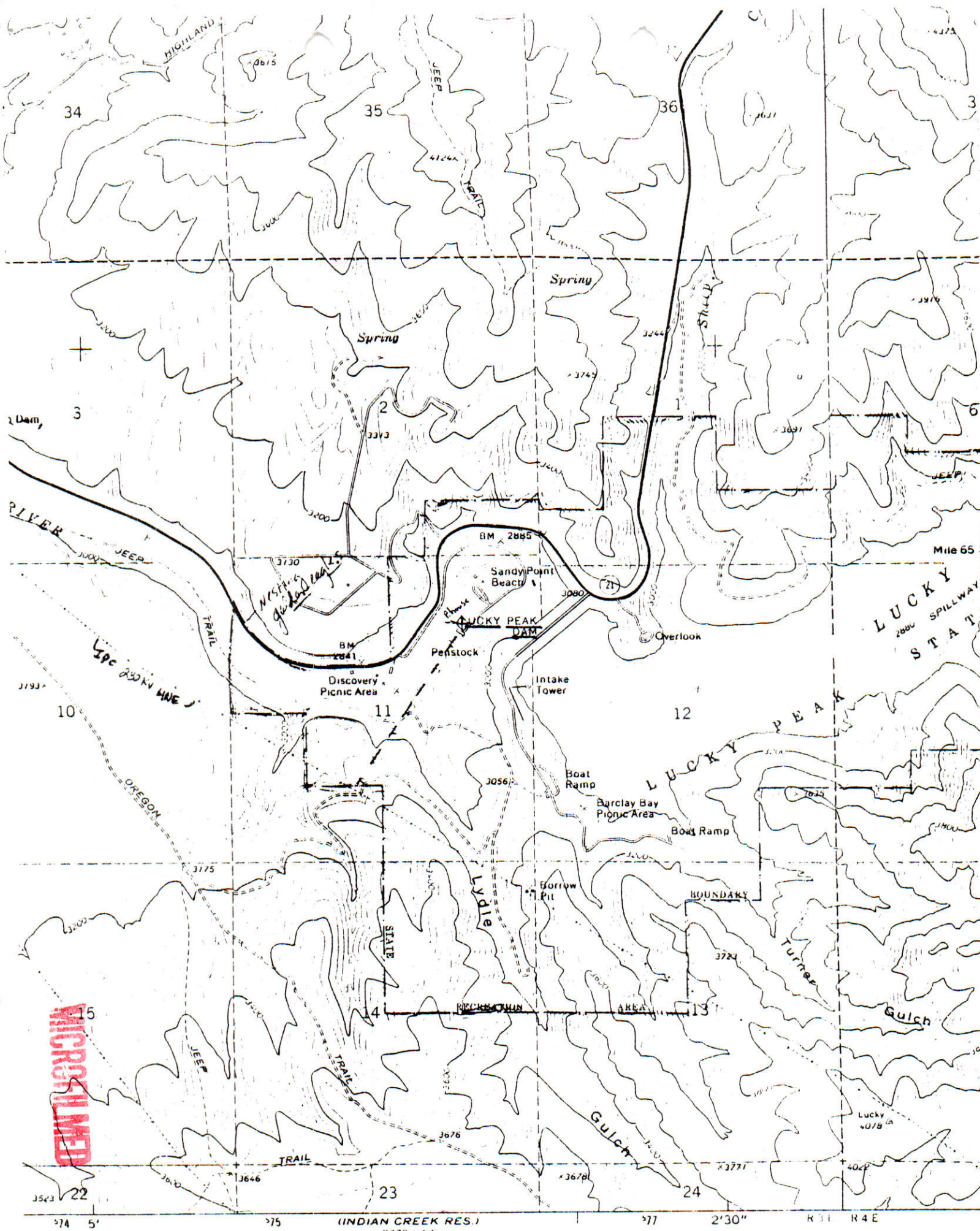
EXHIBIT V      FIGURE I  
LOCATION & VICINITY MAP  
PROPOSED LUCKY PEAK TIE LINE  
IDAHO POWER COMPANY  
AUGUST 1960

LEGEND

- |                                |                                |
|--------------------------------|--------------------------------|
| 1. BEND - MOUNTAIN VIEW 138 KV | 7. ALTERNATIVE ROUTE           |
| 2. BEND - MOUNTAIN VIEW 230 KV | 8. ALTERNATIVE ROUTE           |
| 3. BEND - MOUNTAIN VIEW 230 KV | 9. DEVELOPED AREA (RECREATION) |
| 4. MALAD - BUTTE 138 KV        | 10. HYDRO-ELECTRICITY SITE     |
| 5. BEND - MOUNTAIN VIEW 138 KV | 11. TIE LINE                   |

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CONTOUR INTERVAL 40 FEET  
DOTTED LINES REPRESENT 20-FOOT CONTOURS  
NATIONAL GEODETIC VERTICAL DATUM OF 1929

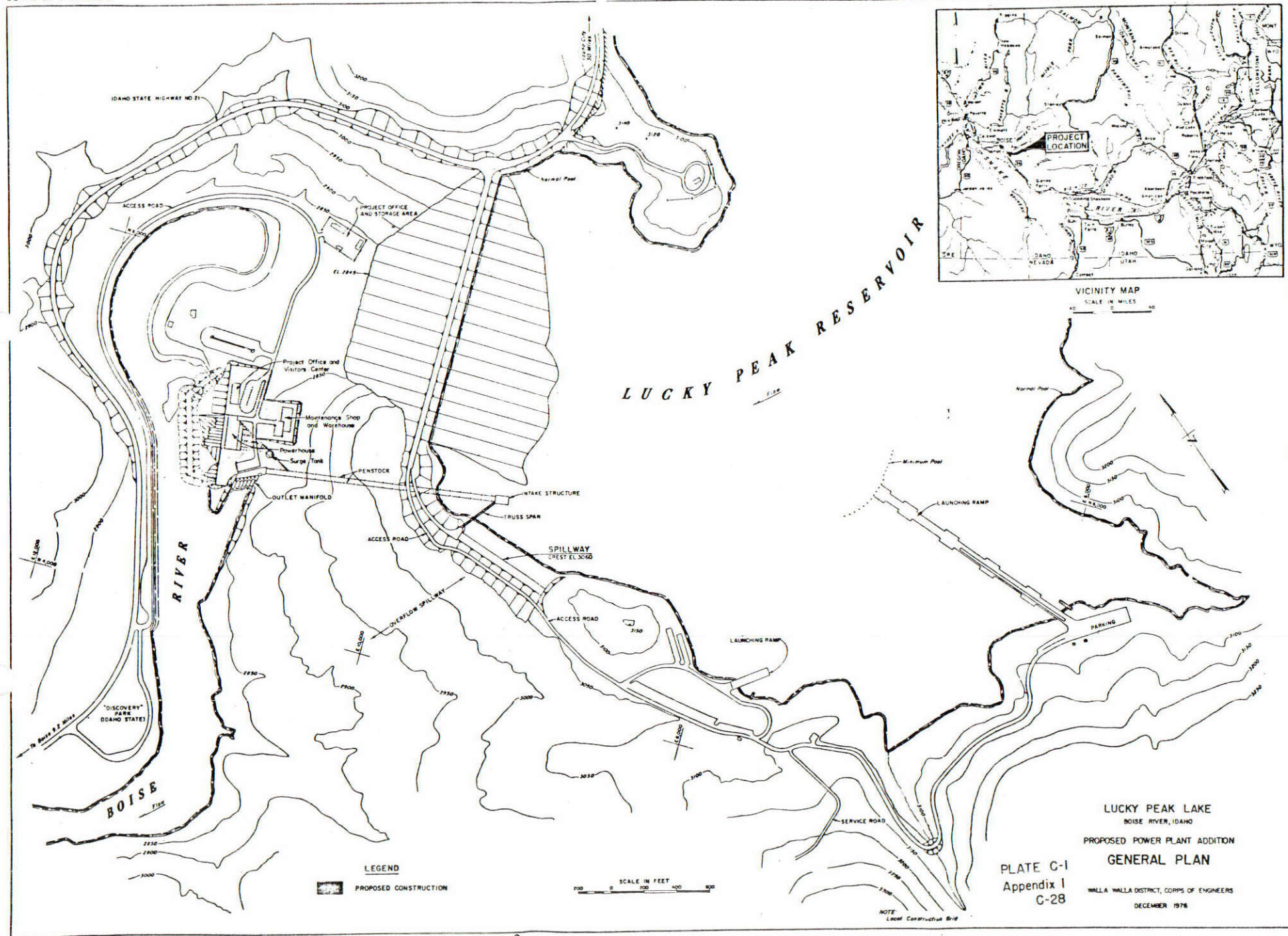
THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS  
FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR RESTON, VIRGINIA 22092  
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

SITE MAP - ALTERNATIVE #1.



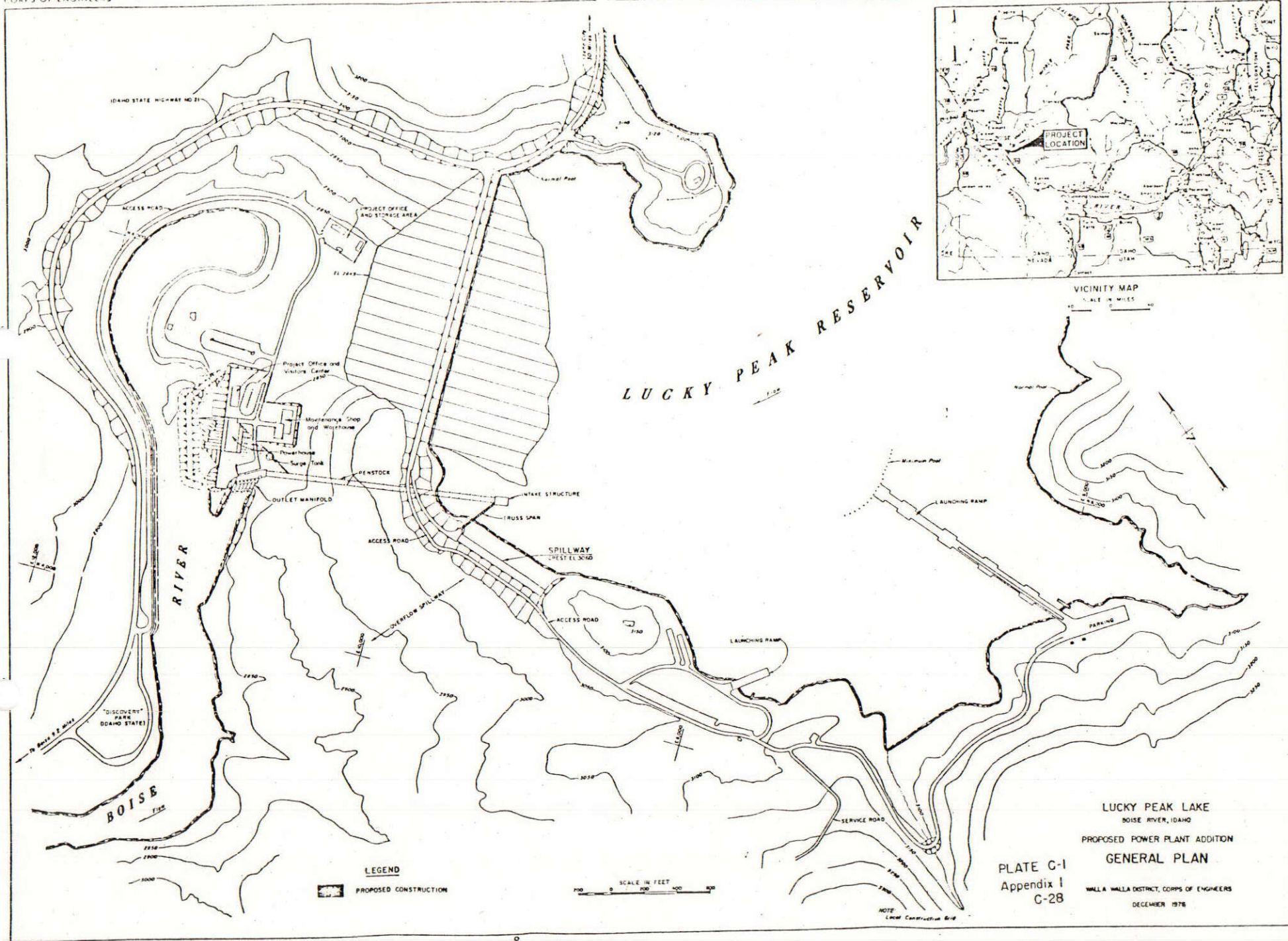
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# Photos taken during tour of Lucky Peak Hydropower Facilities - Dec 20, 1986

## Tour Members

Tom McCreedy - Proj Mgr (M-K)

Norm Young - IDWR

Scott Campbell - Atty for Pioneer

Randall Fredericks - Atty

Don Olowinski - Atty

Dave Tuthill - IDWR



1. View of main tunnel intake structure from alt tunnel intake structure

2. View looking down into Lucky Peak res from alt tunnel intake structure.

3. Gangway between alt tunnel intake structure & hillside.

4. View of powerhouse Const Area.

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**APR 04 1988**



Photos taken during tour of Lucky Peak Hydropower Facilities - Dec 20, 1986, cont



1. Tunnel bifurcation in foreground.



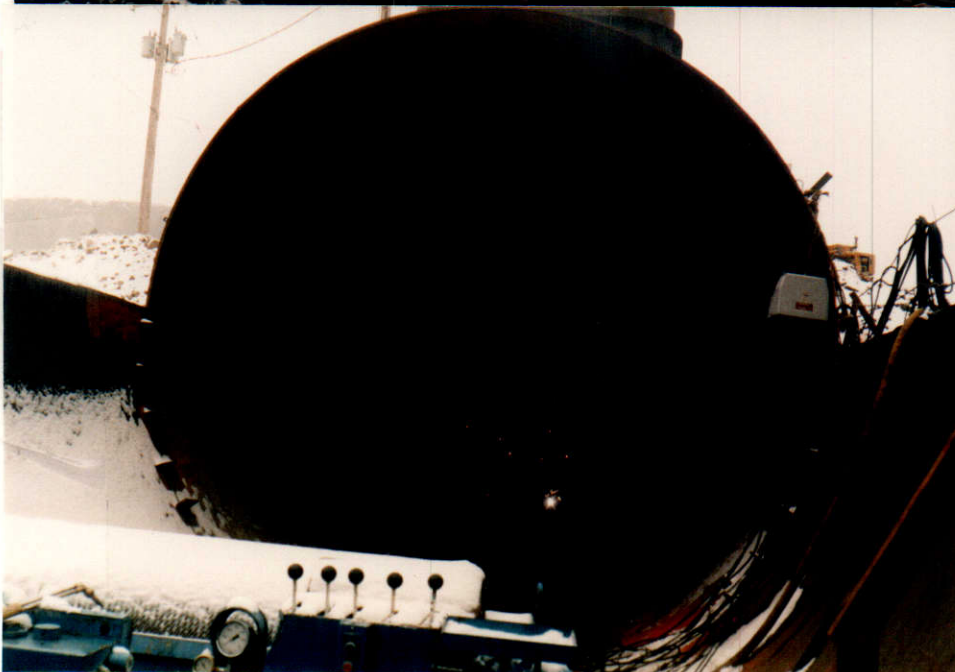
2. Outlet works

3. Outlet works

4. Fixed Crane



5. View of Bifurcation from downstream side.

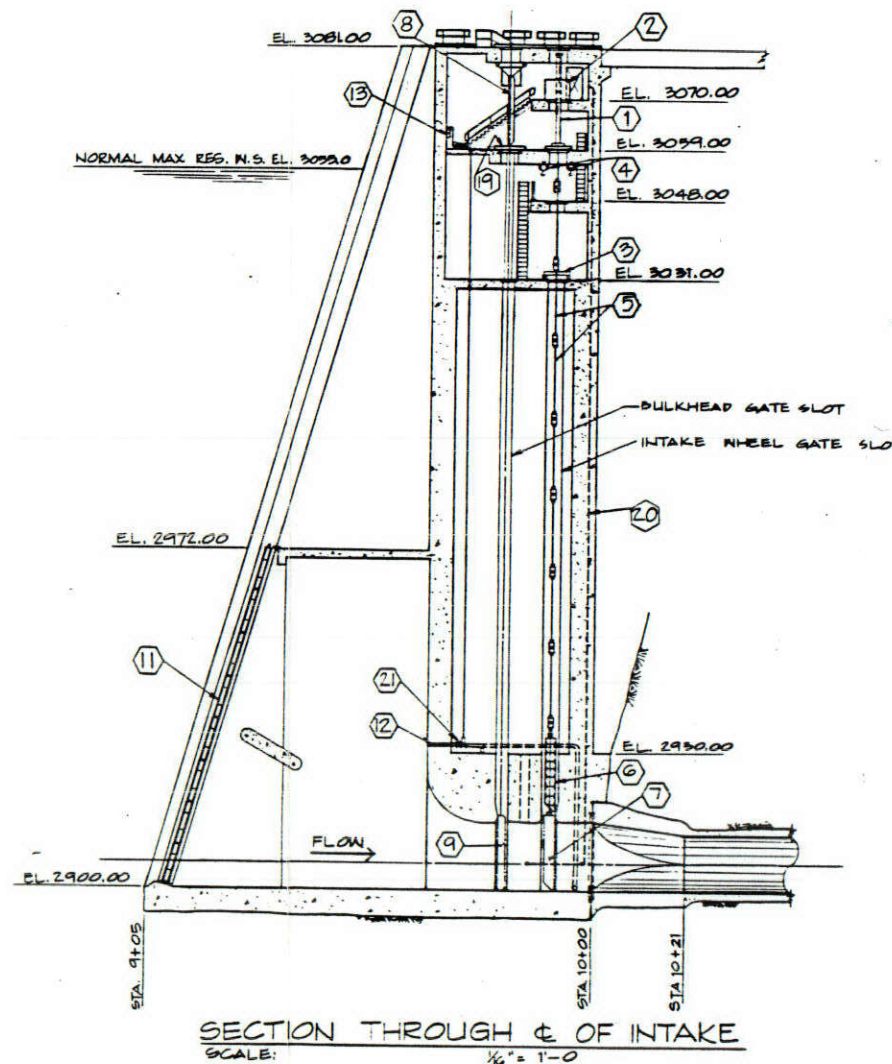
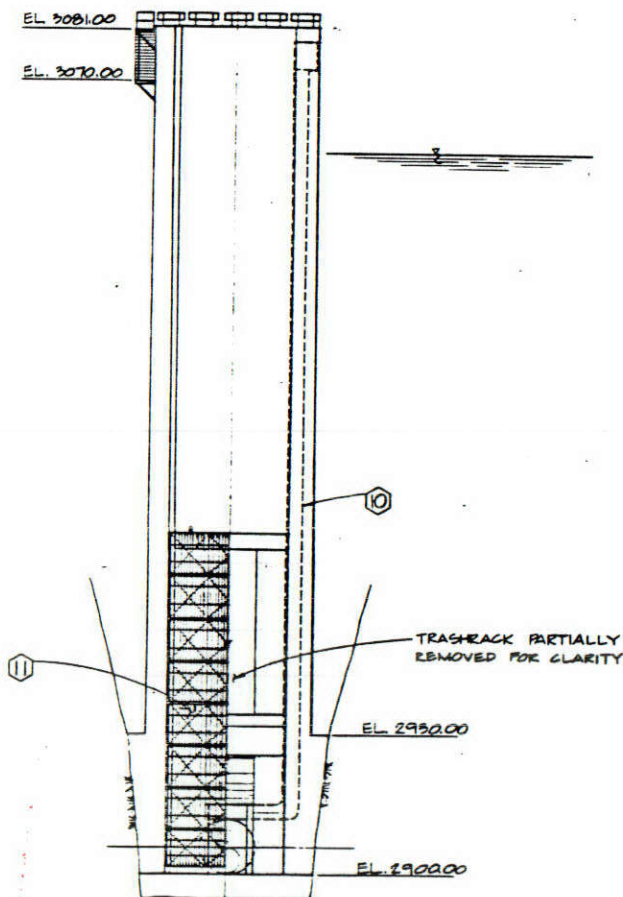
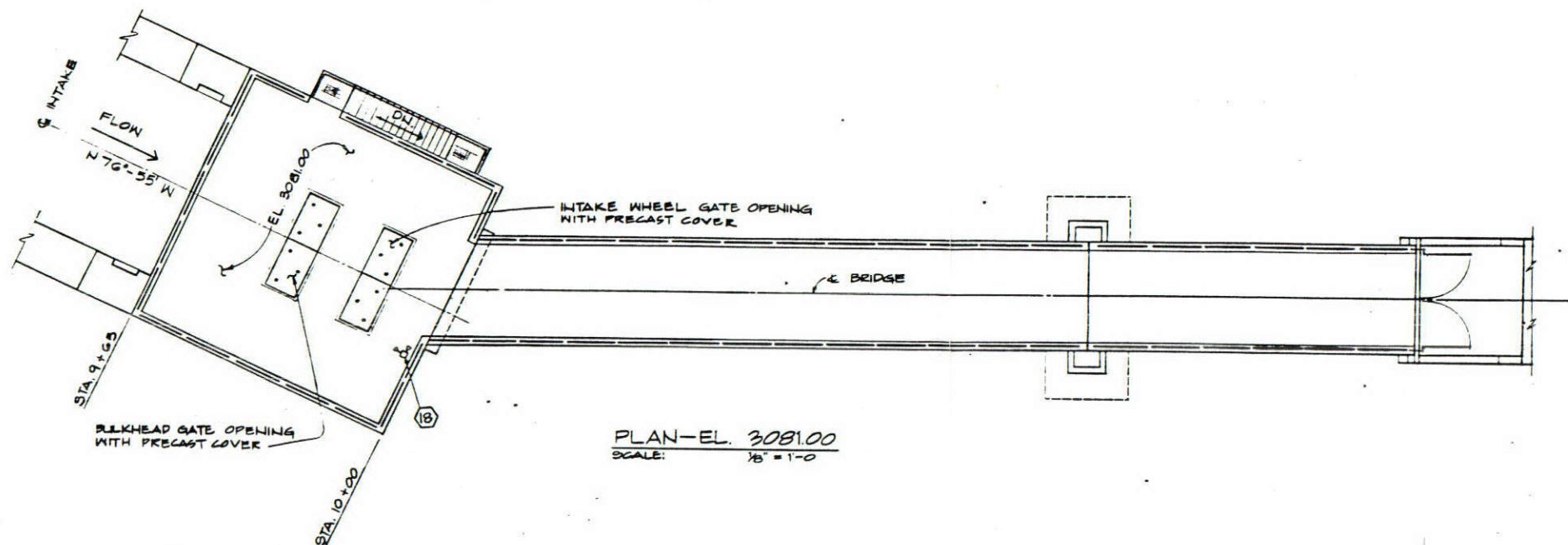


6. Outlet works

7. Outlet tunnel awaiting bifurcation structure.

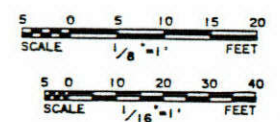
APR 04 1988





- | ITEM NO. | DESCRIPTION                                      |
|----------|--------------------------------------------------|
| 1        | HYDRAULIC CYLINDER HOIST                         |
| 2        | HYDRAULIC POWER UNIT                             |
| 3        | DOSSING DEVICE                                   |
| 4        | 2-TON TROLLEY HOISTS                             |
| 5        | GATE LINKS                                       |
| 6        | INTAKE GATE IN RAISED POSITION                   |
| 7        | INTAKE GATE IN CLOSED POSITION                   |
| 8        | BULKHEAD GATE IN STORED POSITION                 |
| 9        | BULKHEAD GATE IN CLOSED POSITION                 |
| 10       | AIR VENT (NIC)                                   |
| 11       | TRASHRACKS                                       |
| 12       | TUNNEL FILLING LINE (NIC)                        |
| 13       | FILLING VALVE POSITION INDICATOR UNIT (NIC)      |
| 14       | CONTROL CABINET                                  |
| 15       | HYDRAULIC HAND PUMP UNIT FOR FILLING VALVE (NIC) |
| 16       | LIGHTING PANEL LPIG (NIC)                        |
| 17       | 480VAC POWER PANEL (NIC)                         |
| 18       | LIGHTING STANDARD (NIC)                          |
| 19       | BULKHEAD GATE STORAGE BEAMS                      |
| 20       | BUBBLER SYSTEM AIR LINES (NIC)                   |
| 21       | GUARD AND FILLING VALVES (NIC)                   |

NOTE:  
 1. ITEMS 14, 15, 16 AND 17 ARE SHOWN ON DRAWING DC06  
 2. FOR DETAILS OF ITEMS 12, 13 AND 15 SEE MECHANICAL EQUIPMENT DRAWING EM05  
 3. NIC = NOT IN CONTRACT 4040 PC-3



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| REV | DATE     | BY  | APP | DESCRIPTION        |
|-----|----------|-----|-----|--------------------|
| 1   | 12/14/84 | WBC | WBC | APPENDIX NO. 1     |
| 2   | 12/14/84 | WBC | WBC | CONTRACT 4040 PC-3 |

CONSULTING ENGINEERS  
**INTERNATIONAL ENGINEERING COMPANY, INC.**  
 A HERRLICH-KOENIG COMPANY  
 180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105  
 DESIGNED: WBC/DRAW: GDC  
 DATE: 11/2/84  
 CHECKED: M  
 RECOMMENDED: M  
 APPROVED: M

ENDORSEMENTS  
 SIGNATURE DATE  
 CITY OF SEATTLE  
 CITY LIGHT DEPARTMENT  
 DATE: 11-5-84  
 C. J. Archy

LUCKY PEAK POWER PLANT PROJECT  
 BOISE-KUNA IRRIGATION DISTRICT  
 NAMPA & MERIDIAN IRRIGATION DISTRICT  
 WILDER IRRIGATION DISTRICT  
 THE BIG BEND IRRIGATION DISTRICT

DIVERSION AND OUTLET TUNNEL  
**INTAKE**  
**GENERAL ARRANGMENT**  
**PLAN, ELEVATION & SECTION**  
 IECO DWR. NO. 4040D-DC05  
 CLASS. C  
 DRAWING NO. D-24525  
 SCALE AS NOTED  
 REV. NO. 1





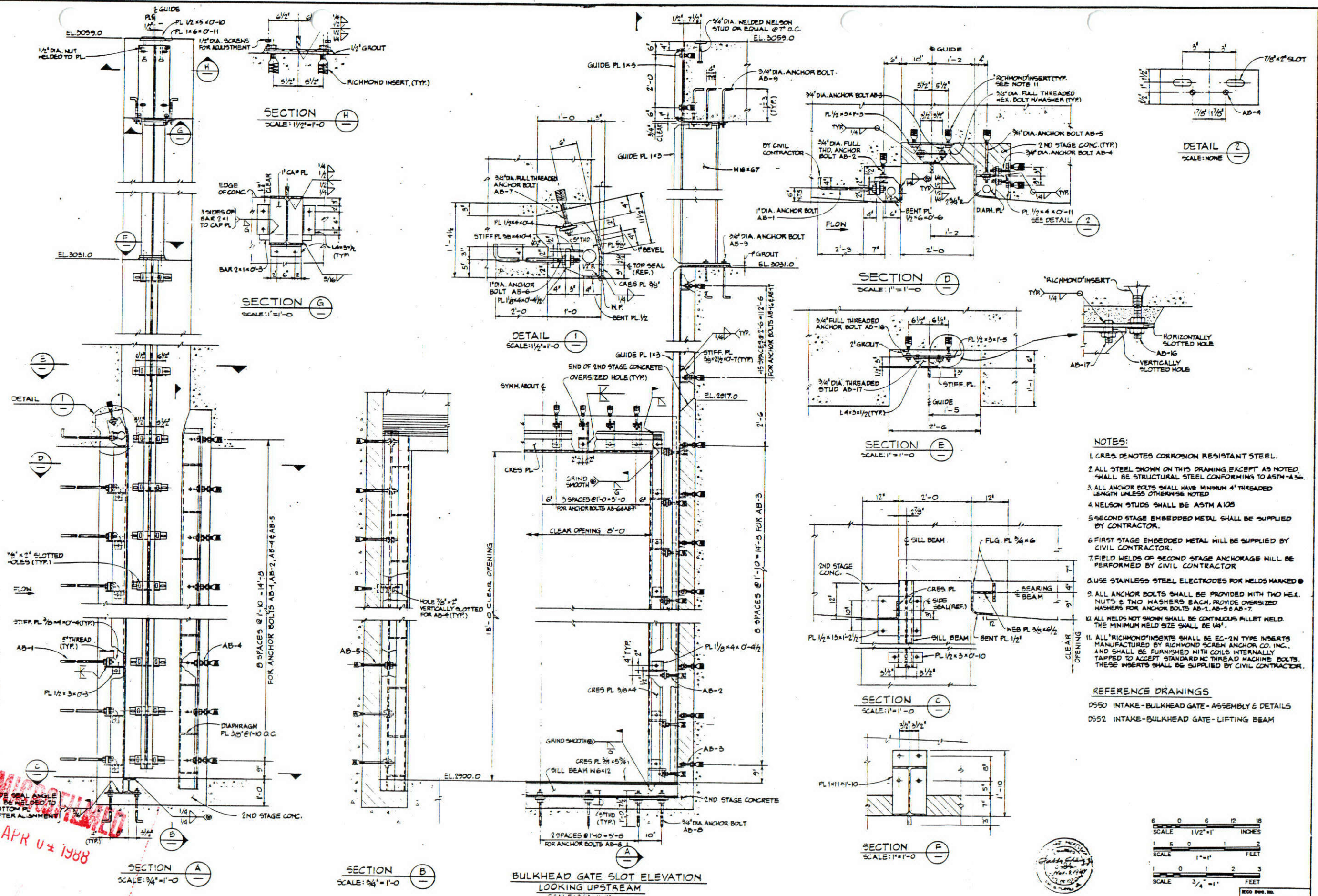




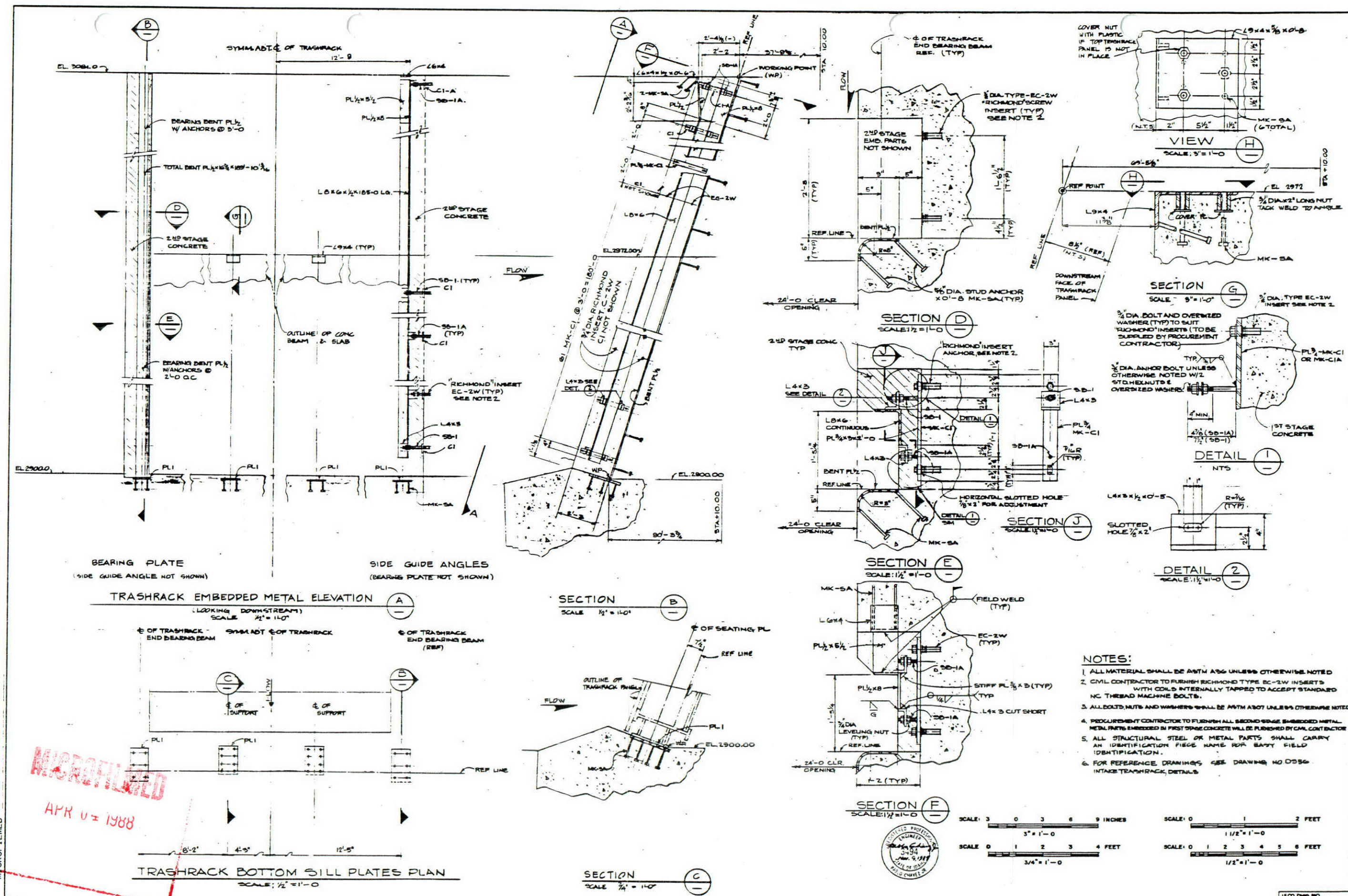












|                                                                                                                                                                   |  |                                                                                                                                                                                                                        |  |                                                                                                                                                                                                                                                                |  |                                                                                                                                        |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>REVISIONS</b><br>REV. DATE BY DESCRIPTION<br>1 11-2-84 JH REVISED TO USE RICHMOND ANCHOR TO SUIT FIELD REQUESTS<br>2 11-2-84 JH REVISED TO SUIT FIELD REQUESTS |  | CONSULTING ENGINEERS<br><b>INTERNATIONAL ENGINEERING COMPANY, INC.</b><br>180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105<br>DESIGNED BY: [Signature] DRAWN BY: [Signature] CHECKED BY: [Signature]<br>DATE: 4/2/84 |  | CITY OF SEATTLE<br><b>CITY LIGHT DEPARTMENT</b><br>LUCKY PEAK POWER PLANT PROJECT<br>BOISE-KUNA IRRIGATION DISTRICT<br>NAMPA & MERIDIAN IRRIGATION DISTRICT<br>WILDER IRRIGATION DISTRICT<br>THE BIG BEND IRRIGATION DISTRICT<br>DATE: 11-5-84 BY: [Signature] |  | DIVERSION AND OUTLET TUNNEL<br><b>INTAKE TRASHRACK EMBEDDED PARTS</b><br>CLASS: S<br>DRAWING NO. D-24588<br>SCALE: AS NOTED REV. NO. 1 |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------|--|



MEMORANDUM

TO: 63-09019 Folder 1

FROM: Vault

DATE: 5-3-2002

RE: Folders 2, 3, and 4.

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NOTE:

Please see Folders 2, 3,  
and 4 for additional  
information regarding  
water right 63-09019.



Identification No. \_\_\_\_\_

Application No. 63-9019

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

APPROVED

To Appropriate the Public Waters of the State of Idaho  
(TYPE OR PRINT IN INK)

1. Name of applicant Boise Project Board of Control Phone: 344-1141  
post office address 214 Broadway, Boise, Idaho 83702

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

3. a. Location of point of diversion is SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 11 Township 2N  
Range 3E B.M. Ada County; additional points of diversion if any: \_\_\_\_\_

b. If water is not consumed, it will be discharged into Boise River at a point in SW  $\frac{1}{4}$   
of NE  $\frac{1}{4}$  of Section 11 Township 2N Range 3E B.M. Ada County

4. Water will be used for the following purposes:

Amount 5,700 or Power purpose from 1-1 to 12-31 (both dates inclusive)  
(cfs or acre-feet per annum)

Amount \_\_\_\_\_ for \_\_\_\_\_ purpose from 11 to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)

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

5. Total quantity to be appropriated:

a. 5,700 cubic feet per second ~~XXXXX~~

b. ~~XXXXX~~

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. controlled reservoir  
discharge - to penstock - to hydro turbines.

b. Height of storage dam 340 feet, active reservoir capacity 278,200 acre feet; total reservoir  
capacity 306,000 acre feet, materials used in storage dam: rolled earth and gravel  
Period of year during which storage will occur January 15 to July 15 inclusive.  
(Mo. Day) (Mo. Day)

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

7. a. Time required for the completion of the works and application of the water to the proposed beneficial use  
is 5 years.

b. Estimated construction cost is \$40,450,000 select project \$48,400,000 alternative

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: SW  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 11 Township 2N  
Range 3E B.M.

(2) Amount of power to be generated: 462,645,000 115 median  
100,575 hp under 175 feet of head.  
per gallon w/ Otis Peterson 175 ft.

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

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

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

100,575: 75  
746

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[illegible]

Total number of acres to be irrigated\_\_\_\_\_

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- [illegible]

---

---

\_\_\_\_\_

\_\_\_\_\_

---

---

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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UNRECORDED



TOWNSHIP 2 North, Range 3 East, B.M., ADA COUNTY, IDAHO

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

Scale: 2 inches equal 1 mile

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

BOISE PROJECT BOARD OF CONTROL

By Clarence L. Sharrington  
(Applicant) Chairman

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Proposed Priority 8/31/77

MICROFILMED

Received by y Date 8-31-77 Time 1:50pm

Preliminary check by WMM Fee \$ 1,335.00

Receipted by y Date 8-31-77 # 8869

Publication prepared by y Date 9-2

Published in Idaho Statesman

Publication dates Sept 8 & 15

Publication approved y Date 10-17-77

Priority reduced to \_\_\_\_\_ Reason \_\_\_\_\_

Protests filed by: none

Copies of protests forwarded by \_\_\_\_\_

Hearing held by \_\_\_\_\_ Date \_\_\_\_\_

Recommended for approval denial by kw

#### ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 63-9019, 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 May 1, 19 89.

c. This permit is subject to delivery by the watermaster of Water District No. 63, Boise River.  
d. Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.

e. This permit does not convey any authority to require or demand the release of water but shall only be effective to allow generation of hydroelectricity using water released under existing rights and operating procedures for irrigation, flood control and fish and wildlife purposes.

f. The diversion and use of water under this permit and any license issued hereunder is subject to review by the Director on June 1, 2030. 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.

g. For licensing purposes, a scientific measurement of the diversion rate of the system as it is normally operated shall be provided by either properly installing an approved type of measuring device or access port or by having a professional engineer certify the rate of diversion to the department prior to submitting proof of beneficial use of water.

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

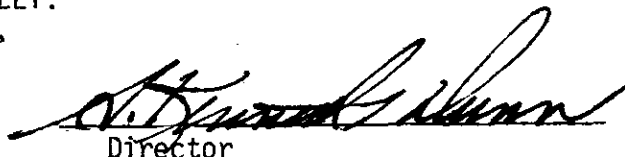
i. This permit is subject to the provisions of Section 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment or mortgage of this permit. Failure to comply with these provisions is cause for immediate cancellation of this permit.

j. Use of water under this permit is subordinated to future diversion of water for irrigation or other consumptive beneficial uses.

k. Structural modification to the dam and storage of water is contingent upon certification to the Department of Water Resources that plans and specifications have been reviewed and approved by the U.S. Army Corps of Engineers and that construction has proceeded in full compliance with the final approved plans.

SEE CONDITIONS l. and m. on ATTACHED SHEET.

Dated this 24th day of May, 1984.

  
Director



STATE OF IDAHO)

) ss.

COUNTY OF ADA )

Melvin Madaruta, 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 regular edition of The Idaho Statesman for

Two insertions, beginning with the issue of September 8, 1977, and ending with the issue of September 15, 1977.

Melvin Madaruta

Subscribed and sworn to before me this 15<sup>th</sup> day of September, 1977.

Roscoe E. Egan  
Notary Public for Idaho, Residing at Boise, Idaho

RECEIVED

SEP 20 1977

Department of Social Services  
Western Regional Office



Two insertions, beginning with the issue of September 29 1977, and ending with the issue of October 6, 1977.

Melvin Madanich  
Subscribed and sworn to before me this 6<sup>th</sup>  
day of October, 1977.

Notary Public for Idaho, Residing at Boise, Idaho

CONTINUED

RECEIVED  
OCT 10 1964  
DEPT. OF THE ARMY  
WASHINGTON, D.C.



ATTACHMENT

TO CONDITIONS OF APPROVAL  
For Permit No. 63-9019

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

m. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.

RECEIVED  
MAY 1 1964  
IDAHO DEPARTMENT OF WATER RESOURCES



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

MAY 02 1989

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

Department of Water Resources

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

Permit No. 63-9019

Name(s) of Permit Holder: Boise Project Board of Control, et al. (see attached)

Post Office Address: 2504 Kootenai Street, P. O. Box 677,

Boise, Idaho 83705 Telephone No. 344-1141 (Board of Control)

344-7063 (Lucky Peak Power Plant Project)

Date Proof Is Due: \_\_\_\_\_

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

Approximately  
Costing \$ \$70,000,000  
construction cost

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

See attached

Permit holder(s) request an extension to 1 May, 19 90. See attached  
(1 yr. minimum) (Signature)\*

FEE: \$15.00

\*IF OTHER THAN PERMIT HOLDER,  
POWER OF ATTORNEY MUST BE SUPPLIED.

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be APPROVED and the time within which to submit proof of beneficial use is extended to May 1, 1990.

Signed this 22<sup>nd</sup> day of May, 19 89.

J. M. Sinton  
Chief, Water Allocations Bureau

JUN 14 1989



**STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
REQUEST FOR EXTENSION OF TIME**

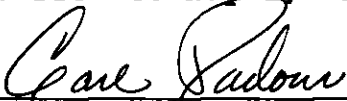
Permit No. 63-9019

**Name(s) of Permit Holder:** Boise Project Board of Control on behalf of the Boise-Kuna Irrigation District, the Nampa & Meridian Irrigation District, the New York Irrigation District, the Wilder Irrigation District and the Big Bend Irrigation District.

**Describe what work has been completed toward the development of this water right:** Construction of the Lucky Peak Power Plant Project was substantially completed and the Project went into commercial operation on October 1, 1988. Test power had been generated with available water since May 5, 1988. The largest flow recorded since that date is 6,600 cfs. The Districts will not be able to prove the full extent of beneficial use until higher flows occur in the spring and summer of 1989. The plant does, however, have the capacity to handle the amount requested on the permit.

The permit holder(s) has been unable to complete the remainder of the work for the following reasons: In order to complete construction of the Project, final testing must occur at full reservoir level and at flows greater than were available after July 1, 1988. Such conditions are not estimated to be available until July, 1989.

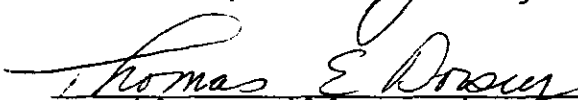
Permit holder(s) request an extension to May 1, 1990.

  
\_\_\_\_\_  
Manager, Boise Project Board of Control

  
\_\_\_\_\_  
President, Boise-Kuna Irrigation District

  
\_\_\_\_\_  
President, Nampa & Meridian Irrigation District

  
\_\_\_\_\_  
President, New York Irrigation District

  
\_\_\_\_\_  
President, Wilder Irrigation District

  
\_\_\_\_\_  
President, Big Bend Irrigation District

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JUN 14 1989

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

IN THE MATTER OF PETITION TO  
CANCEL PERMIT NO. 63-9019

PIONEER IRRIGATION DISTRICT,  
Petitioner,

vs.

BOISE PROJECT BOARD OF CONTROL,  
Respondent.

ORDER ADOPTING AMENDED  
PROPOSED MEMORANDUM  
DECISION AND ORDER

SOURCE: Boise River  
COUNTY: Ada

WHEREAS, R. Keith Higginson, Director of the Department of Water Resources having issued and served a copy on the parties on February 2, 1988, a Proposed Memorandum Decision and Order in the above-captioned matter, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, exceptions to the Proposed Memorandum Decision and Order have been received and considered by the director pursuant to §§ 65-5211 and 67-5212, Idaho Code; and

WHEREAS, the director has incorporated changes to the finding of facts in paragraphs 8, 9, 10, 11, 12, 14, 15 and 19, and to the conclusion of law in paragraph 23;

IT IS, THEREFORE, HEREBY ORDERED that said Amended Proposed

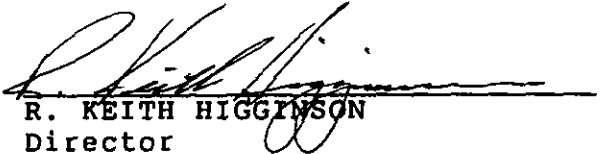
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APR 04 1988



Memorandum Decision and Order be adopted and issued as the Final Decision and Order.

DATED this 17 day of March, 1988.

  
R. KEITH HIGGINSON  
Director

**REPROFILMED**

APR 04 1988

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PETITION TO  
CANCEL PERMIT NO. 63-9019

AMENDED PROPOSED MEMORANDUM  
DECISION AND ORDER

PIONEER IRRIGATION DISTRICT

Petitioner,

vs.

BOISE PROJECT BOARD OF CONTROL

Respondent.

SOURCE: BOISE RIVER  
COUNTY: ADA

BY THE DIRECTOR

On August 31, 1977, the Boise Project Board of Control (Board) filed an application to appropriate 5700 cfs of water from the Boise River to generate power. After the Federal Energy Regulatory Commission (FERC) approved the Board's license, the Idaho Department of Water Resources (Department), through its director, A. Kenneth Dunn (Director), approved the Board's application on May 24, 1984 and issued permit No. 63-9019.

On May 20, 1986, Pioneer Irrigation District (District) filed a petition to cancel permit No. 63-9019. On November 28, 1986, the Department issued an order granting the petition to intervene in favor of the five irrigation districts which compose the Boise Project Board of Control.

On December 18, 1986, a hearing was held before the Department at which time the parties stipulated to certain facts.

APR 14 1988



and the authenticity of the exhibits. The parties agreed to submit their legal arguments to the hearing officer by written brief.

Bobby Fleenor, Chief of the Regional Bureau, served as hearing officer. Scott L. Campbell appeared on behalf of the petitioner, Pioneer Irrigation District. Don A. Olowinski appeared on behalf of the Wilder Irrigation District and the Board. Randall C. Fredericks appeared on behalf of Boise-Kuna Irrigation and the Board. Raymond D. Givens appeared on behalf of the New York Irrigation District and the Board. William F. Ringert appeared on behalf of the Nampa-Meridian Irrigation District and the Board.

Based upon the record in this matter and the law governing cancellation of permits and applications for permits to appropriate water, the Department makes the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

##### BACKGROUND

1. On August 31, 1977, the Board filed an application to appropriate water. The source of the water is the Boise River and the point of diversion is in the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 11, Township 2N, Range 3E, B.M. in Ada County. The amount of water to be appropriated was 5,700 cfs. The purpose of the use was described as power generation.

2. The Department published notice of the amended application in the Idaho Statesman on September 1977 and October

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APR 04 1988

6, 1977. The Idaho Statesman is a newspaper of general circulation published in Ada County. The notice stated the name and address of the applicant, the application number and filing date, the source and amount of water, the season and the purpose of use. October 17, 1977 was the date set forth in the notice as the deadline for filing protests to the application.

3. No protests were filed with the Department against the approval of permit No. 63-9019.

4. The Boise Project Board of Control was established in 1926 by its five member irrigation districts pursuant to several contracts with the United States of America.

5. The irrigation districts are represented on the Board according to their respective acreages within the Boise projects.

6. The five irrigation districts which compose the Boise Project Board of Control are as follows:

Boise-Kuna Irrigation District  
129 North School  
Kuna, Idaho 83634

Nampa & Meridian Irrigation District  
1503 First Street South  
Nampa, Idaho 83651

New York Irrigation District  
214 South Broadway  
Boise, Idaho 83702

Wilder Irrigation District  
709 Cleveland Blvd.  
P.O. Box 416  
Caldwell, Idaho 83654

Big Bend Irrigation District  
Route 3, Box 3253  
Adrian, Oregon 97901

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7. The official address of the Boise Project Board of Control and location of its office and records is 214 South Broadway, Boise, Idaho 83702.

8. In November of 1977, each of the five irrigation districts adopted special resolutions authorizing the Boise Project Board of Control to file an application for permit.

9. On December 7, 1977, the Department notified the Board that the application for permit would be approved pending the issuance of the Federal Power Commission license and completion of any other agreements necessary for the Boise Project Board of Control to use Lucky Peak Dam for power production.

10. On June 10, 1980, the Federal Energy Regulatory Commission (FERC) issued license No. 2832 in the name of the five irrigation districts for the proposed Lucky Peak Power Plant Project (Project).

11. On April 23, 1984, the Boise-Kuna, Nampa and Meridian, Wilder, and Big Bend Irrigation Districts entered into a power purchase and sales contract with the city of Seattle.

12. On May 11, 1984, New York Irrigation District agreed to transfer all interest in application for permit No. 63-9019 to the four remaining districts in exchange for 9.5% of the net proceeds from sale of the power to the city of Seattle after FERC approved the New York Irrigation District's transfer of its interest in the FERC license to the four remaining districts.

13. On May 24, 1984, the Department approved permit No. 63-9019 subject to certain enumerated conditions.

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14. On May 25, 1984, the Boise-Kuna, Nampa and Meridian, Wilder, and Big Bend Irrigation Districts caused construction to commence on the Project.

15. The Boise-Kuna Irrigation District, acting with consent of the Nampa and Meridian, Wilder, and Big Bend Irrigation Districts, issued 154 million dollars of revenue bonds in order to finance the construction of the Project.

16. As of October 31, 1986, the project was 57.8% complete.

17. The record contains no evidence as to the amount spent on construction prior to May 20, 1986; however, as of December 18, 1986 over 65 million had been spent on the project.

#### COMMENCEMENT OF CANCELLATION PROCEEDINGS

18. On May 20, 1986, Pioneer Irrigation District filed a petition to cancel permit No. 63-9019.

19. Pioneer Irrigation District, the petitioner, possesses three natural flow water rights on the Boise River and, by contract, storage rights in Lucky Peak Reservoir.

20. On November 28, 1986, the Department granted the petition to intervene of the five irrigation districts which compose the Boise Project Board of Control.

21. A hearing on the petition to cancel permit No. 63-9019 was scheduled for December 18, 1986 at the State Towers Building in Boise, Idaho.

22. At the hearing, the hearing officer requested posthearing briefs from the parties. Mr. Scott L. Campbell submitted briefs on behalf of the petitioner, Pioneer Irrigation District. Don A. Olowinski, William F. Ringert, Randall C. Fredericks, Raymond D.

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Givens and Larry Sullivan submitted the briefs on behalf of the respondent, the Boise Project Board of Control.

#### STIPULATIONS

23. On December 18, 1986, the parties stipulated to certain facts, most of which were a matter of public record. In addition, the parties stipulated to the authenticity of all exhibits.

#### CONCLUSIONS OF LAW

##### APPLICABLE LAW

1. Idaho Code § 42-201, in effect when the application for permit No. 63-9019 was filed on August 31, 1977, provided:

42-201. Water rights acquired under chapter.--All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation.

1971 Idaho Sess. Laws, ch. 177, § 2, p. 843.

2. Idaho Code § 42-205 (Supp. 1987), in part, provides:

42-205. Issuance of permit--Restrictions.--No permit shall be issued by the department of water resources of the state of Idaho, for the appropriation of water for power purposes, nor shall any such permit be assigned, transferred, mortgaged, sold or conveyed to any person, firm or corporation except in accordance with the provisions of this act.

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3. Idaho Code § 42-206, part of the same act as § 42-205, in effect when the Department issued permit No. 63-9019 on May 24, 1984 provided:

**42-206. Residence a requisite for issuance.**--No permit to appropriate water for power purposes in the state of Idaho shall hereafter be granted to any person or association of persons not an actual bona fide resident or residents of the state of Idaho, nor to any corporation unless organized or qualified to do business in and under the laws of the state of Idaho.

1947 Idaho Sess. Laws, ch. 66, § 2, p. 106.

4. Idaho Code § 42-203, in effect when the Department published notice of application for permit No. 63-9019 on September 29 and October 6, 1977, in part, provided:

**42-203. Notice upon receipt of application --Protest--Hearing and findings--Appeals.**--On and after the passage, approval and effective date of this section, upon receipt of an application to appropriate the waters of this state, the department of water resources, shall prepare a notice in such form as the department may prescribe, specifying the number of the application and the date of filing thereof, the name and post-office address of the applicant, the source of the water supply, the amount of water to be appropriated, in general the nature of the proposed use, the approximate location of the point of diversion, and the point of use, stating in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice. The director of the department of water resources shall cause the notice to be published in a newspaper printed within the county wherein the point of diversion lies, or in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. This notice shall be published at least once each week for two (2) successive weeks.

Any person, firm, association or corpora-

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tion concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application.

1969 Idaho Sess. Laws, ch. 469, § 1, p. 1346.

5. Idaho Code § 42-203, in effect when the Department issued permit No. 63-9019 on May 24, 1984, in part, provided:

**42-203. Notice upon receipt of application--protest--Hearing and findings--Appeals--...**  
In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.

... The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (1) that it will reduce the quantity of water under existing water rights, or (2) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (3) where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, or (4) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (5) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant

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a permit for a less quantity of water than applied for, or may grant a permit upon conditions.

1980 Idaho Sess. Laws, ch. 238, § 2, p. 526.

6. Idaho Code § 42-207 (1977) provides:

**42-207. Sale, transfer, assignment or mortgage of permit.**--Whenever the holder of a permit to appropriate water for power purposes within the state of Idaho, desires to sell, assign, transfer or mortgage such permit so held by him, he shall file with the director of the department of water resources a copy of the deed, bill of sale, assignment, mortgage or other document of transfer, together with such proof as the director of the department of water resources may require that the new owner, holder or assignee of such permit, or the mortgagee, or one or more of the trustees under any mortgage trust indenture, possesses the qualifications set forth in section 42-206, and that such transfer is made in good faith, and not for purposes of speculation or delay; and the sale, transfer, assignment or mortgaging of any such permit except as herein provided shall be void, it being the express intention of the legislature to prohibit the transfer of permits to appropriate water for power purposes by mortgaging the same or otherwise, except in accordance with the provisions of this act.

7. Idaho Code § 42-208 (1977) provides:

**42-208. Cancellation or revocation for noncompliance.**--Every permit to appropriate water for power purposes hereafter issued by the director of the department of water resources shall have plainly printed thereon, that the same is issued subject to the provisions of this act and in the event of its sale, transfer, assignment or of its being mortgaged without a compliance with the provisions of this act, such permit shall be immediately canceled and revoked by the director of the department of water resources.

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8. Idaho Code § 42-301 (1977) provides:

42-301. Permits contestable--When and by whom.--If the holder of a permit to appropriate the public waters shall fail to comply with the requirements of his permit as to the commencing of work or the filing of bond thereunder, or the completion of one fifth (1/5) of the construction work within one half (1/2) the time allowed for the entire completion of such construction work, or shall fail to complete the entire construction work within the time specified in his permit, said permit may be canceled and voided by the department of water resources as hereinafter provided at the instance of any person or persons holding any permit for the diversion of water from the same stream, such permit postdating the permit which is sought to be canceled.

9. A principal may be bound by even unauthorized acts of his agent if subsequent to such acts he voluntarily and knowingly ratifies what has been done even though the principal does not actually receive the full consideration to which he is entitled under terms of contract. Clark v. Gneiting, 95 Idaho 10, 501 P.2d 278 (1972).

10. Ratification is an adoption or confirmation by one person of an act performed on his behalf by another without authority. The substance of the doctrine is confirmation after conduct, amounting to a substitution for prior authority. 2A C.J.S. Agency 363 (1972).

11. Actual authority may be either expressed or implied, "implied authority" being that which is necessary, usual and proper to accomplish or perform the main authority expressly delegated to an agent. Clark v. Gneiting, 95 Idaho 10, 501 P.2d 278 (1972).

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12. Apparent authority exists where a principal voluntarily places an agent in such position that a person of ordinary prudence, conversant with business usages and nature of a particular business, is justified in believing that agent is acting pursuant to existing authority. Hieb v. Minnesota Farmers Union, 105 Idaho 694, 672 P.2d 572 (1983).

13. In construing a statute, not only must the literal wording of the statute be examined, but also account must be taken of all other matters such as context, object in view, evils to be remedied, history of the times and of legislation upon the same subject, public policy, contemporaneous construction, and the like. Knight v. Employment Sec. Agency, 88 Idaho 262, 398 P.2d 643 (1965). See also International Ass'n of Firefighters v. City of Coeur d'Alene, 99 Idaho 630, 586 P.2d 1346 (1978).

14. In construing a statute, the supreme court may examine language used, reasonableness of proposed interpretations, and policies behind the statutes. Umphrey v. Sprinkle, 106 Idaho 700, 682 P.2d 1247 (1983).

15. A construction given a statute by executive or administrative officers of the state is entitled to great weight and will be followed by the courts unless there are cogent reasons for holding otherwise. Idaho Public Utilities Commission v. V-1 Oil Company, 90 Idaho 415, 412 P.2d 581 (1966).

#### APPLICATION OF APPLICABLE LAW

16. The petitioner correctly contends that I.C. § 42-201 requires that all newly acquired rights to use ~~the~~ **MICROFILMED**

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be confirmed under the provisions of chapter 2, title 42, Idaho Code.

17. I.C. § 42-205 mandates that no permit be issued for power purposes that does not meet with the provisions of I.C. § 42-206.

18. The petitioner interprets I.C. § 42-206 to prevent the Department from issuing a permit to the Boise Project Board of Control. The petitioner contends that the Board is ineligible to be granted the permit as it fails to fall under the classification of "person" or "association of persons" as prescribed in I.C. § 42-206. In addition, the petitioner argues that I.C. § 42-206 prohibits an authorized agent from being issued the permit should the Board be characterized as the authorized agent for the five irrigation districts.

"Person" is not defined in Idaho Code §§ 42-205 through 42-210. The petitioner argues that the Department should adopt a more narrow definition of "person" for this specific act than is the case for other acts contained within title 42. Although the definitions of "person" in I.C. §§ 42-242 and 42-4002 are not controlling in this proceeding, there is no compelling reason to adopt a more narrow definition for this act. Using the language of I.C. §§ 42-242 and 42-4002, the Board falls within the meaning of "person" as defined in either statute.

19. Such is also the result if the Board is characterized as an authorized agent for the five irrigation districts. The petitioner argues that the Board lacked the actual authority to apply for the permit. Petitioner bases its argument on the

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limited nature of the express grant of authority contained within the 1926 contracts with the United States and the belated resolutions adopted by the five irrigation districts three months after the application was filed.

20. Even if the Board lacked the express authority to apply for the permit, the Board could still base its action on ratification and implied or apparent authority. The subsequent approval of the Board's earlier action by the five districts through their November 1977 resolutions suggests that the Board's action was ratified. In addition, the Board's action could be based upon the implied authority to perform what is necessary, usual and proper to accomplish the purpose of the express grant of authority. Finally, the record suggests the Board had at least apparent authority to act for the five districts as reasonable men conversant in the administration of water were justified in believing the Board was acting pursuant to existing authority.

21. The petitioner also argues that I.C. § 42-206 does not contemplate the Department issuing a permit to an "agent." The petitioner contends that because "agent" was not specifically included in the statute, it must therefore be excluded. Such a reading of I.C. § 42-206 is too narrow and would unduly hamper the administration of the state's water to totally disqualify all agents from ever attaining a permit. Moreover, it makes no difference whether the Board is characterized as a "person" or "agent." Either description allows the Board to qualify as an actual bona fide resident of the state as the Board's office has been located in Boise since 1926. Finally, the above conclusions

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rendered it unnecessary to ascertain if the Board may also qualify as an "association of persons."

22. Three sections of the Idaho Code could provide standing to attack the Board's filing. I.C. § 42-203 allows for protests to be filed with the Department within ten days from the last date of publication of the notice. I.C. § 42-301 allows for petitions for cancellation to be filed with the Department if the permit holder fails to comply with requirements of commencing or completing construction in a timely manner. I.C. § 42-207 requires the holder of a permit desiring to transfer the permit to file with the Department and qualify under 42-206 or the transfer is void.

In this case, petitioner waited more than eight years from the date of published notice to protest the application for permit by filing the petition to cancel water permit No. 63-9019 on May 20, 1986. As of this filing date, the Board had expended much time and money on the Lucky Peak Project. Moreover, the petition does not allege that the Board has been slack in meeting any construction time schedule.

23. Finally, the petitioner argues the transaction between the New York Irrigation District and the other four irrigation districts constituted a transfer of the permit under I.C. § 42-207. Four of the five co-applicants remained the same both before and after the date New York Irrigation District agreed to transfer their interest in the application. Moreover, on May 11, 1984, the date which New York Irrigation District transferred its interest in the Project, Permit No. 63-9019 has not yet been



issued, so it was merely an application for permit on that date. Therefore, there was never a transfer of the permit as contemplated by I.C. § 42-207.

24. Since the petitioner failed to protest within the 10 days provided by I.C. § 42-203, since there is no alleged violation of I.C. § 42-301, and since no transfer has occurred under I.C. § 42-207, the petitioner cannot rely on any specific statutory provisions for canceling the permit.

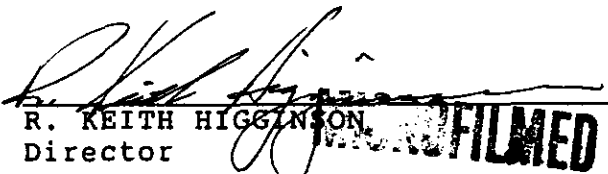
25. Notwithstanding the above analysis, the petitioner argues it has standing to protest the permit because it possesses both natural flow rights in the Boise River and storage rights in Lucky Peak Reservoir. However, the petitioner has never alleged any injury to either their natural flow or storage water rights as a result of the permit, only a general allegation that such permit was issued in direct violation of state law.

26. In light of the above conclusions, the Department finds it unnecessary to examine the equitable issues of laches and estoppel and their applicability to these facts.

#### ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that the petition to cancel water permit 63-9019 is DENIED.

DATED this 17 day of March, 1988.

  
R. KEITH HIGGINSON  
Director

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CERTIFICATE OF MAILING

I hereby certify that on this the 18th day of March 1988, true and correct copies of the foregoing ORDER ADOPTING AMENDED PROPOSED DECISION AND ORDER AND AMENDED PROPOSED MEMORANDUM DECISION AND ORDER were mailed, postage prepaid to:

Pioneer Irrigation District  
Box 426  
Caldwell, ID 83606

Boise Kuna Irrigation Dist.  
129 North School  
Kuna, ID 83634

Wilder Irrigation Dist.  
P. O. Box 416  
Caldwell, ID 83654

William F. Ringert  
P. O. Box 2773  
Boise, ID 83701

Ray D. Givens  
P. O. Box 964  
Boise, ID 83701

Big Bend Irrigation Dist.  
Rt. 3 Box 3253  
Adrian, OR 97901

Scott L. Campbell  
Elam, Burke & Boyd  
P. O. Box 1559  
Boise, ID 83701

Randall C. Fredericks  
First Interstate Bank Building  
Suite 1110  
Boise, ID 83702

Don A. Olowinski  
P. O. Box 1617  
Boise, ID 83701

Nampa-Meridian Irrigation Dist.  
1503 First Street South  
Nampa, ID 83651

New York Irrigation Dist.  
214 S. Broadway  
Boise, ID 83702



RITA I. FLECK  
Secretary/Records Manager  
Idaho Dept. of Water Resources

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M E M O R A N D U M

TO: Keith Higginson  
Norm Young

DATE: March 15, 1988

FROM: John W. Homan

RE: Lucky Peak Hydro Decision

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The cover order which accompanies the amended decision identifies each paragraph that was changed in response to the parties exceptions. The exceptions listed below are from Pioneer's exceptions and were not incorporated into the amended decision for the following reasons:

Paragraph 18 - Pioneer objects to IDWR classification of the Board as a "person" under I.C. § 42-206. Pioneer asserts that I.C. § 42-206 only applies to natural persons. If Pioneer's assertion were adopted, irrigation districts, cities and companies could not hold permits. This issue has been briefed extensively and is addressed in detail on page 12 of the amended decision.

Paragraph 19 - Pioneer objects to IDWR conclusion that the Board was the authorized agent for the districts.

Paragraph 20 - Pioneer objects to IDWR's conclusion that the Board had either express, implied or apparent authority to represent the districts in applying for the permit. In addition, Pioneer objects to IDWR's conclusion that the districts later ratified the Board's action by resolution. The amended decision explains at length IDWR's basis for concluding that the Board had the authority to act for the districts under each agency theory previously mentioned.

Paragraph 21 - Because Pioneer objects to IDWR treatment of the Board as a "person" under I.C. § 42-206, Pioneer asserts that to be a qualifying agent, the agent must represent a natural person therefore, it makes a difference whether the Board is characterized as a "person" or an "agent" under I.C. § 42-206.

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Keith Higginson  
Norm Young  
Page 2  
March 15, 1988

The decision only concludes the Board as a "person" or an "agent," that either designation would meet the residency provision of I.C. § 42-206.

Paragraph 23 - This paragraph was changed to correctly reflect the fact that I.C. § 42-207 (transfer of permits) does not apply to the transfer of an interest in an application for permit.

Paragraph 24 - Pioneer claims that IDWR has an independent legal duty to cancel the Board's permit, despite the inapplicability of all the pertinent statutes (I.C. §§ 42-203, 42-301 and 42-207) concerning deadlines and basis for protest.

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Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES  
STATE OF IDAHO

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                             |
|                                 | ) | Permit No. 63-9019          |
| Petitioner,                     | ) |                             |
|                                 | ) | RESPONSE BRIEF TO           |
| vs.                             | ) | EXCEPTIONS OF               |
|                                 | ) | PIONEER IRRIGATION DISTRICT |
| BOISE PROJECT BOARD OF CONTROL, | ) | TO PROPOSED                 |
|                                 | ) | MEMORANDUM DECISION         |
| Respondent.                     | ) |                             |

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# I. PRELIMINARY STATEMENT

The Boise-Kuna Irrigation District, the Nampa & Meridian Irrigation District, the New York Irrigation District, the Wilder Irrigation District, the Big Bend Irrigation District ("the Districts"), for themselves and as the members of the Boise Project Board of Control ("Board of Control") hereby submit this response brief to the exceptions to the proposed memorandum decision filed by the Pioneer Irrigation District ("Pioneer") on February 17, 1988.

Pioneer filed exceptions to Findings of Fact 8, 9, 11, 12, 14, 15, and 19. It also filed exceptions to Conclusions of Law 18, 19, 20, 21, 23 and 34. The Districts filed exceptions to Findings of Fact 10, 11, 12, 14 and 15. Four of the Districts' exceptions to the Findings of Fact are substantially supported by Pioneer (11, 12, 14 and 15). Pioneer's other proposed exceptions of Fact are either not supported by the record or are insignificant. In its exceptions to the proposed Conclusions of Law, Pioneer attempts to rehash old arguments that have been submitted to the Department and refuted by the Districts again and again in these proceedings.<sup>1</sup>

- 
1. Pioneer filed a Petition to Cancel Water Permit and Memorandum on May 20, 1986. The Districts filed an Answer and a Memorandum in Support of Answer to Petition to Cancel Water Permit on June 23, 1986. Pioneer filed a Reply Memorandum on July 29, 1986. The Districts filed a Response Memorandum on September 25, 1986. Pioneer further

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## II. EXCEPTIONS TO FINDINGS OF FACT

FINDING OF FACT NO. 8. The proposed Finding states: "In November of 1977, each of the five irrigation districts adopted special resolutions authorizing the Boise Project Board of Control to file an application for permit No. 63-9019." Pioneer argues that the proposed Finding of Fact is incorrect because the resolutions did not refer to the application for Permit No. 63-9019 by specific number and that the Districts intended that the Board of Control act only after districts in addition to those comprising the Board of Control, including Pioneer, concurred with the Board of Control Districts.

Pioneer's objections are frivolous. Exhibits 7-11 are resolutions adopted by each of the Districts comprising the Boise Project Board of Control authorizing the Board of Control to apply for a water permit on their behalf for production of electricity at Lucky Peak Dam. The resolutions clearly authorize the Board of Control to apply for a water permit for the Lucky Peak Power Plant Project (the "Project"). That the specific application number is not used is meaningless.

Even more preposterous is Pioneer's contention that the Board of Control was not authorized to apply for a permit

- 
1. (cont.) filed a Post Hearing Memorandum in Support of Petition to Cancel Water Permit on January 30, 1987. The Districts filed a Post Hearing Response Memorandum in Opposition on February 26, 1987. Pioneer then filed a Reply Memorandum on March 13, 1987.

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until Pioneer itself concurred. The Districts intended to act and did act forthemselves in developing the Project.<sup>2</sup> The Board of Control meets monthly. See Stipulation of Facts No. 8. Members of the Board of Control are directors of the irrigation districts represented on the Board. See Stipulation of Facts No. 7. If Pioneer's preposterous contention were correct, the Districts would obviously have given some indication in the ten years since the application was filed and the resolutions were passed. As the record clearly indicates, only the Districts were proceeding to apply for the necessary licenses to produce power at Lucky Peak. See, e.g., Exhibit 32, Minutes of Board of Control meetings for August 3, 1977, p. 2; November 22, 1977, pp. 1 and 2; and November 30, 1977, p. 1.<sup>3</sup>

2. Pioneer has never raised this issue before the Department in all of its voluminous and repetitive filings. Moreover, Pioneer has no standing to raise this argument as it is neither a member of the Board of Control nor a member of the Board of Control's constituent Districts.
3. Pioneer argues that, because the resolutions submitted as Exhibits 7-11 used the phrase "joining with the other Districts comprising the Arrowrock Division of the Boise Project, a U.S. Reclamation Project" that it, and the Settlers Irrigation District were meant to be included because they are members of the Arrowrock Division of the Boise Project. Having failed to present any evidence as to the composition of the Arrowrock Division of the Boise Project, Pioneer asks that the Department take judicial notice that it is a member.

First, Pioneer is factually incorrect. Judicial notice is thus improper. The Arrowrock Division of the Boise Project includes only Districts which are the members of the Boise Project Board of Control. See, e.g., Pub. L. No. 70-859; 45 Stat. 1410 (February 28, 1929); Exhibits 1-6, Contracts Between United States of America and the Board of Control Irrigation Districts. Paragraph 39 of those Contracts

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FINDING OF FACT NO. 9. The proposed Finding states:

"On December 7, 1977, the Department notified the Board that the application would be approved pending the issuance of the Federal Power Commission license."

Pioneer complains, apparently, that the Finding of Fact does not repeat verbatim the language in Exhibit 13. This objection is also frivolous. The Finding of Fact is correct as stated. It could also be modified to quote Exhibit 13.

FINDING OF FACT NO. 11. Pioneer agrees with the proposed modification by the Districts.

FINDING OF FACT NO. 12. Pioneer apparently agrees with the modification by the Districts

FINDING OF FACT NO. 14. The proposed Finding states:  
"On May 25, 1984, the Board commenced construction on the Project." Both the Districts and Pioneer agree that this Finding

- 
3. (cont.) indicates that "Districts organized to include Project lands of said Arrowrock Division of the Boise Project" shall be entitled to membership on the Board of Control.

Pioneer is not a member of the Board of Control and, thus, is not within the Arrowrock Division of the Boise Project. Secondly, Pioneer is incorrect as a matter of intention. As is overwhelmingly demonstrated in the record and the course of the events for the last ten years, the intention of the Board of Control Districts remains the same: they were developing the Lucky Peak Project by themselves and not in conjunction with Pioneer.

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should be modified slightly. The Districts contend that it was they who commenced construction of the Project. Pioneer contends that it was commenced "by the City of Seattle under contract with the Nampa & Meridian, Boise-Kuna, Wilder and Big Bend Irrigations District, as the Steering Committee for Lucky Peak Hydroelectric Project."

Pioneer's contention is not correct as a matter of law. The legal entities holding the FERC license were, and remain, the Board of Control Districts. Consequently, it was they who commenced construction, and it is they who would be liable under the Federal Energy Regulatory Commission license and orders. To say that the City of Seattle commenced construction with the Districts under its contract with them would be similar to saying Morrison-Knudsen Engineers commenced construction with the Districts pursuant to its contract with the Districts, *see* Exhibit 53, Affidavit of C. T. McCreedy, or that Gates & Fox Company commenced construction with the Districts under its contract with them. *See* Exhibit 33, Letter from R. C. Fredricks to A. Kenneth Dunn dated May 18, 1984, enclosing a copy of the New York Irrigation District Agreement and the Power, Purchase and Sale Contract with the City of Seattle.

FINDING OF FACT NO. 15. Pioneer apparently agrees with the Districts as to their proposed modification.

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FINDING OF FACT NO. 19. The Districts have no objection to Pioneer's proposed modification.

### III. CONCLUSIONS OF LAW

Pioneer objects to Conclusions of Law contained in paragraphs 18-21, 23 and 24. Its objections are nothing more than restatements of its old, incorrect arguments.

Paragraph 18. Pioneer objects to the definition of "person" used by the Department which includes the definition of "person" in Idaho Code §§ 42-242 and 42-4002. Pioneer appears to be arguing that a "person" has to be a natural person. If the legislature would have wanted such a narrow definition, it could have said so. If Pioneer's definition were adopted, irrigation districts, cities and companies could not hold permits. Pioneer's argument is simply a rehash of arguments it made earlier, which were dealt with by the Districts in their Post-Hearing Response Memorandum, pp. 8-17.

Paragraphs 19 and 20. Pioneer contends that the Board of Control was not an authorized agent for the five irrigation districts and that the Districts' Resolutions, Exhibits 7-11, did not constitute approval of the Board's application for a permit. These contentions are frivolous for the reasons stated earlier. See Discussion as to Paragraph 8 of Findings of Fact, *supra*.

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PETITION TO )  
CANCEL PERMIT NO. 63-9019 IN )  
THE NAME OF BOISE PROJECT BOARD )  
OF CONTROL )

Permit No. 63-9019

PIONEER IRRIGATION DISTRICT, )  
 )  
Petitioner, )

ORDER GRANTING  
PETITION TO  
INTERVENE

vs. )

BOISE PROJECT BOARD OF CONTROL, )  
 )  
Respondent. )

BOISE-KUNA IRRIGATION DISTRICT, )  
NAMPA & MERIDIAN IRRIGATION )  
DISTRICT, NEW YORK IRRIGATION )  
DISTRICT, WILDER IRRIGATION )  
DISTRICT, and BIG BEND IRRIGATION )  
DISTRICT, )

Respondent-Intervenors. )

On October 14, 1986, Pioneer Irrigation District (Pioneer) filed a Motion to Limit Intervenors and Protestants with respect to Pioneer's Petition to Cancel Water Permit No. 63-9019 for power purposes at the Lucky Peak Dam in the name of the Boise Project Board of Control (Board of Control).

The Board of Control is comprised of the Boise-Kuna Irrigation District, the Nampa & Meridian Irrigation District, the New York Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District, collectively referred to as

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"the Districts". The Districts responded to Pioneer's motion by filing a Petition to Intervene in the cancellation proceeding on October 15, 1986. Pioneer filed an answer to the petition to intervene on October 27, 1986.

The Districts' petition to intervene represents that the Districts are members of the Board of Control and that the Board applied for the water right permit as the operating agent for the Districts. The Districts, therefore, represent that as members of the Board of Control they will be affected by any proceedings in regard to Permit No. 63-9019.

In opposition to the petition to intervene, Pioneer argues that the Districts have failed to comply with the 5 day time requirement under Rule 6,3 of the Department's Rules of Practice and Procedure, and that the Board of Control as "operating agent" for the Districts can adequately represent the interests of the Districts in this proceeding.

In ruling upon the above-referenced motions, the Department notes that the answer to the petition to cancel the water permit was filed for the Board of Control by and through the member Districts. The answer was signed by counsel for each of the member Districts. The Department views the answer as constituting an appearance and answer in this proceeding by the Board of Control and the Districts. The Department also views the Districts to be the real parties in interest in this proceeding and believes it appropriate that the Districts be accorded formal party status so that they may adequately protect their interest in the permit sought to be canceled. The Department finds that

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granting party status to the Districts will not unduly delay or prejudice the rights of Pioneer in this proceeding. The time provision under Rule 6,3 of the Department's Rules of Practice and Procedure is enlarged as necessary to allow for the consideration of the petition to intervene.

The Department expects that the Districts will coordinate their participation as parties so as to expedite the proceedings and avoid duplication of argument and evidence. To this end, the Department will deny Pioneer's motion to limit the participation in the hearing of intervenors and protestants, without prejudice to renew the motion during the hearing as Pioneer deems appropriate.

#### ORDER

Based upon the foregoing consideration of the motions filed herein,

IT IS HEREBY ORDERED as follows:

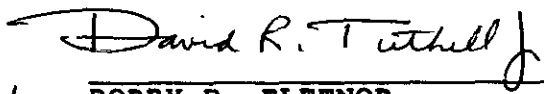
1. The Petition to Intervene in this proceeding by the Boise-Kuna Irrigation District, the Nampa & Meridian Irrigation District, the New York Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District is hereby granted. The Districts are accorded full party status in this proceeding.

2. The Districts shall coordinate their participation as parties so as to expedite the proceedings and avoid duplication of argument and evidence.

3. The caption in this proceeding is amended to reflect the status of the Districts as respondent-intervenors. **RECORDED** **INDEXED** **FILED** **U.S. DEPT. OF AGRICULTURE** **APR 10 1968**

4. The motion of Pioneer Irrigation District to limit the participation in the hearing of intervenors and protestants is hereby denied without prejudice to renew the motion during the hearing as Pioneer deems appropriate in accordance with Rule 9,8 of the Rules of Practice and Procedure of the Department.

DATED this 28 day of November, 1986.

  
for BOBBY D. FLEENOR  
Chief, Regional Office Bureau

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17. The record contains no evidence as to the amount spent on construction prior to May 20, 1986; however, as of December 18, 1986 over 65 million had been spent on the project.

#### COMMENCEMENT OF CANCELLATION PROCEEDINGS

18. On May 20, 1986, Pioneer Irrigation District filed a petition to cancel permit No. 63-9019.

19. Pioneer Irrigation District, the petitioner, possesses a natural flow water right on the Boise River and, by contract, storage rights in Lucky Peak Reservoir.

20. On November 28, 1986, the Department granted the petition to intervene of the five irrigation districts which compose the Boise Project Board of Control.

21. A hearing on the petition to cancel permit No. 63-9019 was scheduled for December 18, 1986 at the State Towers Building in Boise, Idaho.

22. At the hearing, the hearing officer requested post-hearing briefs from the parties. Mr. Scott L. Campbell submitted briefs on behalf of the petitioner, Pioneer Irrigation District. Don A. Olowinski, William F. Ringert, Randall C. Fredericks, Raymond D. Givens and Larry Sullivan submitted the briefs on behalf of the respondent, the Boise Project Board of Control.

#### STIPULATIONS

23. On December 18, 1986, the parties stipulated to certain facts, most of which were a matter of public record. In addition, the parties stipulated to the authenticity of all exhibits.

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## CONCLUSIONS OF LAW

### APPLICABLE LAW

1. Idaho Code § 42-201, in effect when the application for permit No. 63-9019 was filed on August 31, 1977, provided:

42-201. Water rights acquired under chapter.--All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation.

1971 Idaho Sess. Laws, ch. 177, § 2, p. 843.

2. Idaho Code § 42-205 (Supp. 1987), in part, provides:

42-205. Issuance of permit--Restrictions.--No permit shall be issued by the department of water resources of the state of Idaho, for the appropriation of water for power purposes, nor shall any such permit be assigned, transferred, mortgaged, sold or conveyed to any person, firm or corporation except in accordance with the provisions of this act.

3. Idaho Code § 42-206, part of the same act as § 42-205, in effect when the Department issued permit No. 63-9019 on May 24, 1984 provided:

42-206. Residence a requisite for issuance.--No permit to appropriate water for power purposes in the state of Idaho shall hereafter be granted to any person or association of persons not an actual bona fide resident or residents of the state of Idaho.

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nor to any corporation unless organized or qualified to do business in and under the laws of the state of Idaho.

1947 Idaho Sess. Laws, ch. 66, § 2, p. 106.

4. Idaho Code § 42-203, in effect when the Department published notice of application for permit No. 63-9019 on September 29 and October 6, 1977, in part, provided:

42-203. Notice upon receipt of application  
--Protest--Hearing and findings--Appeals.--  
On and after the passage, approval and effective date of this section, upon receipt of an application to appropriate the waters of this state, the department of water resources, shall prepare a notice in such form as the department may prescribe, specifying the number of the application and the date of filing thereof, the name and post-office address of the applicant, the source of the water supply, the amount of water to be appropriated, in general the nature of the proposed use, the approximate location of the point of diversion, and the point of use, stating in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice. The director of the department of water resources shall cause the notice to be published in a newspaper printed within the county wherein the point of diversion lies, or in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. This notice shall be published at least once each week for two (2) successive weeks.

Any person, firm, association or corporation concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application.

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1969 Idaho Sess. Laws, ch. 469, § 1, p. 1346.

5. Idaho Code § 42-203, in effect when the Department issued permit No. 63-9019 on May 24, 1984, in part, provided:

42-203. Notice upon receipt of application--protest--Hearing and findings--Appeals--... In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.

... The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (1) that it will reduce the quantity of water under existing water rights, or (2) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (3) where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, or (4) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (5) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a less quantity of water than applied for, or may grant a permit upon conditions.

1980 Idaho Sess. Laws, ch. 238, § 2, p. 526.

6. Idaho Code § 42-207 (1977) provides:

42-207. Sale, transfer, assignment or mortgage of permit.--Whenever the holder of a permit to appropriate water for power purposes within the state of Idaho, desires to sell, assign, transfer or mortgage such

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permit so held by him, he shall file with the director of the department of water resources a copy of the deed, bill of sale, assignment, mortgage or other document of transfer, together with such proof as the director of the department of water resources may require that the new owner, holder or assignee of such permit, or the mortgagee, or one or more of the trustees under any mortgage trust indenture, possesses the qualifications set forth in section 42-206, and that such transfer is made in good faith, and not for purposes of speculation or delay; and the sale, transfer, assignment or mortgaging of any such permit except as herein provided shall be void, it being the express intention of the legislature to prohibit the transfer of permits to appropriate water for power purposes by mortgaging the same or otherwise, except in accordance with the provisions of this act.

7. Idaho Code § 42-208 (1977) provides:

**42-208. Cancellation or revocation for noncompliance.**--Every permit to appropriate water for power purposes hereafter issued by the director of the department of water resources shall have plainly printed thereon, that the same is issued subject to the provisions of this act and in the event of its sale, transfer, assignment or of its being mortgaged without a compliance with the provisions of this act, such permit shall be immediately canceled and revoked by the director of the department of water resources.

8. Idaho Code § 42-301 (1977) provides:

**42-301. Permits contestable--When and by whom.**--If the holder of a permit to appropriate the public waters shall fail to comply with the requirements of his permit as to the commencing of work or the filing of bond thereunder, or the completion of one fifth (1/5) of the construction work within one half (1/2) the time allowed for the entire completion of such construction work, or shall fail to complete the entire construction work within the time specified in his permit, said permit may be canceled and voided by the department of water resources as hereinafter provided at the instance of

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any person or persons holding any permit for the diversion of water from the same stream, such permit postdating the permit which is sought to be canceled.

9. A principal may be bound by even unauthorized acts of his agent if subsequent to such acts he voluntarily and knowingly ratifies what has been done even though the principal does not actually receive the full consideration to which he is entitled under terms of contract. Clark v. Gneiting, 95 Idaho 10, 501 P.2d 278 (1972).

10. Ratification is an adoption or confirmation by one person of an act performed on his behalf by another without authority. The substance of the doctrine is confirmation after conduct, amounting to a substitution for prior authority. 2A C.J.S. Agency 363 (1972).

11. Actual authority may be either expressed or implied, "implied authority" being that which is necessary, usual and proper to accomplish or perform the main authority expressly delegated to an agent. Clark v. Gneiting, 95 Idaho 10, 501 P.2d 278 (1972).

12. Apparent authority exists where a principal voluntarily places an agent in such position that a person of ordinary prudence, conversant with business usages and nature of a particular business, is justified in believing that agent is acting pursuant to existing authority. Hieb v. Minnesota Farmers Union, 105 Idaho 694, 672 P.2d 572 (1983).

13. In construing a statute, not only must the literal wording of the statute be examined, but also account must be taken of the purpose and intent of the legislature.

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taken of all other matters such as context, object in view, evils to be remedied, history of the times and of legislation upon the same subject, public policy, contemporaneous construction, and the like. Knight v. Employment Sec. Agency, 88 Idaho 262, 398 P.2d 643 (1965). See also International Ass'n of Firefighters v. City of Coeur d'Alene, 99 Idaho 630, 586 P.2d 1346 (1978).

14. In construing a statute, the supreme court may examine language used, reasonableness of proposed interpretations, and policies behind the statutes. Umpfrey v. Sprinkle, 106 Idaho 700, 682 P.2d 1247 (1983).

15. A construction given a statute by executive or administrative officers of the state is entitled to great weight and will be followed by the courts unless there are cogent reasons for holding otherwise. Idaho Public Utilities Commission v. V-1 Oil Company, 90 Idaho 415, 412 P.2d 581 (1966).

#### APPLICATION OF APPLICABLE LAW

16. The petitioner correctly contends that I.C. § 42-201 requires that all newly acquired rights to use the state's water be confirmed under the provisions of chapter 2, title 42, Idaho Code.

17. I.C. § 42-205 mandates that no permit be issued for power purposes that does not meet with the provisions of I.C. § 42-206.

18. The petitioner interprets I.C. § 42-206 to prevent the Department from issuing a permit to the Boise Project Board of Control. The petitioner contends that the Board is ineligible to be granted the permit as it fails to fall under the classifica-

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tion of "person" or "association of persons" as prescribed in I.C. § 42-206. In addition, the petitioner argues that I.C. § 42-206 prohibits an authorized agent from being issued the permit should the Board be characterized as the authorized agent for the five irrigation districts.

"Person" is not defined in Idaho Code §§ 42-205 through 42-210. The petitioner argues that the Department should adopt a more narrow definition of "person" for this specific act than is the case for other acts contained within title 42. Although the definitions of "person" in I.C. §§ 42-242 and 42-4002 are not controlling in this proceeding, there is no compelling reason to adopt a more narrow definition for this act. Using the language of I.C. §§ 42-242 and 42-4002, the Board falls within the meaning of "person" as defined in either statute.

19. Such is also the result if the Board is characterized as an authorized agent for the five irrigation districts. The petitioner argues that the Board lacked the actual authority to apply for the permit. Petitioner bases its argument on the limited nature of the express grant of authority contained within the 1926 contracts with the United States and the belated resolutions adopted by the five irrigation districts three months after the application was filed.

20. Even if the Board lacked the express authority to apply for the permit, the Board could still base its action on ratification and implied or apparent authority. The subsequent approval of the Board's earlier action by the five districts through their November 1977 resolutions suggests that the Board's

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action was ratified. In addition, the Board's action could be based upon the implied authority to perform what is necessary, usual and proper to accomplish the purpose of the express grant of authority. Finally, the record suggests the Board had at least apparent authority to act for the five districts as reasonable men conversant in the administration of water were justified in believing the Board was acting pursuant to existing authority.

21. The petitioner also argues that I.C. § 42-206 does not contemplate the Department issuing a permit to an "agent." The petitioner contends that because "agent" was not specifically included in the statute, it must therefore be excluded. Such a reading of I.C. § 42-206 is too narrow and would unduly hamper the administration of the state's water to totally disqualify all agents from ever attaining a permit. Moreover, it makes no difference whether the Board is characterized as a "person" or "agent." Either description allows the Board to qualify as an actual bona fide resident of the state as the Board's office has been located in Boise since 1926. Finally, the above conclusions rendered it unnecessary to ascertain if the Board may also qualify as an "association of persons."

22. Three sections of the Idaho Code could provide standing to attack the Board's filing. I.C. § 42-203 allows for protests to be filed with the Department within ten days from the last date of publication of the notice. I.C. § 42-301 allows for petitions for cancellation to be filed with the Department if the permit holder fails to comply with requirements of commencing or completing construction in a timely manner.

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requires the holder of a permit desiring to transfer the permit to file with the Department and qualify under 42-206 or the transfer is void.

In this case, petitioner waited more than eight years from the date of published notice to protest the application for permit by filing the petition to cancel water permit No. 63-9019 on May 20, 1986. As of this filing date, the Board had expended much time and money on the Lucky Peak Project. Moreover, the petition does not allege that the Board has been slack in meeting any construction time schedule.

23. Finally, the petitioner argues the transaction between the New York Irrigation Company and the other four irrigation districts constituted a transfer of the permit under I.C. § 42-207. The Board was the holder of the permit both before and after the date of the transaction. Therefore, there was never a transfer of the permit as contemplated by I.C. § 42-207.

24. Since the petitioner failed to protest within the 10 days provided by I.C. § 42-203, since there is no alleged violation of I.C. § 42-301, and since no transfer has occurred under I.C. § 42-207, the petitioner cannot rely on any specific statutory provisions for canceling the permit.

25. Notwithstanding the above analysis, the petitioner argues it has standing to protest the permit because it possesses both natural flow rights in the Boise river and storage rights in Lucky Peak Reservoir. However, the petitioner has never alleged any injury to either their natural flow or storage water rights as a result of the permit, only a general allegation such

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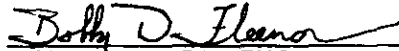
permit was issued in direct violation of state law.

26. In light of the above conclusions, the Department finds it unnecessary to examine the equitable issues of laches and estoppel and their applicability to these facts.

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that the petition to cancel water permit 63-9019 is DENIED.

DATED this 2<sup>nd</sup> day of February, 1988.



BOBBY D. FLEENOR  
Hearing Officer  
Department of Water Resources

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CERTIFICATE OF MAILING

I hereby certify that on this the 2nd day of February, 1988, true and correct copies of the foregoing Order Issuing Proposed Decision and Proposed Memorandum Decision and Order were mailed, postage prepaid to:

Pioneer Irrigation District  
Box 426  
Caldwell, ID 83606

Boise Kuna Irrigation Dist.  
129 North School  
Kuna, ID 83634

Wilder Irrigation Dist.  
P. O. Box 416  
Caldwell, ID 83654

William F. Ringert  
P. O. Box 2773  
Boise, ID 83701

Ray D. Givens  
P. O. Box 964  
Boise, ID 83701

Big Bend Irrigation Dist.  
Rt. 3 Box 3253  
Adrian, OR 97901

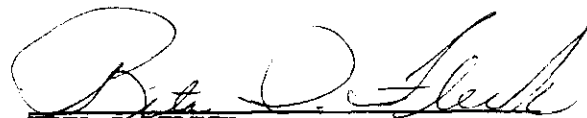
Scott L. Campbell  
Elam, Burke & Boyd  
P. O. Box 1559  
Boise, ID 83701

Randall C. Fredericks  
First Interstate Bank Building  
Suite 1110  
Boise, ID 83702

Don A. Olowinski  
P. O. Box 1617  
Boise, ID 83701

Nampa-Meridian Irrigation Dist.  
1503 First Street South  
Nampa, ID 83651

New York Irrigation Dist.  
214 S. Broadway  
Boise, ID 83702



RITA I. FLECK  
Secretary/Records Manager  
Idaho Dept. of Water Resources

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Department of Water Resources

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

SOURCE: Boise River  
COUNTY: Ada

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portions of the proposed decision to which exceptions are made and specifically states the grounds for those exceptions as follows:

FINDINGS OF FACT

Paragraph 8: The resolutions referred to in this paragraph did not authorize the Boise Project Board of Control to file an application for Permit No. 63-9019. None of the resolutions made any specific reference to application for Permit No. 63-9019, nor did they refer to any pending application for a water permit for production of electricity at Lucky Peak Dam. Moreover, the resolutions authorize the Secretary and Chairman of the Boise Project Board of Control to execute applications only after the "concurrence of the other Districts comprising the Boise Project.\*" There is no evidence in this record demonstrating that this concurrence took place.

*Technically correct since the number was not assigned until the appl. was filed*

*\* Board of Control. Understood*

In this regard, it should be pointed out, and the Director should take official notice pursuant to Rule 9, 16. of the Rules and Regulations of Practice and Procedure, that the Boise Project, United States Reclamation Act Project, includes lands located within the Arrowrock Division, as well as the Payette Division. The irrigation districts located within the Arrowrock Division of the Boise Project include:

- (1) Pioneer Irrigation District;
- (2) Settlers Irrigation District;
- (3) Boise-Kuna Irrigation District;
- (4) New York Irrigation District;
- (5) Nampa-Meridian Irrigation District;

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- (6) Big Bend Irrigation District; and
- (7) Wilder Irrigation District.

The Payette Division of the Boise Project includes lands located within the following irrigation districts:

- (1) Black Canyon Irrigation District, and
- (2) Emmett Irrigation District.

There is no evidence in the record that all of these districts concurred in authorizing the Secretary and Chairman of the Boise Project Board of Control to execute the pertinent applications. (Exhibits 7-11.)

**Paragraph 9:** On December 7, 1977, the Department notified the Boise Project Board of Control that application for Permit No. 63-9019 would be approved pending issuance of the Federal Power Commission license and completion of any other agreements necessary for the Boise Project Board of Control to use Lucky Peak Dam for power production. (Exhibit 13.)

True

**Paragraph 11:** On April 23, 1984, the Board did not enter into a Power Purchase and Sales Contract with the city of Seattle. Instead, the Nampa-Meridian, Boise-Kuna, Wilder, and Big Bend Irrigation Districts entered into such a contract on that date as individual irrigation districts. (Exhibit 31.)

**Paragraph 12:** On May 11, 1984, the New York Irrigation District did not relinquish all interest in Permit No. 63-9019 to the four remaining districts. Permit No. 63-9019 had not been issued at that time, so it was merely an application for a permit on that date. Also, this factual finding conflicts directly with paragraph 23 of the Conclusions of Law of the Proposed Decision

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Decision and Order which concludes that the New York Irrigation Company [sic] did not transfer the permit as contemplated by Idaho Code section 42-207. (Exhibits 6, 25, and 26.)

No conflict.  
A relinquishment of interest to four existing members of the board is not the transfer contemplated under 42-207. Speculation prohibited by 207 is not possible with relinquishment.

Paragraph 14: The Board did not commence construction of the Project on May 25, 1984. Construction of the Project began on that date, but the Board was not involved because of the withdrawal from participation by the New York Irrigation District. (Exhibits 25, 26, 27, and 31.)

New York involved with 9.5% - The members of the Board caused construction to begin.

By resolution, dated May 11, 1984, the New York Irrigation District withdrew from involvement in the Project, except for receipt of 9.5 percent of the profits. By terms of the agreement dated May 11, 1984 (Exhibit 27), the New York Irrigation District consented to the Nampa-Meridian, Boise-Kuna, Wilder, and the Big Bend Irrigation Districts proceeding with the financing, construction, and operation and maintenance of the Project. (Section 2 of Exhibit 27.)

An assignment would most likely have been acceptable but no one misunderstood who the applicant was.

Additionally, by terms of the agreement, the New York Irrigation District disclaimed any rights or privileges under the Power Purchase and Sales Contract and disclaimed all right, title, and interest in and to any facilities constructed pursuant to such license, water permit, or power sale agreement. (Section 2 of Exhibit 27.) Consequently, the construction of the Project was commenced by the city of Seattle under contract with the Nampa-Meridian, Boise-Kuna, Wilder, and Big Bend Irrigation Districts, as the Steering Committee of the Lucky Peak Hydroelectric Project. (Exhibits 26, 27, and 31.)

Construction was caused to commence by the members of the Board.

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Paragraph 15: The Board did not issue any revenue bonds to finance the construction of the Project; instead the Boise-Kuna Irrigation District issued \$154,000,000 of revenue bonds in order to finance construction of the Project. (Affidavit of Ruth L. Keeth and section 1(c) and 5(h) of Exhibit 31.)

The board member chose to allow one member to issue the bonds as being less complicated. There was no intent to allow Boise-Kuna to be the constructor of the project.

Paragraph 19: Pioneer Irrigation District, the petitioner, possesses three natural flow water rights on the Boise River and, True by contract, storage rights in Lucky Peak Reservoir. (Paragraph LXXVI, page 31 of Exhibit 39.)

#### CONCLUSIONS OF LAW

Paragraph 18: The petitioner disagrees with the following statement contained in paragraph 18: "Although the definitions of 'person' in I.C. sections 42-242 and 42-4002 are not controlling in this proceeding, there is no compelling reason to adopt a more narrow definition for this act [sic]. Using the language of I.C. sections 42-242 and 42-4002, the Board falls within the meaning of 'person' as defined in either statute."

This conclusion ignores the plain and ordinary meaning of the terms "person" and "association of persons" which the Department is compelled to apply under accepted rules of statutory construction. Additionally, this conclusion ignores the restrictive language "in this act" which applies to the language of Idaho Code sections 42-242 and 42-4002. (See discussion on pages 26-27 of Reply Memorandum in Support of Petition to Cancel Water Permit No. 63-9019.)

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Paragraph 19: The Board was not an authorized agent for the five irrigation districts with respect to application for Permit No. 63-9019. (See exception to paragraph 8 under Findings of Fact and exception to paragraph 20 under Conclusions of Law)

Paragraph 20: The November 1977 resolutions of the five irrigation districts did not constitute subsequent approval of the Board's earlier action regarding application for Permit No. 63-9019, nor do the resolutions suggest ratification of the Board's actions with regard to that application. (See exception to paragraph 8 of Findings of Fact.)

Moreover, the Board's action could not be based upon the implied authority to perform what is "necessary, usual, and proper to accomplish the purpose of the express grant of authority." Here, the express grant of authority is contained in the 1926 contracts, which specifically limit the Board's power to the operation and maintenance of the portion of the New York Canal and lateral canals downstream of the diversion dam, plus Deer Flat Reservoir. (Paragraph 42, Exhibit 1; paragraph 21, Exhibit 2; paragraph 40, Exhibit 3; paragraph 42, Exhibit 4; paragraph 38, Exhibit 5; and pages 16-20 of Reply Memorandum in Support of Petition to Cancel Water Permit No. 63-9019.)

No stretch of the imagination could produce a conclusion that the Lucky Peak Hydroelectric Project is "necessary, usual, and proper to accomplish the purpose of 'this express grant of authority.'"

There is also nothing in the record, and the proposed decision makes no reference to any evidence in the record, to support

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no question of  
authority was  
raised by anyone  
even though everyone  
interested was aware  
of the filing



the conclusion that "the Board had at least apparent authority to act for the five districts as reasonable men conversant in the administration of water and were justified in believing the Board was acting pursuant to existing authority."

Paragraph 21: It does indeed make a difference whether the Board is characterized as a "person" or "agent." If the Board is not a "person" or "association of persons" under the definition of Idaho Code section 42-206, it cannot meet the requirements of the statute. In short, any "agent" must also be a "person" or "association of persons" and be "an actual bona fide resident or residents of the state of Idaho," in order to qualify under the statutory requirements. In short, an "agent" must still be at least a "person" or "association of persons" to meet the threshold requirements of the statute. The Board does not qualify in either respect.

*The board is actually constituted of the persons filing it is not an outside agent acting for another party.*

Paragraph 23: If, in fact, the "Board was the holder of the permit both before and after the date of the transaction," and "[t]herefore there was never a transfer of the permit as contemplated by Idaho Code section 42-207" then Idaho Code section 42-301 has clearly been violated. The Board has not commenced construction of the Project, nor has it completed one-fifth of the construction work within one-half of the time for completion of the construction, as required by Idaho Code section 42-301. (Royce VanCuren Depo., pp. 6-12; Carl Padour Depo., pp. 10-16.) Instead, construction of the Project has been undertaken by the so called "Steering Committee" established by

*The members of the Board caused the construction to be commenced.*

*A permittee can hire someone to construct his diversion works and project.*

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the Power Purchase and Sales Agreement (Exhibit 31), not by the Board, the "holder of the permit."

In short, the Board cannot have it both ways. If, in fact, it was the holder of the permit both before and after the date of the transaction of the New York Irrigation District with the other four irrigation districts, pursuant to the May 11, 1984, agreement, then the Board has failed to satisfy the requirements of Idaho Code section 42-301, and the Department must cancel the permit under that provision. On the other hand, if the New York Irrigation District is deemed to have transferred its interest to the remaining irrigation districts, the record demonstrates that the requirements of Idaho Code sections 42-206 and 42-207 have been violated.

**Paragraph 24:** The petitioner brought the Petition to Cancel Water Permit No. 63-9019 pursuant to Idaho Code section 42-302 as well as Idaho Code sections 42-205, 42-206, and 42-208. Additionally, the Department of Water Resources has an independent obligation to cancel permits where the owners have failed or neglected to comply with the requirements of Idaho Code section 42-301. (See Idaho Code § 42-311.)

#### CONCLUSION

The Department of Water Resources is required to enforce the statutory enactments of the Idaho legislature. Such enforcement must comport with the language of the statutes and cannot conveniently ignore previously unrecognized errors committed by the Department in the enforcement of these provisions. The petitioner in this matter has brought these errors to the attention

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of the Department and again requests that the Director recognize that the laws of the state of Idaho require the Director to revoke or cancel Water Permit No. 63-9019.

DATED This 17th day of February, 1988.

ELAM, BURKE AND BOYD

By Scott L. Campbell  
Scott L. Campbell, of the Firm  
Attorneys for Petitioner

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 17th day of February, 1988, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Don A. Olowinski  
HAWLEY TROXELL ENNIS & HAWLEY  
One Capital Center  
Boise, Idaho 83701

Raymond D. Givens  
GIVENS, McDEVITT, PURSLEY, WEBB & BUSER  
277 North Sixth Street  
Boise, Idaho 83702

Randall C. Fredericks  
CLEMONS, COSHO & HUMPHREY  
815 West Washington  
Boise, Idaho 83702

William F. Ringert  
RINGERT, CLARK, HARRINGTON,  
REID, CHRISTENSON & KAUFMAN  
599 West Bannock Street  
Boise, Idaho 83702

Larry Sullivan  
SCHROEDER, HUTCHENS & SULLIVAN  
P.O. Box 220  
Vale, Oregon 97918

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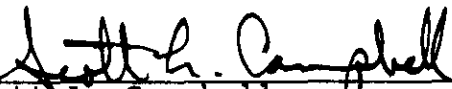
Bobby D. Fleenor  
Hearing Officer  
Department of Water Resources  
1301 North Orchard  
Boise, Idaho 83702

  
\_\_\_\_\_  
Scott L. Campbell

CERTIFICATE OF HAND DELIVERY

I HEREBY CERTIFY That on this 17<sup>th</sup> day of February, 1988, I  
caused a true and correct copy of the above and foregoing instru-  
ment to be hand delivered to:

R. Keith Higginson  
Director  
Department of Water Resources  
1031 North Orchard  
Boise, Idaho 83702

  
\_\_\_\_\_  
Scott L. Campbell

EXCEPTIONS TO PROPOSED  
MEMORANDUM DECISION AND ORDER - 10

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

IN THE MATTER OF PETITION TO  
CANCEL PERMIT NO. 63-9019

PIONEER IRRIGATION DISTRICT,

Petitioner,

vs.

BOISE PROJECT BOARD OF CONTROL,

Respondent.

ORDER ISSUING  
PROPOSED MEMORANDUM  
DECISION

SOURCE: Boise River  
COUNTY: Ada

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by his appointee, Bobby D. Fleenor, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, § 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, § 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director **MICROFILMED** adopting the proposed decision as his final decision.

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I.

EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day



following the day of service of this order and the proposed decision,

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and

3. be sent to each of the parties who appeared or their attorneys.

## II.

### BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

## III.

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exception.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the

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Director, pursuant to Idaho Code § 42-1701A. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral arguments and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

Following the submission of all exceptions, briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

DATED this 2nd day of February, 1988.

  
R. KEITH HIGGINSON, Director  
Department of Water Resources

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PETITION TO  
CANCEL PERMIT NO. 63-9019

PROPOSED MEMORANDUM  
DECISION AND ORDER

PIONEER IRRIGATION DISTRICT

Petitioner,

vs.

BOISE PROJECT BOARD OF CONTROL

Respondent.

SOURCE: BOISE RIVER  
COUNTY: ADA

BY HEARING OFFICER BOBBY D. FLEENOR

On August 31, 1977, the Boise Project Board of Control (Board) filed an application to appropriate 5700 cfs of water from the Boise River to generate power. After the Federal Energy Regulatory Commission (FERC) approved the Board's license, the Idaho Department of Water Resources (Department), through its director, A. Kenneth Dunn (Director), approved the Board's application on May 24, 1984 and issued permit No. 63-9019.

On May 20, 1986, Pioneer Irrigation District (District) filed a petition to cancel permit No. 63-9019. On November 28, 1986, the Department issued an order granting the petition to intervene in favor of the five irrigation districts which compose the Boise Project Board of Control.

On December 18, 1986, a hearing was held before the Department at which time the parties stipulated

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and the authenticity of the exhibits. The parties agreed to submit their legal arguments to the hearing officer by written brief.

Bobby Fleenor, Chief of the Regional Bureau, served as hearing officer. Scott L. Campbell appeared on behalf of the petitioner, Pioneer Irrigation District. Don A. Olowinski appeared on behalf of the Wilder Irrigation District and the Board. Randall C. Fredericks appeared on behalf of Boise-Kuna Irrigation and the Board. Raymond D. Givens appeared on behalf of the New York Irrigation District and the Board. William F. Ringert appeared on behalf of the Nampa-Meridian Irrigation District and the Board.

Based upon the record in this matter and the law governing cancellation of permits and applications for permits to appropriate water, the Department makes the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

##### BACKGROUND

1. On August 31, 1977, the Board filed an application to appropriate water. The source of the water is the Boise River and the point of diversion is in the SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 11, Township 2N, Range 3E, B.M. in Ada County. The amount of water to be appropriated was 5,700 cfs. The purpose of the use was described as power generation.

2. The Department published notice of the amended application in the Idaho Statesman on September 29, 1977 and October

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6, 1977. The Idaho Statesman is a newspaper of general circulation published in Ada County. The notice stated the name and address of the applicant, the application number and filing date, the source and amount of water, the season and the purpose of use. October 17, 1977 was the date set forth in the notice as the deadline for filing protests to the application.

3. No protests were filed with the Department against the approval of permit No. 63-9019.

4. The Boise Project Board of Control was established in 1926 by its five member irrigation districts pursuant to several contracts with the United States of America.

5. The irrigation districts are represented on the Board according to their respective acreages within the Boise projects.

6. The five irrigation districts which compose the Boise Project Board of Control are as follows:

Boise-Kuna Irrigation District  
129 North School  
Kuna, Idaho 83634

Nampa & Meridian Irrigation District  
1503 First Street South  
Nampa, Idaho 83651

New York Irrigation District  
214 South Broadway  
Boise, Idaho 83702

Wilder Irrigation District  
709 Cleveland Blvd.  
P.O. Box 416  
Caldwell, Idaho 83654

Big Bend Irrigation District  
Route 3, Box 3253  
Adrian, Oregon 97901

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7. The official address of the Boise Project Board of Control and location of its office and records is 214 South Broadway, Boise, Idaho 83702.

8. In November of 1977, each of the five irrigation districts adopted special resolutions authorizing the Boise Project Board of Control to file an application for permit No. 63-9019.

9. On December 7, 1977, the Department notified the Board that the application would be approved pending the issuance of the Federal Power Commission license.

10. On June 10, 1980, the Federal Energy Regulatory Commission (FERC) issued license No. 2832 in the name of the Boise Project Board of Control for the proposed Lucky Peak Power Plant Project (Project).

11. On April 23, 1984, the Board entered into a power purchase and sales contract with the city of Seattle.

12. On May 11, 1984, New York Irrigation District relinquished all interest in permit No. 63-9019 to the four remaining districts in exchange for 9.5% of the net proceeds from sale of the power to the city of Seattle.

13. On May 24, 1984, the Department approved permit No. 63-9019 subject to certain enumerated conditions.

14. On May 25, 1984, the Board commenced construction on the Project.

15. The Board issued 154 million dollars of revenue bonds in order to finance the construction of the Project.

16. As of October 31, 1986, the project was complete.

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Pioneer further contends that the Board of Control's actions could not be based upon the implied power to perform what is necessary, usual and proper to accomplish the purpose of its express grant of authority. This contention was also dealt with earlier. The installation of a second outlet tunnel at the Lucky Peak Dam and the relining of the old tunnel which occurred as part of the Project help to insure a flow of irrigation water to the Districts. *See* Exhibit 53, McCreedy Affidavit, paragraph 11. The Districts recognized this at the outset. *See* Exhibits 7-11. Moreover, the contracts with the United States establishing the Board of Control and the federal and state statutes authorizing those contracts all recognize the possibility of power production. The action of the Board of Control was thus authorized or implied under federal statutes, state statutes and the federal contracts with the Districts. *See* Memorandum in Support of Answer to Petition to Cancel Water Permit, pages 22-24.

Finally, Pioneer disputes the conclusion that "the record suggests the Board had at least apparent authority to act for the five Districts as reasonable men conversant in the administration of water were justified in believing the Board was acting pursuant to existing authority." The record is replete with evidence from which this conclusion can be drawn, including minutes from the Board of Control, *see, e.g.*, Exhibit 32; correspondence to or from the Department; *see, e.g.*, Exhibits 6, 13, 15, 16, 22, 23, 29, 30, 33-35, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 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1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 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2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 22

Districts themselves, Exhibits 7-11. Moreover, it is common knowledge to reasonable men conversant in the administration of water that the Board of Control acts for the five Districts. Anyone who deals with the administration of water on the Boise River, including Pioneer, should be aware of this.

Paragraph 21. In its objection to this Conclusion of Law, Pioneer mischaracterizes or misreads the Department's conclusion. The Pioneer challenges the conclusion that it makes no difference whether the Board of Control is characterized as a "person" or "agent" because, it argues, an agent must also be a "person" or "association of persons" and be "an actual bona fide resident or residents of the State of Idaho." Because Pioneer disagrees with the factual findings that the Board is a "person" and a "resident of Idaho," it disagrees with the Conclusion of Law; but this does not invalidate the Conclusion.

Moreover, as an agent of the Districts, the Board of Control would be authorized to hold the permit because the true holders of the permit, the Districts, are empowered to hold it under Idaho law. See Districts' Post-Hearing Response Memorandum, pp. 9-13.

Paragraph 23. Pioneer argues that if a transfer of the permit has not occurred, there must be a violation of Idaho Code § 42-301 because the Board of Control did not commence construction of the Project. This is clearly incorrect and also repeats old arguments. See Districts' Response Memorandum in

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Opposition to Petition to Cancel Water Permit, pp. 4-6,  
Districts' Post Hearing Response Memorandum, page 19.

When the original application for a water permit was filed on August 31, 1977, the application clearly disclosed that the Board of Control was the agent for the five Districts, who would thus be its true holders. Nothing in the statutes indicate that the Districts would have to commence construction using the same agent to sign the construction contracts. As the Districts have pointed out, the New York Irrigation District has agreed to transfer its interest in the water permit and the FERC license. No such transfer has yet occurred. See Districts' Response Memorandum, pp. 4-6. The New York Irrigation District has applied for permission to transfer its interest in the license. See Exhibit 21. It is awaiting that permission before applying to transfer its interest in the water permit.

Paragraph 24. Pioneer confuses, in this exception, the procedural grounds by which it may challenge a permit with the substantive requirements of the various statutes. As the proposed Memorandum Decision correctly points out, Pioneer has no statutory standing to protest Water Permit No. 63-9019. See District's Post Hearing Response Memorandum, pp. 18-20.

#### IV. CONCLUSION

Pioneer, in its briefing, adds nothing by way of logic, argument, or authority to the record before the Department. The

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proposed Memorandum Decision should be issued with the factual modifications requested by the Districts.

RESPECTFULLY SUBMITTED this 3rd day of March, 1988.

HAWLEY TROXELL ENNIS & HAWLEY

By Don A. Olowinski  
Don A. Olowinski

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Randall C. Fredricks, Esq.  
CLEMONS, COSHO & HUMPHREY

Larry Sullivan, Esq.  
SCHROEDER & SULLIVAN

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 3rd day of March, 1988, I served the within and foregoing RESPONSE BRIEF TO EXCEPTIONS OF PIONEER IRRIGATION DISTRICT TO PROPOSED MEMORANDUM DECISION, by causing a true and correct copy thereof to be deposited in the United States Mail, Boise, Idaho, postage prepaid, addressed as follows:

Scott L. Campbell, Esq.  
ELAM, BURKE & BOYD  
P.O. Box 1559  
Boise, Idaho 83701

Don A. Olowinski  
Don A. Olowinski

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*hard delivered 11:30g*

Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

PIONEER IRRIGATION DISTRICT,

Petitioner,

vs.

BOISE PROJECT BOARD OF CONTROL,

Respondent.

Permit No. 63-9019

EXCEPTIONS TO PROPOSED  
MEMORANDUM DECISION

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February 17, 1988

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*these changes  
to the decision  
are okay  
John*

### PRELIMINARY STATEMENT

The Boise-Kuna Irrigation District, the Nampa-Meridian Irrigation District, the New York Irrigation District, the Wilder Irrigation District, the Big Bend Irrigation District ("the Districts"), for themselves and as the members of the Boise Project Board of Control ("Board of Control") hereby submit the following exceptions to the proposed memorandum decision mailed to the Districts on February 2, 1988.

The proposed exceptions relate to Findings of Fact Nos. 10, 11, 12, 14 and 15. Granting these exceptions will not change the conclusions of law stated in the proposed memorandum decision.

### EXCEPTIONS

In stating their exceptions, the Districts will set forth the present proposed findings of fact, the Districts' proposed revision, and the grounds for the proposed revision.

FINDING OF FACT NO. 10: On June 10, 1980, the Federal Regulatory Commission ("FERC") issued License No. 2832 in the name of the Boise Project Board of Control for the proposed Lucky Peak Power Plant Project (Project).

PROPOSED REVISION: On June 10, 1980, the Federal Energy Regulatory Commission ("FERC") issued License 2832 in the name of the five irrigation districts for the proposed Lucky Peak Power Plant Project ("Project").

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GROUNDS: FERC License No. 2832 indicates that the license holder is the Districts rather than the Board of Control. See Exhibit 20. A true copy of pages 1 and 8 of that license is Attachment A to this memorandum with the applicable language emphasized.

FINDING OF FACT NO. 11: On April 23, 1984, the Board entered into a power purchase and sales contract with the City of Seattle.

PROPOSED REVISION: On April 23, 1984, the Boise-Kuna, Nampa & Meridian, Wilder, and Big Bend Irrigation Districts entered into a power purchase and sales contract with the City of Seattle.

GROUNDS: The contract with the City of Seattle indicates that the four irrigation districts listed above, and not the New York Irrigation District, entered into the contract. See Exhibit 31. A true copy of page 1 of that agreement is Attachment B to this Memorandum with the applicable language emphasized.

FINDING OF FACT NO. 12: On May 11, 1984, New York Irrigation District relinquished all interest in Permit No. 63-9019 to the four remaining districts in exchange for 9.5% of the net proceeds from sale of the power to the city of Seattle.

PROPOSED REVISION: On May 11, 1984, the New York Irrigation District agreed to transfer all interest in Permit No. **RECEIVED**

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63-9019 to the four remaining districts in exchange for 9.5% of the net proceeds from sale of the power to the city of Seattle after FERC approved the New York Irrigation District's transfer of its interest in the FERC license to the four remaining districts.

GROUNDS: The agreement between the New York Irrigation District and the remaining four districts shows that the New York Irrigation District has agreed to transfer its interest in Permit No. 63-9019 after FERC has approved transfer of its interest in the FERC license for the project. See Exhibits 21 and 27. True copies of pages 2 and 4 of these documents are Attachment C and D to this Memorandum with the applicable language emphasized. The New York Irrigation District has applied to FERC to transfer its interest, but such application has not yet been approved. See Exhibit 21.

FINDING OF FACT NO. 14: On May 25, 1984, the Board commenced construction on the Project.

PROPOSED REVISION: On May 25, 1984, the Districts commenced construction on the Project.

GROUNDS: Since the license holders were the Districts, it was they who commenced construction on the Project.

FINDING OF FACT NO. 15: The Board issued 154 million dollars of revenue bonds in order to finance the construction of the Project.

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PROPOSED REVISION: The Boise-Kuna Irrigation District,  
acting with the consent of the Nampa & Meridian, Wilder, and Big  
Bend Irrigation Districts, issued 154 million dollars of revenue  
bonds in order to finance the construction of the Project.

GROUND: The bonds were issued by the Boise-Kuna  
Irrigation District with the consent of the other irrigation  
districts pursuant to Idaho Code § 43-2801(d). See Exhibits 31  
and 54 and the testimony of Raymond Givens. True copies of page  
17 from Exhibit 31 and pages 1 and 2 from Exhibit 54 are  
Attachments E and F to this Memorandum with the applicable  
language emphasized.

RESPECTFULLY SUBMITTED this 17th day of February, 1988.

HAWLEY TROXELL ENNIS & HAWLEY

By Don A. Olowinski  
Don A. Olowinski

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CLEMONS, COSHO & HUMPHREY

Larry Sullivan, Esq.  
SCHROEDER & SULLIVAN

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 17th day of February, 1988, I served the within and foregoing EXCEPTIONS TO PROPOSED MEMORANDUM DECISION by causing a true and correct copy thereof to be deposited in the United States Mail, Boise, Idaho, postage prepaid, addressed as follows:

Scott L. Campbell  
ELAM, BURKE & BOYD  
P.O. Box 1559  
Boise, Idaho 83701

Don A. Olowinski  
Don A. Olowinski

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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

|                                      |   |                  |
|--------------------------------------|---|------------------|
| New York Irrigation District         | ) | Project No. 2832 |
| Nampa - Meridian Irrigation District | ) |                  |
| Boise - Kuna Irrigation District     | ) |                  |
| Wilder Irrigation District           | ) |                  |
| Big Bend Irrigation District         | ) |                  |

ORDER ISSUING LICENSE (MAJOR)  
(Issued June 10, 1980)

On January 26, 1979, Boise Project Board of Control (Applicant) 1/ filed an application for a major license under Part I of the Federal Power Act (Act) for the proposed Lucky Peak Power Plant Project No. 2832. 2/ The project would be located at and develop the water power potential of the United States Army Corps of Engineers' (Corps) Lucky Peak Dam, located on the Boise River in Ada County, Idaho, and would affect lands of the United States under the Corps' administration.

Notice of the application has been published in accordance with the Act. A protest was filed by the Idaho Department of Parks and Recreation on July 26, 1979, concerning the Applicant's failure to propose any recreational development.

PROJECT DESCRIPTION

The Lucky Peak Power Plant Project would be located at the downstream toe of the Corps' Lucky Peak Dam. 3/ The project would

- 1/ Boise Project Board of Control was formed by five member districts, to wit: New York Irrigation District, Nampa Meridian Irrigation District, Boise - Kuna Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District. By letter filed July 3, 1979, Boise Project Board of Control requested that the above named districts be designated, collectively, as the Applicant.
- 2/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under Section 375.308 of the Commission's regulations, 45 Fed. Reg. 21216 (1980), amending 44 Fed. Reg. 46449 (1979) and 18 C.F.R. 3.5(g) (1979).
- 3/ The Lucky Peak Dam, completed by the Corps in 1955, is a rolled-earth and gravel-filled structure 340 feet high and 1,700 feet long. The dam was constructed to provide irrigation and flood control. It impounds a reservoir with a usable storage capacity of about 278,200 acre-feet.

It is ordered that:

(A) This license is issued under Part I of the Federal Power Act (Act) to New York Irrigation District of Boise, Idaho; Nampa - Meridian Irrigation District of Nampa, Idaho; Boise - Kuna Irrigation District of Kuna, Idaho; Wilder Irrigation District of Coldwell, Idaho; and Big Bend Irrigation District of Nyssa, Oregon, for a fifty-year period effective the first day of the month in which this license is issued, for the construction, operation, and maintenance of the Lucky Peak Power Plant Project No. 2832, located on the Boise River in Ada County, Idaho and utilizing the Lucky Peak Dam of the United States and appurtenant lands administered by the U. S. Army Corps of Engineers. 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) Project No. 2832 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 areas and boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as:

| <u>Exhibit</u> | <u>FERC No. 2832-</u> | <u>Titled</u> |
|----------------|-----------------------|---------------|
| J              | 2                     | Location Map  |
| K              | 3                     | Site Plan     |

(2) Project works consisting of (1) a concrete intake structure; (2) a 1,050-foot long, 21-foot diameter concrete and steel lined tunnel; (3) an outdoor-type powerhouse containing three Francis turbines, directly connected to three generators each rated at 27.54 MW and one Francis turbine directly connected to a generator rated at 4.86 MW; (4) step up transformers; (5) 13.8/138 kV generator leads; and (6) appurtenant facilities.

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

| <u>Exhibit</u> | <u>FERC No. 2832-</u> | <u>Titled</u>                                                        |
|----------------|-----------------------|----------------------------------------------------------------------|
| L-1            | 4                     | Intake, Tunnel, and Powerhouse -<br>Plan, Cross Sections and Details |
| L-2            | 5                     | Powerhouse - Plans and Sections                                      |

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**POWER PURCHASE AND SALE CONTRACT**

Executed by

**THE CITY OF SEATTLE**

**BOISE-KUNA IRRIGATION DISTRICT**

**NAMPA & MERIDIAN IRRIGATION DISTRICT**

**WILDER IRRIGATION DISTRICT**

and

**BIG BEND IRRIGATION DISTRICT**

for

**THE LUCKY PEAK POWER PLANT PROJECT**

This contract is entered into this 23rd day of April, 1984, by, between and among The City of Seattle, a municipal corporation organized and existing under the laws of the State of Washington, and Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District and Wilder Irrigation District, all irrigation districts organized and existing under the laws of the State of Idaho, and Big Bend Irrigation District, an irrigation district organized and existing under the laws of the State of Oregon.

WHEREAS, the Districts are irrigation districts organized under the laws of the States of Idaho and Oregon and are authorized to own hydroelectric generating facilities to supply electrical energy and to sell surplus electrical energy; and

WHEREAS, the Districts are licensees under a Federal Energy Regulatory Commission License for the construction, operation and maintenance of the Lucky Peak Project; and

WHEREAS, Seattle desires to purchase surplus electrical energy from the Lucky Peak Project under applicable provisions of Washington law and the Districts desire to sell Seattle surplus electrical energy from the Lucky Peak Project under the applicable provisions of Idaho law, particularly Chapter 23, Title 43, Idaho Code, in the case of the Idaho Districts, and the applicable provisions of Oregon law, in the case of the Oregon District, all under the terms and conditions of this contract; and

WHEREAS, the parties to this contract recognize that the primary purpose of the Districts is to provide irrigation water, that the Districts operate extensive irrigation facilities, and that the Districts receive revenue from assessments and other sources in payment for irrigation water supplied and for the purposes of operating the Districts, maintaining, operating, constructing, reconstructing, repairing and acquiring irrigation facilities and for payment of obligations of the Districts incurred to finance the construction or acquisition of irrigation facilities; and

WHEREAS, it is intended by the parties to this contract that none of the assessments or other revenues received or to be received by the Districts in payment for or relating to irrigation water supplied for the purposes of operating the Districts, maintaining, operating, constructing, reconstructing, repairing or acquiring irrigation facilities or for payment of obligations of the Districts incurred to finance the construction or acquisition of irrigation facilities be utilized for payment

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construction, the New York Irrigation District agrees to transfer, pursuant to Section 43-318, Idaho Code, all of its right, title and interest in and to FERC License No. 2832 and Idaho Water Resource Permit No. 63-9019, and any claim of right to the disposition of power generated at Lucky Peak power project and by the execution of this agreement accepts in full satisfaction of any claims it might have for the payments provided in Section 4 of this Agreement.

Section 4. The Boise-Kuna Irrigation District, the Big Bend Irrigation District, the Wilder Irrigation District and the Nampa and Meridian Irrigation District agree to pay from net proceeds of the royalty payments made pursuant to Section 5 (d)(4) of the Power Purchase and Sale Contract, 9.5% of those net proceeds, together with 9.5% of the net proceeds received from sale of power under any extension or renewal of FERC License No. 2832.

If the Boise-Kuna, Big Bend, Wilder and Nampa and Meridian Irrigation Districts use any basis other than all lands in all the districts as the basis for allocation of revenues among those districts, the royalty to be paid New York shall be determined by using the same basis as is used to determine allocation among the Boise-Kuna, Nampa and Meridian, Wilder and Big Bend Irrigation Districts, but the royalty to New York shall not be less than 9.5% in any event. The allocation of revenue among the remaining four districts has not been resolved. The New York shall be paid from bond proceeds

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Transferees and request that the instrument of approval be made effective as of the date of conveyance of the project properties and in support thereof show the Commission as follows:

(4) Transferees, and each of them, are irrigation districts, which are public agencies. Nampa and Meridian Irrigation District, Boise-Kuna Irrigation District and Wilder Irrigation District are operating under Title 43, Idaho Code, "Irrigation Districts," and Big Bend Irrigation District is operating under Chapter 545 Oregon Revised Statutes, "Irrigation District." Transferees submitted to the Commission as Exhibit A to their Application for License for Project No. 2832 proof of the applicable irrigation district laws and proceedings authorizing their formation, to which reference is hereby made and which, by such reference, is fully incorporated herein.

(5) Transferees submitted as Exhibits C and D of their Application for License for Project No. 2832 evidence of their compliance with the requirements of the laws of the State of Idaho, where the Project is located, to which reference is made and which, by such reference, is fully incorporated herein. Such evidence is supplemented by Exhibit A attached hereto reflecting additional proceedings of the Idaho Department of Water Resources subsequent to the granting of said license and will be further supplemented, upon approval of this application, by an Order of the Department of Water Resources transferring the interest of the New York Irrigation District in the water right permit to Transferees.

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time to time by any party by giving notice as above provided. The following persons are designated and appointed the representatives of the following parties:

| <u>Party</u>                         | <u>Addressee</u>                                                                           | <u>Address</u>                                             |
|--------------------------------------|--------------------------------------------------------------------------------------------|------------------------------------------------------------|
| Seattle .....                        | Director, Energy Resources<br>Planning and Management,<br>Seattle City Light<br>Department | 1015 Third Avenue<br>Seattle, Washington 98104             |
| Boise-Kuna Irrigation District ..... | Board of Directors                                                                         | 311 South School Avenue<br>Kuna, Idaho 83634               |
| Nampa & Meridian Irrigation District | Board of Directors                                                                         | 1503 First Street South<br>Nampa, Idaho 83651              |
| Wilder Irrigation District .....     | Board of Directors                                                                         | 709 Cleveland<br>P. O. Box 416<br>Caldwell, Idaho 83606    |
| Big Bend Irrigation District .....   | Board of Directors                                                                         | c/o Ben Witty<br>Route 3, Box 3253<br>Adrian, Oregon 97901 |
| Boise Project Board of Control ..... | Manager, Boise Project Board<br>of Control                                                 | 214 Broadway Avenue<br>Boise, Idaho 83702                  |

#### SECTION 23. CONSENT TO ISSUANCE OF BONDS

In accordance with the provisions of Section 43-2301(d), Idaho Code, as amended, Nampa & Meridian Irrigation District and Wilder Irrigation District each consent and, in accordance with the applicable provisions of Oregon law, Big Bend Irrigation District consents to the issuance of Bonds by Boise-Kuna Irrigation District.

#### SECTION 24. NON-PARTITIONMENT AND NON-DISSOLUTION

(a) *Non-Partitionment.* Each District waives any rights which it may have to partition the Lucky Peak Project, whether by partitionment in any kind or by sale and division of the proceeds, and shall not resort to any action, in law or in equity, to partition the Lucky Peak Project. Each District waives the benefits of all laws that may now or hereafter authorize such partitionment for the term of this contract or for such lesser period as may be required under applicable laws.

(b) *Non-Dissolution.* Each of the Districts, to the extent that each may legally do so, covenants and agrees with Seattle and with the other Districts and the Trustee that it will not dissolve or otherwise abandon its existence so long as this contract is in existence without the written consent of Seattle and the other Districts and, so long as any of the Bonds is outstanding, without the written consent of the Trustee.

#### SECTION 25. SUPPLEMENTAL OWNERSHIP AGREEMENTS

The Districts shall enter into and execute such agreements and other instruments and documents as are necessary for the purpose of recording, filing or publishing notice of the rights and interests of the Districts to the easements, land, land rights, interests in land, and permits which are required for the Lucky Peak Project.

#### SECTION 26. ENTIRE AGREEMENT — MODIFICATION OF CONTRACT TERMS

This contract constitutes the entire agreement of the parties with regard to the Lucky Peak Project. All prior or contemporaneous written or oral agreements between or among Seattle and the

APR 04 1988



Don A. Olowinski  
HAWLEY TROXELL ENNIS & HAWLEY  
P.O. Box 1617  
Boise, Idaho 83701  
Telephone: (208) 344-6000

BEFORE THE DEPARTMENT OF WATER RESOURCES  
STATE OF IDAHO

|                                 |   |                      |
|---------------------------------|---|----------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                      |
|                                 | ) | Permit No. 63-9019   |
| Petitioner,                     | ) |                      |
|                                 | ) | AFFIDAVIT OF RUTH L. |
| vs.                             | ) | KEETH                |
|                                 | ) |                      |
| BOISE PROJECT BOARD OF CONTROL, | ) |                      |
|                                 | ) |                      |
| Respondent.                     | ) |                      |

STATE OF IDAHO       )  
                          ) ss  
County of Ada        )

I, Ruth L. Keeth, first being duly sworn upon oath,  
hereby depose and say as follows:

1. I am employed by the Idaho First National Bank as  
Vice President and Manager of the Corporate Trust Department  
since May 1, 1979.

2. The Idaho First National Bank is the Trustee of the  
funds obtained pursuant to the issuance by the Boise-Kuna  
Irrigation District of its Lucky Peak Hydroelectric Project  
Revenue Bonds 1984 Series A and Series B in the amount of \$154  
million and of the funds obtained from the issuance by the  
Boise-Kuna Irrigation District of its Lucky Peak Hydroelectric

**RECORDED**

APR 04 1988

Project Revenue Refunding Bonds, 1985 Series, in the amount of \$141,150,000. The 1985 bonds were issued to refund the outstanding 1984 bonds.

3. The 1984 Series bonds were issued pursuant to a resolution of the Boise-Kuna Irrigation District dated May 25, 1984. The bonds were sold to the underwriters pursuant to purchase contracts dated May 25, 1984. Closing of the sale of the bonds occurred on July 5, 1984.

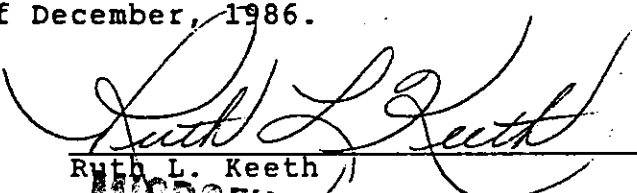
4. The 1985 Series bonds were issued pursuant to a resolution of the Boise-Kuna Irrigation District dated October 11, 1985. The bonds were sold to the underwriters pursuant to a purchase contract dated October 11, 1985. Closing of the sale of the bonds occurred on November 20, 1985.

5. Pursuant to the bond resolutions, the Bank has set up a construction fund for the Lucky Peak Power Plant Project.

6. As of December 16, 1986, the Districts have authorized the appropriation of \$65,277,887.03 from the construction fund for purposes relating to the Project.

7. As of December 16, 1986, there is \$70,569,278.60 remaining in the construction fund.

DATED this 16 day of December, 1986.

  
Ruth L. Keeth

**RECORDED**

APR 04 1988

**ELAM, BURKE AND BOYD**

ATTORNEYS AND COUNSELORS AT LAW

BOISE OFFICE

702 WEST IDAHO  
POST OFFICE BOX 1559  
BOISE, IDAHO 83701  
TELEPHONE 208-343-5454

CANYON COUNTY OFFICE

1120 SIXTH STREET SOUTH  
POST OFFICE DRAWER E  
NAMPA, IDAHO 83653  
TELEPHONE 208-466-9222

Department of Water Resources

BOISE OFFICE

|                            |                        |
|----------------------------|------------------------|
| LAUREL E. ELAM (1888-1974) | TODD J. WILCOX         |
| CARL A. BURKE (1898-1961)  | PETER C. K. MARSHALL   |
| CARL P. BURKE              | KENNETH M. SEBBY       |
| PETER J. BOYD              | TRUDY HANSON FOUSER    |
| M. ALLEN DURTSCI           | D. ALAN KOFOED         |
| JACK S. GJORDING           | SCOTT L. CAMPBELL      |
| JOHN MAGEL                 | BOBBI KILLIAN DOMINICK |
| DAVID B. LINCOLN           | W. DALLAS BURKHALTER   |
| RICHARD C. MELLON, JR.     | ALAN CONILOGUE         |
| ROBERT M. TYLER, JR.       | ELAINE D. HANSON       |
| JAMES D. LARUE             | JEFFERY J. VENTRELLA   |
| RANDALL A. PETERMAN        | BRENDA G. MEIER        |
| WILLIAM J. RUSSELL         | JOHN J. JANIS          |
| KAYE L. O'RIORDAN          | WENDY E.D. SMITH       |
| RYAN P. ARMBRUSTER         | JAMES A. FORD          |
| DAVID E. COMSTOCK          | STEVEN D. ERDAHL       |
| MELVILLE W. FISHER II      | SCOTT W. DAVIDSON      |
| WILLIAM G. DRYDEN          | JEFFREY A. THOMSON     |

CANYON COUNTY OFFICE

WILLIAM F. YOST

February 17, 1988

R. Keith Higginson, Director  
Department of Water Resources  
1031 North Orchard  
Boise, Idaho 83702

Re: Petition to Cancel Permit No. 63-9019

Dear Director Higginson:

I enclose Pioneer Irrigation District's Exceptions to Proposed Memorandum Decision and Order.

Very truly yours,

ELAM, BURKE & BOYD

*Scott L. Campbell*  
Scott L. Campbell

SLC:jc  
Enclosure  
cc Board of Directors (w/enc.)

**MICROFILMED**

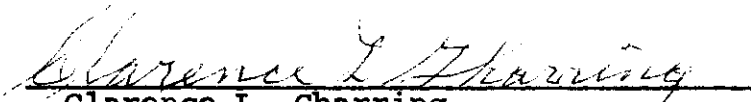
APR 04 1988

AFFIDAVIT TO ESTABLISH QUALIFICATION TO  
DO BUSINESS UNDER THE LAWS OF THE STATE OF IDAHO.

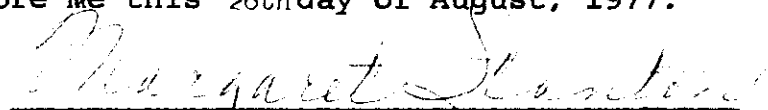
STATE OF IDAHO     )  
                      ) ss  
County of Ada,     )

CLARENCE L. GHARRING, Being first on oath duly sworn,  
deposes and says:

That he is the Chairman of the Boise Project Board of Control; that the Boise Project Board of Control is an agency created as a result of contract entered into under the authority of Federal and State statutes, pursuant to which said Board of Control acts as operating agent for the Boise-Kuna Irrigation District, the Nampa-Meridian Irrigation District, the New York Irrigation District and Wilder Irrigation District, all located in the state of Idaho, and the Big Bend Irrigation District, located in the state of Oregon. Under the provisions of an Act of Congress dated June 17, 1902 (32 Stat. 388) and acts amendatory thereof and supplemental thereto, and particularly under the provisions of Section 4 of an Act of Congress dated December 5, 1924 (43 Stat. 672,701, now Sections 500 and 501, Chapter 12, Title 43 U.S.C.A.) and has such statutory recognition as a quasi-municipal corporation, authorized to do business in the state of Idaho pursuant to the provisions of Section 57-104, Idaho Code; that the registered office of the Boise Project Board of Control is 214 Broadway Avenue, Boise, Idaho 83702, wherein are kept all of the records required to be kept under the provisions of Section 30-144 applicable to irrigation districts.

  
Clarence L. Gharring

SUBSCRIBED AND SWORN To before me this 26th day of August, 1977.

  
Notary Public for Idaho  
Residence: Boise, Idaho

56 FERC ¶ 62,061

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OCT 28 1991

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

Boise-Kuna Irrigation District,  
Big Bend Irrigation District, Nampa-  
Meridian Irrigation District, Wilder  
Irrigation District

Project No. 2832-014  
Idaho

63-9019

ORDER AMENDING LICENSE  
AND REVISING ANNUAL CHARGES  
( Issued October 24, 1991 )

On July 18, 1989 and supplemented on September 23, 1991, the licensees, Boise-Kuna Irrigation District, Big Bend Irrigation District, Nampa-Meridian Irrigation District, and Wilder Irrigation District filed as-built revised exhibits A, F, G, and R for the Lucky Peak Project, FERC No. 2832, in compliance with article 43 of the license.

The revised exhibit A describes a decrease in the number of generating units from the authorized four units to three units and an increase in the plant's total installed capacity from the authorized 87.48 MW to 101.25 MW. This increase in capacity will increase the annual charges for the project, as discussed in article 41 of the license. The plant's hydraulic capacity also increased from the authorized 6,300 cubic foot per second (cfs) to 8,100 cfs. The powerhouse is located in the general area authorized in the license. The revised exhibit F and G drawings show the project structures as-built and the project boundary, respectively. The revised exhibit R drawings show the recreation facilities constructed in compliance with the terms and conditions of the license. The revised exhibit F, G, and R drawings conform to the Commission's Rules and Regulations.

The project is located at a Department of the Army, Corps of Engineers (Corps) facility. Discharges from the reservoir are scheduled by the Corps without regard to the project's hydraulic capacity. The increased hydraulic capacity of the three units enables the hydroelectric facility to operate over a wider range of the available flows. The Lucky Peak Project makes good use of the flow and fall of the Boise River and adequately develops the hydroelectric potential of the site. No adverse environmental impacts have resulted from the additional hydraulic capacity and the resource agencies do not object to the additional capacity.

The Director orders:

(A) The following exhibits are approved and made a part of the license superseding the existing exhibits:

Exhibit A - Six type written pages entitled "Exhibit A" filed on July 18, 1989.

Add new Correspondence  
to next file in this  
folder.



MAY 03 1985

WATER RIGHT NUMBER 63-9019

OWNER LAST NAME - BOISE PROJECT BOARD OF CONTROL FIRST NAME - ORIG OWNER -  
ADDRESS LINE 1 - 214 BROADWAY ADDRESS LINE 2 -  
ADDRESS LINE 3 - CITY - BOISE STATE - ID ZIP CODE - 83702  
SOURCE - BOISE RIVER TRIBUTARY OF - SNAKE RIVER  
STAGE - PERMIT STATUS - PRIORITY - 08-31-1977 COUNTY - ADA TCTAL DIV. RATE - 5700.0000 -CFS  
TOTAL DIV. VOLUME - .00 AFA TRFR/AMEND - WATER DIST. - DLE/CAREY ACT - RIGHT BASIS -  
DIVERSION POINT - SENE 11 02N 03E LOT REDIV - 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0  
FROM - 01-01 TO - 12-31 USE - POWER USE DIV. RATE - 5700.0000 CFS USE DIV. VCLUME - .00 AFA  
USE - POWER PLACE OF USE - TWN 02N RNG 03E SEC 11 TRACT SWNE LOT AC  
DECREE NAME - DATE - TOTAL ACRES 0

REMARKS - THIS PERMIT DOES NOT CONVEY ANY AUTHORITY TO REQUIRE OR DEMAND  
THE RELEASE OF WATER BUT SHALL ONLY BE EFFECTIVE TO ALLOW  
GENERATION OF HYDROELECTRICITY USING WATER RELEASED UNDER  
EXISTING RTS. & OPERATING PROCEDURES FOR IRRIGATION, FLOOD  
CONTROL & FISH & WILDLIFE PURPOSES. STRUCTURAL MODIFICATION TO  
THE DAM & STORAGE OF WATER IS CONTINGENT UPON CERTIFICATION TO  
THE DEPT. THAT PLANS & SPECIFICATIONS HAVE BEEN REVIEWED &  
APPROVED BY THE U.S. ARMY CORPS OF ENGINEERS & THAT CONSTRUCTION  
HAS PROCEEDED IN FULL COMPLIANCE WITH THE FINAL APPROVED PLANS.  
THE ISSUANCE OF THIS PERMIT IN NO WAY GRANTS ANY RIGHT-OF-WAY OR  
EASEMENT ACROSS THE LAND OF ANOTHER. THIS PERMIT DOES NOT  
CONSTITUTE IPUC OR FERC APPROVAL THAT MAY BE REQUIRED.

NON IRRIG USE -

OTHER RIGHTS FOR SAME USE -

PROOF DUE - 05-01-1989 PERMIT/DENIED - 05-24-1984 PROTESTED - HEARING -

PROOF MADE - FLD EXAM - COND. OF APPROVAL - 05 09D 17G 01A 26A 08A 17C 16

DIVERSION MEANS - RES., PENSTOCK &amp; TURBINES.

OLD NO. -

Final DECLARATION OF NonSignificance  
(Proposed/Final) (Significance/NonSignificance)

Proponent City of Seattle

Location of Proposal Ada County, Idaho, 10 Miles Southeast of Boise

Lead Agency City of Seattle, Seattle City Light Department

Title and Description of Proposal

Title of Proposal:

Lucky Peak Power Plant Project Transmission Facilities, Ada County, BoIdaho APR 9 1984

Description of Proposal:

Department of Water Resources

This Proposal addresses two alternatives that provide for a new overhead transmission line and associated facilities, to provide interconnection of the future Lucky Peak Project powerhouse with the existing transmission line (Idaho Power Company) southwest of the project. The City of Seattle, on February 22, 1984, formally adopted the 1979 National Environmental Policy Act (NEPA) Final Environmental Impact Statement (FEIS) for the Lucky Peak Dam Hydroelectric Modification (see attached letter). This document, however, did not address the impacts associated with the transmission facilities.

☒ This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(c).

☐ This proposal has been determined to have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

This determination was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department.

The intent of this declaration is to satisfy the requirements of the Washington State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public of agency determinations pursuant to SEPA. This document is not a permit, nor does it constitute a decision or recommendation to grant or deny a permit.

Responsible Official John Saven

Position/Title Acting Superintendent, Seattle City Light Department

Date 4/4/84 Signature

Revised: 12 July 1976

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## ENVIRONMENTAL CHECKLIST FORM

### I. BACKGROUND

1. Name of Proponent: City of Seattle, Seattle City Light Department
2. Address and Phone Number of Proponent: c/o: Superintendent  
1015 Third Avenue  
Seattle, WA 98104  
625-3200
3. Date Checklist Submitted: April 4, 1984
4. Agency Requiring Checklist: City of Seattle
5. Name of Proposal, if applicable:

Lucky Peak Project Transmission Facilities, Ada County,  
Boise, Idaho

6. Nature and Brief Description of the Proposal (including but not limited to its size, general design elements, and other factors that will give an accurate understanding of its scope and nature):

This checklist addresses two alternatives that provide for a new overhead transmission line and associated facilities, to provide interconnection of the future Lucky Peak Project powerhouse with the existing transmission line (Idaho Power Company) southwest of the project. The City of Seattle, on February 22, 1984, formally adopted the 1979 National Environmental Policy Act (NEPA) Final Environmental Impact Statement (FEIS) for the Lucky Peak Dam Hydroelectric Modification (see attached letter). This document, however, did not address the impacts associated with the transmission facilities.

7. Location of Proposal (describe the physical setting of the proposal, as well as the extent of the land area affected by any environmental impacts, including any other information needed to give an accurate understanding of the environmental setting of the proposal):

The Lucky Peak Dam and Reservoir (c. 1955) is located on the Boise River, approximately 10 miles southeast of Boise, Idaho. The two alternatives under consideration for transmission facilities dealt with by this checklist would be sited along a route, southwest of the existing dam for: (1) one mile to a point of intersection with an existing 230 kv or upgraded 345 kv transmission line; or (2) 4.3 miles to intersect with an existing 138 KV Transmission Line. The area is characterized as arid stepland, vegetated primarily by sagebrush, rabbit brush and associated grasses. The area shows evidence of livestock grazing. The transmission project could require a 60 foot wide right-of-way, resulting in a commitment of approximately 32 acres of both public and private lands for alternative #2 above (the 4.3 mile route). The first alternative, #1 above, would be sited on federal lands totaling less than eight acres. (See details on attached map).

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8. Estimated Date of Completion of the Proposal: 1987
9. List of all Permits, Licenses, or Government Approvals Required for the Proposal (federal, state and local—including rezones):
- . U.S. Fish and Wildlife Service, Endangered Species Office - Evidence of Section 7. Consultation.
  - . Consultation and coordination with the Idaho State Historical Preservation Officer and Idaho Department of Parks and Recreation
  - . Special Use Permit and Easement Agreement from Corp of Engineers, Bureau of Reclamation (USDI) and Private Landowners
10. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain: Addition of power generation units and associated facilities. See #7 above.
11. Do you know of any plans by others which may affect the property covered by your proposal? If yes, explain:

Not aware of any conflicting uses or plans. The transmission line would cross some recreation-use lands but the design will incorporate measures intended to mitigate to some extent the visual intrusion of the transmission corridor.

## II. ENVIRONMENTAL IMPACTS

(Explanations of all "yes" and "maybe" answers are required.)

|                                                                                                                                                                                                          | <u>YES</u> | <u>MAYBE</u> | <u>NO</u> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--------------|-----------|
| 1. <u>Earth.</u> Will the proposal result in:                                                                                                                                                            |            |              |           |
| a. Unstable earth conditions or in changes in geologic substructures?                                                                                                                                    | _____      | _____        | <u>X</u>  |
| b. Disruptions, displacements, compaction, or overcovering of the soil?                                                                                                                                  | <u>X</u>   | _____        | _____     |
| c. Change in topography or ground surface relief features?                                                                                                                                               | _____      | _____        | <u>X</u>  |
| d. The destruction, covering, or modification of any unique geologic or physical features?                                                                                                               | _____      | _____        | <u>X</u>  |
| e. Any increase in wind or water erosion of soils, either on or off the site?                                                                                                                            | _____      | _____        | <u>X</u>  |
| f. Changes in deposition or erosion of beach sands, or changes in siltation, deposition, or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake? | _____      | _____        | <u>X</u>  |

### Explanation:

(b) This disruption would be limited to those sites where support poles for the transmission line would be erected. The number of poles needed has not yet been determined. No new road construction is anticipated to be required, as existing roads and trails should allow access to whatever route is chosen.

### 2. Air. Will the proposal result in:

|                                                           |          |       |          |
|-----------------------------------------------------------|----------|-------|----------|
| a. Air emissions or deterioration of ambient air quality? | <u>X</u> | _____ | _____    |
| b. The creation of objectionable odors?                   | _____    | _____ | <u>X</u> |

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|                                                                                                                 | <u>YES</u> | <u>MAYBE</u> | <u>NO</u> |
|-----------------------------------------------------------------------------------------------------------------|------------|--------------|-----------|
| c. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally? | _____      | _____        | <u>X</u>  |

Explanation: (a) Diesel engine exhaust emissions for the short construction period, will be released.

3. Water. Will the proposal result in:

|                                                                                                                                                                                                                  |       |       |          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|----------|
| a. Changes in currents, or the course of direction of water movements, in either marine or fresh waters?                                                                                                         | _____ | _____ | <u>X</u> |
| b. Changes in absorption rates, drainage patterns, or the amount of surface water runoff?                                                                                                                        | _____ | _____ | <u>X</u> |
| c. Alterations to the course or flow of flood waters?                                                                                                                                                            | _____ | _____ | <u>X</u> |
| d. Change in the amount of surface water in any water body?                                                                                                                                                      | _____ | _____ | <u>X</u> |
| e. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen, or turbidity?                                                       | _____ | _____ | <u>X</u> |
| f. Alteration of the direction or rate of flow of ground waters?                                                                                                                                                 | _____ | _____ | <u>X</u> |
| g. Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavation?                                                         | _____ | _____ | <u>X</u> |
| h. Deterioration in ground water quality, either through direct injection, or through the seepage of leachate, phosphates, detergents, waterborne virus or bacteria, or other substances into the ground waters? | _____ | _____ | <u>X</u> |

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|                                                                                    | <u>YES</u> | <u>MAYBE</u> | <u>NO</u> |
|------------------------------------------------------------------------------------|------------|--------------|-----------|
| i. Reduction in the amount of water otherwise available for public water supplies? | _____      | _____        | <u>X</u>  |

Explanation:

4. Flora. Will the proposal result in:

|                                                                                                                                                    |       |          |          |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------|----------|
| a. Change in the diversity of species, or numbers of any species of flora (including trees, shrubs, grass, crops, micro-flora and aquatic plants)? | _____ | <u>X</u> | _____    |
| b. Reduction of the numbers of any unique, rare or endangered species of flora?                                                                    | _____ | <u>X</u> | _____    |
| c. Introduction of new species of flora into an area, or in a barrier to the normal replenishment of existing species?                             | _____ | _____    | <u>X</u> |
| d. Reduction in acreage of any agricultural crop?                                                                                                  | _____ | _____    | <u>X</u> |

Explanation:

- (a) The pole or tower itself will occupy a small surface area that may displace individual plants. This loss is not significant. No clearing of the rights-of-way will be necessary because of the nature of the existing vegetation.
- (b) The primrose Primula cusickiana, a plant which has been recommended for Federal Listing as endangered, may occur in the area. The route will be searched for the presence of this plant once it is selected and surveyed.

5. Fauna. Will the proposal result in:

|                                                                                                                                                                                     |       |          |       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------|-------|
| a. Changes in the diversity of species, or numbers of any species of fauna (birds, land animals including reptiles, fish and shellfish, benthic organisms, insects, or microfauna)? | _____ | <u>X</u> | _____ |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------|-------|

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|                                                                                                                     | <u>YES</u> | <u>MAYBE</u> | <u>NO</u> |
|---------------------------------------------------------------------------------------------------------------------|------------|--------------|-----------|
| b. Reduction of the numbers of any unique, rare or endangered species of fauna?                                     | _____      | _____        | <u>X</u>  |
| c. Introduction of new species of fauna into an area, or result in a barrier to the migration or movement of fauna? | _____      | _____        | <u>X</u>  |
| d. Deterioration of existing wildlife habitat?                                                                      | _____      | <u>X</u>     | _____     |

Explanation:

(a, d)

The short-term construction phase may displace some animals by virtue of the proximity of this human activity. The timing for construction will be scheduled to minimize the potential for this impact to nesting birds of prey. Once in place, the line(s) do pose some hazards to birds from collision. Efforts will be made to reduce this hazard by siting of the lines away from ridge tops. The configuration of poles and crossarms will be such as to eliminate the hazard of electrocution of birds of prey.

|                                                                     |          |       |       |
|---------------------------------------------------------------------|----------|-------|-------|
| 6. <u>Noise</u> . Will the proposal increase existing noise levels? | <u>X</u> | _____ | _____ |
|---------------------------------------------------------------------|----------|-------|-------|

Explanation:

For a short time during construction, perhaps for a month or two.

|                                                                           |       |       |          |
|---------------------------------------------------------------------------|-------|-------|----------|
| 7. <u>Light and Glare</u> . Will the proposal produce new light or glare? | _____ | _____ | <u>X</u> |
|---------------------------------------------------------------------------|-------|-------|----------|

Explanation:

|                                                                                                                |          |       |       |
|----------------------------------------------------------------------------------------------------------------|----------|-------|-------|
| 8. <u>Land Use</u> . Will the proposal result in the alteration of the present or planned land use of an area? | <u>X</u> | _____ | _____ |
|----------------------------------------------------------------------------------------------------------------|----------|-------|-------|

Explanation:

The area is used primarily for recreation and secondarily for grazing. Portions of both alternatives lie within the boundary of an Idaho State Recreation Area. The addition of transmission lines and poles to those already there will somewhat decrease the aesthetics of the site, but should not be in conflict on portions currently used for grazing purposes. Specific easement agreements with private landowners will need to be made in the case of alternative #2.

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|                                                                                                                                                                                                                                            | <u>YES</u> | <u>MAYBE</u> | <u>NO</u> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--------------|-----------|
| 9. <u>Natural Resources.</u> Will the proposal result in:                                                                                                                                                                                  |            |              |           |
| a. Increase in the rate of use of any natural resources?                                                                                                                                                                                   | _____      | _____        | <u>X</u>  |
| b. Depletion of any nonrenewable natural resource?                                                                                                                                                                                         | _____      | _____        | <u>X</u>  |
| Explanation:                                                                                                                                                                                                                               |            |              |           |
| 10. <u>Risk of Upset.</u> Does the proposal involve a risk of an explosion or the release of hazardous substances (including, but not limited to oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions? | _____      | _____        | <u>X</u>  |
| Explanation:                                                                                                                                                                                                                               |            |              |           |
| 11. <u>Population.</u> Will the proposal alter the location, distribution, density, or growth rate of the human population of an area?                                                                                                     | _____      | _____        | <u>X</u>  |
| Explanation:                                                                                                                                                                                                                               |            |              |           |
| 12. <u>Housing.</u> Will the proposal affect existing housing, or create demand for additional housing?                                                                                                                                    | _____      | _____        | <u>X</u>  |
| Explanation:                                                                                                                                                                                                                               |            |              |           |
| 13. <u>Transportation/Circulation.</u> Will the proposal result in:                                                                                                                                                                        |            |              |           |
| a. Generation of additional vehicular movement?                                                                                                                                                                                            | _____      | _____        | <u>X</u>  |
| b. Effects on existing parking facilities, or demand for new parking?                                                                                                                                                                      | _____      | _____        | <u>X</u>  |
| c. Impact upon existing transportation systems?                                                                                                                                                                                            | _____      | _____        | <u>X</u>  |

|                                                                                       | <u>YES</u> | <u>MAYBE</u> | <u>NO</u> |
|---------------------------------------------------------------------------------------|------------|--------------|-----------|
| d. Alterations to present patterns of circulation or movement of people and/or goods? | _____      | _____        | <u>X</u>  |
| e. Alterations to waterborne, rail or air traffic?                                    | _____      | _____        | <u>X</u>  |
| f. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians?          | _____      | _____        | <u>X</u>  |

Explanation:

14. Public Services. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:

|                                                       |       |          |          |
|-------------------------------------------------------|-------|----------|----------|
| a. Fire protection?                                   | _____ | _____    | <u>X</u> |
| b. Police protection?                                 | _____ | _____    | <u>X</u> |
| c. Schools?                                           | _____ | _____    | <u>X</u> |
| d. Parks or other recreational facilities?            | _____ | <u>X</u> | _____    |
| e. Maintenance of public facilities, including roads? | _____ | _____    | <u>X</u> |
| f. Other governmental services?                       | _____ | _____    | <u>X</u> |

Explanation:

(d) As part of the FERC License for the Lucky Peak Hydroelectric Project, recreation facilities in the project area will be supplemented. Details of this have yet to be worked out with the parties of concern. Impacts attributable to the transmission line will be dealt with by consultation with involved agencies and implementation of suggested mitigation measures in both siting and construction.

15. Energy. Will the proposal result in:

|                                                  |       |       |          |
|--------------------------------------------------|-------|-------|----------|
| a. Use of substantial amounts of fuel or energy? | _____ | _____ | <u>X</u> |
|--------------------------------------------------|-------|-------|----------|

| <u>YES</u> | <u>MAYBE</u> | <u>NO</u> |
|------------|--------------|-----------|
|------------|--------------|-----------|

- b. Demand upon existing sources or energy, or require the development of new sources of energy?

|       |       |          |
|-------|-------|----------|
| _____ | _____ | <u>X</u> |
|-------|-------|----------|

Explanation:

16. Utilities. Will the proposal result in a need for new systems, or alterations to the following utilities:

- a. Power or natural gas?

|          |       |       |
|----------|-------|-------|
| <u>X</u> | _____ | _____ |
|----------|-------|-------|

- b. Communication systems?

|       |       |          |
|-------|-------|----------|
| _____ | _____ | <u>X</u> |
|-------|-------|----------|

- c. Water?

|       |       |          |
|-------|-------|----------|
| _____ | _____ | <u>X</u> |
|-------|-------|----------|

- d. Sewer or septic tanks?

|       |       |          |
|-------|-------|----------|
| _____ | _____ | <u>X</u> |
|-------|-------|----------|

- e. Storm water drainage?

|       |       |          |
|-------|-------|----------|
| _____ | _____ | <u>X</u> |
|-------|-------|----------|

- f. Solid waste and disposal?

|       |       |          |
|-------|-------|----------|
| _____ | _____ | <u>X</u> |
|-------|-------|----------|

Explanation:

- (a) The very nature of the action is to provide a new transmission system to accomodate new electric output from the power generating facilities to be added to Lucky Peak Dam.

17. Human Health: Will the proposal result in the creation of any health hazard or potential health hazard (excluding mental health)?

|       |       |          |
|-------|-------|----------|
| _____ | _____ | <u>X</u> |
|-------|-------|----------|

Explanation:

18. Aesthetics. Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view?

|       |          |       |
|-------|----------|-------|
| _____ | <u>X</u> | _____ |
|-------|----------|-------|

Explanation:

The placement of an additional transmission line will somewhat visually degrade the area, although the area at present shows abundant evidence of human intrusions. Roads, the dam itself, and parallel series of large transmission lines and towers visually disrupt the area. The addition of this line will have little additional impact.

- |                                                                                                                                   | <u>YES</u> | <u>MAYBE</u> | <u>NO</u> |
|-----------------------------------------------------------------------------------------------------------------------------------|------------|--------------|-----------|
| 19. <u>Recreation.</u> Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities? | _____      | _____X_____  | _____     |

Explanation: The view south from the Discovery Picnic Area will be degraded somewhat by the initial one mile of transmission line crossing in the vicinity of Lydle Gulch. (See also the explanation on 14(d).).

- |                                                                                                                                                                    |       |             |       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------------|-------|
| 20. <u>Archaeological/Historical.</u> Will the proposal result in an alteration of a significant archaeological or historical site, structure, object or building? | _____ | _____X_____ | _____ |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------------|-------|

Explanation:

Under alternative #2 (ie. 4.3 miles of line), the proposed right-of-way crosses remnants of the Oregon Trail, which is marked with cement markers and is clearly visible. The trail is presently used by off-road vehicles, but is not regularly traveled.

Two inventoried archeological/historical sites are located near the mouth of Lydle Gulch. These sites will not be directly affected by either of the transmission corridor options. However the project will be clearly visible from Lydle Gulch. Once the route is selected, it will be surveyed for archeological/historical properties, in consultation with the State of Idaho, Historic Preservation Office.

### III. ALTERNATIVES TO THE PROPOSAL

- (1) Briefly describe any alternative modifications to the proposal (to project factors or external factors).

None are evident at this time.

- (2) Briefly describe any alternative proposals including no action.

No action - It would be impossible to transmit the power output from the generating facility without some transmission facility.

This action - It would be possible but extremely costly to bury the transmission line to the point of interconnection.

One additional alternative has been considered but dismissed because the existing transmission system lacks available capacity to accomodate additional power. This alternative would involve inter-connection with an existing 500 kv line owned by Pacific Power and Light Company via 5 miles of new transmission line.

I, the undersigned, state that to the best of my knowledge the above information is true and complete.

Date April 4, 1984

Signature Stephen C. Ralph  
Stephen C. Ralph  
Title Associate Environmental Analyst

Approved by Katherine Fletcher  
Katherine Fletcher, Director  
Title Environmental Affairs Division

Date April 4, 1984

RECEIVED



Ralph

February 22, 1984

MAR 1 1984

v1  
v2

Dear Sir/Ms.:

Notice of Adoption by the City of Seattle of the 1979 National Environmental Policy Act Final Environmental Impact Statement for the Lucky Peak Dam Hydroelectric Modification, near Boise, Idaho

This letter serves as notice of adoption of the Final NEPA EIS, noted above, under the provisions of the State Environmental Policy Act (SEPA) Guidelines (WAC 197-10-600, 650 and 660). The City of Seattle, City Light Department, may soon be entering into a contract with the Boise Project Board of Control to purchase power from the proposed Lucky Peak hydroelectric facility. The action to be taken is the decision by the Seattle City Council to enter into this contract.

The Corps of Engineers has previously evaluated the environmental impacts of adding a hydroelectric facility to the existing Lucky Peak Dam. The 1979 Corps of Engineers' NEPA Final EIS was evaluated by Seattle City Light and found to be adequate for purposes of adoption under the SEPA Guidelines. A SEPA checklist and threshold determination will be prepared and circulated to specifically address the transmission facilities not considered in the 1979 NEPA EIS. You will also receive these documents when they are issued.

Lucky Peak Dam and Reservoir were constructed in 1955 by the U.S. Corps of Engineers primarily for flood control and irrigation purposes. The dam is located on the Boise River, approximately 10 miles southeast of Boise, Idaho. In the mid-1970's, the Corps of Engineers investigated the feasibility of adding hydroelectric generating facilities to the facility and determined that such an addition would cause minimal environmental impact. The NEPA EIS mentioned above constitutes their environmental analysis.

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v2

February 22, 1984

Page 2

The addition of power-generating facilities has been pursued by the Boise Project Board of Control through the Federal Environmental Regulatory Commission licensing process. Currently, the Board of Control holds a FERC license (Project #2832) for the hydroelectric project.

Please feel free to contact Steve Ralph of the Environmental Affairs Division (206/625-3469) if you have any questions concerning this notice. Thank you.

Sincerely,  
Joe Recchi

Joseph P. Recchi  
Superintendent

JPR:sr

cc: Recchi  
Macdonald  
Saven  
Patton  
Garman  
Yamagiwa  
Okeson  
Rockey  
Freitas  
Fletcher  
Croll  
Ralph ✓  
EAD  
File

ALTERNATIVE #2

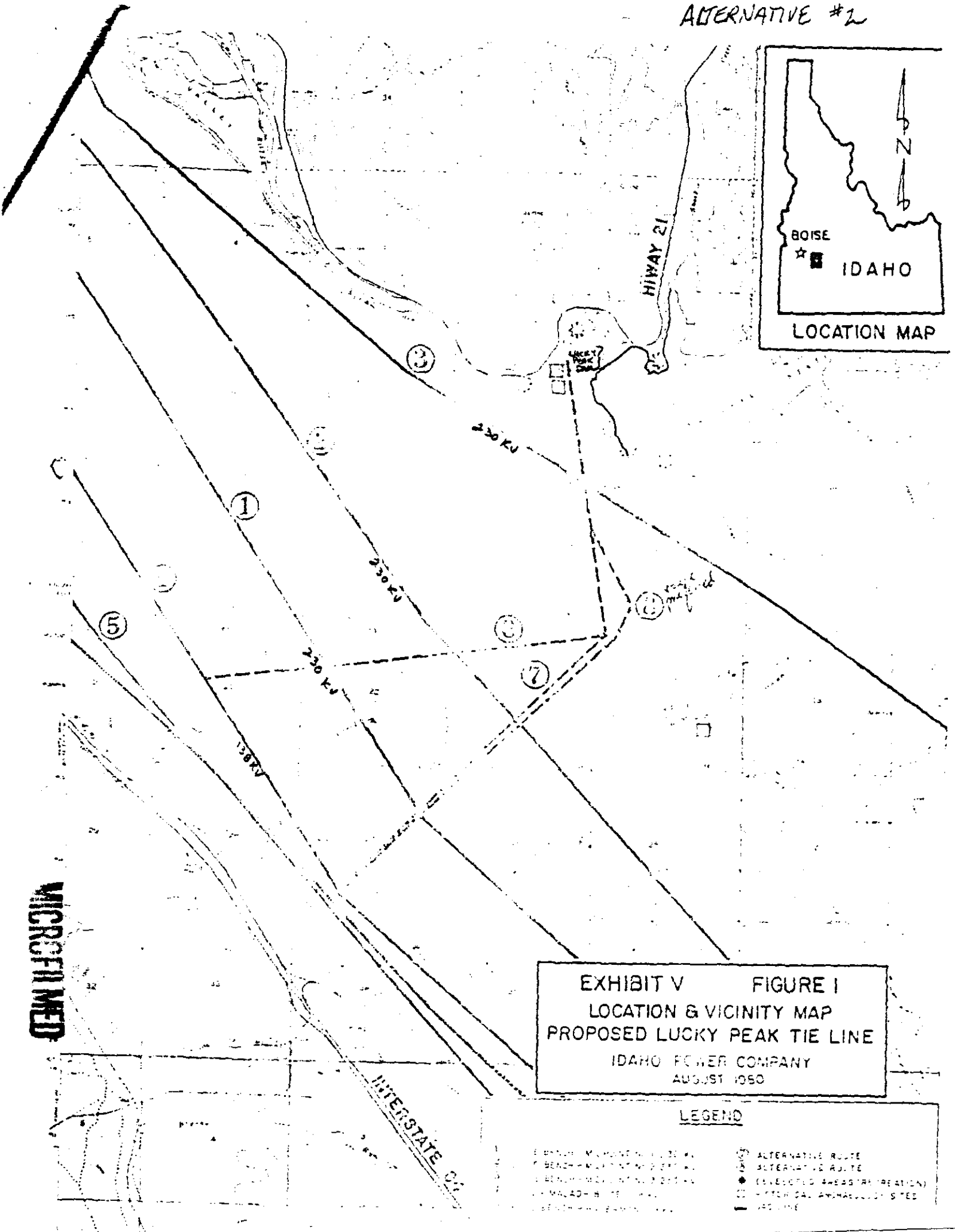
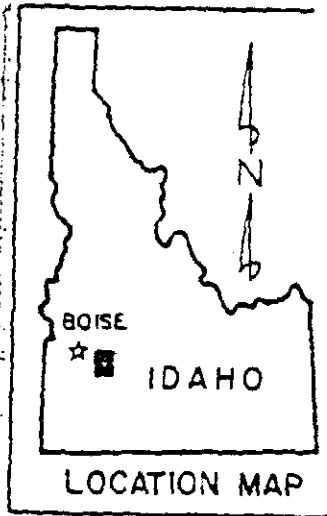
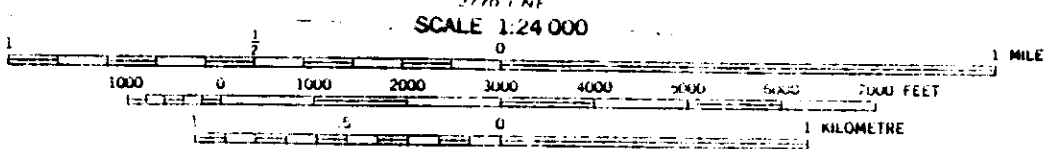
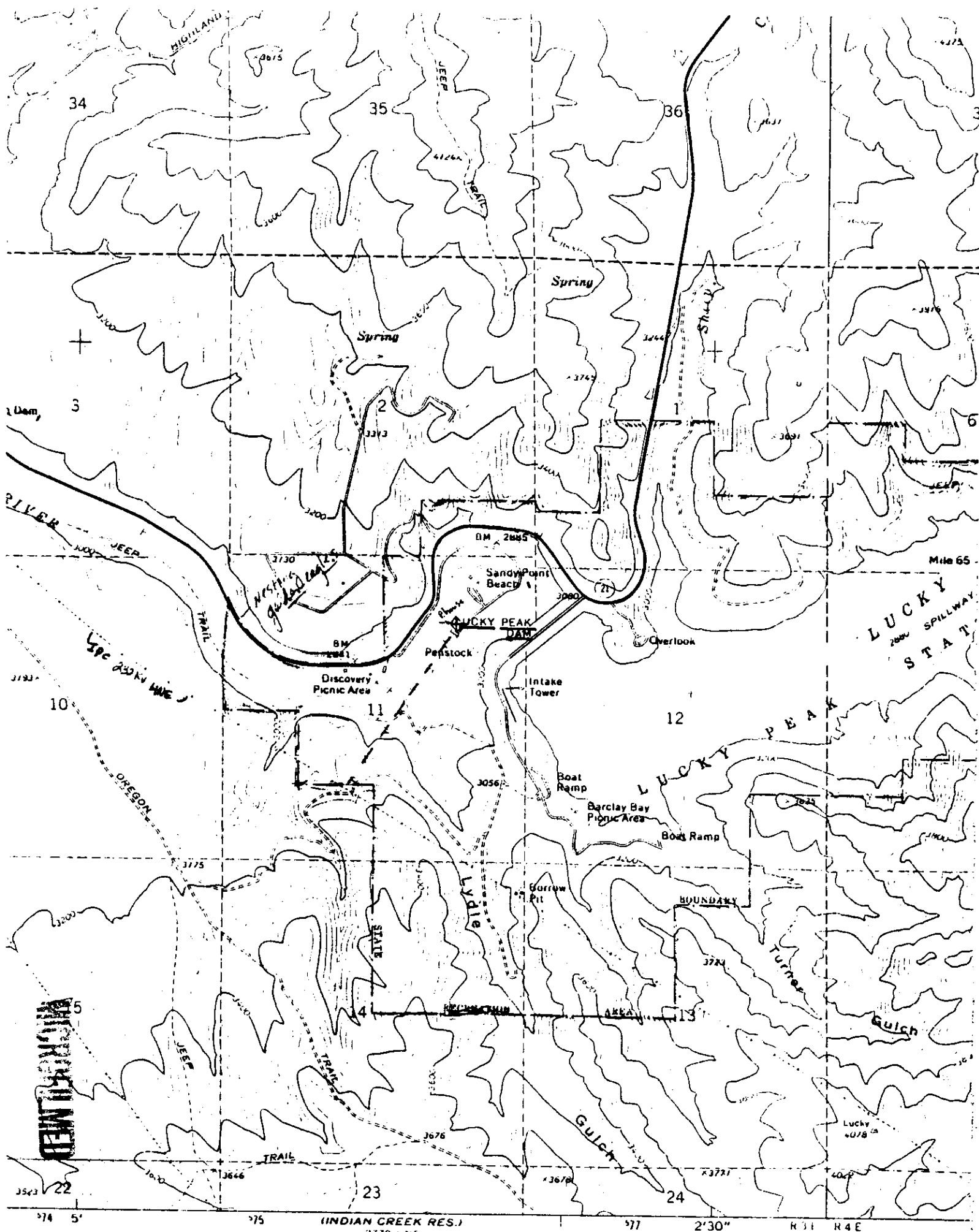


EXHIBIT V      FIGURE I  
 LOCATION & VICINITY MAP  
 PROPOSED LUCKY PEAK TIE LINE  
 IDAHO POWER COMPANY  
 AUGUST 1960

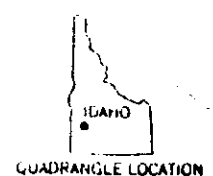
LEGEND

- |                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>1. BENCH MARK (ELEVATION 1,350 FT.)</li> <li>2. BENCH MARK (ELEVATION 1,350 FT.)</li> <li>3. BENCH MARK (ELEVATION 1,350 FT.)</li> <li>4. BENCH MARK (ELEVATION 1,350 FT.)</li> <li>5. BENCH MARK (ELEVATION 1,350 FT.)</li> <li>6. BENCH MARK (ELEVATION 1,350 FT.)</li> <li>7. BENCH MARK (ELEVATION 1,350 FT.)</li> </ul> | <ul style="list-style-type: none"> <li>① ALTERNATIVE ROUTE</li> <li>② ALTERNATIVE ROUTE</li> <li>● (ELEVATED AVERAGE PRESENTATION)</li> <li>○ (ELEVATED AVERAGE PRESENTATION)</li> <li>— TIE LINE</li> </ul> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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CONTOUR INTERVAL 40 FEET  
DOTTED LINES REPRESENT 20-FOOT CONTOURS  
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, VIRGINIA 22092  
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

SITE MAP - ALTERNATIVE #1.

Distribution List - SEPA Checklist and DNS for  
Lucky Peak Project Transmission Facilities

Washington Department of Ecology  
Environmental Review Section  
Mail Stop PU-11  
Olympia, WA 98504

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

City of Seattle  
Department of Construction and Land Use  
600 - 4th Ave. Room 408  
Seattle, WA 98104

Director  
Idaho Public Utilities Commission  
Statehouse  
Boise, ID 83720

U.S. Army Corps of Engineers  
Building 602, City County Airport  
Walla Walla, WA 99362

U.S. Environmental Protection Agency  
Region X, Environmental Evaluation Branch  
1200 - 6th Avenue  
Seattle, WA 98101

N.W. Power Planning Council  
700 S.W. Taylor Suite 200  
Portland, OR 97205

Bonneville Power Administration  
P.O. Box 3621  
Portland, OR 97208

U.S. Fish and Wildlife Service  
2625 Parkmount Lane  
Olympia, WA 98502

Rich Howard  
Endangered Species Program  
U.S. Fish and Wildlife Service  
4620 Overland Road, Room 238  
Boise, ID 83705

Mr. Merle Wells  
Idaho State Historic Preservation Officer  
610 Julian Davis Drive  
Boise, ID 83702

Dave Hansen  
State of Idaho  
Department of Fish and Game  
600 South Walnut Street  
Boise, ID 83707

May 25, 1984

RE: Permit No. 63-9019

Boise Project Board of Control  
214 Broadway  
Boise, ID 83702

Gentlemen:

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

Please be advised that a change to a condition of approval suggested by Mr. Randall C. Fredricks was carefully considered. Mr. Fredricks proposed that the subordination condition be modified to read:

"Use of water under this permit for the purpose of power generation is subordinated to future diversion of water either upstream or downstream for irrigation or other consumptive, beneficial uses by water users within the Boise River Drainage System."

Because the condition proposed by Mr. Fredricks could possibly unnecessarily restrict future opportunities for use of the water, his proposed modification of the subordination condition was not utilized in the final approval condition.

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

Please note the requirement that as a permit holder you must commence the excavation or construction of diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The enclosed blue card must be completed and returned to this office as soon as you commence construction, no later than one year from the date the permit was approved.

Boise Project Board of Control  
May 25, 1984  
Page 2

We have enclosed instructions entitled "Making Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit into a license.

Sincerely,

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

DRT:sc  
Enclosures

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POWER CALCULATIONS FOR APPLICATION NO. 63-9019

P =  $\frac{342357300}{.74} \times \text{hp}$  462645000

proposed

Q = cfs 5700.

H = feet 115 median

e = efficiency 230?

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

3081.5

$e = \frac{P(11.8)}{QH} = \frac{342357300(11.8)}{5700 \times 115} = \frac{4039816140}{655500} = \text{NOT REASONABLE}$

~~$5700 \times 115 = 655500$~~

~~$5700 \times 230 = 1311000$~~

$P = \frac{QHe}{11.8} = \frac{5700 \times 115 \times .80}{11.8} = \frac{524,400}{11.8} = 44,440.7 \text{ OVER}$

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

\*\*\*\*\*

OVERLAP REVIEW

per terminal 5/22/84

(P/D Sec) 63-3026 lic., domestic  
 63-3618 permit irrig. to & from storage  
 63-7236  
 - 7235 lic., domestic  
 - 8356  
 63-9364 permit mining  
 63-4771 domestic  
 63-5168 irr.  
 (P/D Sec) 63-5263 irrig. to & from storage  
 63-3026 irr. NENE  
 63-7236 dom.  
 63-7235 - dom.  
 63-8356 - dom.  
 63-9364 - NWSW  
 63-4771 - dom.  
 63-5168 - irr. SWNE, SENW - 5 acm.

BYPASSED AREA

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use L14-

04  
~~105~~ (63. Boise River)  
109 < ~~18A~~  
18B

17a ~~26a~~

$$P = \frac{5700 \times 115 \times .80}{11.8} = 44,440.7$$

$$P = \frac{QH_e}{11.8} = \frac{5700 \times 230 \times .80}{11.8} = \frac{1048,800}{11.8} = 88,881.4$$

$$H = 100,575 = 74,425.5 \text{ kw}$$

$$e = \frac{P(11.8)}{QH} = \frac{74,425.5 \times 11.8}{5700 \times \cancel{230}} = \frac{878,220.9}{1,311,000.} = 70\%$$

OK

State of Idaho  
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: \_\_\_\_\_ APPLICATION NUMBER: \_\_\_\_\_

CHECK:

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

Field check by: \_\_\_\_\_

Date: \_\_\_\_\_

Comments: \_\_\_\_\_

\*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: \_\_\_\_\_

SEND COPIES TO:

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

Copies sent by: \_\_\_\_\_ Date: \_\_\_\_\_

PROCESSING:

- ☐ Yes ☐ No Platted by: \_\_\_\_\_ Map No. \_\_\_\_\_  
☐ Yes ☐ No Other rights on same place of use. \_\_\_\_\_  
☐ Yes ☐ No\* In form for advertising.  
Final date for protests: \_\_\_\_\_  
☐ Yes ☐ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. Date: \_\_\_\_\_  
☐ 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? 63, Boise R.  
8-31-1977 Date of priority recommended.  
Special conditions of approval or cover letter. \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OFFICE REVIEW:

L14 L12 L19

- ☐ See attached sheet for more information.

By: ew Date: 5-22-84

RECEIVED  
MAY 21 1984

AGREEMENT

Department of Water Resources  
Delivered by hand  
7/8

THIS AGREEMENT, Made this 11th day of May, 1984,  
by and among the NEW YORK IRRIGATION DISTRICT, NAMPA AND  
MERIDIAN IRRIGATION DISTRICT, BOISE-KUNA IRRIGATION DISTRICT,  
WILDER IRRIGATION DISTRICT and BIG BEND IRRIGATION DISTRICT,  
as follows:

1. This agreement is predicated upon the following:

(a) The parties to this agreement are joint licensees  
under Federal Energy Regulatory Commission License No. 2832,  
for the Lucky Peak power plant project, and joint applicants  
under the Idaho Department Water Resources Permit No. 63-9019;

(b) The Nampa and Meridian, Boise-Kuna, Wilder  
and Big Bend Irrigation Districts have each authorized execution  
of a power purchase and sale contract with the City of Seattle  
for the construction, operation and maintenance of the Lucky  
Peak power plant project;

(c) Pursuant to the license, the joint licensees  
must commence construction no later than May 31, 1984, or  
pursuant to the terms of the Federal Power Act and the license,  
the license is no longer in force and effect.

(d) The Boise-Kuna Irrigation District, Nampa  
and Meridian Irrigation District, Wilder Irrigation District  
and Big Bend Irrigation District and the City of Seattle,

RECEIVED

are ready to perform pursuant to the power purchase and sale contract in order to provide necessary financing, in order to commence construction prior to May 31, 1984.

(e) The New York Irrigation District has conducted two contract elections as required under Chapter 23 of Title 43, Idaho Code, as amended, and at neither election was the required two-thirds majority obtained in favor of the execution of the contract.

(f) The New York Irrigation District has determined that under applicable provisions of Idaho law, it would not be able within the necessary time limits to raise the necessary moneys to permit it to make its necessary contribution to the commencement of construction of Lucky Peak power plant project as it is obligated to do under the terms of the license. Because the New York Irrigation District cannot provide its share of the costs of construction, it is not entitled to share in the proceeds from the project.

(g) In order to resolve any dispute which may be present between the joint licensees as to the obligations of the New York Irrigation District to contribute its share of the costs of construction of the Lucky Peak power plant project and in consideration of the agreement by the Boise-Kuna, Nampa and Meridian, Wilder and Big Bend Irrigation Districts to make payment to the New York Irrigation District from the royalty payments due from Seattle, or from any power

sale under any extension or renewal of the FERC license, the New York Irrigation District has agreed to proceed pursuant to statutory authorization contained in Section 43-318, Idaho Code, as amended,

NOW THEREFORE, the parties hereto, for and in consideration of the mutual covenants and agreements herein contained, hereby agree as follows:

Section 1. Upon the execution of this agreement, the New York Irrigation District shall remain a joint licensee under the license with all of the rights, liabilities and obligations under the license, except as otherwise provided in this agreement.

Section 2. The New York Irrigation District consents to the Nampa and Meridian Irrigation District, the Boise-Kuna Irrigation District, the Wilder Irrigation District and the Big Bend Irrigation District, proceeding with the financing, construction, operation and maintenance of the Lucky Peak power plant project under the power purchase and sale contract with the City of Seattle. The New York Irrigation District shall not be a party to the power purchase and sale contract and will not exercise any rights or privileges under the power purchase and sale contract, and disclaims all right title and interest in and to any facilities constructed pursuant to such license water permit or power sale agreement;

Section 3. In order to relieve the New York Irrigation District of its obligation to make contributions to commence

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construction, the New York Irrigation District agrees to transfer, pursuant to Section 43-318, Idaho Code, all of its right, title and interest in and to FERC License No. 2832 and Idaho Water Resource Permit No. 63-9019, and any claim of right to the disposition of power generated at Lucky Peak power project and by the execution of this Agreement accepts in full satisfaction of any claims it might have for the payments provided in Section 4 of this Agreement.

Section 4. The Boise-Kuna Irrigation District, the Big Bend Irrigation District, the Wilder Irrigation District and the Nampa and Meridian Irrigation District agree to pay from net proceeds of the royalty payments made pursuant to Section 5 (d)(4) of the Power Purchase and Sale Contract, 9.5% of those net proceeds, together with 9.5% of the net proceeds received from sale of power under any extension or renewal of FERC License No. 2832. The allocation of revenue among the remaining four districts has not yet been resolved. If the Boise-Kuna, Big Bend, Wilder and Nampa and Meridian Irrigation Districts use any basis other than all lands in all the districts as the basis for allocation of revenues among those districts, the royalty to be paid New York shall be determined by using the same basis as is used to determine allocation among the Boise-Kuna, Nampa and Meridian, Wilder and Big Bend Irrigation Districts, but the royalty to New York shall not be less than 9.5% in any event. The New York shall be paid from bond proceeds



any reimbursable costs paid by it in the same manner as the remaining four districts are reimbursed. In calculating net proceeds of royalties to be paid to New York there shall be deducted amounts determined by applying New York's percentage of those proceeds to the cost and expenses of the remaining four districts which are not included in Ownership and Operation Costs, as defined in the Power Purchase and Sale Contract with Seattle or under any power sale under any extension or renewal of FERC License No. 2832.

Section 5. This contract shall be governed by the Laws of the State of Idaho.

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

NEW YORK IRRIGATION DISTRICT

By [Signature]

NAMPA AND MERIDIAN IRRIGATION DISTRICT

By [Signature]

BOISE-KUNA IRRIGATION DISTRICT

By [Signature]

WILDER IRRIGATION DISTRICT

By [Signature]

BIG BEND IRRIGATION DISTRICT

By [Signature]

CLEMONS, COSHO & HUMPHREY, P. A.

LOUIS H. COSHO  
HOWARD HUMPHREY  
RICHARD H. GREENER  
R. MICHAEL SOUTHCOMBE  
STANLEY W. WELSH  
MAX A. EIDEN, JR.  
RANDALL C. FREDRICKS  
FREDRIC V. SHOEMAKER  
CHRISTOPHER BURKE  
MICHAEL T. SPINK  
RORY R. JONES  
STEVEN L. ADDINGTON

COUNSELORS AND ATTORNEYS AT LAW  
ELEVENTH FLOOR, FIRST INTERSTATE BUILDING  
700 WEST IDAHO  
BOISE, IDAHO 83702

DALE CLEMONS (1911-1983)

TELEPHONE  
AREA CODE 208  
344-7811

May 18, 1984

RECEIVED  
MAY 18 1984

A. Kenneth Dunn, Director  
DEPARTMENT OF WATER RESOURCES  
Statehouse  
Boise, ID 83720

Department of Water Resources

*Hand Delivered*

Dear Ken:

I am enclosing certain information requested by you in your letter of April 2, 1984, in order to obtain issuance of the Water Appropriation Permit for the Lucky Peak Project. These documents are the contract documents for the Lucky Peak Power Plant project, including addendum number one and information for bidders which should give you the information you need in order to document the physical lay-out of the project.

I am also including a copy of the signed agreement with Seattle for the purchase of power from the Project, which should be sufficient to document the economic feasibility of the project. As you are aware we have been working many hours with the various underwriters and bond people and a great number of documents will be executed within the next week or two in order to obtain the revenue to commence construction. If you need copies of any of the other documentation, please advise. Also, please note that we did sign the construction contract for the initial phase with the low bidder (Gates & Fox Company, Inc.).

We are also, as you are aware, dealing with the Corps of Engineers and should have a memorandum agreement signed by them within the next few days. They have previously given their approval for the construction, a copy of which letter has been sent to you earlier. This satisfies your condition regarding access to the dam.

Also enclosed is a copy of the agreement with the New York Irrigation District regarding transfer of their rights in the water permit.

RECEIVED

A. Kenneth Dunn, Director  
May 18, 1984  
Page 2.

I would request that under your condition number 8 that it be changed to read as follows, for clarification:

- "8. Use of water under this permit for the purpose of power generation is subordinated to future diversion of water either upstream or downstream for irrigation or other consumptive, beneficial uses by water user's within the Boise River Drainage System."

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. Fredricks".

Randall C. Fredricks

tek

Enclosures

RECEIVED  
MAY 22 1984  
FBI - BOISE

63-9019

MAY 17 1982

Department of Water Resources

UNITED STATES OF AMERICA      19 FERC ¶62,213  
FEDERAL ENERGY REGULATORY COMMISSION

-2-

NEW YORK IRRIGATION DISTRICT      )  
NAMPA-MERIDIAN IRRIGATION DISTRICT      )  
BOISE-KUNA IRRIGATION DISTRICT      )  
WILDER IRRIGATION DISTRICT      )  
BIG BEND IRRIGATION DISTRICT      )      Project No. 2832-002

ORDER AMENDING LICENSE

( Issued May 10, 1982 )

On April 5, 1982, Boise Project Board of Control (Board), 1/ filed an application for amendment of its license for the Lucky Peak Power Plant Project No. 2832, located at the base of the existing U.S. Army Corps of Engineers' Lucky Peak Dam in Ada County, Idaho.

The Board requested that Article 39 of the license for the Lucky Peak Power Plant Project be amended to extend the period for the commencement of construction of the project from two to four years, and the period for completion of construction from four to within six years from the effective date of the license.

The Board stated that due to the unfavorable climate of the bond market, it has not been able to acquire adequate funds for completing the project and indicated that the additional time is required to secure suitable financing for the project.

It is determined that the request is in the public interest and, therefore, is granted.

It is ordered that:

(A) Article 39 of the Order Issuing License (Major), issued June 10, 1980, for the Lucky Peak Power Plant Project No. 2832 is revised to read as follows:

Article 39. The Licensee shall commence construction of the project works within four years from the effective date of this license and in good faith and with due diligence shall prosecute and complete construction of the project works within six years from the effective date of this license.

(B) This order is final unless a petition appealing it to the Commission is filed within 30 days from the date of its issuance, as provided in Section 1.7(d) of the Commission's regulations, 18 C.F.R. Section 1.7(d) (1981). The filing of a petition appealing this order to the Commission or an application for rehearing as provided in Section 313(a) of the Act does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically ordered by the Commission. The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this order. In acknowledgement of acceptance of this order and its terms and conditions, it shall be signed by the Licensee and returned to the Commission within 60 days from the date this order is issued.

*Robert E. Cackowski*

Robert E. Cackowski  
Acting Director, Office of  
Electric Power Regulation

- 1/ The Boise Project Board of Control is composed of New York, Nampa-Meridian, Boise-Kuna, and Wilder Irrigation Districts. These five member irrigation Districts are collectively the Licensee for the Lucky Peak Power Plant Project No. 2832 (Order issuing License, issued June 10, 1980), and are the applicant in this proceeding.
- 2/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation under 18 C.F.R. §375.308 (1980), as amended by 46 Fed. Reg. 14119 (1981).

FEDERAL ENERGY  
REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID  
FEDERAL ENERGY  
REGULATORY COMMISSION  
PERC 351



C. Steven Silrod, Director, et al  
Idaho Department of Water Resources  
Statehouse P-2832  
Boise, Idaho 83720

FEDERAL ENERGY  
REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300

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POSTAGE AND FEES PAID  
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REGULATORY COMMISSION  
FERC 351



RECEIVED  
APR 30 1984

Department of Water Resources

State of Idaho P-2832  
Dept of Water Resources  
State House  
Bosie, Idaho 83720

MICROFILMED

DET ~~DET~~  
61m ~~61m~~  
Norm ~~Norm~~  
Fleenor ~~Fleenor~~

63-9019  
C. C. C. C. C.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

New York Irrigation District        ) Project No. 2832-003  
Nampa - Meridian Irrigation District )  
Boise - Kuna Irrigation District    )  
Wilder Irrigation District         )  
Big Bend Irrigation District       )

**ORDER APPROVING REVISED EXHIBIT DRAWINGS  
AND AMENDING LICENSE**

( Issued April 20, 1984 )

The Boise Project Board of Control (Board),<sup>1/</sup> has filed an application for amendment of its license for the Lucky Peak Power Plant Project No. 2832, located at the existing U. S. Army Corps of Engineers' Lucky Peak Dam in Ada County, Idaho.<sup>2/</sup>

The application includes revised Exhibits J, K and L drawings, which collectively portray a new diversion and outlet tunnel in lieu of a new power tunnel as licensed, and modification of the existing outlet tunnel to be utilized as both a power tunnel and an outlet tunnel. The Board stated that changes in the licensed project features were required in order to obtain the approval of the U. S. Army Corps of Engineers' (Corps) as stipulated in Article 37 of the license.

- <sup>1/</sup> Boise Project Board of Control was formed by five member districts, to wit: New York Irrigation District, Nampa - Meridian Irrigation District, Boise - Kuna Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District. These five member irrigation districts are collectively the licensee for the Lucky Peak Power Plant Project No. 2832 (Order issuing License, issued June 10, 1980), and are the applicant in this proceeding.
- <sup>2/</sup> 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), FERC Statutes and Regulations §30,238. This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. §385.1902, FERC Statutes and Regulations §29,052 47 Fed. Reg. 19014 (1982). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application 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

In lieu of constructing a separate power tunnel adjacent to the existing tunnel, the Board proposes to line the existing tunnel with a 1-inch-thick, 21-foot-diameter, steel liner and grout the space between the existing tunnel and new steel liner. The penstock would attach to the tunnel liner and consist of a 20-foot-diameter steel lined cast-in-place concrete pipe, manifold, three 10-foot-diameter pipes and one 4.5-foot-diameter pipe.

To provide reservoir releases during emergencies, the Board proposes a new intake structure, diversion and outlet tunnel, and outlet works to be constructed on the south abutment of the dam. The concrete and steel lined tunnel will be approximately 1650 feet long and have an inside diameter of 12 feet. The outlet works would consist of a stilling basin and chute which would discharge into the Boise River.

The Corps has reviewed the revised plan and approved the design concept. Further, the Corps review of the plans indicates that it would not be inconsistent with or in conflict with the authorized purposes of the project as specified in the Flood Control Act of 1946 and the Water Resources Development Act of 1976. To ensure that the construction and operation of the diversion tunnel will be compatible with the authorized purposes of the Corps project, and will be at no cost to the Federal Government, Article 47 will be added to the license.

It is determined that the Board's request is in the public interest and, therefore, will be granted.

It is ordered that:

(A) The license for Project No. 2832 is amended to include a new diversion and outlet tunnel in lieu of a new power tunnel, and to include modification of the existing outlet tunnel for use as both a power and outlet tunnel.

(B) Ordering Paragraph (B)(2) of the Order Issuing License (Major), issued June 10, 1980, is revised to read as follows:

(2) Project works consisting of: (1) a concrete intake structure; (2) an existing 1,050-foot-long, 21-foot-diameter concrete and steel-lined tunnel; (3) an outdoor type powerhouse containing three Francis turnbines, directly connected to three generators each rated at 27.54 MW and one Francis turbine directly connected to a generator rated at 4.86 MW; (4) step up transformers; (5) 13.8/138 kV generator leads; (6) a 1,650-foot-long, 12-foot-diameter concrete and steel lined diversion tunnel with a stilling basin and outlet chute; and (7) appurtenant facilities.

(C) The following exhibit drawings filed on March 26, 1984, are approved and made a part of the license superseding the exhibit drawings noted:

| <u>EXHIBIT</u> | <u>FERC NO. 2832-</u> | <u>TITLED</u>                                                            | <u>SUPERSEDING<br/>FERC NO. 2832-</u> |
|----------------|-----------------------|--------------------------------------------------------------------------|---------------------------------------|
| J              | 6                     | Location Map                                                             | 2                                     |
| K-1            | 7                     | Site Plan                                                                | 3                                     |
| K-2            | 8                     | Site Plan                                                                | -                                     |
| L              | 9                     | General Design<br>Drawings and<br>Descriptive Information<br>Information | -                                     |
| L-1            | 10                    | Intake, Tunnel and<br>Powerhouse Cross<br>Sections                       | 4                                     |
| L-2            | 11                    | Powerhouse - Plans<br>and Section                                        | 5                                     |
| L-3            | 12                    | Diversion and Outlet<br>Tunnel - Plans and<br>Sections                   | -                                     |

(D) The superseded exhibit drawings are deleted from the license.

(E) Within 90 days of the date of issuance of this order, the Licensee shall file originals of the approved Exhibit drawings reproduced on silver or gelatin 35 mm microfilm mounted on type D (3 3/4" x 7 3/8") aperture cards for each drawing. In addition, the Licensee shall file two Diazo-type duplicate aperture cards. FERC drawing numbers shall be shown in the margin below the title block of the microfilmed drawings, and also in the upper right corner of each card.

(F) The following article is added to and made a part of the license for the Lucky Peak Power Plant Project No. 2832:

Article 47. In order to ensure that the construction and operation of the diversion tunnel will not conflict with the authorized purposes of the Federal Lucky Peak Project, the licensee shall include in an agreement with the U. S. Army Corps of Engineers, procedures for diversion tunnel construction, operation, maintenance, and control at no cost to the Federal Government.

MICROFILMED

(G) The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this amendment. In acknowledgment of acceptance of this order and its terms and conditions, it shall be signed by the Licensees and returned to the Commission within 60 days from the date this order is issued.

*Lawrence R. Anderson*  
For Lawrence R. Anderson  
Director, Office of Electric  
Power Regulation



RECEIVED MED

Project No. 2832

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, Wilder Irrigation District this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, has caused its corporate name to be signed hereto by \_\_\_\_\_, its \_\_\_\_\_ President, and its corporate seal to be affixed hereto and attested by \_\_\_\_\_ its \_\_\_\_\_ Secretary, pursuant to a resolution of its Board of Directors duly adopted on the \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, a certified copy of the record of which is attached hereto.

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

(Executed in quadruplicate)

Project No. 2832

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, Boise - Kuna Irrigation District this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, has caused its corporate name to be signed hereto by \_\_\_\_\_, its \_\_\_\_\_ President, and its corporate seal to be affixed hereto and attested by \_\_\_\_\_ its \_\_\_\_\_ Secretary, pursuant to a resolution of its Board of Directors duly adopted on the \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, a certified copy of the record of which is attached hereto.

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

(Executed in quadruplicate)

Project No. 2832

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, Nampa and Meridian Irrigation District this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, has caused its corporate name to be signed hereto by \_\_\_\_\_, its \_\_\_\_\_ President, and its corporate seal to be affixed hereto and attested by \_\_\_\_\_ its \_\_\_\_\_ Secretary, pursuant to a resolution of its Board of Directors duly adopted on the \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, a certified copy of the record of which is attached hereto.

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

(Executed in quadruplicate)

Project No. 2832

**MICROFILMED**

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, New York Irrigation District this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, has caused its corporate name to be signed hereto by \_\_\_\_\_, its \_\_\_\_\_ President, and its corporate seal to be affixed hereto and attested by \_\_\_\_\_ its \_\_\_\_\_ Secretary, pursuant to a resolution of its Board of Directors duly adopted on the \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, a certified copy of the record of which is attached hereto.

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

(Executed in quadruplicate)

Project No. 2832

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, Big Bend Irrigation District this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, has caused its corporate name to be signed hereto by \_\_\_\_\_, its \_\_\_\_\_ President, and its corporate seal to be affixed hereto and attested by \_\_\_\_\_ its \_\_\_\_\_ Secretary, pursuant to a resolution of its Board of Directors duly adopted on the \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, a certified copy of the record of which is attached hereto.

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

(Executed in quadruplicate)



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

April 2, 1984

Mr. Howard Carsman  
Eberle, Berlin, Kading, Turnbow  
& Gillespie  
Capitol Park Plaza  
300 North Sixth Street  
P. O. Box 1368  
Boise, ID 83701

RE: 63-9019 - Boise Project Board of Control  
Lucky Peak Hydro Project

Dear Howard;

I have carefully reviewed your letter of February 21, 1984, asking that the department republish notice of the above reference project. I agree that the circumstances of the project have changed since first applied for in 1977. In particular, the regulatory requirements have been revised by addition of the local public interest criterion, the requirement to review the five criteria of 42-203, Idaho Code, whether protested or unprotested, and by the courts' interpretations in Troutco I & II and Hidden Springs. Because of these changes in requirements, the department will seek additional documentation from the applicants. I cannot, however, see that the position of your clients relative to this matter has been altered from what it was in 1977. Whatever property interest in the project your clients have now, they had then. The nature of the sales contract, whether with Idaho Power Company or some other out-of-state entity, does not seem material because your clients were not direct beneficiaries of the project and the original sales agreements did not guarantee power availability to either your clients or customers in Idaho as a whole.

For this reason, further notice will not be given. I will, however, review information you may wish to submit relative to any of the criteria of Section 42-203.

Sincerely,

A. KENNETH DUNN  
Director

AKD:alw

MICROFILMED



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

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

April 2, 1984

Randall C. Fredrick, Attorney  
Clemons, Casho, & Humphrey  
700 West Idaho  
Boise, ID 83702

RE: 63-9019 - Lucky Peak Project  
Boise Project Board of Control

Dear Mr. Fredrick:

This is a response to your letter of March 6, 1984, requesting issuance of a water appropriation permit for the Lucky Peak project. The department has determined that water is available and can be appropriated without injury to senior right holders. The permit will be issued after the department receives the following information:

1. Plans and specifications in sufficient detail to document the physical layout of the project. ✓
2. Financial ability and economic feasibility data to demonstrate that funds are or can be made available to pursue the project.
3. Copies of easements or agreements allowing the Boise Project Board of Control legal access to Lucky Peak Dam as needed to design, construct, operate and maintain the proposed project.

The requirement to submit information on plans and specification, financial ability and economic feasibility factors has recently been emphasized by a district court ruling issued last summer. Much of this information is likely readily available to you because of FERC related studies. The information must, however, be made a part of the department's file to allow the determinations required by 42-203, Idaho Code, to be made as a permit is issued.

You have asked that the applicant be given an opportunity to review the permit conditions before a permit is issued. I have consented to do so because of the short-time period that the applicant has remaining to commence construction under the FERC license. I have attached a list of conditions which likely will be incorporated into the permit approval. The conditions must be considered preliminary and subject to change; perhaps as a result of the information requested in this letter. In no way is the offering of this list a suggestion that the conditions are subject to negotiation.

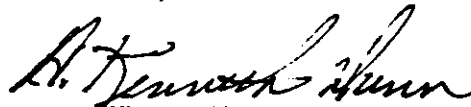
MICROFILMED

April 2, 1984

Note from suggested condition #9 that it is my intention to interpret section 42-1711(d)(2), Idaho Code, as allowing structural changes to be made to the dam without going through the formal application, review and approval process of the state dam safety programs upon certification that the requirement technical reviews have been made by the Corps of Engineers. This interpretation is being made to avoid a duplication of the plan and construction review process for work on a federally-owned dam that will be subjected to the full technical review of the Corps of Engineers. The applicant will not be required to formally submit plans, pay the required fees, and wait for state approval. However, plans and specifications must be submitted to Department of Water Resources for information purposes.

If I can provide further information on this matter, please contact me.

Sincerely,



A. KENNETH DUNN  
Director

AKD:alw

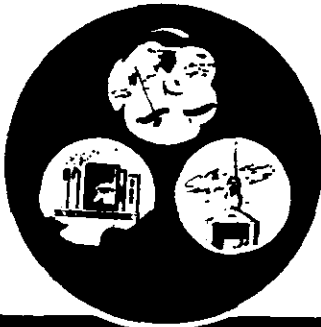
cc: Howard Carsman  
Gerald Guentz  
Col. Williams  
Royse Van Curen

Encl.

4-2-84

SUGGESTED CONDITIONS OF APPROVAL FOR APPLICATION FOR  
PERMIT NO. 63-9019 -- LUCKY PEAK HYDRO

1. Subject to all prior rights.
2. This permit does not convey any authority to require or demand the release of water but shall only be effective to allow generation of hydro-electricity using water released under existing rights and operating procedures for irrigation, flood control and fish and wildlife purposes.
3. The diversion and use of water under this permit and any license issued hereunder is subject to review by the Director on June 1, 2030. 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.
4. For licensing purposes, a scientific measurement of the diversion rate of the system as it is normally operated shall be provided by either properly installing an approved type of measuring device or access port or by having a professional engineer certify the rate of diversion to the department prior to submitting proof of beneficial use of water.
5. The issuance of this permit in no way grants any right-of-way or easement across the land of another.
6. This permit is subject to the provisions of Section 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.
7. Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.
8. Use of water under this permit for the purpose of power generation is subordinated to future diversion of water either upstream or downstream for irrigation or other consumptive beneficial uses.
9. Structural modification to the dam and storage of water is contingent upon certification to the Department of Water Resources that plans and specifications have been reviewed and approved by the U.S. Army Corps of Engineers and that construction has proceeded in full compliance with the final approved plans.
10. This permit does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
11. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
12. Proof of beneficial use of the water is due within five years of the date of permit issuance.



6-9019

RECEIVED  
MAR 28 1984

# City of Caldwell

Department of Water Resources

*We Extend Our Hand . . .*

**CITY CLERK**  
BETTY JO KELLER

**MAYOR**  
A. H. "AL" McCLUSKEY

**COUNCIL MEMBERS**  
JACK RAYMOND  
Council President  
GENE BETTS  
LES CARTER  
PAT MALLEA  
JACK CARTER  
PETE COWLES

March 27, 1984

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

RE: Lucky Peak Project

Dear Mr. Dunn,

I am writing this letter as a novice when it concerns water rights, but also as a citizen of the State of Idaho and Mayor of the City of Caldwell who has been watching very closely action taken by various departments and groups regarding the hydropower potential for Lucky Peak Dam.

My first concern was when the Boise Project Board of Control believed they were justified in eliminating Pioneer Irrigation District from their plans. As I understand it, this decision kept the cities of Caldwell and Nampa from benefiting from the sale of power that would be generated by a dam at Lucky Peak. I can't help but believe that logical thinking would support the fact that both cities have been involved for many years in helping pay for the development of facilities that now make this hydropower program feasible and should they be part of the overall benefits derived from that project. Unless there were some general hearings that I was unaware of, I have never been invited to express my views to your Department as a representative of the City of Caldwell.

My second concern as Mayor, although primarily as a citizen of the State of Idaho, is that a decision has been made to sell the power to the City of Seattle. Over the period of years through information received from appointed and elected officials, we have been led to believe that the number one priority in our State is to protect our water resources. Regardless of the amount of profit that could be engendered from selling to the City of Seattle, I am philosophically opposed to that action. In spite of the difficulty I have with some of the policies of Idaho Power, they are at least a local entity that can be dealt with in our area and under Idaho laws.

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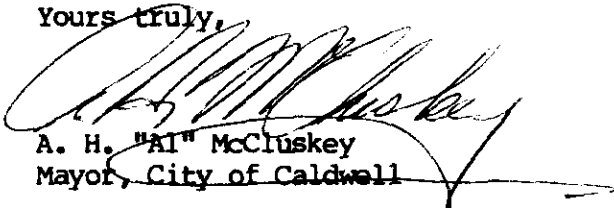
Mr. A. Kenneth Dunn

PAGE 2

March 27, 1984

I would hope that it would still be possible for some of the ignored water users to be involved in a hearing process to enable them to support the position established by the Boise River Water User's Action Committee.

Yours truly,



A. H. "Al" McCluskey  
Mayor, City of Caldwell

CC: Lawerance V. Gray  
Winston Goering, Mayor of Nampa  
City Council

AHM/bjk

MICROFILMED

*Hand Delivered*

CLEMONS, COSHO & HUMPHREY, P. A.

COUNSELLORS AND ATTORNEYS AT LAW

DALE CLEMONS  
LOUIS H. COSHO  
HOWARD HUMPHREY  
RICHARD H. GREENER  
R. MICHAEL SOUTHCOMBE  
STANLEY W. WELSH  
MAX A. EIDEN, JR.

FIRST INTERSTATE BUILDING, SUITE 1110

700 WEST IDAHO

BOISE, IDAHO 83702

TELEPHONE (208) 344-7811

RANDALL C. FREDRICKS  
FREDRIC V. SHOEMAKER  
CHRISTOPHER BURKE  
MICHAEL T. SPINK  
RORY R. JONES  
STEVEN L. ADDINGTON

March 6, 1984

**RECEIVED**  
MAR 6 1984

Kenneth Dunn, Director  
Water Resources Board  
State of Idaho  
Statehouse Mail  
Boise, Idaho 83720

Department of Water Resources

Dear Mr. Dunn:

Enclosed is a copy of a letter from the Department of the Army Corps of Engineers, giving their approval of the Boise Project Board of Control's plans regarding the proposed power project and by-pass tunnel.

Request is hereby made on behalf of the five irrigation districts involved for issuance of the State's permit pursuant to our previous request and as outlined in our meeting several weeks ago.

It was also our understanding that any conditions you propose to place on the permit would be reviewed by us prior to final issuance.

Please advise.

Very truly yours,



Randall C. Fredrick

RCF/d

RECEIVED  
MAR 6 1984



REPLY TO  
ATTENTION OF:  
NPWEN-FM

DEPARTMENT OF THE ARMY  
WALLA WALLA DISTRICT, CORPS OF ENGINEERS  
BUILDING 602, CITY-COUNTY AIRPORT  
WALLA WALLA, WASHINGTON 99362

January 31, 1984

RECEIVED  
FEB 3 1984

BOISE PROJECT BOARD OF CONTROL

RECEIVED  
MAR 6 1984

Department of Water Resources

Mr. Gerald Guentz, Chairman  
Boise Project Board of Control  
214 Broadway  
Boise, Idaho 83702

Dear Mr. Guentz:

In reply to your letter dated January 20, 1984, we are advised of the irrigation districts' approval to reimburse the Corps of Engineers for costs incurred in the supervision of your present drilling program at Lucky Peak, and of your request for support of the proposed modification for FERC Application for Permit: Project No. 2832.

In order to avoid any misunderstanding, reimbursement for incurred costs should include all reviews of the project design required prior to the consummation of the Memorandum of Understanding (M.O.U.). As was stated in our letter dated January 12, 1984, it is strongly suggested that the M.O.U. be revised and finalized as soon as possible.

The Corps of Engineers is in full support of your revised plans to strengthen the existing outlet tunnel with a bifurcation and valving near the downstream portal to provide water for power generation, and to construct a second outlet facility along an alignment at the south end of the spillway. Although a 1968 Corps of Engineers' plan for a power plant at this project included a new tunnel parallel to, and 150 feet landward of the existing tunnel, subsequent concern for the safety and integrity of the existing structures led to an alternate design similar to the design proposed by your office. Attached is a drawing of the powerhouse plan which was included in a 1978 report entitled "Lucky Peak Dam and Lake, Modification Study". This report has been reviewed and approved by our North Pacific Division Office, our Washington Headquarters Office, and the Board of Engineers for Rivers and Harbors.

A second outlet to pass minimum flows at the project during times when the main tunnel is being inspected or repaired was authorized in the Water Resources Development Act of 1976. Preliminary design was initiated in 1977, but terminated for lack of funding. Approximately 75 percent of the planned explorations along the tunnel were completed prior to the termination of the study.

MICROFILMED

Your proposed plan, if accepted by FERC, would eliminate the need for explorations that had been envisioned for the parallel tunnel alignment. The only explorations needed would be those considered necessary to finalize the design along the second outlet alignment, and sufficient explorations in the area of the proposed power plant to determine foundation grades.

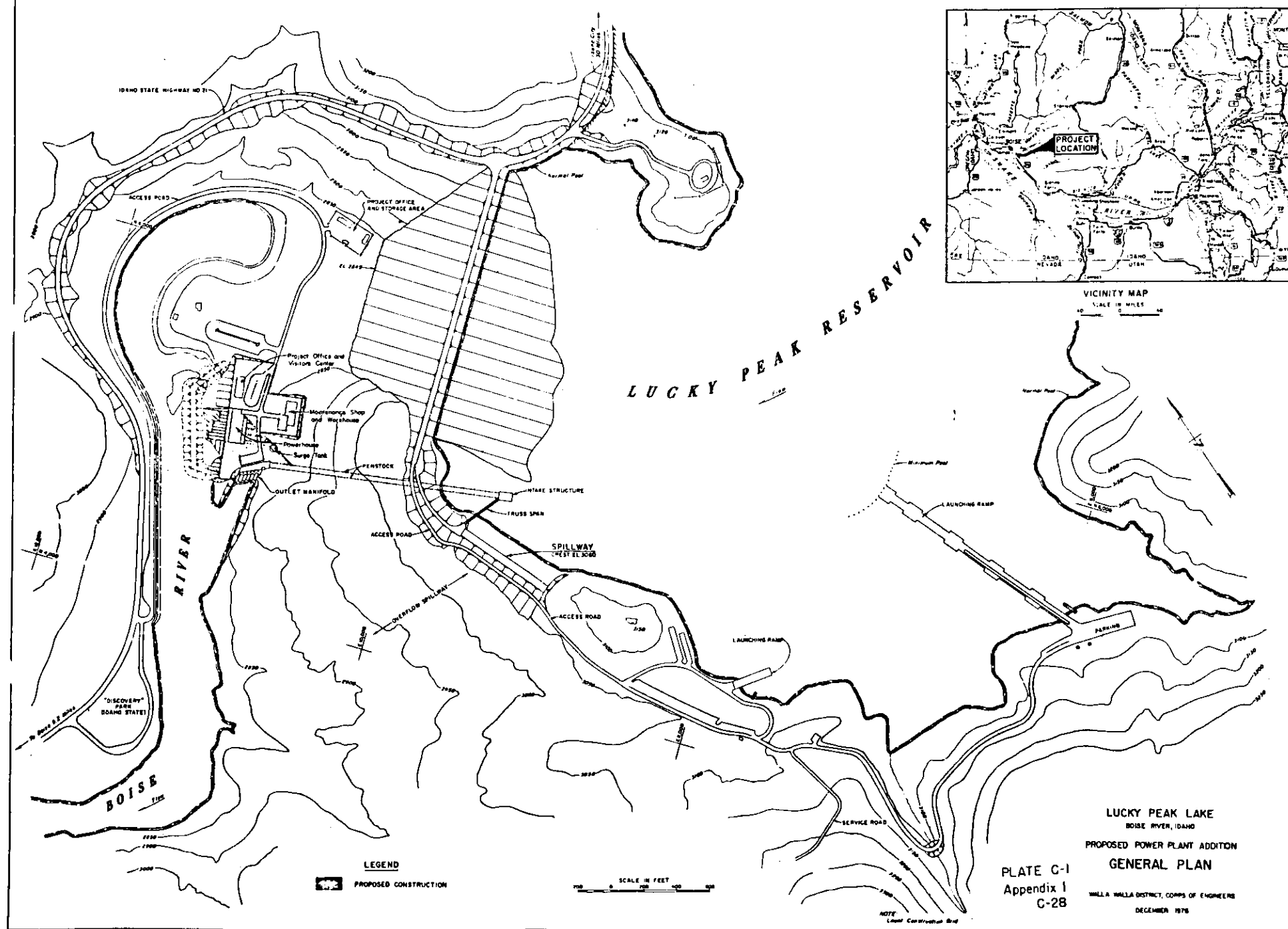
Although concerns for dam safety are still present, we feel the potential for structural damage to the existing structures during construction of power facilities is substantially reduced by your new proposal.

Sincerely,

  
Robert B. Williams  
Colonel, Corps of Engineers  
District Engineer

Enclosure

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EBERLE, BERLIN, KADING, TURNBOW & GILLESPIE,  
CHARTERED

TELEPHONE (208) 344-8535

JAMES L. BERLIN  
R. B. KADING, JR.  
R. M. TURNBOW  
JAMES R. GILLESPIE  
WILLIAM J. MCKLVEEN  
DALE G. HIGER  
WARREN E. JONES  
MARK S. GESTON  
B. NEWAL SQUIRES, JR.  
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THOMAS R. LINVILLE  
RICHARD A. RILEY  
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BRADLEY G. ANDREWS  
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ATTORNEYS AND COUNSELORS AT LAW  
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BOISE, IDAHO 83701

J. L. EBERLE (1890-1964)  
T. H. EBERLE (1922-1977)

February 21, 1984

RECEIVED  
FEB 22 1984

Department of Water Resources

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

Re: Lucky Peak Project

Dear Ken:

As you know, I am writing on behalf of the Boise River Water Users Action Committee. Our clients, as well as the public generally, have an interest in seeing the development of the hydropower potential for Lucky Peak Dam. Rather than addressing the nature of the Boise River Water Users Action Committee's interest in Lucky Peak, we thought it appropriate at this time to only address a rather narrow question: Should the Department of Water Resources provide new notice for the Boise Project Board of Control's Application for Permit No. 63-9019.

As everyone recognizes, Lucky Peak and its hydropower potential is a local resource capable of providing benefits to the general public in the Boise area. More specifically, Lucky Peak's hydropower potential can provide a source of revenue for all those Boise River water users who have paid for the construction and maintenance of the three Boise River dams. These water users who are the holders of water rights in the dams also hold the falling water rights which originally were located at Arrowrock Reservoir but have now been transferred to Lucky Peak. These water users have a vital interest in the development of hydropower at Lucky Peak and in seeing that their water rights are properly used to produce revenue and benefits for themselves and for Idaho. Thus, the development of hydropower at Lucky Peak affects the property rights of the many water right holders in Lucky Peak Reservoir and the other reservoirs and affects the more generalized public interest in the development of an important resource for southwestern Idaho.

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Substantial changes in factual circumstances and in the law have occurred since 1977, the date of Application for Permit No. 63-9019. The most significant change in circumstances since the date of the permit application has been the apparent end of the agreement between the Boise Project Board of Control and Idaho Power Company. That agreement provided the very foundation for the financial feasibility of the Lucky Peak Project since it provided for construction financing as well as a ready market for the power produced by the project. With the end of the Idaho Power agreement, the Boise Project Board of Control has apparently entered into negotiations with the City of Seattle. Even if such negotiations result in a financially feasible project, which we understand has not been established in any manner before you, the possibility or probability that power produced at Lucky Peak would be sold to Seattle, with the benefits of the project largely leaving Idaho, presents a major change in circumstances since the date of this permit application.

Coupled with the substantial change in facts which has occurred in the seven years since the application was made by the Boise Project Board of Control is a major change in Idaho law. In 1978, the legislature enacted the local public interest criteria of Idaho Code §42-203. As the Supreme Court held in Hidden Spring Trout Ranch, Inc. v. Allred, 102 Idaho 623 (1981) the local public interest criteria applies to pending applications.

Prior to 1978, the public had little or no right to comment on water right applications. Generally, only competing water users had standing to object to an application, due to the effect which the proposed permit would have on their rights. However, since 1978 the public does have a right to object or simply provide their views to the Department on the local public interest.

Without notice and an opportunity to be heard on the issue of local public interest, the public generally and interested parties have no meaningful opportunity to respond to an application and present evidence to the Department. As Judge Smith held in Trout Co. II, the Department of Water Resources is obligated by Idaho Code §67-5209 to provide all parties with an opportunity to respond to an application and to present evidence.

If new notice is not provided, the public and specific interested parties have no opportunity to present the Department with evidence or argument. The Department's statutes do not provide for a means of public comment on an application except after notice has been

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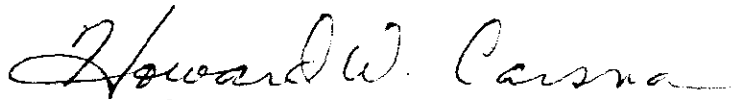
published by the Department. Given the change in law and facts since Application No. 63-9019 was made in 1977, new notice appears to be necessary so that the public and other interested parties can exercise rights afforded to them by the legislature's 1978 amendment which added the local public interest criteria.

With the loss of the Idaho Power contract, the Boise Project Board of Control apparently has no firm contract with a buyer of its power and no arrangement for financing the construction costs of the project. The negotiations with the City of Seattle highlight the unanswered questions regarding the applicants financial ability to complete the project. To the members of the interested public, the ultimate question is whether the resource represented by Lucky Peak's hydropower potential will be developed and if so by whom.

The financial ability requirement has been judicially, interpreted in Trout Co. II to require a showing of an applicants present financial ability to complete a project. The significant change in circumstances surrounding the applicant's ability to finance the Lucky Peak Project requires an opportunity for meaningful public input. As Judge Schroeder held in Trout Co. I, the Department of Water Resources cannot commit a public resource development without substantial evidence of financial ability. Due to the importance of Lucky Peak to the public and to the water users of the Boise River, they are entitled to notice and an opportunity to be heard on the applicant's ability to complete the project.

This letter is a relatively informal presentation of the position of the Boise River Water Users Action Committee on the narrow question of whether new notice is required. If you feel that a more formal submission on this question is appropriate, we will be glad to provide one and will serve it upon counsel for the Boise Project Board of Control. I look forward to hearing your thoughts on this matter very soon.

Sincerely,

  
Howard W. Carsman

HWC/jh

cc: Lawerance V. Gray  
M.C. Galvin  
Harry Vogt  
L.C. Mace  
Don Smitchger



EBERLE, BERLIN, KADING, TURNBOW & GILLESPIE,  
CHARTERED

JAMES L. BERLIN  
R. B. KADING, JR.  
R. M. TURNBOW  
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TELEPHONE (208) 344-8535

J. L. EBERLE (1890-1964)  
T. H. EBERLE (1922-1977)

February 1, 1984

RECEIVED  
FEB 2 1984

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

Department of Water Resources

RE: Boise River Water Users Action Committee,  
Lucky Peak Project

Dear Ken:

I am writing on behalf of a group of Boise River Water Users regarding the Lucky Peak hydropower project. As you know, our firm has been retained by the Boise River Water Users Action Committee which consists of most of the Boise River Irrigators who are not within the districts under the Boise Project Board of Control. We will be representing them in proceedings or actions involving the Department of Water Resources. In order that we may be kept advised of the Department's actions with regard to the Boise Project Board of Control's Lucky Peak project, **we request that this firm be placed on a mailing list and provided with notice of the Department's actions with regard to this project.**

It is my understanding that the Boise Project Board of Control currently has a pending application for a water right permit for the Lucky Peak project. It is also my understanding that the Department has not yet acted upon this application. We intend to file, with the Department, a statement of the Boise River Water Users organizations' position on the pending permit application.

Sincerely,

*Howard W. Carsman*  
Howard W. Carsman

HWC:klo

cc: L. V. Gray  
M. C. Galvin  
Harry Vogt  
L. C. Mace  
Don Smitchger

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*Hand Delivered*

CLEMONS, COSHO & HUMPHREY, P. A.

COUNSELLORS AND ATTORNEYS AT LAW

DALE CLEMONS  
LOUIS H. COSHO  
HOWARD HUMPHREY  
RICHARD H. GREENER  
R. MICHAEL SOUTHCOMBE  
STANLEY W. WELSH  
MAX A. EIDEN, JR.

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RANDALL C. FREDRICKS  
FREDRIC V. SHOEMAKER  
CHRISTOPHER BURKE  
MICHAEL T. SPINK  
RORY R. JONES  
STEVEN L. ADDINGTON

March 6, 1984

**RECEIVED**  
MAR 6 1984

Kenneth Dunn, Director  
Water Resources Board  
State of Idaho  
Statehouse Mail  
Boise, Idaho 83720

Department of Water Resources

Dear Mr. Dunn:

Enclosed is a copy of a letter from the Department of the Army Corps of Engineers, giving their approval of the Boise Project Board of Control's plans regarding the proposed power project and by-pass tunnel.

Request is hereby made on behalf of the five irrigation districts involved for issuance of the State's permit pursuant to our previous request and as outlined in our meeting several weeks ago.

It was also our understanding that any conditions you propose to place on the permit would be reviewed by us prior to final issuance.

Please advise.

Very truly yours,



Randall C. Fredrick

RCF/d

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DEPARTMENT OF THE ARMY  
WALLA WALLA DISTRICT, CORPS OF ENGINEERS  
BUILDING 602, CITY-COUNTY AIRPORT  
WALLA WALLA, WASHINGTON 99362

January 31, 1984

REPLY TO  
ATTENTION OF:  
NPWEN-FM

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FEB 3 1984

BOISE PROJECT BOARD OF CONTROL

RECEIVED  
MAR 6 1984

Mr. Gerald Guentz, Chairman  
Boise Project Board of Control  
214 Broadway  
Boise, Idaho 83702

Department of Water Resources

Dear Mr. Guentz:

In reply to your letter dated January 20, 1984, we are advised of the irrigation districts' approval to reimburse the Corps of Engineers for costs incurred in the supervision of your present drilling program at Lucky Peak, and of your request for support of the proposed modification for FERC Application for Permit: Project No. 2832.

In order to avoid any misunderstanding, reimbursement for incurred costs should include all reviews of the project design required prior to the consummation of the Memorandum of Understanding (M.O.U.). As was stated in our letter dated January 12, 1984, it is strongly suggested that the M.O.U. be revised and finalized as soon as possible.

The Corps of Engineers is in full support of your revised plans to strengthen the existing outlet tunnel with a bifurcation and valving near the downstream portal to provide water for power generation, and to construct a second outlet facility along an alignment at the south end of the spillway. Although a 1968 Corps of Engineers' plan for a power plant at this project included a new tunnel parallel to, and 150 feet landward of the existing tunnel, subsequent concern for the safety and integrity of the existing structures led to an alternate design similar to the design proposed by your office. Attached is a drawing of the powerhouse plan which was included in a 1978 report entitled "Lucky Peak Dam and Lake, Modification Study". This report has been reviewed and approved by our North Pacific Division Office, our Washington Headquarters Office, and the Board of Engineers for Rivers and Harbors.

A second outlet to pass minimum flows at the project during times when the main tunnel is being inspected or repaired was authorized in the Water Resources Development Act of 1976. Preliminary design was initiated in 1977, but terminated for lack of funding. Approximately 75 percent of the planned explorations along the tunnel were completed prior to the termination of the study.

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Your proposed plan, if accepted by FERC, would eliminate the need for explorations that had been envisioned for the parallel tunnel alignment. The only explorations needed would be those considered necessary to finalize the design along the second outlet alignment, and sufficient explorations in the area of the proposed power plant to determine foundation grades.

Although concerns for dam safety are still present, we feel the potential for structural damage to the existing structures during construction of power facilities is substantially reduced by your new proposal.

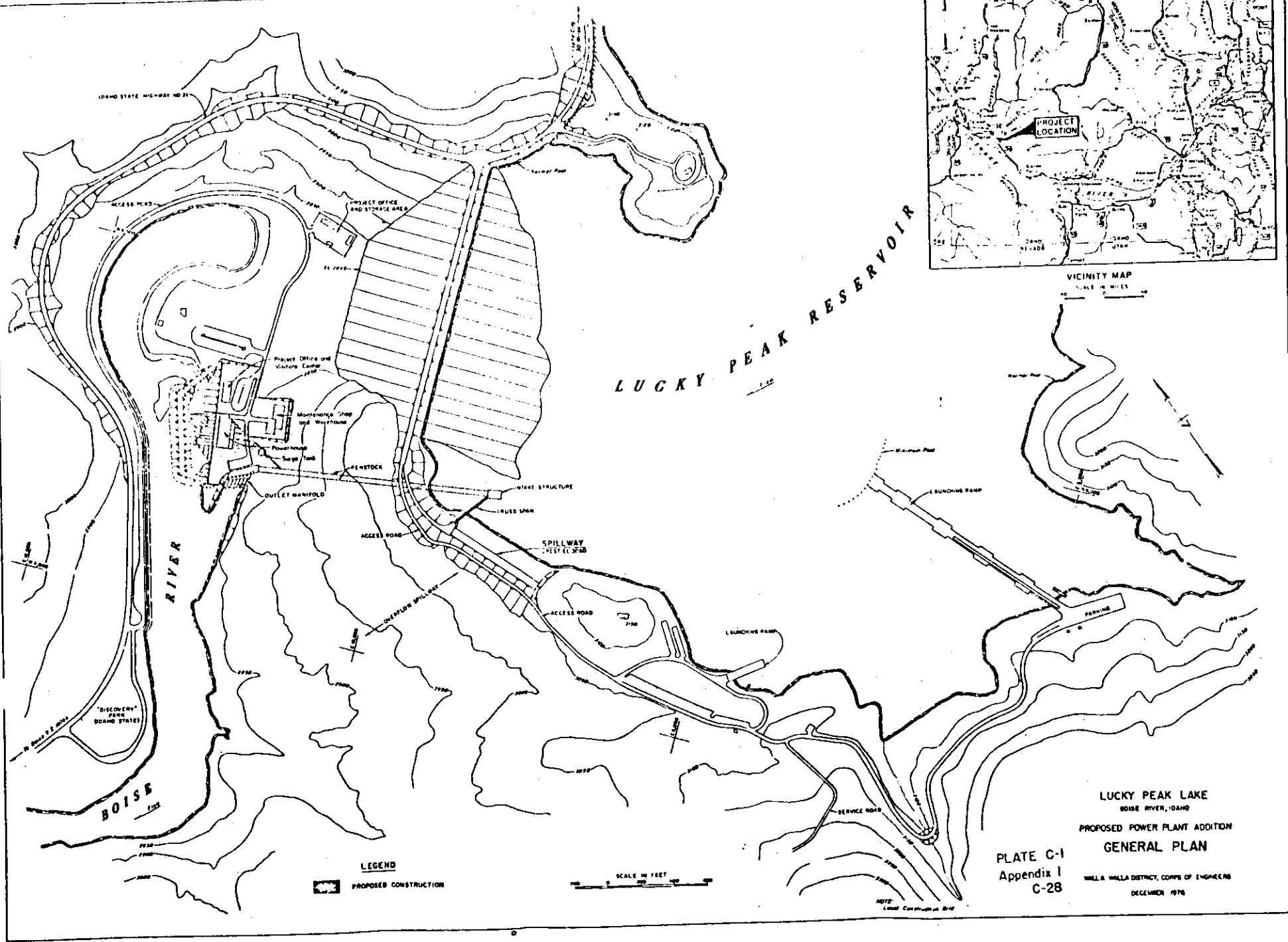
Sincerely,



Robert B. Williams  
Colonel, Corps of Engineers  
District Engineer

Enclosure

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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

MEMORANDUM

TO: A. Kenneth Dunn  
FROM: Norman C. Young *1097*  
DATE: February 1, 1984  
RE: Suggested Conditions of Approval for Lucky Peak Application

1. Subject to all prior rights.
2. This permit does not convey any authority to require or demand the release of water but shall only be effective to allow generation of hydro-electricity, using water released under rights and existing operating procedures for irrigation, flood control and fish and wildlife purposes.
3. This permit shall expire on February 1, 2004 unless renewed by order of the Director of the Department of Water Resources. Application for renewal may be made at any time after February 1, 1994 and must be made prior to February 1, 2004 to retain the priority established under this permit.
4. For licensing purposes, a scientific measurement of the diversion rate of the system as it is normally operated shall be provided by either properly installing an approved type of measuring device or by having a professional engineer certify the rate of diversion to the department prior to submitting proof of beneficial use of water.
5. The issuance of this permit in no way grants any right-of-way or easement across the land of another.
6. 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.

1097

7. Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.

8. Use of water under this permit for the purpose of power generation is subordinated to future diversion of water either upstream or downstream for irrigation or other consumptive beneficial uses.

9. The storage of water is contingent upon certification by the Department of Water Resources, of the modifications to the existing dam under the dam safety provisions of the Idaho Code, authorizing storage.

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

11. Proof of beneficial use of the water is due on or before February 1, 1989.

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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Charles B. Curtis, Chairman;  
Georgiana Sheldon, Matthew Holden, Jr.,  
George R. Hall and J. David Hughes.

|                                    |   |                  |
|------------------------------------|---|------------------|
| New York Irrigation District       | ) |                  |
| Nampa-Meridian Irrigation District | ) |                  |
| Boise-Kuna Irrigation District     | ) | Project No. 2832 |
| Wilder Irrigation District         | ) |                  |
| Big Bend Irrigation District       | ) |                  |

ORDER ON APPEAL MODIFYING ORDER ISSUING  
LICENSE (MAJOR) AND GRANTING INTERVENTION

(Issued October 9, 1980)

On June 10, 1980, the Director of the Office of Electric Power Regulation (Director) issued an "Order Issuing License (Major)" for the Lucky Peak Power Plant Project No. 2832 [11 FERC ¶62, 119] pursuant to authority delegated under Section 375.308 of the Commission's regulations, 45 Fed. Reg. 21216 (1980), amending 44 Fed. Reg. 46449 (1979) and 18 C.F.R. 3.5(g) (1979). Boise Project Board of Control (Board), 1/ Idaho Department of Water Resources (IDWR) 2/, and the U.S. Army Corps of Engineers (Corps) filed appeals of the order issuing license on July 7, 9, and September 3, 1980, respectively.

Minimum Flow Release

All appellants have requested the Commission to delete Article 35 of the Director's order. Article 35 requires the licensee to discharge from the project a continuous minimum flow of 160 cfs with a provision for waiving that requirement during critical drought years. This minimum flow release was recommended by the City of Boise and the U.S. Environmental Protection Agency. In a letter to the Director dated March 17, 1980, the Board indicated that it proposed to maintain that minimum flow, except during critical drought years. On appeal, the Board explained that its proposal was based not on its ability to control releases, but rather upon the historic use of the waters in

- 1/ The Boise Project Board of Control is composed of five member irrigation districts, New York Irrigation District, Boise-Kuna Irrigation District, Nampa-Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District. These five irrigation districts are collectively the applicant for license in this proceeding and will be referred to hereinafter as the "Board."
- 2/ IDWR simultaneously filed a petition to intervene in this proceeding. IDWR states that it seeks intervention to protect the authority of the State of Idaho to regulate the allocation and distribution of the State's water resources. The public interest may be served by granting the petition to intervene. The petition is granted in ordering paragraph (B).

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the Boise River since the construction of Lucky Peak Dam. As explained by IDWR in its appeal, the Board holds no water rights in the Lucky Peak reservoir. The proposed Lucky Peak Project will utilize the flood control and irrigation releases from the reservoir for electric power generation. IDWR states that no additional waters are available for appropriation in the Boise River System which would allow the Board to meet the 160 continuous flow requirement.

The Corps in its appeal asserts that Article 35 would alter an agreement between the Department of the Army and the Department of the Interior, dated November 20, 1953, which provides for the joint use of the storage in the three-reservoir system on the Boise River--Lucky Peak, Arrowrock, and Anderson Ranch Reservoirs--and provides for controlled releases as a joint function of the Water and Power Resources Service (WPRS) and the Corps of Engineers. Releases are coordinated with the Board, to meet irrigators' demands, and Idaho Department of Fish and Game (IDFG), who may call releases from 50,000 acre-feet of Lucky Peak reservoir storage for maintaining minimum wintertime flow in the Boise River. The Corps maintains that the mandatory minimum streamflow requirement of Article 35 would "destroy a delicate balance of interests achieved through an effective management plan of the three-reservoir system on the Boise River..."

In light of the management plan in effect for the operation of the three reservoirs on the Boise River, we shall relieve the Board of the mandatory minimum flow requirement in Article 35. We do, however, feel that further attention to minimum flow needs below Lucky Peak Dam is required. Article 35 will be revised to direct the Board to consult with WPRS, the Corps and IDFG to determine the feasibility of providing a continuous minimum flow from Lucky Peak dam during the non-irrigation season.

#### Power for Operation of Federal Facilities

The Corps recommends that the license include a condition requiring the provision of power free of cost to the United States for operation and maintenance of the government project. The Corps explains that this is item "e" of the "General Requirements for Non-Federal Hydroelectric Plant Construction at U.S. Army Corps of Engineers Water Resource Projects," as forwarded to the Commission by the Chief of Engineers' letter of March 17, 1980.

Under Section 11(c) of the Federal Power Act (Act), 16 U.S.C. 804(c), the Commission is authorized to require a licensee of a project located across, along, or in navigable waters of the United States to furnish free of cost to the United States power for the operation of navigation facilities, whether constructed by the licensee or the United States. The federal facilities at the Lucky Peak Project are not navigation facilities and are thus outside the scope of the Commission's authorization under Section 11(c). We also note that, under the terms of the license, the Corps will be reimbursed directly for expenses it incurs incident to the construction of the hydropower

project and the United States will be compensated for the use of the government dam by annual charges imposed pursuant to Section 10(e). The Corps has provided no showing of good cause for any additional requirement for free power to operate the non-navigational Corps project, and therefore we reject its recommendation.

#### Corps Review and Supervision of Construction

The Corps, on appeal, restated its concerns regarding the close proximity of constructing an additional tunnel adjacent to the Corps' existing tunnel and recommended extensive engineering investigations to establish whether such a plan can be constructed without threatening the integrity and safety of the existing dam embankment. Article 37 of the Director's order adequately provides for consultation with and the approval of the Corps regarding the design and construction of the additional tunnel. Article 37 directs that the design and construction of all facilities that will be an integral part of the Lucky Peak Dam shall be done in consultation with and subject to the review and approval of the Corps. The Corps maintains that this provision does not adequately satisfy its legal responsibility for the safety and integrity of the dam and facilities heretofore or hereafter constructed at the Lucky Peak project. The Corps would revise Article 37 to direct that "[t]he location, design, construction and flow regulation of all hydropower facilities that will be an integral part of the Lucky Peak dam shall be accomplished by or under the direct supervision of the Department of the Army, Corps of Engineers, Walla Walla District... The purpose of this supervision is to assure the safety and integrity of the dam." The original language of Article 37 that provides for Corps "review and approval" of the design and construction of all facilities integral to the Lucky Peak Dam assures the Corps' authority with respect to the safety and integrity of the dam. To include the revised language proposed by the Corps providing for location, design, construction and flow regulation to be "accomplished by or under the direct supervision of the" Corps would be tantamount to requiring the licensee to hire the Corps as its designer/contractor. Although we would have no objection should the licensee decide to so employ the services of the Corps, we find it inappropriate to require this action. The authority of the Corps to review and approve designs and plans for construction is confirmed by the provisions of the Director's order.

The Corps also asserts that the requirement of Article 37 that provides for the resolution of any dispute between the Corps and the licensee regarding the design and construction of facilities integral to the dam by the Director, Office of Electric Power Regulation, would infringe on the Corps' Section 4(e) approval authority. We need not resolve that question now. We believe it quite unlikely that the Corps and the licensee would be unable to resolve on their own any differences that might initially arise. We shall therefore remove the dispute resolution procedure from Article 37. Should a dispute arise, however, about whether the Corps' requirements are unreasonable or beyond the scope of the Corps' statutory authority, the licensee may-- as with any other requirement under its license--petition the Commission to clarify its responsibilities under the license. Or the licensee

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may petition to amend Article 37 of the license. Only in such an instance would we need to address the scope of the Corps' authority and, if appropriate, resolve the dispute. The Corps would, in either event, have full opportunity then to present its position on the law and the facts applicable to the dispute.

The Corps urges the Commission to expand Article 38 by adding a requirement that the Licensee shall hold and save the United States free from any and all claims and damages resulting from construction, operation, and use of the Lucky Peak dam and facilities for power purposes. Such a requirement will be included as Article 46.

The Corps asserts that Article 42, which provides for reimbursement to the United States for reasonable construction costs, does not include provision for reimbursement of reasonable costs for engineering, administrative and supervisory costs incurred by the Corps resulting from review of design, plans and specifications, and supervision of construction. We shall revise Article 37 to include provision for reimbursement of reasonable costs incurred by the Corps in its review and approval of design and construction.

#### Land Use and Recreational Development

The Corps states that the provisions of Article 34 and 45 could be construed to allow the licensee to engage in recreational development or initiate other land use features that might infringe on Corps jurisdiction cover existing federal project lands. Article 34 requires the licensee to conduct a study to determine the need for recreational development in the vicinity of its hydroelectric project and prepare a plan for any recreational facilities by the licensee. The licensee is required by Article 34 to consult with the Corps, in addition to the Idaho Department of Parks and Recreation and the Heritage Conservation and Recreation Service of the U.S. Department of the Interior. This consultation requirement will provide for consistency of the licensee's plans with the Corps' recreational master plan. By directing a study of recreational needs in the vicinity as opposed to within the boundaries of the licensed project, the licensee is afforded some flexibility regarding the possible location of its recreational development should a cooperative arrangement be possible with the Corps or some other governmental agencies in the project area. No extraordinary authority is implied or intended by this article.

Article 45 is the standard shoreline control article now included in all project licenses. The language of that article refers exclusively to "project lands and waters" and as such cannot be read to to affect anything beyond the licensed project boundaries.

#### Annual Charges for Use of Government Dam

The Board has also suggested that Article 41(3), which provides for the future determination of annual charges for the use of the Government dam, be revised to provide for adjustment of the annual

UNOFFICIAL

charge for expenditures by the licensee that result in enhancement of the federal facility. The Board asserts that the proposed additional tunnel to be constructed at Lucky Peak dam will benefit the federal project in that it will permit the release of all irrigation and wintertime minimum flows when the single tunnel is closed for inspection or repair and double the ability to release flood control waters through the Lucky Peak dam during periods of unprecedented flood without resort to use of the spillway. In its appeal, the Corps requested the opportunity to provide pertinent information should the Commission consider credits to the licensee for benefits and project enhancement.

At such time as the annual charge for use of the Lucky Peak Dam is to be determined, the Board may present its contentions with respect to the proper computation of that charge including any credits claimed. Input from the Corps at that time will also be welcome. We need not at this time address the question of the permissibility or extent of any adjustment to the annual charge for enhancement to the federal project anticipated by the Board. No revision of Article 41 is required.

The Commission orders:

(A) Ordering Paragraph (D) of the "Order Issuing License (Major)" for the Lucky Peak Power Plant Project No. 2832, issued June 10, 1980, is revised by substituting the following Articles 35 and 37 for the like-numbered articles in that order and by adding Article 46, set forth below:

Article 35. Licensee shall consult with the Water and Power Resources Service of the U.S. Department of the Interior, U.S. Army Corps of Engineers, Idaho Department of Water Resources, and the Idaho Department of Fish and Game to determine the feasibility of providing, to the extent surplus water is available from the Federal dam, a continuous minimum flow of 160 cfs at the project dam during the nonirrigation season. Within 1 year from the issuance of this order, Licensee shall file a report with the Commission that describes the results of the above consultation and any recommendation for ensuring the protection of downstream fishery resources.

Article 37. The design and construction of all facilities that will be an integral part of the Lucky Peak Dam shall be done in consultation with and subject to the review and approval of the U.S. Army Corps of Engineers, Walla Walla District, Walla Walla, Washington. To the extent that the Corps incurs reasonable costs directly related to the review and approval of design and construction of licensed facility, the Licensee shall reimburse the Corps.

Article 46. The Licensee shall hold and save the United States of America free from any and all claims and damages resulting from construction, operation, and use of the Lucky Peak Dam and facilities for power purposes.

RECEIVED  
JUN 11 1980  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

(B) Pursuant to §375.302 of the Commission's regulations, 45 Fed. Reg. 21216 (1980), amending 18 C.F.R. §3.5(a) 1979, as promulgated by Federal Energy Regulatory Commission rulemaking RM78-19 (issued August 14, 1978), Idaho Department of Water Resources is permitted to intervene in this proceeding subject to the Commission's Rules and Regulations under the Federal Power Act, 16 U.S.C. §§791(a)-825(r). Participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in its petition to intervene. The admission of the intervenor shall not be construed as recognition by the Commission that it might be aggrieved by any order entered in this proceeding.

(C) This order is final unless an application for rehearing is filed within 30 days of the date of its issuance, as provided in Section 313(a) of the Federal Power Act. The filing of an application for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. Failure of the Licensee to file an application for rehearing shall constitute acceptance of the order of June 10, 1980, issuing major license for Project No. 2832, as modified by this order. In acknowledgment of acceptance of this license, this order shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

By the Commission.

( S E A L )

*Lois D. Cashell*

Lois D. Cashell,  
Acting Secretary.

MICROFILMED

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

New York Irrigation District )  
Nampa - Meridian Irrigation District )  
Boise - Kuna Irrigation District )  
Wilder Irrigation District )  
Big Bend Irrigation District )

Project No. 2832

|                  |         |
|------------------|---------|
| DIRECTOR         |         |
| DEPUTY DIR.      |         |
| RESO. ADMIN.     |         |
| RESO. ANALYSIS   |         |
| OPER. BUREAU     |         |
| TECH. SER. BUR.  |         |
| PROJ. STUD. BUR. |         |
| LEGAL            |         |
| FISCAL           |         |
| PERSONNEL        |         |
| REG. BUREAU      |         |
| S. REG.          | N. REG. |
| W. REG.          | E. REG. |
| FILES            |         |

ORDER ISSUING LICENSE (MAJOR)  
(Issued June 10, 1980)

On January 26, 1979, Boise Project Board of Control (Applicant) 1/ filed an application for a major license under Part I of the Federal Power Act (Act) for the proposed Lucky Peak Power Plant Project No. 2832. 2/ The project would be located at and develop the water power potential of the United States Army Corps of Engineers' (Corps) Lucky Peak Dam, located on the Boise River in Ada County, Idaho, and would affect lands of the United States under the Corps' administration.

Notice of the application has been published in accordance with the Act. A protest was filed by the Idaho Department of Parks and Recreation on July 26, 1979, concerning the Applicant's failure to propose any recreational development.

PROJECT DESCRIPTION

The Lucky Peak Power Plant Project would be located at the downstream toe of the Corps' Lucky Peak Dam. 3/ The project would

- 1/ Boise Project Board of Control was formed by five member districts, to wit: New York Irrigation District, Nampa - Meridian Irrigation District, Boise - Kuna Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District. By letter filed July 3, 1979, Boise Project Board of Control requested that the above named districts be designated, collectively, as the Applicant.
- 2/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under Section 375.308 of the Commission's regulations, 45 Fed. Reg. 21216 (1980), amending 44 Fed. Reg. 46449 (1979) and 18 C.F.R. 3.5(g) (1979).
- 3/ The Lucky Peak Dam, completed by the Corps in 1955, is a rolled-earth and gravel-filled structure 340 feet high and 1,700 feet long. The dam was constructed to provide irrigation and flood control. It impounds a reservoir with a usable storage capacity of about 278,200 acre-feet.

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consist of: a concrete intake structure; a 1,050-foot long, 21-foot diameter, concrete and steel lined tunnel serving an outdoor-type powerhouse containing 4 generating units with a total rated capacity of 87.48 MW. The project is more fully described in ordering paragraph (B) below.

#### SAFETY OF STRUCTURES

The Corps stated in its comments that the Applicant's plan to construct - by blasting - a separate tunnel adjacent to the Corps' existing tunnel could jeopardize the structural integrity of the existing tunnel. The Corps, however, did not recommend an alternative scheme. Article 37 of the license requires the approval of the Corps for those project facilities that would affect the Lucky Peak Dam. Article 40 of the license also requires that a copy of the final plans and specifications be filed with the Commission's Regional Engineer in San Francisco, California, before construction commences. Should any changes in the final plans or specifications be necessary to insure the safety and adequacy of the project, the Director, Office of Electric Power Regulation, may require those changes. The Commission's staff has examined the preliminary plans for the powerhouse and intake structures. The intake structure was found to be safe under normal maximum reservoir level and earthquake loads. The powerhouse structure was found to be safe under maximum hydrostatic loading.

The safety and adequacy of the Lucky Peak Dam are the responsibility of the Corps.

#### ECONOMIC ANALYSIS

The Applicant, by letter dated April 4, 1980, furnished a copy of a Memorandum of Understanding with Idaho Power Company (IPC). This memorandum sets forth the preliminary agreement for the purchase of power by IPC. IPC will purchase all the project generation that is in excess of the Applicant's pumping requirements at Lake Lowell or the energy required for 1,000 hp of pumping, whichever is less. The price of the purchased power shall include:

- (a) the amount required to pay the Annual Debt Service which includes the total amount of interest on the outstanding bonds, the annual amount of Trustee's fees, and the annual annuity factor;
- (b) the amount required to be deposited in the Maintenance Reserve account;
- (c) any taxes or FERC charges levied against the project; and

- (d) an amount equal to not less than 2.0 mills per kilowatt hour for each kilowatt of project generation in each calendar year.

In addition, IPC will construct the transmission lines from the point of delivery, the high voltage bus, to interconnect with IPC's existing distribution system. Based on the Memorandum of Understanding between IPC and the Applicant, and staff's analysis, the project is economically feasible.

#### TRANSMISSION FACILITIES AND USE OF PROJECT POWER

There would be no transmission facilities included under this license. An application was submitted on March 26, 1980, by IPC for the Lucky Peak Transmission Line Project No. 3104.

The power to be generated by the project would be used for irrigation purposes of the member districts. Surplus power would be sold to IPC for use in its service area. The City of Boise, Idaho urged that it be given preferential rates for additional energy demands required for upgrading the quality of wastewater discharged from its sewage treatment facilities into the Boise River. There is no express authorization in the Act for the Commission to require preferential rates for municipal purposes as a license condition and the City of Boise has offered no explanation, nor is it apparent, why the imposition of such a license condition requiring preferential treatment would be warranted under Section 10(g) of the Act. The imposition of such a requirement would not, under the circumstances, be appropriate.

#### WATER QUALITY AND MINIMUM FLOWS

Applicant has obtained a state water quality certificate for the Lucky Peak Project, in accordance with Section 401 of the Federal Water Pollution Control Act Amendment of 1972.

The City of Boise (City) and the U. S. Environmental Protection Agency recommended that a continuous minimum flow of 160 cubic feet per second be maintained to protect water quality standards and quality of fishing in the Boise River during the non-irrigation season. Applicant has agreed to release a continuous minimum flow of 160 cfs except during critical drought years as determined by State and Federal agencies responsible for water management of the Boise River. Article 35 requires the minimum flow. During critical drought years the Applicant may request of the Commission a temporary waiver of the minimum flow requirement.

#### RECREATION

Existing public recreation sites near the Lucky Peak Project area include: Discovery Picnic Area, owned and operated by Idaho Department of Parks and Recreation (IDPR); Observation Point (Overlook),

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developed and maintained by the Corps; and Sandy Point Beach, leased from the Corps and operated by IDPR. Additionally, there are eleven developed sites and nine potential sites in the area.

Exhibit R of the subject application describes project facilities and water releases and references Exhibit W, which describes existing recreation facilities near the Lucky Peak Reservoir. No new recreational development was proposed by the Applicant.

Applicant indicated that in an effort to improve reservoir recreation, it would propose a revised operating plan to the agencies involved in regulating the river when the project begins operation. This plan would allow the reservoir to be maintained at a fairly stable level all year.

IDPR found the Exhibit R filed to be totally inadequate considering the recreation opportunity that exists at the Lucky Peak site. IDPR, emphasizing licensee's responsibility to make provisions for adequate public access to project facilities and waters, discussed the desirability of developing trails for bicycling and jogging along the irrigation canals. The U. S. Department of the Interior (Interior) commented that there is a need for additional recreational facility development at the project. Noting the proximity of the project to Boise, Interior explained that the highest visitor attendance for all recreation areas in the State of Idaho occurred at Lucky Peak in 1977. Interior suggested that a bicycle trail extending from Barber Park (located approximately 5 miles downstream from the project) to the Water and Power Resources Service (WPRS) Diversion Dam (located approximately 3 miles downstream from the project) would be an appropriate recreational development for the project. Interior recommended that the Applicant be directed to develop, in coordination with IDPR and the concerned Federal agencies, a definitive proposal for meeting recreation needs at the project.

In response to Interior's comments, Applicant stated that its member "irrigation districts do not feel that they could be burdened with such [recreational development] costs and indeed, are prohibited by state law, from expending funds on other than the purpose for which they were chartered which is to provide irrigation water for the dry lands of southern Idaho".

Applicant's Exhibit C does reflect its authority under the Idaho Code and Oregon Revised Statutes to generate and sell hydroelectric power. Applicant's comments, however, raise some questions regarding its ability or willingness to comply with conditions the Commission may impose in the interests of comprehensive development pursuant to Section 10(a) of the Federal Power Act [16 U.S.C. §803(a)]. The imposition of such conditions addressing matters other than hydroelectric power generation is not optional. Section 10(a) requires that any license issued be on the condition that the project shall be "best adapted to a comprehensive plan for improving

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or developing a waterway... for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval".

In light of the agency comments received, Applicant will be directed to conduct a study, in consultation with appropriate agencies, to determine the need for recreational development in the vicinity of the project and shall prepare a plan for developing recreation facilities that, based on the study completed, would be appropriately related to its hydropower development. This does not constitute prejudgment in advance of the required study what, if any, recreational development the licensee must undertake incident to the development of power at the Lucky Peak Project. It must, however, be made clear at this time that by retrofitting hydroelectric facilities to an existing dam, a licensee is not relieved of its recreational development responsibilities as a licensee under the Federal Power Act. It should also be noted that recreation facilities that are clearly related to the Federal development are the responsibility of the Corps.

The Exhibit R does not provide for the development of any recreational facilities at the project and therefore is not approved. Article 34 directs the filing of plans for developing any recreational facilities required as a result of the Licensee's study in consultation with appropriate agencies.

#### CULTURAL RESOURCES

The foundation of the home of Mary Hallock Foote, a novelist, is approximately 1,080 feet south of the project. This site has been nominated for inclusion in the National Register of Historic Places. Also, Bannock and Shoshone Tribes' artifacts have been salvaged from an archeological site near Lydle Gulch. The gulch extends southward from the river valley below the Lucky Peak Dam. The artifacts are being analyzed at the University of Idaho. Lydle Gulch is eligible for inclusion in the National Register of Historic Places. The State Historic Preservation Officer (SHPO) advised that the proposed project will have no effect on archeological or historic properties in the area that are eligible for inclusion in the National Register.

Interior recommended that Applicant be required to keep the SHPO informed of all excavations and construction activities at the project site. Interior also recommended that the Applicant contact the State Office of Archeology and Historic Preservation for consideration of any archeological salvage program should artifactual material be found during construction.

Article 33 details procedures to protect any cultural resources that may be affected by the project.

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### FISH AND WILDLIFE RESOURCES

The Idaho Department of Fish and Game (DFG) annually plants rainbow trout, kokanee, and smallmouth bass in the Lucky Peak Reservoir. Dolly Varden is native to the Boise River, and is found both in the reservoir and below it. A rainbow and brown trout fishery is located below the WPRS's Diversion Dam downstream. Under current procedures, 50,000 acre-feet of storage capacity in Lucky Peak Reservoir is used for flow maintenance below Lucky Peak Dam. Releases are made in accordance with schedules provided by DFG.

Exhibit S, filed as part of the application, describes the fishery and wildlife resources of the project and measures designed to conserve and enhance these resources. DFG, in commenting on the application, stated that the Applicant's plan, described in Exhibit S, "should result in no long-term adverse impact on the Boise River or the fish and wildlife resources of the Boise River drainage". Exhibit S is approved and made part of this license.

### OTHER ENVIRONMENTAL CONCERNS

Noise and human activities occurring during construction would have adverse, but temporary, effects on wildlife that inhabit or frequent the area. Additional traffic, noise, and dust would hamper recreation activities in the Sandy Point area. The swimming beach at Sandy Point might be closed for a short time during excavation for the powerhouse.

The adverse effects of construction upon recreation and environmental resources would be temporary and the operation and maintenance of the project would have minimal adverse environmental impacts.

Based upon the record, including agency comments and staff's independent analysis, it is concluded that issuance of a license for this project would not constitute a major Federal action significantly affecting the quality of the human environment; therefore, the preparation of an environmental impact statement is not required.

### OTHER EXHIBITS

Applicant's Exhibits J, K, L, and M are approved to the extent that they generally show and describe the project. Article 43 requires filing, within one year of completion of project construction, "as-built" Exhibits A, F, and G (these exhibits replace Exhibits J, K, L, and M) to show and describe the project as finally constructed and located.

### COMPREHENSIVE DEVELOPMENT

Two reservoirs located upstream of Lucky Peak Dam, Arrowrock and Anderson Ranch, are operated by WPRS. The Arrowrock Reservoir, 10 miles upstream of Lucky Peak on the Boise River, has a storage capacity of 285,000 acre-feet entirely allocated to irrigation

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purposes. There are no power generating facilities at this site. The Anderson Ranch Reservoir, located on the South Fork Boise River, which flows into Arrowrock Reservoir, has a storage capacity of 423,000 acre-feet allocated to flood control and irrigation purposes. WPRS operates a 27 MW Power Plant at this site.

Flow releases from Lucky Peak, Arrowrock, and Anderson Ranch are made in accordance with a coordinated operation plan as directed jointly by the Corps, WPRS, and the member irrigation districts.

The Lucky Peak Power Plant Project would develop the head created by the Lucky Peak Dam and use flows released from the reservoir for irrigation which are not now being used to generate power. It would use a non-polluting, reusable resource to produce annually an average of 282 million kWh of electric energy, saving the equivalent of approximately 463,000 barrels of oil or 131,000 tons of coal per year.

It is concluded that the proposed project is compatible with the water resource projects in the region, and under the terms of this license, is best adapted to the comprehensive development of the Boise River.

#### ANNUAL CHARGES

Section 10(e) of the Act, 16 U.S.C. Section 803(e) requires the Commission to fix a reasonable annual charge to be paid to the United States for the use of a government dam. The method used historically to arrive at a charge has been the "sharing of the net benefit method". The Applicant and Idaho Power Company have entered into a memorandum of understanding for the purchase of the project's power output. Under the terms of that agreement, submitted by letter dated April 4, 1980, Idaho Power Company agreed to pay projects costs, including operation and maintenance costs and government dam use charges assessed in this license. In addition, the Company agreed to pay the Applicant benefits of at least 2 mills per kWh, subject to certain adjustments based on future Idaho Power Company steam plant construction and fuel costs and charges for operation and maintenance costs of the Lucky Peak Project. Based on the concept that the Applicant and the United States should equally share the benefits derived from power developments using government dams, the benefits to the United States would be the same as those described above that would accrue to the Applicant. Therefore, the annual charge for use of the Corps' Lucky Peak Dam would be \$564,000. The Commission's staff is currently reassessing the subject of annual charges for use of government dams for the purpose of making recommendation to the Commission. Therefore, a final determination of the charge for the use of the Lucky Peak Dam will be reserved. Article 41 provides for subsequent determination of that charge, which will be not more than \$564,000.

It is ordered that:

(A) This license is issued under Part I of the Federal Power Act (Act) to New York Irrigation District of Boise, Idaho; Nampa - Meridian Irrigation District of Nampa, Idaho; Boise - Kuna Irrigation District of Kuna, Idaho; Wilder Irrigation District of Coldwell, Idaho ; and Big Bend Irrigation District of Nyssa, Oregon, ~~for a fifty-year period effective the first day of the month in which this license is issued,~~ for the construction, operation, and maintenance of the Lucky Peak Power Plant Project No. 2832, located on the Boise River in Ada County, Idaho and utilizing the Lucky Peak Dam of the United States and appurtenant lands administered by the U. S. Army Corps of Engineers. 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) Project No. 2832 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 areas and boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as:

| <u>Exhibit</u> | <u>FERC No. 2832-</u> | <u>Titled</u> |
|----------------|-----------------------|---------------|
| J              | 2                     | Location Map  |
| K              | 3                     | Site Plan     |

(2) Project works consisting of (1) a concrete intake structure; (2) a 1,050-foot long, 21-foot diameter concrete and steel lined tunnel; (3) an outdoor-type powerhouse containing three Francis turbines, directly connected to three generators each rated at 27.54 MW and one Francis turbine directly connected to a generator rated at 4.86 MW; (4) step up transformers; (5) 13.8/138 kV generator leads; and (6) appurtenant facilities.

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

| <u>Exhibit</u> | <u>FERC No. 2832-</u> | <u>Titled</u>                                                        |
|----------------|-----------------------|----------------------------------------------------------------------|
| L-1            | 4                     | Intake, Tunnel, and Powerhouse -<br>Plan, Cross Sections and Details |
| L-2            | 5                     | Powerhouse - Plans and Sections                                      |

Exhibit M containing general specifications of mechanical, electrical, and transmission equipment and consisting of 3 pages filed on January 26, 1979.

Exhibit S consisting of 31 pages filed January 26, 1979.

(3) All of the structures, fixtures, equipment, ~~on 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, whether located within or outside the project boundary, as approved by the Commission, and all riparian or other rights necessary or appropriate in the operation or maintenance of the project.

(C) Exhibits J, K, L, and M designated in ordering paragraph (B) above, are approved and made a part of the license only to the extent that they show the basic location and layout of the project and its works and generally describe its mechanical and electrical equipment and appurtenances. Exhibit S, designated in ordering paragraph (B) above, is approved and made a part of the license.

(D) This license is also subject to the terms and conditions designated Articles 1 through 32 in Form L-2 (revised October 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States," attached to and made a part of this license. This license is also subject to the following special conditions set forth as additional articles:

Article 33. Prior to the commencement of any construction or development of any project works or other facilities at the project, the Licensee shall consult and cooperate with the State Historic Preservation Officer (SHPO) to determine the need for, and extent of, any archeological or historic resource surveys and any mitigative measures that may be necessary. The Licensee shall provide funds in a reasonable amount for such activity. If any previously unrecorded archeological or historic sites are discovered during the course of construction, 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 historic resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historic 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 34. Licensee shall, in consultation with the Idaho Department of Parks and Recreation, the U. S. Army Corps of Engineers, and the Heritage Conservation and Recreation Service of the U. S. Department of the Interior, conduct a study to determine the need for recreational development in the vicinity of its hydroelectric

project, and shall prepare a plan to provide for any recreational facilities by the Licensee. The Licensee shall, within one year from the date of issuance of this license, file with the Commission a report on the study, and for approval, its plan for developing any recreational facilities associated with Project No. 2832.

~~Article 35.~~ Licensee shall discharge from the project a continuous minimum flow of 160 cubic feet per second. This flow may be modified temporarily if required by operating emergencies beyond the control of the Licensee, and for short periods for fishery management purposes upon mutual agreement between the Licensee and the Idaho Department of Fish and Game.

Article 36. The Licensee shall, to the satisfaction of the Commission's authorized representative, install and operate any signs, lights, sirens, barriers or other safety devices that may reasonably be needed to warn the public of fluctuations in flow from the project and to protect the public in its recreational use of project lands and waters.

Article 37. The design and construction of all facilities that will be an integral part of the Lucky Peak Dam shall be done in consultation with and subject to the review and approval of the U. S. Army Corps of Engineers, Walla Walla District, Walla Walla, Washington. If, within one year from the date of issuance of this license, the Licensee and the Corps have not been able to agree on the design and construction of the above facilities, then no later than that date the Licensee shall file, with a copy to the Corps, a request for resolution by the Director, Office of Electric Power Regulation, of the terms remaining in dispute. The request must include all the terms on which there is agreement and specify each term proposed by the Corps with which the Licensee disagrees, the Licensee's counter-proposal, if any, and the reason for disagreement with that term.

Article 38. The Licensee shall have no claim under this license against the United States arising from the effect of any changes made in the pool levels of the Lucky Peak Reservoir.

Article 39. The Licensee shall commence construction of the project works within two years from the effective date of this license and in good faith and with due diligence shall prosecute and complete construction of the project works within four years from the effective date of this license.

Article 40. The Licensee shall file with the Commission's Regional Engineer in San Francisco, California, and the Director, Office of Electric Power Regulation, one copy each of the contract drawings and specifications prior to the start of construction. The Director, Office of Electric Power Regulation, may require changes in the plans and specifications to ensure a safe and adequate project.

Article 41. The Licensee shall pay the United States the following annual charges, to be assessed according to this schedule: (a) 5.5% of each charge effective from the date the 4,860-kW (rated) unit begins commercial operation; (b) 37% of each charge effective from the date a 27,540-kW (rated) unit begins commercial operation; (c) 68.5% of each charge effective from the date the next 27,540-kW unit begins commercial operation; and (d) 100% of each charge when all generating units are in commercial operation.

- 1) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with its regulations in effect from time to time. The total authorized installed capacity for that purpose is 116,640 horsepower.
- 2) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, a reasonable annual charge as determined by the Commission in accordance with its regulations in effect from time to time. The acreage of United States lands for that purpose will be determined after submission of "as-built" exhibits for approval.
- 3) For the purpose of recompensing the United States for the use of Lucky Peak Dam, an amount to be determined later and that shall not exceed \$564,000, subject to possible adjustment at the intervals specified in Section 10(e) of the Act.

Article 42. The Licensee shall reimburse the United States for all reasonable construction costs incurred by the United States for the specific and sole purpose of accomodating the installation of power facilities at the Lucky Peak Dam. This reimbursement is in addition to the annual charge specified in paragraph (3) of Article 41. Arrangements for payment shall be made with the Chief of Engineers, Department of the Army, at the time of commencement of construction of the project.

Article 43. Within one year after commencement of operation of the project, the Licensee shall file for approval Exhibits A, F, and G conforming to §4.51 of the Commission's regulations, as amended, 44 Fed. Reg. 67644 (November 29, 1979), to describe and show the project works and facilities as constructed. Exhibits A, F, and G, when approved, will supersede the Exhibits J, K, L, and M approved as part of this license.

Article 44. If the Commission has not finally determined the amount of the annual charge for the use of the Lucky Peak Dam by the time when the first generating unit begins commercial operation, the Licensee shall establish and shall maintain, until the Commission has finally determined that amount and the accumulated annual charges have been paid, a reserve sufficient to meet its potential liability for the accumulated annual charges for the use of the Lucky Peak Dam.



Article 45. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities; 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

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implementing this paragraph (b) and to require modifications of those standards, guidelines, or procedures.

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

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

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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.

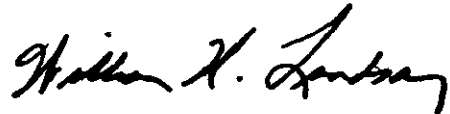
(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions 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.

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

( S E A L )



William W. Lindsay  
Director, Office of Electric  
Power Regulation

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FEDERAL ENERGY REGULATORY COMMISSION

TERMS AND CONDITIONS OF LICENSE FOR  
UNCONSTRUCTED MAJOR PROJECT  
AFFECTING 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 shall be 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 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 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 Commission may prescribe for the 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. 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 22. 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 23. 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 24. 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 25. 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 26. 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 27. 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 28. 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 transmission 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 29. 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 30. 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 31. 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 32. 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.



Project No. 2832

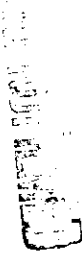
IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this Order, Big Bend Irrigation District this \_\_\_\_\_ day of \_\_\_\_\_, 1980, has caused its corporate name to be signed hereto by \_\_\_\_\_ its President, and its corporate seal to be affixed hereto and attested by \_\_\_\_\_, its \_\_\_\_\_ Secretary, pursuant to a resolution of its Board of Directors duly adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a certified copy of the record of which is attached hereto.

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

(Executed in quadruplicate)



LAW OFFICES  
GIVENS, McDEVITT, PURSLEY & WEBB

RAYMOND D. GIVENS  
CHAS. F. McDEVITT  
KENNETH L. PURSLEY  
JAY L. WEBB

SUITE 501, STATEHOUSE SQUARE  
802 WEST BANNOCK STREET  
POST OFFICE BOX 2720  
BOISE, IDAHO 83701

RECEIVED  
TELEPHONE  
(208) 343-1657  
JUN 1 1983  
TELECOPIER  
(208) 343-9492

LEO EDWARD MILLER  
KENNETH L. MALLEA  
CHRISTOPHER J. BEESON  
CELESTE KIM VERNETTI

May 31, 1983

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

Re: Application for Permit No. 63-9019

Dear Mr. Tuthill:

We respond to your letter of May 17th directed to the Boise Project Board of Control regarding the application to appropriate water for hydro-electric generation of Lucky Peak Reservoir.

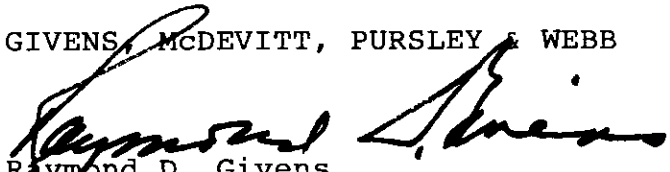
During the past year the five irrigation districts, which compromise the Boise Project, have been negotiating with the Idaho Power Company for the ultimate disposition of the project, and we believe that nearly all of the differences with regard to that contract have been resolved.

As you may have noted from the press there remain some differences of opinion among the districts as to the ultimate disposition of the revenues, but it is our present belief that construction of the project will proceed within the time limits required by the FERC license, of which you have a copy.

If we can give you any other specific information, we will be happy to respond further.

Yours very truly,

GIVENS, McDEVITT, PURSLEY & WEBB

  
Raymond D. Givens

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RDG:ph

No response req'd  
DNR

May 17, 1983

Boise Project Board of Control  
214 Broadway  
Boise, ID 83702

Re: Application for Permit No. 63-9019

Gentlemen:

On August 31, 1977, you submitted the above-referenced application to appropriate water for the purpose of hydropower generation at Lucky Peak Reservoir.

Please provide to us by June 1, 1983, a summary of progress made in the past year toward developing the project.

Sincerely,

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

DRT:sc

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MAY 20 1982

Department of Water Resources  
TELEPHONE  
(208) 342-6571

TELECOPIER  
(208) 343-9492

LAW OFFICES  
**GIVENS, McDEVITT, PURSLEY & WEBB**

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LEO EDWARD MILLER  
KENNETH L. MALLEA  
CHRISTOPHER J. BEESON  
CELESTE KIM VERNETTI

May 18, 1982

*Dict*  
Mr. David R. Tuthill, Jr., P. E.  
Supervisor, Water Allocation Section  
State of Idaho  
Department of Water Resources  
State Office  
450 W. State Street  
Boise, Idaho

Re: Application for Permit No. 63-9019

Dear Mr. Tuthill:

We respond on behalf of the Boise Project Board of Control to your letter of April 8, 1982.

On May 10, 1982 Federal Energy Regulatory Commission granted a two-year extension of the license granted to the Boise Project Board of Control, a copy of which is attached for your record.

The chaotic financial climate, particularly that of the bond market, has caused some delay in the completion of the project. However, the Boise Project continues to push for completion of the Lucky Peak project.

Yours very truly,

GIVENS, McDEVITT, PURSLEY & WEBB

*Raymond D. Givens*  
Raymond D. Givens

RDG:ph

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FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

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MAY 10 1982

BOISE PROJECT BOARD OF CONTROL

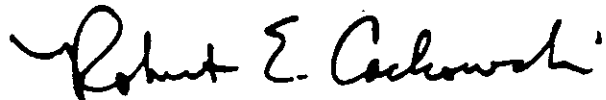
Project No. 2832

Boise-Kuna Irrigation District  
Attn: Chairman  
214 Broadway  
Boise, Idaho 83702

Gentlemen:

Enclosed is the order designated Amendment No. 1 , Instrument  
No. 2 , in the above-entitled matter.

Sincerely,



Robert E. Cackowski  
Acting Director, Office of  
Electric Power Regulation

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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

19 FERC 162,213

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MAY 10 1982

BOISE PROJECT BOARD OF CONTROL

NEW YORK IRRIGATION DISTRICT )  
NAMPA-MERIDIAN IRRIGATION DISTRICT )  
BOISE-KUNA IRRIGATION DISTRICT )  
WILDER IRRIGATION DISTRICT )  
BIG BEND IRRIGATION DISTRICT )

Project No. 2832-002

ORDER AMENDING LICENSE

( Issued May 10, 1982 )

On April 5, 1982, Boise Project Board of Control (Board), 1/  
filed an application for amendment of its license for the Lucky  
Peak Power Plant Project No. 2832, located at the base of the  
existing U.S. Army Corps of Engineers' Lucky Peak Dam in Ada  
County, Idaho.

The Board requested that Article 39 of the license for the Lucky  
Peak Power Plant Project be amended to extend the period for the  
commencement of construction of the project from two to four years,  
and the period for completion of construction from four to within  
six years from the effective date of the license.

The Board stated that due to the unfavorable climate of the bond  
market, it has not been able to acquire adequate funds for completing  
the project and indicated that the additional time is required to  
secure suitable financing for the project.

It is determined that the request is in the public interest and,  
therefore, is granted.

1/ The Boise Project Board of Control is composed of New York,  
Nampa-Meridian, Boise-Kuna, and Wilder Irrigation Districts.  
These five member irrigation Districts are collectively the  
Licensee for the Lucky Peak Power Plant Project No. 2832  
(Order issuing License, issued June 10, 1980), and are the  
applicant in this proceeding.

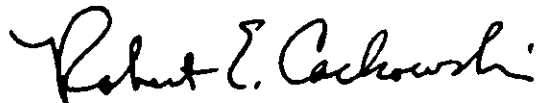
2/ Authority to act on this matter is delegated to the Director,  
Office of Electric Power Regulation under 18 C.F.R. §375.308  
(1980), as amended by 46 Fed. Reg. 14119 (1981).

It is ordered that:

(A) Article 39 of the Order Issuing License (Major), issued June 10, 1980, for the Lucky Peak Power Plant Project No. 2832 is revised to read as follows:

Article 39. The Licensee shall commence construction of the project works within four years from the effective date of this license and in good faith and with due diligence shall prosecute and complete construction of the project works within six years from the effective date of this license.

(B) This order is final unless a petition appealing it to the Commission is filed within 30 days from the date of its issuance, as provided in Section 1.7(d) of the Commission's regulations, 18 C.F.R. Section 1.7(d) (1981). The filing of a petition appealing this order to the Commission or an application for rehearing as provided in Section 313(a) of the Act does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically ordered by the Commission. The Licensee's failure to file a petition appealing this order to the Commission shall constitute acceptance of this order. In acknowledgement of acceptance of this order and its terms and conditions, it shall be signed by the Licensee and returned to the Commission within 60 days from the date this order is issued.



Robert E. Cackowski  
Acting Director, Office of  
Electric Power Regulation

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APR 2 1982

Department of Water Resources

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

|                                        |   |                      |
|----------------------------------------|---|----------------------|
| NEW YORK IRRIGATION DISTRICT           | ) |                      |
| NAMPA AND MERIDIAN IRRIGATION DISTRICT | ) | Project No. 2832     |
| BOISE-KUNA IRRIGATION DISTRICT         | ) |                      |
| WILDER IRRIGATION DISTRICT             | ) | APPLICATION FOR      |
| BIG BEND IRRIGATION DISTRICT           | ) | AMENDMENT OF LICENSE |

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COME NOW, NEW YORK IRRIGATION DISTRICT, NAMPA AND MERIDIAN IRRIGATION DISTRICT, BOISE-KUNA IRRIGATION DISTRICT, WILDER IRRIGATION DISTRICT and BIG BEND IRRIGATION DISTRICT, And represents to the Commission as follows:

1. Comes now licensee for power project designated as Project No. 2832 in the records of the Federal Power Commission issued on the 10th day of June, 1980, and amended on the 9th day of October, 1980, and hereby makes application to said Commission for an amendment of the License for said project in the manner and to the extent herein described.

2. That said License, and in particular Article 39 be amended to read as follows:

Article 39. The Licensee shall commence construction of the project works within four years from the effective date of this license and in good faith and with due diligence shall prosecute and complete construction of the project works within six years from the effective date of this license.

RECEIVED



3. That the proposed changes are necessary and desirable for the following reasons:

That at the time the application was filed, the applicant had reached an understanding with the Idaho Power Company to purchase the excess power produced by the Project under an agreement which required said Idaho Power Company to pay in addition to the other sums, the amount necessary to service the debt to be created by the construction costs of the Project; that the applicants had contemplated the issuance of revenue bonds to be guaranteed by the agreement to be entered into by the Idaho Power Company, and thereby avoid the issuance of general obligation bonds by the districts. Advice received from bond counsel and representatives of the bond houses, was to the effect that the applicants were advised that the Idaho Power Company would be required to enter into an agreement which included a "hell and high water" clause guaranteeing payment by the Idaho Power Company for the benefit of the bond holders, to successfully market such issue. The Idaho Power Company has declined to enter into such an agreement, but the applicant have continued their negotiations with the Idaho Power Company, believing said Company to be the best customerdsds for the excess power to be produced by the Project.

In the meantime the general climate of the bond market, at least for the type of bonds contemplated to be issued by the applicants, has deteriorated and become most unsettled, and funding in that area has become so difficult that the applicants have been unable to acquire adequate funds to complete the project at this time.

\* Applicants believe that if an extension of two years is granted for the required initiation of construction, that suitable financing of the project can be obtained.

That the applicants have delayed until the present time seeking an amendment, being hopeful that some arrangement might be entered into so that construction would commence on June 10, 1982, but that such now appears impossible.

(4) That no exhibits are filed herewith. The exhibits normally required for amendments were heretofore filed with the Commission.

WHEREFORE, Licensees pray that this Application for Amendment be accepted as timely and that the time for initiation of construction and for completion of construction be extended for a period of two years.

IN WITNESS WHEREOF, The applicant has caused its name to be hereunto signed and these presents executed by Warren Tolmie Chairman of the Boise Project Board of Control, the person designated to act on behalf of the licensee.

Respectfully submitted,

  
WARREN TOLMIE  
CHAIRMAN OF THE BOARD  
BOISE PROJECT BOARD OF CONTROL

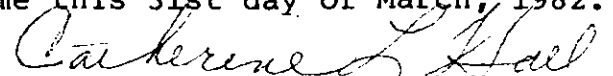
STATE OF IDAHO, )  
                  ) ss  
County of Ada    )

WARREN TOLMIE Being first duly sworn, deposes and says:

That is the Chairman of the Boise Project Board of Control and makes this verification for and on behalf of the New York Irrigation District, Nampa and Meridian Irrigation District, Boise-Kuna Irrigation District, Wilder Irrigation District and Big Bend Irrigation District as well as the Boise Project Board of Control as directed by the Resolution of the above named irrigation districts; that he has read the foregoing, knows the contents thereof and that the statements therein contained are true to the best of his knowledge and belief.

  
WARREN TOLMIE

SUBSCRIBED AND SWORN To before me this 31st day of March, 1982.

  
Notary Public for Idaho  
Residence: Boise, Idaho

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

NEW YORK IRRIGATION DISTRICT )  
NAMPA AND MERIDIAN IRRIGATION DISTRICT )  
BOISE-KUNA IRRIGATION DISTRICT )  
WILDER IRRIGATION DISTRICT )  
BIG BEND IRRIGATION DISTRICT )  
----- )

Project No. 2832

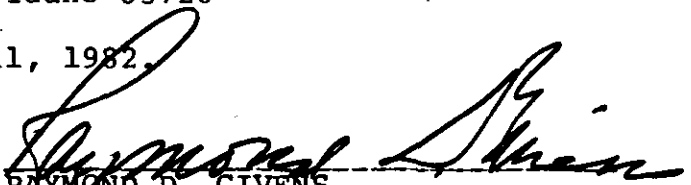
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the attached  
Application for Amendment of License upon the Idaho Department of  
Water Resources by serving a copy on the following persons:

DAVID H. LEROY  
Attorney General of Idaho  
Statehouse  
Boise, Idaho 83720

PHILLIP J. RASSIER  
Deputy Attorney General  
Department of Water Resources  
Boise, Idaho 83720

Dated this 1st day of April, 1982.

  
RAYMOND D. GIVENS

MICROFILMED

April 8, 1982

Boise Project Board of Control  
214 Broadway  
Boise, Idaho 83720

RE: Application For Permit No. 63-9019

Gentlemen:

On August 31, 1977, you submitted the above referenced application to appropriate water for the purposes of hydropower generation at Lucky Peak Reservoir.

During a routine review of our water right files we noticed that we have received no information regarding application since we received the Notice of Intent to Act in 1980.

Please provide to us by May 15, 1982, any information regarding the current status of your activities with respect to the project. We need this information to determine the current status of the application.

Sincerely,

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

DRT:jg

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

63-9019  
POOR QUALITY ORIGINAL

New York Irrigation District )  
Nampa-Meridian Irrigation District )  
Boise-Kuna Irrigation District )  
Wilder Irrigation District )  
Big Bend Irrigation District )

Project No. 2832

NOTICE OF INTENT TO ACT

(September 26, 1980)

Acting pursuant to authority delegated in Section 375.308 of the Commission's regulations, 1/ the Director of the Commission's Office of Electric Power Regulation has issued an order granting a major license for the Lucky Peak Power Plant Project No. 2832 to five irrigation districts (Licensees) located in Idaho and Oregon. The Licensees and the Idaho Department of Natural Resources then filed appeals of the Director's order, pursuant to §1.7(d) of the Commission's regulations (18 C.F.R. §1.7(d) (1980)). The U. S. Army Corps of Engineers requested and received an extension of the time prescribed for filing an appeal. The Corps of Engineers has now filed its appeal. The Commission intends to act on the appeals filed by the Licensees and the Department of Natural Resources at the same time as it acts on the appeal of the Corps of Engineers. Therefore, the appeals of the Licensees and the Department of Natural Resources shall not be deemed to be denied by operation of law pursuant to §1.7(d) of the Commission's regulations.

By the direction of the Commission.

*Kenneth F. Plumb*  
Kenneth F. Plumb,  
Secretary.

RECEIVED  
FEDERAL ENERGY REGULATORY COMMISSION  
SEP 29 1980

DC-A-20

1/ 45 Fed. Reg. 21216 (1980), amending 44 Fed. Reg. 46442 (1979) and 18 C.F.R. §3.5(q) (1979).

MICROFILMED



U1

FEDERAL ENERGY  
REGULATORY COMMISSION  
WASHINGTON, D.C. 20438

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID  
FEDERAL ENERGY  
REGULATORY COMMISSION  
FERC 351



State of Idaho P-0830  
Dept. of Water Resources  
State House  
Bosie, Idaho 83720

RECEIVED

OCT 10 1980

Department of Water Resources

CHARLES F. WOOD  
CHAIRMAN OF THE BOARD  
CARL GERMAN  
VICE CHAIRMAN OF THE BOARD  
ROYSE VAN CUREN  
PROJECT MANAGER  
CARL PADOUR  
ASSISTANT PROJECT MANAGER  
NORLYN F. POPE  
SECRETARY-TREASURER  
PHEBE M. MORRIS  
ASSISTANT SECRETARY-TREASURER

REFERENCE—FIRST SECURITY BANK OF IDAHO—BOISE  
IDAHO FIRST NATIONAL BANK—BOISE  
BUREAU OF RECLAMATION—BOISE, IDAHO: WASHINGTON, D.C.

## BOISE PROJECT BOARD OF CONTROL

(FORMERLY BOISE U. S. RECLAMATION PROJECT)

214 BROADWAY

BOISE, IDAHO 83702

OPERATING AGENCY FOR 167,000  
ACRES FOR THE FOLLOWING  
IRRIGATION DISTRICTS:

NAMPA-MERIDIAN DISTRICT  
BOISE-KUNA DISTRICT  
WILDER DISTRICT  
NEW YORK DISTRICT  
BIG BEND DISTRICT

RECEIVED

DEC 18 1979

Department of Water Resources

Mr. C. Stephen Allred, Director  
State of Idaho  
Department of Water Resources  
Statehouse  
Boise, Idaho 83720

Dear Mr. Allred:

Responsive to your inquiry of December 5 on the licensing of the Lucky Peak hydropower project, we can advise you that the license application is proceeding on schedule and that the Federal Energy Regulatory Commission has tentatively scheduled action on the license in April, 1980. A copy of the FERC schedule on our license application is enclosed.

Representatives of the Board of Control met with the head of the licensing branch of FERC last March and were assured that FERC intends to move as rapidly as possible. If the license is granted in April, 1980, it will mean that the time between filing for the license and FERC action will only be 14 months. We think you will agree that this will set a record in FERC action on a major hydropower license.

The only holdup appears to be a delay in commenting on our Lucky Peak license application by the Corps of Engineers. This was also expected and as the enclosed correspondence indicates, we are doing everything possible to overcome any foot dragging by the Corps.

Sincerely,

*Charles F. Wood*

Charles F. Wood  
Chairman of the Board

CFW:ph

Enclosure:

RECEIVED

# Major Hydroelectric License: New Capacity DOCKET NO. P2832; LUCKY PEAK PROJECT

| KEY DOCKET INFORMATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | KEY FERC PERSONNEL                                                                                                                                                                                                                                                                                                                                                                                                                     | ACTION                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Applicant:</b> Boise Project Board of Control<br/> <b>Location:</b> Boise River; Ada Co., Idaho<br/> <b>Energy Value:</b> 79 MW<br/> <b>Dollar Value:</b> \$55,817,000<br/> <b>Applicant Contact:</b> Chairman, Boise Project Board of Control<br/> 214 Broadway<br/> Boise, Idaho 83702<br/> <b>Related Dockets:</b> None</p> <p><b>Background:</b><br/> This project would utilize the head at existing Corps of Engineers' Lucky Peak Dam to provide an installed capacity of 79 MW.</p> <p>The applicant is filing this application at Lucky Peak Dam, among other reasons, because Lucky Peak Dam as constructed by the Corps of Engineers infringes upon the tailwater, 90 feet at maximum pool, of Arrowrock Dam making an installation of a powerplant at Arrowrock Dam as provided in the 1926 contract infeasible.</p> <p>The proposed use or market for this power to be developed is to supply energy for project purposes and to market surplus power to Idaho Power Company, a private investor owned utility.</p> <p><u>The applicant had applied for a preliminary permit to study the feasibility of developing this project, but requested the permit application be held in abeyance pending the filing of a license application.</u></p> | <p><b>Project Manager:</b> William Wakefield 275-0420<br/> <b>Alternate PM:</b> Hossein Ildari 275-4861<br/> <b>Division Contact:</b> James Stout 275-4868<br/> <b>OGC Attorney:</b> Donald Clark 275-4346<br/> <b>OOA Attorney:</b> N/A<br/> <b>EIS Contact:</b> N/A<br/> <b>ALJ:</b> N/A<br/> <b>Reviewed by Project Manager:</b> <i>Hossein Ildari</i><br/> <b>Reviewed by Office of Executive Director:</b> <i>Bill Watson</i></p> | <p>Awaiting FERC Action<br/> Awaiting Applicant Action<br/> Awaiting Receipt of Permit<br/> Awaiting DOE Action<br/> Awaiting Other Federal Action<br/> Awaiting State/Local Action<br/> Awaiting Court Action<br/> Other</p> |

## PROJECT STATUS

### • Potential Problems

The Corps of Engineers has criticized the location of the proposed penstock, in addition to recommending Federal development of the project.

The Dept. of Interior has expressed concern over the effects of construction of the project on fish and wildlife resources.

The Environmental Protection Agency has requested that the applicant plan for a second outlet works to alleviate what EPA believes is a serious water quality problem downstream from the dam.

### • Recent Significant Actions

- # On 9/17/79 the Corps of Engineers indicated that they would request until 11/15/79 to file comments.

### • Hearing Status

Too early to determine.

### • External Constraints

The Corps of Engineers is advocating Federal development.

A Water Quality Certificate is required from the State of Idaho, and is targeted for 10/30/79.

### • Recommended Action

None

### • Project Manager Summary

The applicant had applied for a preliminary study the feasibility of developing this project in abeyance (at applicant's request) after review, pending the applicant's filing for a license. Those comments that have been received.

### • Slippage Analysis

The following slippages have occurred in (milestone 8000) since the baseline schedule.

- # 1) 4/7/80-6/27/80: Corps of Engineers requested file comments.

# Indicates change in information

**MICROFILMED**



December 5, 1979

Boise Project Board of Control  
214 Broadway  
Boise, ID 83702

Attention: Mr. Gharring

Gentlemen:

Re: Application for Permit No. 63-9019  
Boise Project Board of Control

I have corresponded with you on December 7, 1977 and on December 19, 1978 relative to the above referenced application for power generation at Lucky Peak Dam. The application currently is being held by the Department pending issuance of a FPC license and other agreements necessary for the Boise Project Board of Control to proceed with the development of the proposed water right. To date, I have received no response to either letter.

Please advise me of progress to date before March 1, 1980, or the application may be viewed as filed for speculative purposes and may be voided pursuant to Section 42-204, Idaho Code.

If you have questions relative to this letter, please contact me.

Sincerely,

C. STEPHEN ALLRED  
Director

CSA:rf

December 19, 1978

Boise Project Board of Control  
214 Broadway  
Boise, Idaho

Attention: Mr. Gharring

Gentlemen:

Our last correspondence with you in connection with the above referenced permit application was on December 7, 1977. In that correspondence, we indicated that the application could be approved pending issuance of an FPC license and completion of any other agreements necessary for the Boise Project Board of Control to use Lucky Peak Dam for power generation.

Please advise this office of progress to date in the completion of these matters.

Sincerely,

C. STEPHEN ALLRED  
Director

CSA:LGS:rf

UNRECORDED

December 7, 1977

Re: Permit No. 63-9019

Boise Project Board of Control  
214 Broadway  
Boise, Idaho 83702

Attn: Mr. Gharring

Gentlemen:

The Department of Water Resources has reviewed your application number 63-9019 for power production at Lucky Peak Dam. The Department has determined that the requested water is available to be appropriated for power production at the dam location.

Your application will be approved pending issuance of an FPC license and completion of any other agreements necessary for the Boise Project Board of Control to use Lucky Peak dam for power production.

Please keep the Department informed of your progress in acquiring the license and agreements.

Very truly,

C. STEPHEN ALLRED  
Director

CSA:DBS:jfr

*Have Delivered  
to Otis  
Peterson.*

MICROFILMED

## INTER-DEPARTMENT MEMO — 1

DATE 10-17-77

FROM Glen Saxton

TO File 63-9019

SUBJECT

I recommend we hold the app. without approval until such time as feasibility, possession interest, etc. has been terminated.

MICROFILMED

HS

SIGNATURE

DEPARTMENT OF WATER RESOURCES  
- STAFF ANALYSIS -

Item Initial Date

Application No. 63

☒ Source  
☒ Point of Diversion  
☒ County  
☒ Quantity of Water and Period of Use  
☒ Description of Diverting Works  
☒ Time required for B/U of water  
☒ Place of Use or Acres Irrigated  
☒ Map  
☒ Signature  
☒ Fee

☐ Pre-permit exam  
☐ Adjudication Claim  
☐ Dam Construction  
Papers Sent

(1) Wahr 9/1/77

In form to receipt

(2) \_\_\_\_\_

Send Copies to:

\_\_\_\_\_ Idaho State Health Department  
\_\_\_\_\_ Idaho Fish and Game Department  
\_\_\_\_\_ Bureau of Land Management

(3) \_\_\_\_\_

\_\_\_\_\_ Request Special Use Permit from U.S.F.S.  
\_\_\_\_\_ Request Easement from B.L.M.  
\_\_\_\_\_ Request Information from Applicant  
\_\_\_\_\_ Request Dam Safety Information

(4) Wahr 9/1/77

In form for advertising

(5) \_\_\_\_\_

Platted on Map No. \_\_\_\_\_

(6) \_\_\_\_\_

Located within Water District No. \_\_\_\_\_

(7) \_\_\_\_\_

Critical groundwater area: yes \_\_\_\_\_ no \_\_\_\_\_

(8) \_\_\_\_\_

Groundwater levels:

\_\_\_\_\_ Declining, \_\_\_\_\_ Stable, \_\_\_\_\_ Increasing

(comment) \_\_\_\_\_

(9) \_\_\_\_\_

Other rights on the same place of use

(10) \_\_\_\_\_

Comments: \_\_\_\_\_

(11) \_\_\_\_\_

Affidavit of Publication received(date) \_\_\_\_\_

(12) \_\_\_\_\_

Final date for protests \_\_\_\_\_  
Protests received: yes \_\_\_\_\_ no \_\_\_\_\_

(13) \_\_\_\_\_

All requested information received from agencies or  
applicant: yes \_\_\_\_\_ no \_\_\_\_\_

(14) \_\_\_\_\_

Action recommended:

\_\_\_\_\_ Approve \_\_\_\_\_ Deny

\_\_\_\_\_ Proposed Priority

\_\_\_\_\_ Reason for Reduction \_\_\_\_\_

\_\_\_\_\_ Measuring device required

\_\_\_\_\_ See attached sheet for other conditions of  
approval

\_\_\_\_\_ No special conditions for approval

(15) District W By WJA Date 10-17-77

RECEIVED  
OCT 17 1977

HOLD

October 3, 1977

Re: Application for Permit No. 63-9019  
Boise Project Board of Control

Boise Project Board of Control  
214 Broadway  
Boise, ID 83702

Gentlemen:

Pursuant to your request, enclosed is a copy of the letter from the Corps of Engineers concerning the above referenced application for permit.

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

Sincerely,

RITA FLECK  
Secretary

RF:

Enc.

MICROFILMED



DEPARTMENT OF THE ARMY  
WALLA WALLA DISTRICT, CORPS OF ENGINEERS

BLDG. 602, CITY-COUNTY AIRPORT  
WALLA WALLA, WASHINGTON 99362

NPWEN-PL

21 September 1977

Mr. C. Stephen Allred  
Director  
Idaho Department of Water Resources  
92 South Cole Road  
Boise, Idaho 83705



Dear Mr. Allred:

Notice has been received of application by the Boise Project Board of Control for water permit for 5,700 cfs at Lucky Peak Dam for power generation.

The purpose of this letter is not to protest this permit but to point out that the Corps is in the final stages of a report to Congress requesting the authorization for construction by the Corps of a powerplant at Lucky Peak Dam. I would also like to point out that, to our knowledge, the Board of Control has not obtained a license to study from the Federal Power Commission or other authority for this development that would give the Board of Control priority from the Federal standpoint.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "C. S. Allaire", written over the typed name.

C. S. ALLAIRE  
Colonel, CE  
District Engineer

RECEIVED



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
WESTERN REGION

John V. Evans  
Governor

92 South Cole Road  
Boise, Idaho 83705  
(208) 384-2190

September 23, 1977

Re: Notice of Application for Permit No. 63-9032 -- Richard Burke

Notice of Correction No. 63-9019 -- Boise Project Board of Control

Idaho Statesman  
Box 40  
Boise, ID 83707

Gentlemen:

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

An affidavit of publication must be submitted to the Department along with the publication bill. In order to receive payment, the following certification must appear on the bill:

"I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due after allowing all just credits and that no part of the same has been paid."

\_\_\_\_\_  
(Signature of Claimant)

Please send the affidavit of publication and publication billing to this office before October 17, 1977.

Sincerely,

RITA FLECK  
Secretary

*Bill submitted*  
*10-17-77*  
*[Signature]*



NOTICE OF CORRECTION

Notice is hereby given that notice of Application for Permit No. 63-9019 in the name of BOISE PROJECT BOARD OF CONTROL was published in error on September 8 and 15, 1977.

The point of diversion was advertised as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  Sec 11 T2N-R3E B.M. Ada County. WHEREAS, the actual point of diversion is within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  Sec 11 T2N-R3E B.M., Ada County.

Any protest against approval of this application must be filed with the Director of the Idaho Department of Water Resources, 92 S. Cole Road, Boise, ID 83705 on or before October 17, 1977.

C. STEPHEN ALLRED

Director

Published in the Idaho Statesman, Boise, Idaho on September 29, 1977 and October 6, 1977.



State of Idaho

## DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 92 South Cole Road, Boise, Idaho 83705

JOHN V. EVANS  
Governor

(Office at the corner of  
Franklin and Cole Roads)

C. STEPHEN ALLRED  
Director

(208) 384-2190

September 8, 1977

Boise Project Board of Control  
214 Broadway  
Boise, ID 83702

Gentlemen:

Enclosed is your Receipt No. 8802 in the amount of \$1,535.00  
for Application for Permit No. 63-9019 which was received in  
this office on August 31, 1977.

Sincerely,

RITA FLECK  
Secretary

RF

Enclosure

MICROFILMED



STATE OF IDAHO  
**DEPARTMENT OF WATER RESOURCES**  
WESTERN REGION

John V. Evans  
Governor

92 South Cole Road  
Boise, Idaho 83705  
(208) 384-2190

September 2, 1977

RE: Notice of Application for Water Permit No. 63-9019 -- Boise Project Board of Control  
63-9088 --- Gene P. Or Marcia L. Brown  
63-9021 -- Kenneth J. Hopkins

The Idaho Statesman  
Box 40  
Boise, ID 83707

Gentlemen:

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

An affidavit of publication must be submitted to the Department along with the publication bill. In order to receive payment, the following certification must appear on the bill:

"I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due after allowing all just credits and that no part of the same has been paid."

\_\_\_\_\_  
(Signature of Claimant)

Please send the affidavit of publication and publication billing to this office before September 26, 1977.

Sincerely,

RITA FLECK  
Secretary

MICROFILMED

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that BOISE PROJECT BOARD of CONTROL  
214 Broadway, Boise, ID 83702  
has on 8-31-77 submitted Application No. 63-9019  
for a permit to appropriate 5,700 cubic feet per second acre feet  
xxxxxxx per annum of water from Boise River trib. Snake River  
by means of reservoir-penstock, hydroturbines  
within the SENE Sec 11 T2N R3E B.M., Ada County

to be used from Jan 1 to December 31  
for power  
within the SWNE Sec 11, T2N-R3E

If issued, this permit will be subject to all prior water rights. Pro-  
tests against the granting of the permit must be filed with the Director of  
the Idaho Department of Water Resources, 92 South Cole Road, Boise, Idaho  
83705 on or before Sept. 26, 1977.

C. STEPHEN ALLRED

Director

Published in the Idaho Statesman  
on September 8 and September 15, 1977.

January 24, 1990

BOISE PROJECT BOARD OF CONTROL  
214 BROADWAY  
BOISE, ID 83702

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 63-09019

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the WESTERN Regional Office in Boise at (208)334-2190.

Sincerely,

Rita Fleck  
Secretary/Records Manager

c: IDWR - Region

**MICROFILMED**

FEB 21 1990

**HAWLEY TROXELL ENNIS & HAWLEY**  
ATTORNEYS AND COUNSELORS

ROBERT I. TROXELL  
JESS B. HAWLEY, JR.  
JOHN T. HAWLEY, P.A.  
THOMAS A. MILLER  
M. NEAL NEWHOUSE  
CRAIG L. MEADOWS  
JOSEPH D. MCCOLLUM, JR.  
WAYNE S. SLAUGHTER, JR.  
GARY D. SABBITT  
P. CRAIG STORTI  
MERLYN W. CLARK  
RICHARD F. GOODSON  
CARL W. HARDER  
PHILLIP M. BARBER  
DONALD E. KNICKREHM  
EDWIN V. APEL, JR.  
EUGENE A. RITTI  
KAREN L. LANSING  
RICHARD G. SMITH  
JOHN F. KURTZ, JR.  
ROBERT S. ERICKSON  
NICHOLAS G. MILLER  
BRENT F. LLOYD

JOHN MCGOWN, JR.  
ALBERT F. BARKER  
DON A. OLOWINSKI  
JOHN T. HAWLEY, JR.  
RONALD E. BUSH  
STEVEN W. BERENTER  
KENNETH C. HOWELL  
RITA L. BERRY  
MICHAEL M. STODDARD  
JOSEPH P. LANGFIELD  
SUSAN D. MINER  
KEVIN J. BEATON  
PATRICK V. COLLINS  
CHRIS F. ODE  
DAVID A. CHANNER  
BRAD R. MILLER  
STEVEN R. ORMISTON  
BART J. PATTERSON  
WILLIAM J. DAVIS\*  
JOHN S. HINTON\*  
JULIA A. CROSSLAND  
RICHARD S. BURLEIGH  
\*NOT ADMITTED IN IDAHO

FIRST INTERSTATE CENTER  
SUITE 1000  
POST OFFICE BOX 1617  
BOISE, IDAHO 83701  
TELEPHONE  
(208) 344-6000

TELECOPIER  
(208) 342-3829

November 15, 1989

PAUL S. ENNIS  
(1916-1982)

POCATELLO OFFICE  
125 NORTH GARFIELD  
POST OFFICE BOX 4167  
POCATELLO, IDAHO 83205

TELEPHONE  
(208) 233-0845

TELECOPIER  
(208) 233-1304

**VIA HAND DELIVERY**

Idaho Department Of  
Water Resources  
2735 Airport Way  
Boise, Idaho 83705

Re: Permit No. 63-9019

To Whom It May Concern:

I have enclosed for filing a Proof of Beneficial Use form and a check in the amount of \$600.00 concerning the above-referenced permit. If you have any questions, please do not hesitate to communicate with me.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

*Don A. Olowinski*

Don A. Olowinski

**Enclosures**

cc: Boise Project Board of Control  
Boise-Kuna Irrigation District  
Nampa & Meridian Irrigation District  
New York Irrigation District  
Wilder Irrigation District  
Big Bend Irrigation District  
Dennis Larrondo

RECEIVED  
NOV 15 1989

Department of Water Resources  
Western Regional Office

MicroFILMED

FEB 21 1990

03/86

RECEIVED

NOV 17 1989

RECEIVED

NOV 15 1989

STATE OF IDAHO

Department of Water Resources  
Western Regional Office

DEPARTMENT OF WATER RESOURCES

For Office Use Only

Fee Received

Date 11-16-89Receipt # W0006718Receipt by DLReviewed by DL-1-5-90

Sent to region

Department of Water Resources

## PROOF OF BENEFICIAL USE

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

Permit No. 63-9019Boise Project Board of Control on behalf  
of Boise-Kuna Irrigation District;

Nampa &amp; Meridian Irrigation District;

Name(s) of Permit Holder: New York Irrigation District; Wilder Irrigation District;  
Big Bend Irrigation DistrictPost Office Address: 214 Broadway Avenue, Boise, Idaho 83706 - Board of Control  
Post Office Box 5677, 344-1141 Board of Control  
Boise, Idaho 83705 - LPPPP Telephone No. 344-7063 LPPPPSource of Water: Boise River

Extent of Use:

Domestic \_\_\_\_\_ (number of households)

Stockwater \_\_\_\_\_ (number and type of stock)

Irrigation \_\_\_\_\_ (acres)

Other/Remark Power GenerationTotal rate and/or volume for which proof is submitted 5700 cfs \_\_\_\_\_ acre-feetShow the date water was first diverted and beneficially used under this permit: May 5, 1988Measuring Device: Required? ☒ Yes ☐ No  
Installed? ☒ Yes ☐ NoFee enclosed \$ 600.00  
(See License Examination Fee Schedule)Flow Measurement Port: Required? ☐ Yes ☐ No  
Installed? ☐ Yes ☐ No

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

Dennis Larrondo344-7063

(Name)

(Telephone Number)

Post Office Box 5677, Boise, Idaho 83705

(Address)

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

MICROFILMED

FEB 21 1990

November 9, 1989

Date

Signature of Permit Holder (and title, if appropriate)

Chester Hargrove  
Chairman, Boise Project Board of Control

State of Idaho  
Department of Water Resources

LICENSE EXAMINATION FEE SCHEDULE

(c.f.s. = cubic feet per second  
AF = acre feet)

| cfs          | AF          | Fee    |
|--------------|-------------|--------|
| 0 - 0.04     | 0 - 4       | \$ 0   |
| .05 - 0.20   | 5 - 20      | 50.00  |
| .21 - 1.0    | 21 - 100    | 100.00 |
| 1.01 - 2.0   | 101 - 200   | 125.00 |
| 2.01 - 3.0   | 201 - 300   | 150.00 |
| 3.01 - 4.0   | 301 - 400   | 175.00 |
| 4.01 - 5.0   | 401 - 500   | 200.00 |
| 5.01 - 6.0   | 501 - 600   | 225.00 |
| 6.01 - 7.0   | 601 - 700   | 250.00 |
| 7.01 - 8.0   | 701 - 800   | 275.00 |
| 8.01 - 9.0   | 801 - 900   | 300.00 |
| 9.01 - 10.0  | 901 - 1000  | 325.00 |
| 10.01 - 11.0 | 1001 - 1100 | 350.00 |
| 11.01 - 12.0 | 1101 - 1200 | 375.00 |
| 12.01 - 13.0 | 1201 - 1300 | 400.00 |
| 13.01 - 14.0 | 1301 - 1400 | 425.00 |
| 14.01 - 15.0 | 1401 - 1500 | 450.00 |
| 15.01 - 16.0 | 1501 - 1600 | 475.00 |
| 16.01 - 17.0 | 1601 - 1700 | 500.00 |
| 17.01 - 18.0 | 1701 - 1800 | 525.00 |
| 18.01 - 19.0 | 1801 - 1900 | 550.00 |
| 19.01 - 20.0 | 1901 - 2000 | 575.00 |
| 20.01 & over | 2001 & over | 600.00 |

Checks should be made payable to the  
Department of Water Resources

No fee is required for single family  
domestic use or stockwater use.



**HAWLEY TROXELL ENNIS & HAWLEY**

FIRST INTERSTATE CENTER

P.O. BOX 1617

BOISE, IDAHO 83701

*To*

HAND DELIVERED

IDAHO DEPARTMENT OF  
WATER RESOURCES  
2735 AIRPORT WAY  
BOISE, IDAHO 83705

**FIRST CLASS MAIL**

**MICROFILMED**  
FEB 21 1980

May 24, 1989

Boise Project Board of Control  
P. O. Box 677  
Boise, ID 83705

Gentlemen:

Re: Permit No. 63-9019

Enclosed is a copy of the approved request for extension of time. The time within which to submit proof of beneficial use is extended to May 1, 1990.

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

Sincerely,

RITA I. FLECK  
Secretary/Records Manager

Enclosure

MAILED  
JUN 14 1989

MEMORANDUM

DATE: May 22, 1989

TO: File 63-9019

FROM: Rita Fleck *Rita Fleck*

On April 26 and 27, 1989, the department conducted a training conference at the Red Lion Convention Center. During this time, the office was staffed with temporary help. The regular postal mail was held at the post office until the 28th.

It appears that no instruction was given to the temporary help about date stamping documents from walk-in customers.

In regards to this filing, the extension request should be considered timely received on April 27, 1989.

**MICROFILMED**

JUN 14 1989

# HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS

ROBERT I. TROXELL  
JESS B. HAWLEY, JR.  
JOHN T. HAWLEY, P.A.  
THOMAS A. MILLER  
M. NEAL NEWHOUSE  
CRAIG L. MEADOWS  
JOSEPH D. McCOLLUM, JR.  
WAYNE B. SLAUGHTER, JR.  
GARY D. BABBITT  
P. CRAIG STORTI  
MERLYN W. CLARK  
RICHARD F. GOODSON  
CARL W. HARDER  
PHILLIP M. BARBER  
DONALD E. KNICKREHM  
EDWIN V. APEL, JR.  
EUGENE A. RITTI  
KAREN L. LANSING  
RICHARD G. SMITH  
JOHN F. KURTZ, JR.  
ROBERT S. ERICKSON  
NICHOLAS G. MILLER

BRENT F. LLOYD  
JOHN MCGOWN, JR.  
ALBERT P. BARKER  
DON A. OLOWINSKI  
JOHN T. HAWLEY, JR.  
RONALD E. BUSH  
CATHY R. SILAK  
STEVEN W. BERENTER  
KENNETH C. HOWELL  
RITA L. BERRY  
MICHAEL M. STODDARD  
JOSEPH P. LANGFIELD  
SUSAN D. MINER  
KEVIN J. SEATON  
PATRICK V. COLLINS  
CHRIS F. ODE  
DAVID A. CHANNER  
BRAD P. MILLER  
STEVEN R. ORMISTON  
MICHAEL K. CORAN  
BART J. PATTERSON  
STEVEN D. ERDAHL

FIRST INTERSTATE CENTER

SUITE 1000

POST OFFICE BOX 1617

BOISE, IDAHO 83701

TELEPHONE  
(208) 344-6000

TELECOPIER  
(208) 342-3829

PAUL B. ENNIS  
(1918-1982)

POCATELLO OFFICE

125 NORTH GARFIELD

POST OFFICE BOX 4167

POCATELLO, IDAHO 83205

TELEPHONE  
(208) 233-0845

TELECOPIER  
(208) 233-1304

May 17, 1989

RECEIVED  
MAY 18 1989

L. Glen Saxton, Chief  
Water Allocation Bureau  
State of Idaho  
Department of Water Resources  
1301 North Orchard Street  
Boise, Idaho 83720

Department of Water Resources

Re: Permit 63-9019 - Request for Extension of Time

Dear Mr. Saxton:

This letter is in response to your letter of May 8, 1989, questioning why the Districts requested an extension of time on permit 63-9019 rather than submitting proof of beneficial use. A request for extension of time was filed after the Districts' coordinator discussed the situation with the Director of the Department who recommended that approach. In addition, this office consulted with Phillip Rassier prior to submitting the request.

As noted on the request, the Districts utilized more than the requested 5700 cfs for power generation purposes. These flows did not become available until the latter part of April 1989, and project testing has not yet been completed. Such testing is scheduled to occur in June and July of 1989. This testing may possibly reveal deficiencies in the turbines and generators which could limit their use. We thus thought it more prudent to apply for an extension of time.

I also note that your letter stated that our request for an extension of time was not submitted until May 2, 1989. This is incorrect. The request for extension of time was hand-delivered to the department on April 27, 1989. At that point in time the staff person on duty advised me that everyone in the department who could conform our copy of the request was in a training seminar and that she would obtain the appropriate confirmation and return it to us by mail.

MICROFILMED

JUN 14 1989

HAWLEY TROXELL ENNIS & HAWLEY

L. Glen Saxton  
May 17, 1989  
Page 2

If after review of this letter you desire further information, please let me know. If you feel that it would be more appropriate to submit proof of beneficial use, please advise me.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

*Don A. Olowinski*  
Don A. Olowinski

JUN 14 1989

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

RECEIVED  
MAY 15 1989

Department of Water Resources

*Handwritten signature*

RECEIVED  
MAY 15 1989

BOISE, IDAHO  
MAY 15 1989  
U.S. POST OFFICE  
BOISE, IDAHO



NO SUCH ADDRESS

Boise Project Board of Control  
2504 Kootenai Street  
P. O. Box 677  
Boise, ID 83706

*Handwritten: N/S/P*

MICROFILMED

JUN 14 1989

|||||



State of Idaho

DEPARTMENT OF WATER RESOURCES

(208) 327-7900

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - [REDACTED]

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

May 8, 1989

Boise Project Board of Control  
2504 Kootenai Street  
P.O. Box 677  
Boise, ID 83705

RE: PERMIT 63-9019 - REQUEST FOR EXTENSION OF TIME

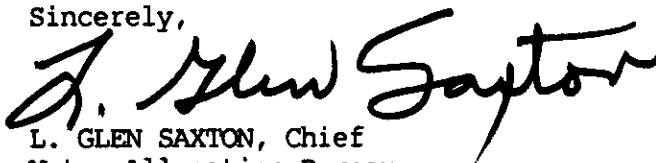
Gentlemen:

The department has reviewed the request for extension of time which you submitted on May 2, 1989 in connection with the above referenced permit which authorizes power development at Lucky Peak Dam on the Boise River.

The extension request states that additional time is needed to utilize larger flows discharged through the generating facility. The extension request appears to show that up to 6,600 cfs has been utilized. Permit 63-9019 authorizes the diversion of 5,700 cfs for power generation purposes. Since more water has apparently been used in the generating facility than authorized by the permit, I don't understand why the Board of Control needs an extension of time. It appears that the submittal of the proof of beneficial use would be more appropriate.

Please advise me within thirty (30) days relative to this matter. Also feel free to contact me if you have questions. My direct phone number is 327-7955.

Sincerely,

  
L. GLEN SAXTON, Chief  
Water Allocation Bureau

c: Ray Givens  
W. Region

**MICROFILMED**

JUN 14 1989

May 8, 1989

Boise Project Board of Control  
2504 Kootenai Street  
P.O. Box 677  
Boise, ID 83705

RE: PERMIT 63-9019 - REQUEST FOR EXTENSION OF TIME

Gentlemen:

The department has reviewed the request for extension of time which you submitted on May 2, 1989 in connection with the above referenced permit which authorizes power development at Lucky Peak Dam on the Boise River.

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Sincerely,

L. GLEN SAXTON, Chief  
Water Allocation Bureau

c: Ray Givens  
W. Region

**MICROFILMED**

JUN 14 1989



BOISE PROJECT BOARD OF CONTROL  
214 BROADWAY  
BOISE, ID 83702

February 28, 1989

138021

PROOF DUE NOTICE

RE: PERMIT NO. 63-09019

Dear Permit Holder:

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

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

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

SINCERELY,

Rita Fleck  
Secretary/Records Manager

Enclosures

RECEIVED

JUN 14 1989

REC-11  
NOV 16 1987

63-09019  
-09206  
-09813  
-10230

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

Project No. 4656-002

-2-

Boise-Kuna Irrigation District, ) Project No. 4656-002  
et al.

NOTICE GRANTING LATE INTERVENTION  
(November 6, 1987)

On June 5, 1987, the Settlers Irrigation District (Settlers) filed an untimely motion to intervene in the proceeding involving the Boise-Kuna, Nampa and Meridian, Wilder, New York, and Big Bend Irrigation Districts' (Districts) jointly filed application for license for the proposed Arrowrock Project No. 4656, to be located at the federal Arrowrock reservoir in Elmore, Boise, and Ada Counties, Idaho. The deadline for filing motions to intervene in the proceeding was September 23, 1985.

Under Rule 214(d) of the Commission's regulations, 18 C.F.R. § 385.214(d) (1987), in determining whether good cause exists to permit late intervention, the Commission will consider whether (1) the movant had good cause for filing the motion late, (2) any disruption in the proceeding would result from permitting the intervention, (3) the movant's interest is not adequately represented by other parties in the proceeding, and (4) any prejudice to or additional burdens upon the existing parties might result.

Settlers requests late intervention in the Project No. 4656 proceeding because it believes that the proposed Project No. 4656 may affect Settlers' flow-of-the-river water rights in the Boise River and Settlers' contractual storage water rights in the U.S. Bureau of Reclamation's Arrowrock reservoir. According to Settlers, recent events, namely the 1987 drought in the project area and the lowering of Lucky Peak reservoir water levels to accommodate construction of the licensed Lucky Peak Project No. 2832 located downstream from the Arrowrock reservoir, indicate that operation of Project No. 4656 will have a potentially disastrous adverse impact upon Settlers and other water users and would be inconsistent with the primary irrigation function of the Arrowrock dam and reservoir. Settlers argues that it is also entitled to late intervention because the Commission failed to serve Settlers written notice of the Districts' application.

The Districts have filed a response in opposition to Settlers motion to intervene arguing that Settlers has not shown good cause for filing its motion nearly two years late and that intervention now by Settlers would disrupt the proceeding. The Districts also contend that Settlers' interests are already adequately represented by a party to the proceeding, the Pioneer Irrigation District.

It appears that good cause exists for allowing Settlers to intervene late. The interests of Settlers may not be adequately represented by Pioneer or any other party to the proceeding. The fact that Settlers and Pioneer currently retain the same law firm and that Settlers has as part of its motion adopted positions taken by Pioneer in its earlier motion to intervene does not establish that their interests are the same. Also, it has not been shown how intervention by Settlers would disrupt the proceeding or prejudice any of the other parties at this stage of the proceeding. With respect to Settlers not having notice in writing of the Districts' application, it appears that at the time of noticing, it was the Commission staff's practice to serve written notice on municipalities likely to be interested, such as Settlers, even though Section 4(f) of the FPA did not require such written notice when the application is filed by a municipality such as the Districts. In light of these considerations, intervention by Settlers would not be contrary to the public interest.

Pursuant to Section 375.302 of the Commission's regulations, 18 C.F.R. § 375.302 (1987), Settlers is permitted to intervene in the above-captioned proceeding subject to the Commission's rules and regulations under the Federal Power Act, 16 U.S.C. §§ 791a-825r. Participation of Settlers shall be limited to matters set forth in its motion to intervene. The admission of Settlers shall not be construed as recognition by the Commission that Settlers might be aggrieved by any order entered in this proceeding.

Lois D. Cashell  
Acting Secretary

RECEIVED  
JUN 14 1989

31 248700

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE: \$300



POSTAGE AND FEES PAID  
FEDERAL ENERGY  
REGULATORY COMMISSION  
FERC-351

P -0004656002 101465  
STATE OF IDAHO DIRECTOR  
IDAHO DEPARTMENT OF WATER RESOURCES  
450 WEST STATE STREET  
BOISE, ID 83720



UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Boise-Kuna Irrigation District, ) Project No. 4656-002  
et al.

NOTICE GRANTING LATE INTERVENTION  
(November 6, 1987)

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DC-A-22

RECEIVED  
NOV 16 1987

Project No. 4656-002

Department of Water Resources  
-2-

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Lois D. Cashell  
Acting Secretary

MICROFILMED

JUN 14 1989

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300



POSTAGE AND FEES PAID  
FEDERAL ENERGY  
REGULATORY COMMISSION  
PERC 351

P -0004656002 101465  
PHILLIP J. RASSIER ESQ.  
IDAHO DEPARTMENT OF WATER RESOURCES  
450 WEST STATE STREET  
BOISE, ID 83720



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
COMMENCEMENT OF WORKS

Permit No. 63-9019  
Name(s) of Permit Holder(s): Boise Project Board of Control  
Post Office Address: 214 Broadway, Boise, Idaho 83702  
Tel. No. 204-1141

- ☒ I hereby certify that construction of diversion works for the above referenced permit began on May 25, 1984. I understand that I must  
(date)  
continue to develop the water system with due diligence to maintain a valid permit.
- ☐ I hereby certify that construction of diverting works on the above referenced project has not yet begun due to the following reason beyond my control\*:  
\_\_\_\_\_  
\_\_\_\_\_

\*Note: A financing difficulty is  
not an acceptable reason.

10/1/84  
Date

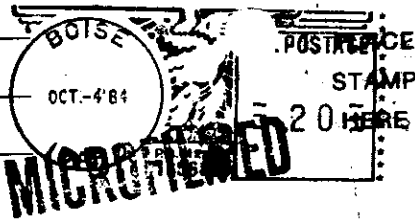
Signature of Permit Holder

Gerald Guentz, Chairman

Boise Project Board of Control

214 Broadway

Boise, Idaho 83702



**MICROFILMED**

JUN 14 1989

**RECEIVED**



OCT 10 1984

IDAHO DEPARTMENT OF WATER RESOURCES  
STATEHOUSE

Department of Water Resources  
BOISE, IDAHO 83720

March 18, 1988

Pioneer Irrigation District  
Box 426  
Caldwell, ID 83606

Gentlemen:

Re: Permit No. 63-9019 - Boise Project Board of Control

Enclosed is a copy of the Order Adopting Amended Proposed Memorandum Decision and Order and Amended Proposed Memorandum Decision and Order.

Any one who disagrees with the decision of the department may request rehearing before the Director within 20 days or may appeal directly to the district court within 30 days of the date the decision is mailed.

Sincerely,

L. GLEN SAXTON  
Chief, Operations Bureau

Enclosures

c: Pioneer Irrigation Dist.  
Boise Kuna Irrigation Dist.  
Wilder Irrigation Dist.  
William F. Ringert  
Ray D. Givens  
Big Bend Irrigation Dist.  
Scott L. Campbell  
Randall C. Fredericks  
Don A. Olowinski  
Nampa-Meridian Irrigation Dist.  
New York Irrigation Dist.

**MICROFILMED**

APR 04 1988



FEB 18 1988

**ELAM, BURKE AND BOYD**

ATTORNEYS AND COUNSELORS AT LAW

BOISE OFFICE

702 WEST IDAHO  
POST OFFICE BOX 1559  
BOISE, IDAHO 83701  
TELEPHONE 208-343-5454

CANYON COUNTY OFFICE

1120 SIXTH STREET SOUTH  
POST OFFICE DRAWER E  
NAMPA, IDAHO 83653  
TELEPHONE 208-466-9222

BOISE OFFICE

Department of Water Resources  
LAUREL E. ELAM (1888-1961)  
CARL A. BURKE (1898-1961)  
CARL P. BURKE  
PETER J. BOYD  
J. RAY DURTSCHI  
M. ALLYN DINGEL, JR.  
JACK S. GJORDING  
JOHN MAGEL  
DAVID B. LINCOLN  
RICHARD C. MELLON, JR.  
ROBERT M. TYLER, JR.  
JAMES D. LARUE  
RANDALL A. PETERMAN  
WILLIAM J. RUSSELL  
KAYE L. O'RIORDAN  
RYAN P. ARMBRUSTER  
DAVID E. COMSTOCK  
MELVILLE W. FISHER II  
WILLIAM G. DRYDEN  
JOHN J. WILCOX  
PETER C. K. MARSHALL  
KENNETH M. SEBBY  
TRUDY HANSON FOUSER  
D. ALAN KOFOED  
SCOTT L. CAMPBELL  
BOBBI KILLIAN DOMINICK  
W. DALLAS BURKHALTER  
ALAN CONOLOGUE  
ELAINE D. HANSON  
JEFFERY J. VENTRELLA  
BRENDA G. MEIER  
JOHN J. JANIS  
WENDY E. D. SMITH  
JAMES A. FORD  
STEVEN D. ERDAHL  
SCOTT W. DAVIDSON  
JEFFREY A. THOMSON

CANYON COUNTY OFFICE

WILLIAM F. YOST

February 17, 1988

R. Keith Higginson, Director  
Department of Water Resources  
1031 North Orchard  
Boise, Idaho 83702

Re: Petition to Cancel Permit No. 63-9019

Dear Director Higginson:

I enclose Pioneer Irrigation District's Exceptions to Proposed Memorandum Decision and Order.

Very truly yours,

ELAM, BURKE & BOYD

*Scott L. Campbell*  
Scott L. Campbell

SLC:jc  
Enclosure  
cc Board of Directors (w/enc.)

**MICROFILMED**

APR 04 1988

RECEIVED  
FEB 18 1988

Peter J. Boyd  
Scott L. Campbell  
ELAM, BURKE AND BOYD  
702 West Idaho  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Department of Water Resources

Attorneys for Petitioner

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

IN THE MATTER OF PETITION TO  
CANCEL PERMIT NO. 63-9019

PIONEER IRRIGATION DISTRICT,

Petitioner,

v.

BOISE PROJECT BOARD  
OF CONTROL,

Respondent.

EXCEPTIONS TO PROPOSED  
MEMORANDUM DECISION  
AND ORDER

SOURCE: Boise River  
COUNTY: Ada

COMES NOW Pioneer Irrigation District, by and through its counsel of record, and hereby presents the following Exceptions to Proposed Memorandum Decision and Order issued in the above-captioned matter on February 2, 1988. These exceptions are being presented pursuant to Idaho Code sections 42-1701A and 67-5211, as well as Rule 10, 2, 2. of the Rules and Regulations for Practice and Procedure before the Department of Water Resources, state of Idaho. The petitioner specifically i

EXCEPTIONS TO PROPOSED  
MEMORANDUM DECISION AND ORDER - 1

MICROFILMED

APR 04 1988

portions of the proposed decision to which exceptions are made and specifically states the grounds for those exceptions as follows:

FINDINGS OF FACT

Paragraph 8: The resolutions referred to in this paragraph did not authorize the Boise Project Board of Control to file an application for Permit No. 63-9019. None of the resolutions made any specific reference to application for Permit No. 63-9019, nor did they refer to any pending application for a water permit for production of electricity at Lucky Peak Dam. Moreover, the resolutions authorize the Secretary and Chairman of the Boise Project Board of Control to execute applications only after the "concurrence of the other Districts comprising the Boise Project." There is no evidence in this record demonstrating that this concurrence took place.

In this regard, it should be pointed out, and the Director should take official notice pursuant to Rule 9, 16. of the Rules and Regulations of Practice and Procedure, that the Boise Project, United States Reclamation Act Project, includes lands located within the Arrowrock Division, as well as the Payette Division. The irrigation districts located within the Arrowrock Division of the Boise Project include:

- (1) Pioneer Irrigation District;
- (2) Settlers Irrigation District;
- (3) Boise-Kuna Irrigation District;
- (4) New York Irrigation District;
- (5) Nampa-Meridian Irrigation District;

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APR 04 1988

- (6) Big Bend Irrigation District; and
- (7) Wilder Irrigation District.

The Payette Division of the Boise Project includes lands located within the following irrigation districts:

- (1) Black Canyon Irrigation District, and
- (2) Emmett Irrigation District.

There is no evidence in the record that all of these districts concurred in authorizing the Secretary and Chairman of the Boise Project Board of Control to execute the pertinent applications. (Exhibits 7-11.)

Paragraph 9: On December 7, 1977, the Department notified the Boise Project Board of Control that application for Permit No. 63-9019 would be approved pending issuance of the Federal Power Commission license and completion of any other agreements necessary for the Boise Project Board of Control to use Lucky Peak Dam for power production. (Exhibit 13.)

Paragraph 11: On April 23, 1984, the Board did not enter into a Power Purchase and Sales Contract with the city of Seattle. Instead, the Nampa-Meridian, Boise-Kuna, Wilder, and Big Bend Irrigation Districts entered into such a contract on that date as individual irrigation districts. (Exhibit 31.)

Paragraph 12: On May 11, 1984, the New York Irrigation District did not relinquish all interest in Permit No. 63-9019 to the four remaining districts. Permit No. 63-9019 had not been issued at that time, so it was merely an application for a permit on that date. Also, this factual finding conflicts directly with paragraph 23 of the Conclusions of Law of the Proposed Order.

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Decision and Order which concludes that the New York Irrigation Company [sic] did not transfer the permit as contemplated by Idaho Code section 42-207. (Exhibits 6, 25, and 26.)

Paragraph 14: The Board did not commence construction of the Project on May 25, 1984. Construction of the Project began on that date, but the Board was not involved because of the withdrawal from participation by the New York Irrigation District. (Exhibits 25, 26, 27, and 31.)

By resolution, dated May 11, 1984, the New York Irrigation District withdrew from involvement in the Project, except for receipt of 9.5 percent of the profits. By terms of the agreement dated May 11, 1984 (Exhibit 27), the New York Irrigation District consented to the Nampa-Meridian, Boise-Kuna, Wilder, and the Big Bend Irrigation Districts proceeding with the financing, construction, and operation and maintenance of the Project. (Section 2 of Exhibit 27.)

Additionally, by terms of the agreement, the New York Irrigation District disclaimed any rights or privileges under the Power Purchase and Sales Contract and disclaimed all right, title, and interest in and to any facilities constructed pursuant to such license, water permit, or power sale agreement. (Section 2 of Exhibit 27.) Consequently, the construction of the Project was commenced by the city of Seattle under contract with the Nampa-Meridian, Boise-Kuna, Wilder, and Big Bend Irrigation Districts, as the Steering Committee of the Lucky Peak Hydroelectric Project. (Exhibits 26, 27, and 31.)

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Paragraph 15: The Board did not issue any revenue bonds to finance the construction of the Project; instead the Boise-Kuna Irrigation District issued \$154,000,000 of revenue bonds in order to finance construction of the Project. (Affidavit of Ruth L. Keeth and section 1(c) and 5(h) of Exhibit 31.)

Paragraph 19: Pioneer Irrigation District, the petitioner, possesses three natural flow water rights on the Boise River and, by contract, storage rights in Lucky Peak Reservoir. (Paragraph LXXVI, page 31 of Exhibit 39.)

#### CONCLUSIONS OF LAW

Paragraph 18: The petitioner disagrees with the following statement contained in paragraph 18: "Although the definitions of 'person' in I.C. sections 42-242 and 42-4002 are not controlling in this proceeding, there is no compelling reason to adopt a more narrow definition for this act [sic]. Using the language of I.C. sections 42-242 and 42-4002, the Board falls within the meaning of 'person' as defined in either statute."

This conclusion ignores the plain and ordinary meaning of the terms "person" and "association of persons" which the Department is compelled to apply under accepted rules of statutory construction. Additionally, this conclusion ignores the restrictive language "in this act" which applies to the language of Idaho Code sections 42-242 and 42-4002. (See discussion on pages 26-27 of Reply Memorandum in Support of Petition to Cancel Water Permit No. 63-9019.)

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Paragraph 19: The Board was not an authorized agent for the five irrigation districts with respect to application for Permit No. 63-9019. (See exception to paragraph 8 under Findings of Fact and exception to paragraph 20 under Conclusions of Law)

Paragraph 20: The November 1977 resolutions of the five irrigation districts did not constitute subsequent approval of the Board's earlier action regarding application for Permit No. 63-9019, nor do the resolutions suggest ratification of the Board's actions with regard to that application. (See exception to paragraph 8 of Findings of Fact.)

Moreover, the Board's action could not be based upon the implied authority to perform what is "necessary, usual, and proper to accomplish the purpose of the express grant of authority." Here, the express grant of authority is contained in the 1926 contracts, which specifically limit the Board's power to the operation and maintenance of the portion of the New York Canal and lateral canals downstream of the diversion dam, plus Deer Flat Reservoir. (Paragraph 42, Exhibit 1; paragraph 21, Exhibit 2; paragraph 40, Exhibit 3; paragraph 42, Exhibit 4; paragraph 38, Exhibit 5; and pages 16-20 of Reply Memorandum in Support of Petition to Cancel Water Permit No. 63-9019.)

No stretch of the imagination could produce a conclusion that the Lucky Peak Hydroelectric Project is "necessary, usual, and proper to accomplish the purpose of 'this express grant of authority.'"

There is also nothing in the record, and the proposed decision makes no reference to any evidence in the record, to support

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the conclusion that "the Board had at least apparent authority to act for the five districts as reasonable men conversant in the administration of water and were justified in believing the Board was acting pursuant to existing authority."

Paragraph 21: It does indeed make a difference whether the Board is characterized as a "person" or "agent." If the Board is not a "person" or "association of persons" under the definition of Idaho Code section 42-206, it cannot meet the requirements of the statute. In short, any "agent" must also be a "person" or "association of persons" and be "an actual bona fide resident or residents of the state of Idaho," in order to qualify under the statutory requirements. In short, an "agent" must still be at least a "person" or "association of persons" to meet the threshold requirements of the statute. The Board does not qualify in either respect.

Paragraph 23: If, in fact, the "Board was the holder of the permit both before and after the date of the transaction," and "[t]herefore there was never a transfer of the permit as contemplated by Idaho Code section 42-207" then Idaho Code section 42-301 has clearly been violated. The Board has not commenced construction of the Project, nor has it completed one-fifth of the construction work within one-half of the time for completion of the construction, as required by Idaho Code section 42-301. (Royce VanCuren Depo., pp. 6-12; Carl Padour Depo., pp. 10-16.) Instead, construction of the Project has been undertaken by the so called "Steering Committee" established by

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APR 04 1988



the Power Purchase and Sales Agreement (Exhibit 31), not by the Board, the "holder of the permit."

In short, the Board cannot have it both ways. If, in fact, it was the holder of the permit both before and after the date of the transaction of the New York Irrigation District with the other four irrigation districts, pursuant to the May 11, 1984, agreement, then the Board has failed to satisfy the requirements of Idaho Code section 42-301, and the Department must cancel the permit under that provision. On the other hand, if the New York Irrigation District is deemed to have transferred its interest to the remaining irrigation districts, the record demonstrates that the requirements of Idaho Code sections 42-206 and 42-207 have been violated.

Paragraph 24: The petitioner brought the Petition to Cancel Water Permit No. 63-9019 pursuant to Idaho Code section 42-302 as well as Idaho Code sections 42-205, 42-206, and 42-208. Additionally, the Department of Water Resources has an independent obligation to cancel permits where the owners have failed or neglected to comply with the requirements of Idaho Code section 42-301. (See Idaho Code § 42-311.)

#### CONCLUSION

The Department of Water Resources is required to enforce the statutory enactments of the Idaho legislature. Such enforcement must comport with the language of the statutes and cannot conveniently ignore previously unrecognized errors committed by the Department in the enforcement of these provisions. The petitioner in this matter has brought these errors to the attention

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APR 04 1988

of the Department and again requests that the Director recognize that the laws of the state of Idaho require the Director to revoke or cancel Water Permit No. 63-9019.

DATED This 17th day of February, 1988.

ELAM, BURKE AND BOYD

By Scott L. Campbell  
Scott L. Campbell, of the Firm  
Attorneys for Petitioner

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 17th day of February, 1988, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Don A. Olowinski  
HAWLEY TROXELL ENNIS & HAWLEY  
One Capital Center  
Boise, Idaho 83701

Raymond D. Givens  
GIVENS, McDEVITT, PURSLEY, WEBB & BUSER  
277 North Sixth Street  
Boise, Idaho 83702

Randall C. Fredericks  
CLEMONS, COSHO & HUMPHREY  
815 West Washington  
Boise, Idaho 83702

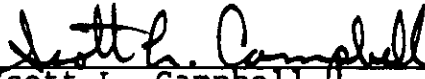
William F. Ringert  
RINGERT, CLARK, HARRINGTON,  
REID, CHRISTENSON & KAUFMAN  
599 West Bannock Street  
Boise, Idaho 83702

Larry Sullivan  
SCHROEDER, HUTCHENS & SULLIVAN  
P.O. Box 220  
Vale, Oregon 97918

**MICROFILMED**

APR 04 1988

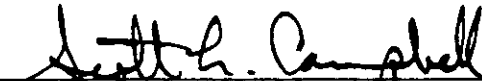
Bobby D. Fleenor  
Hearing Officer  
Department of Water Resources  
1301 North Orchard  
Boise, Idaho 83702

  
\_\_\_\_\_  
Scott L. Campbell

CERTIFICATE OF HAND DELIVERY

I HEREBY CERTIFY That on this 17th day of February, 1988, I caused a true and correct copy of the above and foregoing instrument to be hand delivered to:

R. Keith Higginson  
Director  
Department of Water Resources  
1031 North Orchard  
Boise, Idaho 83702

  
\_\_\_\_\_  
Scott L. Campbell

EXCEPTIONS TO PROPOSED  
MEMORANDUM DECISION AND ORDER - 10

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APR 04 1988

( ELAM, BURKE AND BOYD  
ATTORNEYS AND COUNSELORS AT LAW  
FIRST INTERSTATE BUILDING  
702 WEST IDAHO  
POST OFFICE BOX 1559  
BOISE, IDAHO 83701-1559

Bobby D. Fleenor  
Hearing Officer  
Department of Water Resources  
1301 North Orchard  
Boise, ID 83702



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
BOISE 83720

JIM JONES  
ATTORNEY GENERAL

DEPARTMENT OF WATER RESOURCES  
STATEHOUSE, BOISE, IDAHO 83720  
TELEPHONE: (208) 334-4448

February 10, 1987

Scott Campbell, Esquire  
ELAM BURKE & BOYD  
Attorneys at Law  
First Interstate Bank Building  
Boise, Idaho 83702

Re: Pioneer Irrigation District vs. Boise Project  
Board of Control, Permit No. ~~83-9019~~

Dear Mr. Campbell:

Enclosed is the original and one copy of the transcript of Ray Givens' testimony at the December 18, 1986 hearing on the above referenced matter.

The transcript is 37 pages long. I.R.C.P. 83(K) through reference to I.C. § 1-1105 provides for a fee of \$2.00 per page, therefore the fee for preparing the transcript is \$74. Please remit this amount to Roberta Garrett, Idaho Department of Water Resources.

I apologize for taking so long to prepare this, your request came at a very busy time. If you have any questions regarding the preparation of this transcript, you may contact me 334-4448.

Sincerely,

*Debra L. Cline*

Debra L. Cline  
Legal Secretary

Enclosures

cc: Roberta Garrett

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APR 04 1988

INTER-DEPARTMENT MEMO — 1

DATE 1/12/87

FROM Dave T

TO Bob F.

SUBJECT

Plz add to file 63-9019 (Boise Project Bd of Control)

Dave

---

SIGNATURE

# Photos taken during tour of Lucky Peak Hydropower Facilities - Dec 20, 1986

## Tour Members

Tom McCreedy - Proj Mgr (M-K)

Norm Young - IDWR

Scott Campbell - Atty for Pioneer

Randall Fredericks - Atty

Don Olowinski - Atty

Dave Tuthill - IDWR

1. View of main tunnel intake structure from alt tunnel intake structure
2. View looking down into Lucky Peak res from alt tunnel intake structure.
3. Gangway between alt tunnel intake structure & hillside.
4. View of powerhouse const Area.

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APR 04 1988

Photos taken during tour of Lucky Peak Hydropower Facilities - Dec 20, 1986, cont

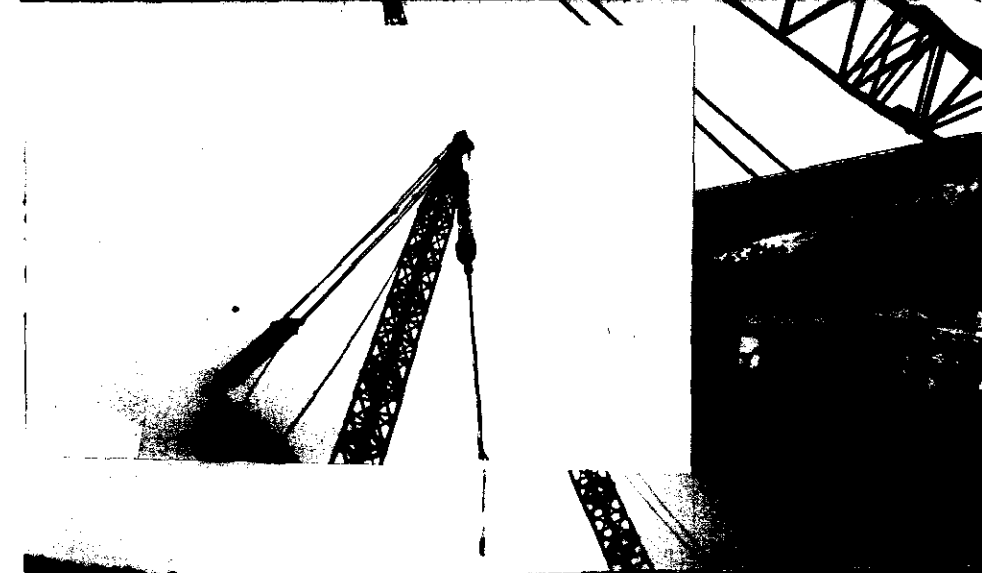


1. Tunnel bifurcation in foreground.

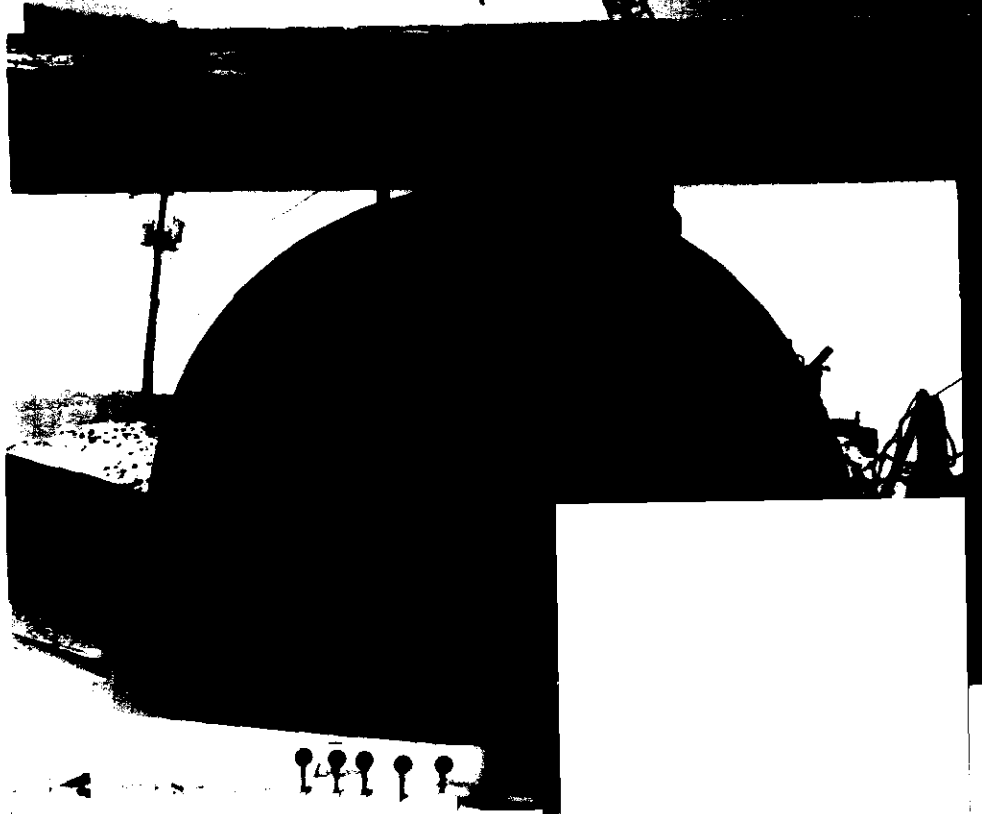
2. Outlet works

3. Outlet works

4. Fixed Crane



5. View of Bifurcation from downstream side.



6. Outlet works

7. Outlet tunnel awaiting bifurcation structure.

APR 04 1988



Place: 10th Floor Large Conference Room, State Towers Bldg., Boise, ID  
Date: Thursday, December 18 - Friday, December 19 - December 22, 1986  
9:00 a.m. - 5:00 p.m.  
Hearing conducted by: Bob Fleenor & Dave Tutthill

[illegible]

①

Pioneer App. to  
CANAL ~~by~~ <sup>by</sup> ~~the~~ <sup>the</sup> Project.

12/18/86  
PJZ

Appreciations

SCOTT Campbell - ~~App~~ Petitioner  
DON OLOWINSKI  
RAY GIVENS  
RALPH FREDRICKS  
BILL LINGG

SCOTT:

1. Stipulation as to exhibits
2. Stipulation as to facts
3. Agreed to present depositions of 3 witnesses
4. Petitioner believes the stipulated matters are adequate to establish the record
5. Brief of Petitioner by JAN 30, 1987  
Reply MAR 3, 1987  
Response of Petitioner MAR 18, 1987 (or 15 days)
6. Change P26, CN12 of VAN CUMEN Deposition  
change "across" to "is"

DON:

1. He has provided listed exhibits to the Dept, and Scott will ~~provide~~ <sup>provide</sup> other exhibits
2. Dept's entire file will be part of the record.

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APR 04 1988

(2)

3. Request Scott state on the record  
the limited purpose of Ex. 22 & 23.
4. Ex. 28 & 29 of Petitioner
5. View of Project by hearing officer on  
12/19/86
  - comments of parties at viewing not  
considered part of the record.
6. Ex. 53 & 54 marked & admitted  
2. Affidavits

---

WITNESS: Amy Owens

- Represented Boise Project since 1964
- 1975 - began to actively representing the  
Board for the Lucky Peak Project
- Ex 13 - letter from Stave Alred.
  - letter used as attachment to  
FERC Petition
  - after issuance of FERC license
    - letter used for Power Purchase  
Agreement; Board Resolution;  
Preliminary official statement for  
bond purchase agreement.
- Ex 31 - Power Sale Agreement w/ Seattle
  - Alred letter relied upon

COPIED

APR 04 1988

- Role of Owens in representing the  
Bore Project in the Bond Issuance
  - Drafting Power Purchase Agreement
  - authored opinion of counsel
- Role of Underwriter (Objection by Scott)
  - purchase of bonds
  - participated in drafting the documents necessary for the Bond sale
- attended meetings of rating agencies
  - Moody's
  - Standard & Poor
- Made representations 5/2-3/84  
regarding water rights
- Necessity for the water rights to the Underwriter
  - Underwriter insisted the water permit be completed before sale of the bonds.
  - The District and their counsel were required to opine the water permit was issued and no objection thereto existed.
- Role of Bond Closing - ■ 7/3/84
  - A.K. DUNN Letter 7/3/84
    - Water permit issued 5/24/84
    - report that Condition "J" was satisfied
  - DUNN letter acknowledges withdrawal of Condition "J" objection.

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APR 04 1988

CROSS - by Scott

-Q: who asked Ray to assist in drafting the water right App.

A: - Lower Committee of Base Projects  
- and the representatives of the District comprising the Board.

Q: N.Y.T.D. Dist Elections

A: Sp. 1984

- Both elections were before the closing of the lower sale agreement  
- Elections were before May 24, 1984, the date of issuance of the permit.

Q: What was the role of the N.Y.T.D. Dist after the election disapproving the sale agreement to Seattle.

A: District participated, but not as a signatory to the lower sale agreement.

Q: Did anyone take action to inform the Dept.

A: Ex. 33 - he believes Mr. Fredericks notified the Dept of the reduced role of N.Y.T.D. Dist in the permit.

RECORDED

FEB 04 1988

Whether any request was made to the Dept to strike the name of N.Y.T.D. from the water permit.

A: Base Projects did not believe action necessary.

- until FEAC had acted upon such a transfer.

Q: How the Board of Control is organized

A: Under 3 rep

B-K 2 rep

W-M 2 rep

N.Y. 1 rep.

Big Bend - 1 (votes 1 up out of 10)

Q: General Function of Board  
(Ex 1-5)

AN: Bb is responsible for operation & maintenance of various facilities.

Q

AN - Doesn't recall whether N.Y. had  
has to sign and if the Board document  
assurances. (that were signed by the other  
districts).

Q: (EX 31) - Power Purchase Agreement.

AN. P. 11, §12 Steering Committee

- Made up of the 4 from dists - 1 rep each.

- Seattle - Subpara (E) - authority of City

- NO Action by Board of Control after  
that date (final)

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END 11:35

APR 04 1988

Petition to Cancel Permit No. 63-9019

Hearing on 12/18/1986

10<sup>th</sup> Floor Conf Rm

- Petitioner

Scott Campbell

- Elam Burke & Boyd

Appearing For

Pioneer Irr Dist

- Respondents

Don Olowinski

Ray Givens

Randall Fredericks

William Ringert

Larry Sullivan

Boise - Kuna

Nampa Meridian I.D.

Big Bend Irr Dist

- Scott Campbell

Stipulation of Facts - Signed by all parties

Stipulation of Exhibits - Signed by all parties

Royce Van Curen

Carl Padour

} Depositions to be provided to this office today

Proposed Time Frame - Petitioner - Jan 30, 1987 Brief Due

- Respondent March 3, 1987 Brief Due

- Rebuttal by Pet. March 18, 1987 (or, 15 days from the date of the supply (reply) brief)

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APR 04 1988

Exhibits missing at time of hearing will be supplied by Scott Campbell

X exam of Givens by Campbell

Q: When were the irrigation dist elections conducted?  
(before May 24, '84?)

A: yes

Q: Were you aware of the results of these elections before that date?

A: yes

Q: What did you mean by saying that the N.Y.I.D. became a partial participant in the Lucky Peak project?

A: The NYID irrigators (members) disapproved sale of the power to the City of Seattle, so they were not a signatory in the sale of power to Seattle.

Q: Is May 11, 1984 a date that you would agree with as the date when <sup>the</sup> NYID Board of Directors did not approve the sale of power to Seattle?

A: I wouldn't disagree with that date.

Q: Why wasn't the name transferred from New York Irr Dist?

A: We felt that FERC should act first, then we would file a change with IDWR

Boise Proj Bd of Control

Composition:

Wilder - 3 members

Nampa Meridian, Boise-Kuna - 2 ea

New York - 1

Big Bend - 1 (votes each 10 years)

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APR 12 1988



Olowinski

- Exhibits presented by Mr. Olowinski are nos. 1-21, 25, 31-36, 40-52 / Exhibits to be provided by Mr. Campbell: 22-24, 26-30, 37-39
- Dept file in this case is incorporated into record (Mr. Fleenor: that is correct)
- Project will be reviewed Dec 19<sup>th</sup> at project site by hearing officer.

Mr Givens (Witness)

- Participated in preparation of applications for the power plant at Lucky Peak
- Water right permit was used as a basis for the <sup>City of</sup> Seattle power purchase agreement, and as a basis for bond rating meetings in New York on May 2 or 3, 1984.
- The day after the permit was issued (63-9019), the power purchase agreement <sup>(for sale of bonds)</sup> was signed (May 25, 1984). Mr. Givens feels that the power purchase signature was based on the water right permit being approved.

x exam (Campbell)

APR 12 1988

Q: Were your activities on behalf of the Board of Control?

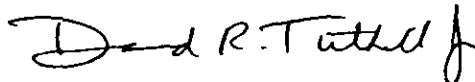
A: Yes, to the extent that they benefitted the Board of Control.

page 2

Boise Project Board of Control, Lucky Peak Dam

Although three days have been set aside for the hearing on this matter, we reiterate our request that the parties abbreviate the proceeding to the extent possible via stipulations, etc., to enable preparation of a proper record in an expeditious manner.

Sincerely,

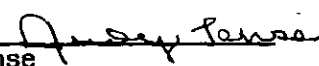


DAVID R. TUTHILL, JR., P. E.  
Manager, Western Regional Office

DRT:jp

|                    |                      |
|--------------------|----------------------|
| c.c. Niel Stessman | Howard Fuller        |
| Carter Fritschle   | John Hockberger, Jr. |
| Donald J. Sayre    | Fred Houston         |
| Lawrence V. Gray   | Don Smitchger        |

I, hereby, certify that on the 28<sup>th</sup> of November, 1986, I caused this letter, and the two enclosures, to be mailed postage prepaid to the addressees on the letter as well as those shown to receive carbon copies.



Judy Pense  
Secretary

**MICROFILMED**

APR 04 1988

63-9019

Boise Project Board of Control

Hearing on Petition to Cancel by Pioneer Irrigation District -

Stipulation

Exhibit - 1 thru 52

Facts - 1 thru

F

M

~~##~~

Presentation - Petition -

Transcripts - Joe, Royce, Carl, -

Briefing schedule - Jan 30, 1987; Response March 3,  
then 15 days for reply.

Mr. - Olawinski

Stipulation of Facts

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APR 04 1988

Ray Givens -

Represent Boise Project Board of Control May 1964

Represent New York C

1954

Responsibility - Prepared Application for water right &amp; FERC license

Exhibit 13 - letter from Steve -

- Used letter to negotiate power contract

# Exhibit 31

- 154 million - Bonds
- Bond issuance relied on water right as portion of rating -
- Met with bond <sup>rat</sup>ers May 1984
- Bond underwriter - needed to know status of water right -
- Final <sup>official</sup> statement showed no objections -
- Opinion letters of council necessary to close the bond

Closing of bonds on . 1984 see Exhibit 54

X-exam by Mr Campbell -

- ~~Assisted~~ Asked by the power committee of the Boise Project Board of Control
- Election of New York ID
- Spring of 1984 -

~~Did BPBC inform Dept. of New Y Canal withdrawal as full participant - Yes.~~  
 - Exhibit 33 - letter by Mr. Fredricks May 18, 1984

- Was there any request to change the permit holder from BPBC to the 4 remaining Irrigation Districts -
- Application to transfer <sup>from</sup> New York ID <sup>FERC</sup> **RECEIVED** to four Irrigation Districts -
- Assignment premature until FERC acts -

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- BP Board of Control <sup>Members</sup> - Wilder 3, Boise 2, ~~Napa~~ 2 NY 1 Big Bend 1/10
- Function of BP Board of Control - O&M. of Canals, Primarily
- Did NY Irrigation District sign the final ~~Official~~ Official Statement for the bonding? not sure - <determine>

X-exam

Exhibit 31 - Contains no reference to water permit

Re-direct

Petitioners brief due January 30

Response March 3

Reply 15 days following response

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APR 04 1988

# ROUTING AND TRANSMITTAL SLIP

Date

12/11/86

TO: (Name, office symbol, room number, building, Agency/Post)

Initials

Date

1. ATTN: STATE OF IDAHO

*Haas*

2. *→ Boise Project Lucky Peak file 67-9019*

3.

4.

*[Signature]*

5.

|                                               |                      |                  |
|-----------------------------------------------|----------------------|------------------|
| Action                                        | File                 | Note and Return  |
| Approval                                      | For Clearance        | Per Conversation |
| As Requested                                  | For Correction       | Prepare Reply    |
| Circulate <input checked="" type="checkbox"/> | For Your Information | See Me           |
| Comment                                       | Investigate          | Signature        |
| Coordination                                  | Justify              |                  |

## REMARKS

CF: State of Idaho w/cy OMB cmts & dtd COE rept.

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APR 04 1988

**RECEIVED**

DEC 15 1986

Department of Water Resources

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

DAEN-CWP-G

PLANNING DIVISION(CW)

JOANN KENT

5041-102

Room No.—Bldg.  
7106/PULASKI

Phone No.

272-0450

OPTIONAL FORM 41 (Rev. 7-76)

Prescribed by GSA

FPMR (41 CFR) 101-11.206

GPO : 1985 O - 485-151



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, DC 20310-0103

DEC 15 1985

Department of Water Resources

30 OCT 1986

Honorable Robert T. Stafford  
Chairman  
Committee on Environment and  
Public Works  
United States Senate  
Washington, D. C. 20510

Dear Mr. Chairman:

A resolution adopted January 5, 1959, by the United States Senate Committee on Public Works requested a review of prior water resource development feasibility reports with a view to determining whether any modification of the existing project is advisable at this time, with particular reference to the addition of facilities for generation of hydroelectric power at Lucky Peak Reservoir on Boise River, Idaho.

The review requested by the Committee has been completed with a finding that adding hydroelectric power generating facilities at the existing Lucky Peak Dam site, would be feasible. However, the Boise Project Board of Control, a local public body, has received a Federal Energy Regulatory Commission hydropower license (No. 2832) and has initiated construction of hydroelectric facilities at Lucky Peak Dam. Therefore, further consideration of Federal hydropower at this project is not warranted.

The Office of Management and Budget agrees that no further consideration is warranted and requests that Congress be advised of the Administration's position on this project. A copy of its letter is enclosed.

Sincerely,

(Signed) Steven Dots, Acting

Robert K. Dawson

*for* Assistant Secretary of the Army  
(Civil Works)

Enclosure

CF: State of Idaho w/cy OMB cmts & dtd COE rept.

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APR 04 1988



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OCT 9 1986

Honorable Robert K. Dawson  
Assistant Secretary of the Army  
for Civil Works  
Room 2E570 - Pentagon  
Washington, D.C. 20310

Dear Mr. Dawson:

On August 28, 1985, you sent this office a copy of the supplemental report of the Chief of Engineers regarding authorization of Federal hydroelectric power at Lucky Peak Dam, Idaho, with your recommendations and draft transmittal letter to Congress.

You recommend that the Administration give no further consideration to Federal hydroelectric power at Lucky Peak Dam, since a non-Federal entity has received a FERC license and initiated construction of power facilities at the site. The Office of Management and Budget agrees that no further consideration is warranted. Please advise the Congress of the Administration's position on this project.

Sincerely,

Donald E. Crabill  
Deputy Associate Director  
for Natural Resources

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APR 04 1988





DEPARTMENT OF THE ARMY  
OFFICE OF THE CHIEF OF ENGINEERS  
WASHINGTON, D.C. 20314

REPLY TO  
ATTENTION OF:

DAEN-CWP-A

17 March 1980

SUBJECT: Lucky Peak Dam and Lake, Idaho, Modification Study

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on Lucky Peak Dam and Lake, Idaho, Modification Study. It is accompanied by the reports of the Board of Engineers for Rivers and Harbors and the District and Division Engineers. These reports are in partial response to a resolution adopted 27 July 1962, and satisfies a resolution adopted 5 January 1959, both by the Committee on Public Works of the United States Senate. The 1962 resolution granted a general study authority to determine the advisability of further development of the land and water resources to meet regional requirements along the Columbia River and its tributaries. The 1959 authority specifically requested studies for the addition of hydroelectric power at the Lucy Peak Project.
2. The District and Division Engineers recommend authorization for construction of a hydroelectric generating facility at the existing Lucky Peak Dam. Their recommended plan consists of constructing a powerhouse with a total generating capacity of 75 megawatts near the downstream end of the existing outlet works. The existing outlet tunnel would be strengthened and a bifurcation facility added. A surge tank is also included to regulate pressures in the event of an emergency shutdown of the powerhouse. The District Engineer estimated the first cost of the proposed improvements, based on October 1976 price levels, to be \$55,500,000 all of which would be Federal. The annual charges, based on a 100-year period for economic analysis and an interest rate of 6-3/8 percent, are estimated at \$4,268,000, including an additional \$271,000 for operation, maintenance, and normal replacements. The District Engineer estimates the average annual benefits at \$8,248,000, resulting in a benefit-cost ratio of 1.9. The Division Engineer indicates that use of the prescribed Federal interest rate of 6-5/8 percent would not have a significant impact on project economic justification.
3. The Board of Engineers for Rivers and Harbors concurs generally in the findings of the reporting officers and recommends authorization of proposed modifications to the Lucky Peak Dam and Lake in the interest of hydroelectric power generation. However, the Board agrees that, during post authorization planning, further coordination should be effected with the State of Idaho concerning possible diversion of Boise River.

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APR 04 1980

DAEN-CWP-A

SUBJECT: Lucky Peak Dam and Lake, Idaho, Modification Study

It also believes that additional studies should be conducted to determine the most efficient plant configuration, the potential for water quality problems in the project tailwater and any corrective measures necessary, and the appropriate allocation of costs to power. The Board further recommended that the Chief of Engineers be authorized to determine, in cooperation with the marketing agency, the appropriate accounting for power costs. The date of the Board's report is 21 June 1978.

4. On 28 January 1979, the Boise Project Board of Control filed and application for a license with the Federal Energy Regulatory Commission (FERC) to construct the hydroelectric power facilities at Lucky Peak. By letter dated 23 April 1979, the Idaho Department of Water Resources informed me that the Idaho Water Resources Board, after evaluating the recommendations of the U. S. Army Corps of Engineers and those of the Boise Project Board of Control, concluded that the latter offered more benefits to the people of Idaho than the proposal of the Corps of Engineers. The Water Resources Board, however, qualified their support by identifying several unresolved issues, solutions to which are necessary before construction can begin. These qualifications are listed below.

a. An equitable contract between the Boise Project Board of Control and an Idaho electrical utility is successfully negotiated.

b. A license is granted by the Federal Energy Regulatory Commission for construction.

c. The landholders within the Boise Project Board of Control service area endorse the contract and project.

d. Legal issues surrounding transfer of the Boise Project Board of Control power right at Arrowrock Dam to Lucky Peak are resolved.

e. The Boise Project Board of Control and its member districts utilize net revenues gained from this project to rehabilitate and improve their irrigation system and to participate in solving other problems on the Boise River System.

f. That the Boise Project Board of Control utilize a portion of the net revenues to maintain the channel of the Boise River in cooperation with other agencies or organizations existing for the purpose.

5. At the present time, the demand for energy in southern Idaho exceeds the area's supply, thereby necessitating imports from neighboring states. After 1983, such imports will be unavailable resulting in power deficits if additional generation is not installed. There is no question concerning the need for and the economic justification of installation of generating facilities at Lucky Peak.

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APR 04 1988

DAEN-CWP-A

SUBJECT: Lucky Peak Dam and Lake, Idaho, Modification Study

6. Lucky Peak was constructed by the Corps of Engineers in 1955 as a part of the Boise River System (Lucky Peak, Arrowrock, and Anderson Ranch). It is operated by the Corps of Engineers under an agreement between the U.S. Bureau of Reclamation (now Water and Power Resources Service) and the Corps of Engineers whereby the three projects are operated as a system to provide the maximum benefits for flood control, irrigation, fish and wildlife, and recreation to the people of Idaho. The project, therefore, embodies multiple-purpose capabilities.

7. There presently exists throughout the nation 24 Corps of Engineers project at which hydroelectric generating facilities have been installed by non-Federal entities. In each instance, however, the Federal project is a single-purpose development for navigation, debris control or other project function. None of these projects embodies multiple-purpose development nor has the significant capability for river regulation embodied in the Lucky Peak project.

8. The Federal Energy Regulatory Commission (FERC) licenses all non-Federal power developments. Applications are referred to my office for review and comment pursuant to the Federal Power Act of 1920, as amended. Staff review by my office insures that functions for which the Federal Government has responsibility, such as navigation, are not adversely affected. The Corps of Engineers has general requirements for non-Federal hydroelectric plant construction at its projects which become a part of the license, if issued. Construction of a power plant by the Boise Project Board of Control at Lucky Peak will require a FERC license. I have this date provided my views and comments to FERC on the Boise Project Board of Control's application for a license to construct power generating facilities at Lucky Peak.

9. The Corps of Engineers' plan for adding a powerplant at Lucky Peak differs from that of the Boise Project Board of Control's principally in that the Corps of Engineers' proposal would make use of the existing outlet works whereas the Boise Project Board of Control would construct a new 23-foot tunnel adjacent to the existing tunnel which would serve as the principal outlet for all purposes with the existing outlet kept as an emergency outlet. I find the Boise Project Board of Control's plan unacceptable since the blasting required to construct the tunnel could jeopardize the integrity of the existing outlet and the structural integrity of the dam. The Corps of Engineers has a responsibility to protect the federal investment and must retain approval of the design and construction of all modifications to the existing facilities.

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APR 04 1988

DAEN-CWP-A

SUBJECT: Lucky Peak Dam and Lake, Idaho, Modification Study

10. Operation of the powerplant must be subservient to the authorized purposes of the project and to the memorandum of understanding between the Corps of Engineers and the Water and Power Resources Service (formerly the Bureau of Reclamation) regarding operation of the Boise River storage projects. This would include scheduling of maintenance of joint use facilities as well as scheduling of releases for authorized project functions. Operation of the plan of the Boise Project Board of Control, as presently contemplated, would not affect presently authorized functions.

11. I see no conflict with the Boise Project Board of Control's desire to develop the hydroelectric potential at Lucky Peak with that of a similar plan by the Corps of Engineers provided the plan meets Corps design, construction, and operational approval. I am concerned, however, with the present and projected energy shortages in this area and the contribution hydroelectric development at Lucky Peak could make regardless of the constructing entity. It is essential that this development take place.

12. The President, in his June 1978 water policy message to Congress, proposed several changes in cost sharing for water resources projects to allow a state to participate more actively in project implementation decisions. These changes include a cash contribution from the benefiting state of five percent of first costs of construction assigned to nonvendible project purposes and ten percent of costs assigned to vendible project purposes. The contributing state would share with the Federal Government the revenue from vendible outputs in proportion to its share of project costs. In the event of Federal construction, application of this policy to the Lucky Peak Modification Project requires a total contribution from the State of Idaho of an estimated \$7,460,000 in cash (10 percent of \$74,600,000 total estimated first costs of construction assigned to vendible project purposes, based on October 1979 price levels). The State would share net power revenues from the project in like proportion. Net power revenues are defined as the gross receipts from power output less all operation and maintenance costs allocated to power.

13. In arriving at my recommendations, I considered several options. These options are summarized as follows:

a. U. S. Army Corps of Engineers construction and operation, as recommended by the reporting officers. This option fully recognizes the Corps role and responsibilities in the existing project.

b. Boise Project Board of Control, construction and operation. This recognizes the non-Federal role in water resource decisions, development, and marketing. The Corps of Engineers would participate through approvals of engineering documents, and under its regulatory responsibilities.

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APR 04 1988

DAEN-CWP-A

SUBJECT: Lucky Peak Dam and Lake, Idaho, Modification Study

c. U. S. Army Corps of Engineers construction, and Boise Project Board of Control operation. This recognizes the Corps interest in the structural integrity of engineering modifications in the existing project, and the non-Federal role in marketing the power. Construction financing would be by the Federal Government with repayment by the Board of Control.

d. U. S. Army Corps of Engineers development only if the Boise Project Board of Control fails to develop power within three years subsequent to passage of a Water Resources Development Act containing this recommendation.

14. Annual charges, based on a 100-year period of economic analysis, the current interest rate of 7-1/8 percent, and October 1979 price levels are estimated to be \$6,146,000. Average annual benefits are estimated to be \$13,376,000, resulting in a benefit-cost ratio of 2.1.

15. Based on the above, I concur with the views and recommendations of the Board of Engineers for Rivers and Harbors and recommend authorization of power facilities subject to the following exceptions:

a. Construction and operation of the hydroelectric power facilities by the Boise Project Board of Control;

b. Design, construction, operation and maintenance of the hydroelectric facilities at Lucky Peak subject to my approval;

c. To insure development of the hydroelectric potential, Federal construction of the Corps' proposed plan should the Boise Project Board of Control fail to initiate construction within three years subsequent to passage of a Water Resources Development Act containing this recommendation; and

d. Under the President's cost sharing policy, the State of Idaho enter into an agreement to provide 10 percent of project costs should Federal construction be undertaken.

  
JAMES A. JOHNSON  
Major General, USA  
Acting Chief of Engineers

**MICROFILMED**  
APR 04 1988



DEPARTMENT OF THE ARMY  
OFFICE OF THE CHIEF OF ENGINEERS  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

DAEN-CWP-A

August 5, 1985

SUBJECT: Lucky Peak Dam and Lake, Idaho, Modification Study.

THE SECRETARY OF THE ARMY

1. This supplements the Chief of Engineers report on the addition of hydroelectric power at Lucky Peak Dam, transmitted to you in March 1980.
2. In his report, my predecessor recommended authorization of a Federal hydropower installation at Lucky Peak, provided local interests failed to initiate construction of such a development within three years of authorization.
3. I am advised by the reporting officers that the Boise Project Board of Control has initiated construction of a non-Federal hydropower project at Lucky Peak, similar to the plan recommended by the Chief of Engineers, under provisions of FERC License Number 2832. Therefore, the recommendation for Federal authorization has been precluded.
4. Accordingly, the reports of the Secretary of the Army and the Chief of Engineers need be provided to the Congress only for information in response to the two Committee Resolutions cited in my predecessor's report of 17 March 1980.

A handwritten signature in dark ink, appearing to read "E. R. Heiberg", with a stylized flourish at the end.

E. R. HEIBERG MI  
Lieutenant General, USA  
Chief of Engineers

MICROFILMED  
APR 04 1988

CONVERSATION MEMORANDUM

DATE 12/15/86

FILE 63-9019

NAME OF PARTY Christie Odiaga (Court Reporter)

EMPLOYEE Dave Tutthill

RE: Hearing on 18, 19, 22 Dec 86

I called to confirm that Ms. Odiaga is planning to act as court reporter for the purpose of taking stenographic notes at the hearing. She confirmed that she will be acting as such.

ORT

**MICROFILMED**

APR 11 1988

**ELAM, BURKE AND BOYD**

ATTORNEYS AND COUNSELORS AT LAW

FIRST INTERSTATE BUILDING  
702 WEST IDAHO  
POST OFFICE BOX 1559  
BOISE, IDAHO 83701  
TELEPHONE 208-343-5454  
TELECOPIER 208-343-5454

LAUREL E. ELAM (1888-1974)  
CARL A. BURKE (1898-1981)  
CARL P. BURKE  
PETER J. BOYD  
J. RAY DURTSCHI  
M. ALLYN DINGEL, JR.  
JACK S. GJORDING  
JOHN MAGEL  
DAVID B. LINCOLN  
RICHARD C. MELLON, JR.  
ROBERT M. TYLER, JR.  
JAMES D. LARUE  
RANDALL A. PETERMAN  
WILLIAM J. RUSSELL  
KAYE L. O'RIORDAN  
RYAN P. ARMBRUSTER  
DAVID E. COMSTOCK

MELVILLE W. FISHER II  
WILLIAM G. DRYDEN  
TODD J. WILCOX  
PETER C. K. MARSHALL  
KENNETH M. SEBBY  
TRUDY HANSON FOUER  
D. ALAN KOFOED  
SCOTT L. CAMPBELL  
BOBBI KILLIAN DOMINICK  
W. DALLAS BURKHALTER  
ALAN CONIOLOGUE  
ELAINE D. HANSON  
JEFFERY J. VENTRELLA  
BRENDA G. MEIER  
JOHN J. JANIS  
WENDY E.D. SMITH\*

\* PENN. & D.C. BARS ONLY

December 11, 1986

HAND DELIVERED

David R. Tuthill, Jr.  
Manager, Western Regional Office  
Idaho Department of Water Resources  
450 W. State Street  
Boise, Idaho 83720

Re: Petition to Cancel Water Permit No. 63-9019

(374-8880)

Dear David:

I have enclosed a Request for Taking Stenographic Notes by a Qualified Court Reporter with respect to the above-captioned matter. Ms. Christie Odiaga is available to take the stenographic notes on December 18, 19, and 22, 1986.

If you have any questions, please contact me.

Very truly yours,

ELAM, BURKE AND BOYD

  
Scott L. Campbell

SLC:ls  
cc: Board of Directors  
Pioneer Irrigation District  
Ms. Hazel Robinson  
Mr. Peter J. Boyd

**MICROFILMED**

APR 01 1988



Department of Water Resources  
Western Regional Office



Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Attorneys for Petitioner

Department of Water Resources  
Western Regional Office

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF PETITION TO  
CANCEL PERMIT NO. 63-9019 IN  
THE NAME OF BOISE PROJECT BOARD  
OF CONTROL

Permit No. 63-9019

PIONEER IRRIGATION DISTRICT,

Petitioner,

v.

BOISE PROJECT BOARD OF CONTROL,

Respondent.

BOISE-KUNA IRRIGATION DISTRICT,  
NAMPA & MERIDIAN IRRIGATION  
DISTRICT, NEW YORK IRRIGATION  
DISTRICT, WILDER IRRIGATION  
DISTRICT, and BIG BEND  
IRRIGATION DISTRICT,

Respondent-Intervenors.

REQUEST FOR TAKING OF  
STENOGRAPHIC NOTES BY  
A QUALIFIED COURT REPORTER

**MICROFILMED**

APR 04 1988

COMES NOW the petitioner, above named, and hereby makes  
formal request of the Department that the proceedings before the  
Department of Water Resources in the above-captioned matter,  
scheduled for December 18, 19, and 22, be taken before Christie

REQUEST FOR TAKING OF STENOGRAPHIC NOTES  
BY A QUALIFIED COURT REPORTER - 1

Odiaga, a certified court reporter, who is available to take stenographic notes of said proceeding on said dates.

This request is made pursuant to Rule 9,21. of the Rules and Regulations of Practice and Procedure before the Department of Water Resources.

DATED This 11th day of December, 1986.

ELAM, BURKE AND BOYD

By Scott L. Campbell  
Scott L. Campbell, Of the Firm  
Attorneys for Petitioner

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 11th day of December, 1986, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Raymond D. Givens, Esq.  
P.O. Box 2720  
Boise, Idaho 83701

William F. Ringert, Esq.  
P.O. Box 2773  
Boise, Idaho 83701

Randall C. Fredericks, Esq.  
1110 First Interstate Bank Bldg.  
Boise, Idaho 83702

Don A. Olowinski, Esq.  
Rita L. Berry, Esq.  
P.O. Box 1617  
Boise, Idaho 83701

Larry Sullivan, Esq.  
P.O. Box 220  
Vale, Oregon 97918

Scott L. Campbell  
Scott L. Campbell  
FILED

47-04 1988

Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Attorneys for Petitioner

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF PETITION TO )  
CANCEL PERMIT NO. 63-9019 IN )  
THE NAME OF BOISE PROJECT BOARD )  
OF CONTROL )

Permit No. 63-9019

\_\_\_\_\_  
PIONEER IRRIGATION DISTRICT, )  
Petitioner, )

REQUEST FOR TAKING OF  
STENOGRAPHIC NOTES BY  
A QUALIFIED COURT REPORTER

v. )

BOISE PROJECT BOARD OF CONTROL, )  
Respondent. )

BOISE-KUNA IRRIGATION DISTRICT, )  
NAMPA & MERIDIAN IRRIGATION )  
DISTRICT, NEW YORK IRRIGATION )  
DISTRICT, WILDER IRRIGATION )  
DISTRICT, and BIG BEND )  
IRRIGATION DISTRICT, )

Respondent-Intervenors. )  
\_\_\_\_\_

**MICROFILMED**

APR 04 1988

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DATED This 11th day of December, 1986.

ELAM, BURKE AND BOYD

By Scott L. Campbell  
Scott L. Campbell, Of the Firm  
Attorneys for Petitioner

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1110 First Interstate Bank Bldg.  
Boise, Idaho 83702

Don A. Olowinski, Esq.  
Rita L. Berry, Esq.  
P.O. Box 1617  
Boise, Idaho 83701

Larry Sullivan, Esq.  
P.O. Box 220  
Vale, Oregon 97918

Scott L. Campbell  
Scott L. Campbell **RECEIVED**

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Statehouse  
Boise, Idaho 83720

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Western Region**

**Statehouse** (Street or P.O. Box)

**Boise, Idaho 83720**

(City, State, and ZIP Code)

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**3. ARTICLE ADDRESSED TO:**

U.S. Dept of Justice  
Bureau of Reclamation  
Attn: Ron Cooper  
Box 20 23724

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*[Signature: Ron Cooper]*

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**7a. EMPLOYEE'S INITIALS**

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**APR 04 1988**

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**Idaho Department of Water Resources**  
**Western Region**  
**Statehouse**  
**Boise, Idaho 83720** (Street, P.O. Box)

(City, State, and ZIP Code)

PS Form 3811, Dec. 1980

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**3. ARTICLE ADDRESSED TO:**

*Barry Sullivan Esq.  
Schneider H. Johnson  
F.D. 220  
Waco OR 97918*

**4. TYPE OF SERVICE:**

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**7a. EMPLOYEE'S INITIALS**

*[Signature]*

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**MICROFILMED**

**APR 04 1988**

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TO**



(Name of Sender)  
**Idaho Department of Water Resources  
Western Region**

**Statehouse** (Street or P.O. Box)  
**Boise, Idaho 83720**

(City, State, and ZIP Code)

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**3. ARTICLE ADDRESSED TO:**

Randall C. Friedrich Eng  
 1110 1st Street West  
 Peoria, IL 61607

**4. TYPE OF SERVICE:**

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USE TO AVOID PAYMENT

**MICROFILMED**



APR 04 1988

**RETURN  
TO**



(Name of Sender)

**Department of Water Resources**  
**Western Region**

**Statehouse**

(Street or P.O. Box)

**Boise, Idaho 83720**

(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, 3, and 4.  
Add your address in the "RETURN TO" space  
on reverse.

**(CONSULT POSTMASTER FOR FEES)**

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

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

- 2.
- ☐
- RESTRICTED DELIVERY**
- \$

(The restricted delivery fee is charged in addition to  
the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:**

Raymond D. Givens Esq  
 Givens McDevitt Building  
 P.O. Box 2720  
 Boise, ID 83701

4. **TYPE OF SERVICE:**

- ☐ REGISTERED ☐ INSURED  
☒ CERTIFIED ☐ COD  
☐ EXPRESS MAIL

**ARTICLE NUMBER**

9300

228 149

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

5. 

## DATE OF DELIVERY

12/2/86

POSTMARK

6. **ADDRESSEE'S ADDRESS** (Only if requested)7. **UNABLE TO DELIVER BECAUSE:**7a. **EMPLOYEE'S INITIALS**

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL.

D100-6.9

**UNITED STATES POSTAL SERVICE**  
OFFICIAL BUSINESS

**SENDER INSTRUCTIONS**

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

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

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

**MICROFILMED**



APR 04 1988

**RETURN  
TO**



(Name of Sender)

**Idaho Department of Water Resources  
Western Region**

(Street or P.O. Box)

**Statehouse  
Boise, Idaho 83720**

(City, State, and ZIP Code)

Department of Water Resources  
Western Region  
State

● **SENDER:** Complete items 1, 2, 3, and 4.  
Add your address in the "RETURN TO" space on reverse.

**(CONSULT POSTMASTER FOR FEES)**

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

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

2. ☐ **RESTRICTED DELIVERY** ..... \$

(The restricted delivery fee is charged in addition to the return receipt fee.)

**TOTAL \$**

3. **ARTICLE ADDRESSED TO:**

William P. Vincent Esq.  
 Ringert Clark Harrington  
 PO Box 2773  
 Boise ID 83701

4. **TYPE OF SERVICE:**

- ☐ REGISTERED ☐ INSURED  
☒ CERTIFIED ☐ COD  
☐ EXPRESS MAIL

**ARTICLE NUMBER**

9 F397

135 197

**(Always obtain signature of addressee or agent)**

I have received the article described above

**SIGNATURE** ☐ Addressee ☒ Authorized agent

5. *Randy Kaufman*  
**DATE OF DELIVERY** 12-2-86

**POSTMARK**

6. **ADDRESSEE'S ADDRESS** (Only if requested)

7. **UNABLE TO DELIVER BECAUSE:**

7a. **EMPLOYEE'S INITIALS**

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

6100 6-9



**UNITED STATES POSTAL SERVICE**  
**OFFICIAL BUSINESS**

**SENDER INSTRUCTIONS**

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

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

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



**MICROFILMED**

**APR 04 1988**

**RETURN  
TO**



Department of Water Resources  
Western Regional Office

(Name of Sender)

**Idaho Department of Water Resources  
Western Region**

(Street or P.O. Box)

**Statehouse  
Boise, Idaho 83720**

(City, State, and ZIP Code)

- **SENDER:** Complete items 1, 2, 3, and 4.  
Add your address in the "RETURN TO" space  
on reverse.

**(CONSULT POSTMASTER FOR FEES)**

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

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

- 2.
- ☐
- RESTRICTED DELIVERY**
- .....

(The restricted delivery fee is charged in addition to  
the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO

20014 Cambridge Ave  
 P O Box 1759  
 Eugene, OR 97401

4. TYPE OF SERVICE

- ☐ REGISTERED ☐ INSURED  
☒ CERTIFIED ☐ COD  
☐ EXPRESS MAIL

- ARTICLE NUMBER

9300

228 036

(Always obtain signature of addressee or agent)

I have received the article described above

SIGNATURE ☐ Addressee ☒ Authorized agent

5.

DATE OF DELIVERY

12-2-86

POSTMARK

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S  
INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

b10026



State of Idaho  
**DEPARTMENT OF WATER RESOURCES**  
WESTERN REGION, 450 W. State Street, Boise, Idaho

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

Mailing address:  
Statehouse  
Boise, Idaho 83720  
(208) 334-2190

November 28, 1986

Raymond D. Givens, Esq.  
GIVENS, McDEVITT, PURSLEY,  
WEBB & BUSER  
P.O. Box 2720  
Boise, ID 83701

Randall C. Fredricks, Esq.  
CLEMENS, COSHO & HUMPREHEY  
1110 First Interstate Bank Bldg.  
Boise, ID 83702

Larry Sullivan, Esq.  
SCHROEDER, HUTCHENS & SULLIVAN  
P.O. Box 220  
Vale, OR 97918

U.S. Department of Interior  
Bureau of Reclamation  
Attn: Ron Golus  
Box 043-550 W. Fort St.  
Boise, ID 83724

William F. Ringert, Esq.  
RINGERT, CLARK, HARRINGTON,  
REID, CHRISTENSON & KAUFMAN  
P.O. Box 2773  
Boise, ID 83701

Don A. Olowinski, Esq.  
HAWLEY, TROXELL, ENNIS & HAWLEY  
P.O. Box 1617  
Boise, ID 83701

Scott L. Campbell, Esq.  
ELAM, BURKE & BOYD  
P.O. Box 1559  
Boise, ID 83701

U.S. Corp. of Engineers  
Attn: LTC Richard M. Ely  
Office of Council Bldg. 602  
City-County Airport  
Walla Walla, WA 99362-9265

Re: Water Right Permit No. 63-9019, Boise Project Board of Control, Lucky  
Peak Dam

Dear Interested Parties:

Enclosed please find copies of a Notice of Hearing, and Order Granting  
Petition to Intervene, regarding the above-referenced water right permit.  
It is the understanding of this office that the attorneys representing the  
principle parties in this matter have agreed with the dates of December 18,  
19, and 22, 1986, to conduct the necessary hearing.

**MICROFILMED**

APR 04 1988

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 63-9019           )  
IN THE NAME OF BOISE PROJECT BOARD OF       )     NOTICE OF HEARING  
CONTROL                                           )

On August 31, 1977, the Boise Project Board of Control filed with the Department of Water Resources (Department) application for permit No. 63-9019 to appropriate the waters of the Boise River for power production purposes at the Lucky Peak Dam Site. On May 24, 1984, a permit based on this application was issued by the Department, including multiple conditions of approval.

On May 21, 1986, the Department received from Pioneer Irrigation District a Petition to Cancel Water Permit No. 63-9019. This petition included a request for hearing.

The Department has set the matter of the Petition to Cancel Permit for hearing to begin on Thursday, December 18, 1986, at 9:00 a.m., in the Tenth Floor Large Conference Room, State Towers Building, 450 West State Street, Boise, ID 83720. The hearing is currently anticipated to last for two days, extending through Friday, December 19, 1986. In addition, Monday, December 22, 1986 has been reserved as a hearing date if it is found to be necessary.

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 28 day of November, 1986.

**MICROFILMED**

APR 04 1988

*David R. Tuthill, Jr.*

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

P 300 228 037

# RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

|                                                                     |  |                        |  |
|---------------------------------------------------------------------|--|------------------------|--|
| SENT TO                                                             |  | US Corp of Engineers   |  |
| STREET AND NO.                                                      |  | 1122 Richard St        |  |
| P.O. STATE AND ZIP CODE                                             |  | Phoenix, Arizona 85004 |  |
| POSTAGE                                                             |  | \$                     |  |
| CERTIFIED FEE                                                       |  | ¢                      |  |
| SPECIAL DELIVERY                                                    |  | ¢                      |  |
| RESTRICTED DELIVERY                                                 |  | ¢                      |  |
| SHOW TO WHOM AND DATE DELIVERED                                     |  | ¢                      |  |
| SHOW TO WHOM AND ADDRESS OF DELIVERY                                |  | ¢                      |  |
| SHOW TO WHOM AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY       |  | ¢                      |  |
| SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY |  | ¢                      |  |
| TOTAL POSTAGE AND FEES                                              |  | \$ 1.00                |  |
| POSTMARK OR DATE                                                    |  |                        |  |

PS Form 3800, Apr. 1976

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

P 397 135 197  
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

|                                                                  |    |
|------------------------------------------------------------------|----|
| Sent to<br><i>William S. Ruggert</i>                             |    |
| Street and No.<br><i>P.O. Box 2773</i>                           |    |
| P.O., State and ZIP Code<br><i>Bainbridge 3701</i>               |    |
| Postage                                                          | \$ |
| Certified Fee                                                    |    |
| Special Delivery Fee                                             |    |
| Restricted Delivery Fee                                          |    |
| Return Receipt Showing<br>to whom and Date Delivered             |    |
| Return Receipt Showing to whom,<br>Date, and Address of Delivery |    |
| TOTAL Postage and Fees                                           | \$ |
| Postmark or Date                                                 |    |

PS Form 3800, Feb. 1982

P 300-228 036

# RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

|                             |                        |                                                                     |   |
|-----------------------------|------------------------|---------------------------------------------------------------------|---|
| SENT TO                     |                        | Scott I. Campbell Esq.                                              |   |
| STREET AND NO.              |                        | PO Box 1559                                                         |   |
| P.O., STATE AND ZIP CODE    |                        | Baird ID 23701                                                      |   |
| POSTAGE                     |                        | \$                                                                  |   |
| CONSULT POSTMASTER FOR FEES | OPTIONAL SERVICES      | CERTIFIED FEE                                                       | c |
|                             |                        | SPECIAL DELIVERY                                                    | c |
|                             |                        | RESTRICTED DELIVERY                                                 | c |
|                             | RETURN RECEIPT SERVICE | SHOW TO WHOM AND DATE DELIVERED                                     | c |
|                             |                        | SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY                         | c |
|                             |                        | SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY            | c |
|                             |                        | SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY | c |
| TOTAL POSTAGE AND FEES      |                        | \$                                                                  |   |
| POSTMARK OR DATE            |                        |                                                                     |   |

PS Form 3800, Apr. 1976

P 300-228 034

# RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

|                                                                     |                                             |   |
|---------------------------------------------------------------------|---------------------------------------------|---|
| SENT TO <i>U.S. Dept. Interior</i>                                  |                                             |   |
| <i>Bureau of Reclamation</i>                                        |                                             |   |
| STREET AND NO. <i>Row College</i>                                   |                                             |   |
| <i>Box 043-550 in 1000</i>                                          |                                             |   |
| P.O., STATE AND ZIP CODE<br><i>Boise ID 83724</i>                   |                                             |   |
| POSTAGE                                                             | \$                                          |   |
| CONSULT POSTMASTER FOR FEES                                         | CERTIFIED FEE                               | c |
|                                                                     | SPECIAL DELIVERY                            | c |
|                                                                     | RESTRICTED DELIVERY                         | c |
|                                                                     | OPTIONAL SERVICES                           |   |
|                                                                     | RETURN RECEIPT SERVICE                      |   |
|                                                                     | SHOW TO WHOM AND DATE DELIVERED             | c |
|                                                                     | SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY | c |
| SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY            | c                                           |   |
| SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY | c                                           |   |
| TOTAL POSTAGE AND FEES                                              | \$                                          |   |
| POSTMARK OR DATE                                                    |                                             |   |

PS Form 3800, Apr. 1976



P 300 228 035

# RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

|                             |                        |                                                                     |   |
|-----------------------------|------------------------|---------------------------------------------------------------------|---|
| SENT TO                     |                        | Don A. Oliveira                                                     |   |
| STREET AND NO.              |                        | 2030 1617                                                           |   |
| P.O., STATE AND ZIP CODE    |                        | Benice NV 89701                                                     |   |
| POSTAGE                     |                        | \$                                                                  |   |
| CONSULT POSTMASTER FOR FEES | OPTIONAL SERVICES      | CERTIFIED FEE                                                       | c |
|                             |                        | SPECIAL DELIVERY                                                    | c |
|                             | RETURN RECEIPT SERVICE | RESTRICTED DELIVERY                                                 | c |
|                             |                        | SHOW TO WHOM AND DATE DELIVERED                                     | c |
|                             |                        | SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY                         | c |
|                             |                        | SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY            | c |
|                             |                        | SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY | c |
| TOTAL POSTAGE AND FEES      |                        | \$                                                                  |   |
| POSTMARK OR DATE            |                        |                                                                     |   |

PS Form 3800, Apr. 1976

**P 300-228 150**  
**RECEIPT FOR CERTIFIED MAIL**

**NO INSURANCE COVERAGE PROVIDED —**  
**NOT FOR INTERNATIONAL MAIL**  
 (See Reverse)

|                             |                        |                                                                     |   |
|-----------------------------|------------------------|---------------------------------------------------------------------|---|
| SENT TO                     |                        | <i>Cambridge &amp; Frederick</i>                                    |   |
| STREET AND NO.              |                        | <i>Common Coals</i>                                                 |   |
| P.O., STATE AND ZIP CODE    |                        | <i>1110 1st Interstate</i>                                          |   |
| POSTAGE                     |                        | \$                                                                  |   |
| CONSULT POSTMASTER FOR FEES | OPTIONAL SERVICES      | CERTIFIED FEE                                                       | € |
|                             |                        | SPECIAL DELIVERY                                                    | € |
|                             | RETURN RECEIPT SERVICE | RESTRICTED DELIVERY                                                 | € |
|                             |                        | SHOW TO WHOM AND DATE DELIVERED                                     | € |
|                             |                        | SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY                         | € |
|                             |                        | SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY            | € |
|                             |                        | SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY | € |
| TOTAL POSTAGE AND FEES      |                        | \$                                                                  |   |
| POSTMARK OR DATE            |                        |                                                                     |   |

PS Form 3800, Apr. 1976

P 300 228 033

# RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

|                             |                        |                                                                     |   |
|-----------------------------|------------------------|---------------------------------------------------------------------|---|
| SENT TO                     |                        | Larry L. Johnson                                                    |   |
| STREET AND NO.              |                        | Schroeder Heights                                                   |   |
| P.O., STATE AND ZIP CODE    |                        | PO Box 220<br>Vail CO 81798                                         |   |
| POSTAGE                     |                        | \$                                                                  |   |
| CONSULT POSTMASTER FOR FEES | OPTIONAL SERVICES      | CERTIFIED FEE                                                       | c |
|                             |                        | SPECIAL DELIVERY                                                    | c |
|                             | RETURN RECEIPT SERVICE | RESTRICTED DELIVERY                                                 | c |
|                             |                        | SHOW TO WHOM AND DATE DELIVERED                                     | c |
|                             |                        | SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY                         | c |
|                             |                        | SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY            | c |
|                             |                        | SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY | c |
| TOTAL POSTAGE AND FEES      |                        | \$                                                                  |   |
| POSTMARK OR DATE            |                        |                                                                     |   |

P 300 228 149

# RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

|                                 |                   |                                                                     |                                                          |   |
|---------------------------------|-------------------|---------------------------------------------------------------------|----------------------------------------------------------|---|
| SENT TO <i>Raymond C. Jones</i> |                   |                                                                     |                                                          |   |
| <i>CLARENCE M. DEWITT</i>       |                   |                                                                     |                                                          |   |
| STREET AND NO.                  |                   |                                                                     |                                                          |   |
| <i>P.O. Box 2720</i>            |                   |                                                                     |                                                          |   |
| P.O., STATE AND ZIP CODE        |                   |                                                                     |                                                          |   |
| <i>Bruse OH 43701</i>           |                   |                                                                     |                                                          |   |
| POSTAGE                         | \$                |                                                                     |                                                          |   |
| CONSULT POSTMASTER FOR FEES     | CERTIFIED FEE     | c                                                                   |                                                          |   |
|                                 | OPTIONAL SERVICES | SPECIAL DELIVERY                                                    | c                                                        |   |
|                                 |                   | RESTRICTED DELIVERY                                                 | c                                                        |   |
|                                 |                   | RETURN RECEIPT SERVICE                                              | SHOW TO WHOM AND DATE DELIVERED                          | c |
|                                 |                   |                                                                     | SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY              | c |
|                                 |                   |                                                                     | SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY | c |
|                                 |                   | SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY | c                                                        |   |
| TOTAL POSTAGE AND FEES          |                   | \$                                                                  |                                                          |   |
| POSTMARK OR DATE                |                   |                                                                     |                                                          |   |

PS Form 3800, Apr. 1976

DA  
RECEIVED  
NOV 28 1986

Letter to the Department of Water Resources  
Washington, D.C. 20006

Department of Water Resources

Don A. Olowinski  
HAWLEY TROXELL ENNIS & HAWLEY  
One Capital Center  
999 Main Street  
P.O. Box 1617  
Boise, Idaho 83701  
(208) 344-6000

Attorneys for Boise Project Board of Control

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                        |
|---------------------------------|---|------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                        |
|                                 | ) |                        |
| Petitioner,                     | ) | Permit No. 63-9019     |
|                                 | ) |                        |
| vs.                             | ) |                        |
|                                 | ) |                        |
| BOISE PROJECT BOARD OF CONTROL, | ) | NOTICE OF TAKING DEPO- |
|                                 | ) | SITION DUCES TECUM     |
| Respondent.                     | ) |                        |
|                                 | ) |                        |

TO: Hazel Robinson and Scott Campbell and Elam, Burke and  
Boyd, her counsel of record.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE, that on  
December 5, 1986, at the hour of 2:00 p.m., Respondent will take  
the deposition of Hazel Robinson, at the offices of Pioneer  
Irrigation District, 3700 Lake Avenue, Caldwell, Idaho, before a  
court reporter or notary public qualified to administer oaths.

DEFINITIONS

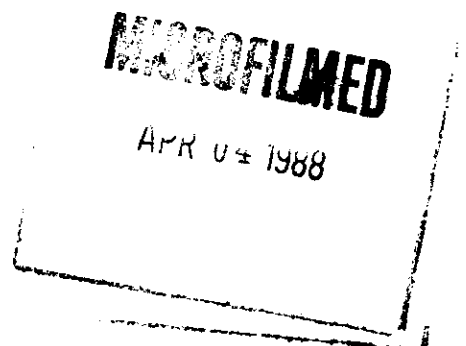
The term "document" shall mean and include any kind of

MICROFILMED

written, printed, typed or graphic material of any kind or nature, however produced or reproduced, including but without limitation, all mechanical or electronic sound recordings or transcripts thereof, papers, agreements, contracts, notes, memoranda, correspondence, letters, telegrams, statements, books, reports, studies, minutes, records, accounting books, maps, plans, drawings, diagrams, photographs, analysis or studies, whether in your possession or under your control or not, relating or pertaining in any way to the subject matters in connection with which it is used, and includes, but without limitation, originals, all file copies, and all other copies no matter how or by whom prepared and all drafts prepared in connection with such writings, whether used or not.

You are requested to have Hazel Robinson bring with her any documents relating to Pioneer's Petition to Cancel Water Permit No. 63-9019, including but not limited to,

1. Any minutes of the Board;
2. Any documents related to any agreement or understanding Pioneer may have with any other person, corporation, irrigation district or entity in regard to its petition to cancel;
3. Any documents relating to the Boise River Water Users Action Committee;



4. Any documents relating to the participation of the Pioneer Irrigation District, either by itself or as a member of the Boise River Water Users Action Committee or other organization, in the elections held in the New York Irrigation District, Wilder Irrigation District, Nampa & Meridian Irrigation District, and Boise-Kuna Irrigation District in 1984 concerning the Lucky Peak Hydroelectric Project. These documents should include, but not be limited to, any bills, newspaper advertisements, cancelled checks or receipts, and other documents advocating a position in the elections;

5. Any documents relating to the hearing before the Water Resource Board on January 31, 1984.

DATED this 26th day of November, 1986.

HAWLEY TROXELL ENNIS & HAWLEY

By Don A. Olowinski  
Don A. Olowinski  
Attorneys for Respondent

RECEIVED  
APR 04 1988

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 26th day of November, 1986, I mailed a true and correct copy of the within and foregoing NOTICE OF TAKING DEPOSITION DUCES TECUM, postage prepaid and addressed as follows:

Scott L. Campbell  
Elam, Burke & Boyd  
First Interstate Bank Bldg.  
P.O. Box 1559  
Boise, ID 83701

Don A. Olowinski  
Don A. Olowinski

**MICROFILMED**

APR 04 1988



**ELAM, BURKE AND BOYD**

ATTORNEYS AND COUNSELORS AT LAW

FIRST INTERSTATE BUILDING  
702 WEST IDAHO  
POST OFFICE BOX 1559  
BOISE, IDAHO 83701  
TELEPHONE 208-343-5454  
TELECOPIER 208-343-5454

LAUREL E. ELAM (1888-1974)  
CARL A. BURKE (1898-1961)  
CARL P. BURKE  
PETER J. BOYD  
J. RAY DURTSCHI  
M. ALLYN DINGEL, JR.  
JACK S. GJORDING  
JOHN MAGEL  
DAVID B. LINCOLN  
RICHARD C. MELLON, JR.  
ROBERT M. TYLER, JR.  
JAMES D. LARUE  
RANDALL A. PETERMAN  
WILLIAM J. RUSSELL  
KAYE L. O'RIORDAN  
RYAN P. ARMBRUSTER

DAVID E. COMSTOCK  
MELVILLE W. FISHER II  
WILLIAM G. DRYDEN  
TODD J. WILCOX  
PETER C. K. MARSHALL  
KENNETH M. SEBBY  
TRUDY HANSON FOUSSER  
D. ALAN KOFOED  
SCOTT L. CAMPBELL  
BOBBI KILLIAN DOMINICK  
W. DALLAS BURKHALTER  
ALAN CONILOGUE  
ELAINE D. HANSON  
JEFFERY J. VENTRELLA  
BRENDA G. MEIER  
JOHN J. JANIS

October 23, 1986

David R. Tuthill, Jr., P.E.  
Manager, Western Regional Office  
Department of Water Resources  
State of Idaho  
450 W. State  
Boise, Idaho 83720

Re: Petition to Cancel Water Permit No. 63-9019

Dear David:

I have enclosed an original and two copies of the Answer to Petition to Intervene with respect to the above-captioned matter. The original and one copy is for the Department's records. I have also enclosed a stamped, self-addressed envelope for your staff to return a conformed copy of this document to me for my files. ✓ DMH

Thank you for your assistance in this matter.

Very truly yours,

ELAM, BURKE AND BOYD

*Scott L. Campbell*  
Scott L. Campbell

SLC:lmr  
Enclosures

cc: Raymond D. Givens, Esq.  
Randall C. Fredricks, Esq.  
Larry Sullivan, Esq.  
William F. Ringert, Es.  
Donald A. Olowinski, Esq.  
Phillip Rassier, Esq.  
U.S. Department of the Interior  
U.S. Army Corps of Engineers  
Board of Directors of Pioneer  
Irrigation District  
Hazel Robinson

**MICROFILMED**

APR 04 1988

**RECEIVED**  
OCT 27 1986

Department of Water Resources  
Western Regional Office

REC-100  
COT-100

Department of Water Resources  
Western Regional Office

Peter J. Boyd  
Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                    |
|---------------------------------|---|--------------------|
| PIONEER IRRIGATION DISTRICT,    | ) | Permit No. 63-9019 |
|                                 | ) |                    |
| Petitioner,                     | ) |                    |
|                                 | ) |                    |
| v.                              | ) | ANSWER TO PETITION |
|                                 | ) | TO INTERVENE       |
| BOISE PROJECT BOARD OF CONTROL, | ) |                    |
|                                 | ) |                    |
| Respondent.                     | ) |                    |

COMES NOW, Pioneer Irrigation District, petitioner herein,  
and hereby answers the Petition to Intervene, as follows:

I.

Pioneer denies each and every allegation of the Petition to  
Intervene unless specifically admitted herein.

II.

The Petition to Intervene was not filed within five (5) days  
after receiving notice of the present proceeding and the Petition  
has not stated a substantial reason for the delay in filing, all

ANSWER TO PETITION TO INTERVENE - 1

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in violation of Rule 6,3 of the Rules of Practice and Procedure before the Idaho Department of Water Resources.

III.

The Boise Project Board of Control has consistently maintained throughout this proceeding that it is the "operating agent" for five irrigation districts (the "Districts"): the Boise Kuna Irrigation District, the Nampa and Meridian Irrigation District, the New York Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District. As the "operating agent" for the Districts and the allegedly qualified legal entity which holds the wrongfully issued water Permit No. 63-9019, the Boise Project Board of Control can adequately represent the interests of the Districts with respect to this proceeding.

IV.

The Districts were provided notice that the Department of Water Resources would conduct a hearing with respect to this matter in correspondence, dated September 11, 1986, from Mr. David R. Tuthill, Jr., P.E., Manager of the Western Regional Office of the Department. The Petition to Intervene, dated October 15, 1986, alleges in Paragraph V that the Districts did not file an earlier request to intervene because the Department of Water Resources had not indicated an intention to hold a hearing. As stated above, the Department notified the Districts, individually, in correspondence dated September 11, 1986, that a hearing would be held.

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V.

The Motion to Limit Intervenors and Protestants, filed by Pioneer, on October 13, 1986, prompted the filing of the Petition to Intervene by the Districts. Under Rule 6,3 of the Rules of Practice and Procedure of the Department of Water Resources, the Districts did not comply with the requirement for filing a Petition to Intervene within five (5) days after receiving notice of the proceeding and have not provided a substantial reason for the delay in complying with this requirement. Accordingly, the Petition to Intervene should be denied.

DATED This 23<sup>rd</sup> day of October, 1986.

ELAM, BURKE AND BOYD

By Scott L. Campbell  
Scott L. Campbell  
Attorneys for Pioneer  
Irrigation District

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 23<sup>rd</sup> day of October, 1986, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Raymond D. Givens  
P.O. Box 2720  
Boise, ID 83701

William F. Ringert  
P.O. Box 2773  
Boise, ID 83701

Randall C. Fredericks  
1110 First Interstate Bldg.  
702 W. Idaho  
Boise, ID 83702

ANSWER TO PETITION TO INTERVENE - 3

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APR 04 1988

Don A. Olowinski  
Rita L. Berry  
P.O. Box 1617  
Boise, ID 83701

Larry Sullivan  
P.O. Box 220  
Vale, OR 97918

  
\_\_\_\_\_  
Scott L. Campbell

**MICROFILMED**

APR 04 1988

**ELAM, BURKE AND BOYD**

**ATTORNEYS AND COUNSELORS AT LAW**

FIRST INTERSTATE BUILDING  
702 WEST IDAHO  
POST OFFICE BOX 1559  
BOISE, IDAHO 83701  
TELEPHONE 208-343-5454  
TELECOPIER 208-343-5454

LAUREL E. ELAM (1888-1974)  
CARL A. BURKE (1898-1981)  
CARL P. BURKE  
PETER J. BOYD  
J. RAY DURTSCHI  
M. ALLYN DINGEL, JR.  
JACK S. GJORDING  
JOHN MAGEL  
DAVID B. LINCOLN  
RICHARD C. MELLON, JR.  
ROBERT M. TYLER, JR.  
JAMES D. LARUE  
RANDALL A. PETERMAN  
WILLIAM J. RUSSELL  
KAYE L. O'RIORDAN  
RYAN P. ARMBRUSTER

DAVID E. COMSTOCK  
MELVILLE W. FISHER II  
WILLIAM G. DRYDEN  
TODD J. WILCOX  
PETER C. K. MARSHALL  
KENNETH M. SEBBY  
TRUDY HANSON FOUSER  
D. ALAN KOFOED  
SCOTT L. CAMPBELL  
BOBBI KILLIAN DOMINICK  
W. DALLAS BURKHALTER  
ALAN CONILOGUE  
ELAINE D. HANSON  
JEFFERY J. VENTRELLA  
BRENDA G. MEIER  
JOHN J. JANIS

October 20, 1986

David R. Tuthill, Jr., P.E.  
Manager, Western Regional Office  
Department of Water Resources  
State of Idaho  
Statehouse Mail  
Boise, Idaho 83720

Re: Petition to Cancel Water Permit No. 63-9019

Dear David:

I am responding to your correspondence of October 9, 1986, concerning the above-captioned matter. In response to your inquiry regarding unavailable days during the week of December 1-5, 1986, I have a scheduling conflict on December 1, 1986. The remainder of that week has been reserved for the hearing on the Petition to Cancel Water Permit No. 63-9019.

As I indicated in my previous correspondence to you, dated October 13, 1986, I believe that some of the preliminary factual matters could be established by stipulation of the parties, thereby resulting in a reduction of the required hearing time. In this regard, I have contacted Mr. Raymond Givens, attorney for the Boise Project Board of Control, to suggest this possibility

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APR 14 1988



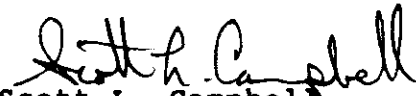
Department of Water Resources  
Western Regional Office

David R. Tuthill, Jr., P.E.  
October 20, 1986  
Page Two

to him. When I receive a response from Mr. Givens, I will inform the Department of the viability of this approach.

Very truly yours,

ELAM, BURKE AND BOYD

  
Scott L. Campbell

SLC:ls

cc: Ramond D. Givens, Esq.  
Randall C. Fredricks, Esq.  
Larry Sullivan, Esq.  
William F. Ringert, Esq.  
Donald A. Olowinski, Esq.  
Phillip Rassier, Esq.  
U.S. Department of the Interior  
U.S. Army Corps of Engineers  
Board of Directors of Pioneer  
Irrigation District  
Hazel Robinson  
Peter J. Boyd

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APR 24 1988

**ELAM, BURKE AND BOYD**

ATTORNEYS AND COUNSELORS AT LAW

FIRST INTERSTATE BUILDING  
702 WEST IDAHO  
POST OFFICE BOX 1559  
BOISE, IDAHO 83701  
TELEPHONE 208-343-5454  
TELECOPIER 208-343-5454

LAUREL E. ELAM (1888-1974)  
CARL A. BURKE (1898-1961)  
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DAVID B. LINCOLN  
RICHARD C. MELLON, JR.  
ROBERT M. TYLER, JR.  
JAMES D. LARUE  
RANDALL A. PETERMAN  
WILLIAM J. RUSSELL  
KAYE L. O'RIORDAN  
RYAN P. ARMBRUSTER

DAVID E. COMSTOCK  
MELVILLE W. FISHER II  
WILLIAM G. DRYDEN  
TODD J. WILCOX  
PETER C. K. MARSHALL  
KENNETH M. SEBBY  
TRUDY HANSON FOUSER  
D. ALAN KOFOED  
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BOBBI KILLIAN DOMINICK  
W. DALLAS BURKHALTER  
ALAN CONILOGUE  
ELAINE D. HANSON  
JEFFERY J. VENTRELLA  
BRENDA G. MEIER  
JOHN J. JANIS

October 20, 1986

Raymond D. Givens, Esquire  
Givens, McDewitt, Pursley, Webb & Buser  
P.O. Box 2720  
Boise, Idaho 83701

Re: Petition to Cancel Water Permit No. 63-9019

Dear Ray:

The correspondence, dated October 9, 1986, from Mr. David R. Tuthill, Jr., Manager, Western Regional Office of the Department of Water Resources, requested suggestions regarding ways to abbreviate the hearing procedure with respect to this controversy. In accordance with his request, I have suggested to him, in my correspondence, dated October 20, 1986, that a stipulation of the parties may resolve preliminary factual matters, which could result in an abbreviation of the time requirements for the hearing. I have provided you with a copy of that correspondence.

In this regard, if you and Messrs. Fredericks, Sullivan, Ringert, and Olowinski wish to explore this possibility, please contact me in the near future, and we could discuss the areas of possible agreement. The participation of Messrs. Fredericks, Sullivan, Ringert, and Olowinski will be necessary if the Petition to Intervene, dated October 15, 1986, is granted by the Department of Water Resources.

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OCT 21 1986

Department of Water Resources  
Western Regional Office



Raymond D. Givens, Esq.  
October 20, 1986  
Page Two

I await your response.

Very truly yours,

ELAM, BURKE AND BOYD

  
Scott L. Campbell

SLC:ls

cc: Ramond D. Givens, Esq.  
Randall C. Fredricks, Esq.  
Larry Sullivan, Esq.  
William F. Ringert, Esq.  
Donald A. Olowinski, Esq.  
Phillip Rassier, Esq.  
U.S. Department of the Interior  
U.S. Army Corps of Engineers  
Board of Directors of Pioneer  
Irrigation District  
Hazel Robinson  
Peter J. Boyd

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APR 02 1988

**ELAM, BURKE AND BOYD**

ATTORNEYS AND COUNSELORS AT LAW

FIRST INTERSTATE BUILDING  
702 WEST IDAHO  
POST OFFICE BOX 1559  
BOISE, IDAHO 83701  
TELEPHONE 208-343-5454  
TELECOPIER 208-343-5454

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RANDALL A. PETERMAN  
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KAYE L. O'RIORDAN  
RYAN P. ARMBRUSTER  
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KENNETH M. SEBBY  
TRUDY HANSON FOUER  
D. ALAN KOFOED  
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W. DALLAS BURKHALTER  
ALAN CONILOGUE  
ELAINE D. HANSON  
JEFFERY J. VENTRELLA  
BRENDA G. MEIER  
JOHN J. JANIS

October 20, 1986

HAND DELIVERED

David R. Tuthill, Jr., P.E.  
Manager, Western Regional Office  
Department of Water Resources  
State of Idaho  
450 W. State  
Boise, Idaho 83720

Re: Petition to Cancel Water Permit No. 63-9019

Dear David:

I have enclosed the originals and copies of Notice of Taking Deposition Duces Tecum of Norlyn Pope, Notice of Taking Deposition of Lou Murgurtio, Notice of Taking Deposition of Royce Van Curen, Notice of Taking Deposition of Gerald Guentz, Notice of Taking Deposition of Clarence Gharring, and Notice of Taking Deposition of Carl Padour for filing in the above-captioned matter. I have also enclosed one extra copy of these notices. Please file stamp the extra copies and return them to our offices in the enclosed self-addressed, stamped envelope.

Thank you for your assistance.

Very truly yours,

ELAM, BURKE AND BOYD

*Scott L. Campbell*  
Scott L. Campbell

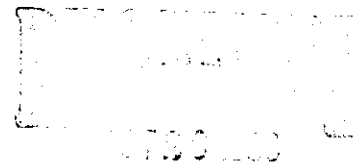
SLC:ls  
Enclosures

**MICROFILMED**

APR 6 1988

**RECEIVED**

Department of Water Resources  
Water Control Division



Department of Water Resources  
Boise Regional Office

Peter J. Boyd  
Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                             |
|                                 | ) |                             |
| Petitioner,                     | ) | Permit No. 63-9019          |
|                                 | ) |                             |
| v.                              | ) | NOTICE OF TAKING DEPOSITION |
|                                 | ) | DUCES TECUM OF NORLYN POPE  |
| BOISE PROJECT BOARD OF CONTROL, | ) |                             |
|                                 | ) |                             |
| Respondent.                     | ) |                             |
|                                 | ) |                             |

TO: Norlyn Pope and Raymond D. Givens, his counsel of record.

YOU WILL PLEASE TAKE NOTICE That the petitioner will take the testimony on oral examination of Norlyn Pope, pursuant to Rules 26 and 30(a) of the Idaho Rules of Civil Procedure, before Capitol Reporters, a Notary Public, or in case of their inability to act or be present, before some other officer authorized to administer oaths, on November 17, 1986, at 1:30 p.m., of said day in the offices of Elam, Burke and Boyd, First Interstate Building, 702 West Idaho, Suite 1010, Boise, Idaho.

Oral examination will continue from time to time until completed. You are respectfully requested to have Norlyn Pope

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NOTICE OF TAKING DEPOSITION  
DUCES TECUM OF NORLYN POPE - 1

APR 6 1988

present for the purposes of taking such deposition at the time and place indicated, and bring with him the following:

1. Any documents organizing or creating the Boise Project Board of Control and any correspondence or memoranda relating thereto;
2. Any documents illustrating the organizational structure of the Boise Project Board of Control;
3. Any documents relating to the Application for Water Permit No. 63-9019; and
4. All correspondence, documents, or memoranda among or between the members, employees, or agents of the Boise Project Board of Control, and/or the members of the Board of Directors, employees, or agents of the New York, Nampa and Meridian, Boise-Kuna, Wilder, and Big Bend Irrigation Districts, and/or representatives, employees, or agents of the City of Seattle or any of its departments, which pertain or in any way relate to Application for Water Permit No. 63-9019 or Department of Water Resources Permit No. 63-9019.

DATED This 20th day of October, 1986.

ELAM, BURKE & BOYD

By Scott L. Campbell  
Scott L. Campbell, of the Firm  
Attorneys for Pioneer Irrigation  
District

RECORDED

APR 04 1986

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 20<sup>th</sup> day of October, 1986, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Raymond D. Givens  
P.O. Box 2720  
Boise, Idaho 83701

William F. Ringert  
P.O. Box 2773  
Boise, Idaho 83701

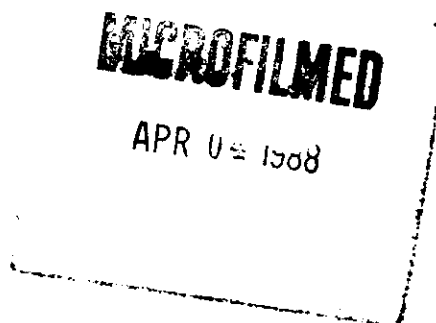
Randall C. Fredericks  
1110 First Interstate Building  
702 W. Idaho  
Boise, Idaho 83702

Don A. Olowinski  
Rita L. Berry  
P.O. Box 1617  
Boise, Idaho 83701

Larry Sullivan  
P.O. Box 220  
Vale, Oregon 97918

Capitol Reporters  
P.O. Box 574  
Boise, Idaho 83701

  
\_\_\_\_\_  
Scott L. Campbell



RECEIVED  
08/100

Department of Water Resources  
Western Regional Office

Peter J. Boyd  
Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                             |
|                                 | ) |                             |
| Petitioner,                     | ) | Permit No. 63-9019          |
|                                 | ) |                             |
| v.                              | ) | NOTICE OF TAKING DEPOSITION |
|                                 | ) | OF LOU MURGURTIO            |
| BOISE PROJECT BOARD OF CONTROL, | ) |                             |
|                                 | ) |                             |
| Respondent.                     | ) |                             |

TO: Lou Murgurtio and Raymond D. Givens, his counsel of record.

YOU WILL PLEASE TAKE NOTICE That the petitioner will take the testimony on oral examination of Lou Murgurtio, pursuant to Rules 26 and 30(a) of the Idaho Rules of Civil Procedure, before Capitol Reporters, a Notary Public, or in case of their inability to act or be present, before some other officer authorized to administer oaths, on November 19, 1986, at 1:30 p.m., of said day in the offices of Elam, Burke and Boyd, First Interstate Building, 702 West Idaho, Suite 1010, Boise, Idaho.

Oral examination will continue from time to time until completed. You are respectfully requested to have said Lou Murgurtio present for the purpose of taking such deposition at

NOTICE OF TAKING DEPOSITION OF LOU MURGURTIO - 1

MICROFILMED  
APR 01 1988

the time and place indicated, and you are hereby notified to appear and take part in the examination.

DATED This 20th day of October, 1986.

ELAM, BURKE & BOYD

By Scott L. Campbell  
Scott L. Campbell, of the Firm  
Attorneys for Pioneer Irrigation  
District

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 20th day of October, 1986, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Raymond D. Givens  
P.O. Box 2720  
Boise, Idaho 83701

William F. Ringert  
P.O. Box 2773  
Boise, Idaho 83701

Randall C. Fredericks  
1110 First Interstate Building  
702 W. Idaho  
Boise, Idaho 83702

Don A. Olowinski  
Rita L. Berry  
P.O. Box 1617  
Boise, Idaho 83701

Larry Sullivan  
P.O. Box 220  
Vale, Oregon 97918

Capitol Reporters  
P.O. Box 574  
Boise, Idaho 83701

Scott L. Campbell  
Scott L. Campbell  
MICROFILMED

Peter J. Boyd  
Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Department of Water Resources  
Western Regional Office

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                             |
|                                 | ) |                             |
| Petitioner,                     | ) | Permit No. 63-9019          |
|                                 | ) |                             |
| v.                              | ) | NOTICE OF TAKING DEPOSITION |
|                                 | ) | OF ROYCE VAN CUREN          |
| BOISE PROJECT BOARD OF CONTROL, | ) |                             |
|                                 | ) |                             |
| Respondent.                     | ) |                             |
|                                 | ) |                             |

TO: Royce Van Curen and Raymond D. Givens, his counsel of record.

YOU WILL PLEASE TAKE NOTICE That the petitioner will take the testimony on oral examination of Royce Van Curen, pursuant to Rules 26 and 30(a) of the Idaho Rules of Civil Procedure, before Capitol Reporters, a Notary Public, or in case of their inability to act or be present, before some other officer authorized to administer oaths, on November 19, 1986, at 9 a.m., of said day in the offices of Elam, Burke and Boyd, First Interstate Building, 702 West Idaho, Suite 1010, Boise, Idaho.

Oral examination will continue from time to time until completed. You are respectfully requested to have said Royce Van Curen present for the purpose of taking such deposition.

NOTICE OF TAKING DEPOSITION OF ROYCE VAN CUREN - 1

APR 04 1988

MICROFILMED



time and place indicated, and you are hereby notified to appear and take part in the examination.

DATED This 20th day of October, 1986.

ELAM, BURKE & BOYD

By Scott L. Campbell  
Scott L. Campbell, Of the Firm  
Attorneys for Pioneer Irrigation  
District

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 20th day of October, 1986, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Raymond D. Givens  
P.O. Box 2720  
Boise, Idaho 83701

William F. Ringert  
P.O. Box 2773  
Boise, Idaho 83701

Randall C. Fredericks  
1110 First Interstate Building  
702 W. Idaho  
Boise, Idaho 83702

Don A. Olowinski  
Rita L. Berry  
P.O. Box 1617  
Boise, Idaho 83701

Larry Sullivan  
P.O. Box 220  
Vale, Oregon 97918

Capitol Reporters  
P.O. Box 574  
Boise, Idaho 83701

Scott L. Campbell  
Scott L. Campbell  
RECORDED & INDEXED

Peter J. Boyd  
Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                             |
|                                 | ) |                             |
| Petitioner,                     | ) | Permit No. 63-9019          |
|                                 | ) |                             |
| v.                              | ) | NOTICE OF TAKING DEPOSITION |
|                                 | ) | OF GERALD GUENTZ            |
| BOISE PROJECT BOARD OF CONTROL, | ) |                             |
|                                 | ) |                             |
| Respondent.                     | ) |                             |

TO: Gerald Guentz and Raymond D. Givens, his counsel of record.

YOU WILL PLEASE TAKE NOTICE That the petitioner will take the testimony on oral examination of Gerald Guentz, pursuant to Rules 26 and 30(a) of the Idaho Rules of Civil Procedure, before Capitol Reporters, a Notary Public, or in case of their inability to act or be present, before some other officer authorized to administer oaths, on November 18, 1986, at 3 p.m., of said day in the offices of Elam, Burke and Boyd, First Interstate Building, 702 West Idaho, Suite 1010, Boise, Idaho.

Oral examination will continue from time to time until completed. You are respectfully requested to have said Gerald Guentz present for the purpose of taking such deposition.

NOTICE OF TAKING DEPOSITION OF GERALD GUENTZ - 1

**MICROFILMED**

APR 04 1988

time and place indicated, and you are hereby notified to appear and take part in the examination.

DATED This 20th day of October, 1986.

ELAM, BURKE & BOYD

By Scott L. Campbell  
Scott L. Campbell of the Firm  
Attorneys for Pioneer Irrigation  
District

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 20th day of October, 1986, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Raymond D. Givens  
P.O. Box 2720  
Boise, Idaho 83701

William F. Ringert  
P.O. Box 2773  
Boise, Idaho 83701

Randall C. Fredericks  
1110 First Interstate Building  
702 W. Idaho  
Boise, Idaho 83702

Don A. Olowinski  
Rita L. Berry  
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Larry Sullivan  
P.O. Box 220  
Vale, Oregon 97918

Capitol Reporters  
P.O. Box 574  
Boise, Idaho 83701

Scott L. Campbell  
Scott L. Campbell **MAILED**

APR 04 1988

Peter J. Boyd  
Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                             |
|                                 | ) |                             |
| Petitioner,                     | ) | Permit No. 63-9019          |
|                                 | ) |                             |
| v.                              | ) | NOTICE OF TAKING DEPOSITION |
|                                 | ) | OF CLARENCE GHARRING        |
| BOISE PROJECT BOARD OF CONTROL, | ) |                             |
|                                 | ) |                             |
| Respondent.                     | ) |                             |

TO: Clarence Gharring and Raymond D. Givens, his counsel of record.

YOU WILL PLEASE TAKE NOTICE That the petitioner will take the testimony on oral examination of Clarence Gharring, pursuant to Rules 26 and 30(a) of the Idaho Rules of Civil Procedure, before Capitol Reporters, a Notary Public, or in case of their inability to act or be present, before some other officer authorized to administer oaths, on November 18, 1986, at 1:30 p.m., of said day in the offices of Elam, Burke and Boyd, First Interstate Building, 702 West Idaho, Suite 1010, Boise, Idaho.

Oral examination will continue from time to time until completed. You are respectfully requested to have said Clarence Gharring present for the purpose of taking such deposition at the

NOTICE OF TAKING DEPOSITION OF CLARENCE GHARRING - 1

**MICROFILMED**  
APR 04 1988

time and place indicated, and you are hereby notified to appear and take part in the examination.

DATED This 20th day of October, 1986.

ELAM, BURKE & BOYD

By Scott L. Campbell  
Scott L. Campbell, of the Firm  
Attorneys for Pioneer Irrigation  
District

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 20th day of October, 1986, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Raymond D. Givens  
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Boise, Idaho 83701

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P.O. Box 2773  
Boise, Idaho 83701

Randall C. Fredericks  
1110 First Interstate Building  
702 W. Idaho  
Boise, Idaho 83702

Don A. Olowinski  
Rita L. Berry  
P.O. Box 1617  
Boise, Idaho 83701

Larry Sullivan  
P.O. Box 220  
Vale, Oregon 97918

Capitol Reporters  
P.O. Box 574  
Boise, Idaho 83701

Scott L. Campbell  
Scott L. Campbell

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NOTICE OF TAKING DEPOSITION OF CLARENCE GHARRING - 2

OCT 24 1988

Peter J. Boyd  
Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Department of Water Resources  
Western Regional Office

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                             |
|                                 | ) |                             |
| Petitioner,                     | ) | Permit No. 63-9019          |
|                                 | ) |                             |
| v.                              | ) | NOTICE OF TAKING DEPOSITION |
|                                 | ) | OF CARL PADOUR              |
| BOISE PROJECT BOARD OF CONTROL, | ) |                             |
|                                 | ) |                             |
| Respondent.                     | ) |                             |

TO: Carl Padour and Raymond D. Givens, his counsel of  
record.

YOU WILL PLEASE TAKE NOTICE That the petitioner will take the testimony on oral examination of Carl Padour, pursuant to Rules 26 and 30(a) of the Idaho Rules of Civil Procedure, before Capitol Reporters, a Notary Public, or in case of their inability to act or be present, before some other officer authorized to administer oaths, on November 18, 1986, at 9 a.m., of said day in the offices of Elam, Burke and Boyd, First Interstate Building, 702 West Idaho, Suite 1010, Boise, Idaho.

Oral examination will continue from time to time until completed. You are respectfully requested to have said Carl Padour present for the purpose of taking such deposition at the time and

NOTICE OF TAKING DEPOSITION OF CARL PADOUR - 1

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APR 04 1988

place indicated, and you are hereby notified to appear and take part in the examination.

DATED This 20th day of October, 1986.

ELAM, BURKE & BOYD

By Scott L. Campbell  
Scott L. Campbell, of the Firm  
Attorneys for Pioneer Irrigation  
District

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 20th day of October, 1986, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Raymond D. Givens  
P.O. Box 2720  
Boise, Idaho 83701

William F. Ringert  
P.O. Box 2773  
Boise, Idaho 83701

Randall C. Fredericks  
1110 First Interstate Building  
702 W. Idaho  
Boise, Idaho 83702

Don A. Olowinski  
Rita L. Berry  
P.O. Box 1617  
Boise, Idaho 83701

Larry Sullivan  
P.O. Box 220  
Vale, Oregon 97918

Capitol Reporters  
P.O. Box 574  
Boise, Idaho 83701

Scott L. Campbell  
Scott L. Campbell

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INDEXED

NOTICE OF TAKING DEPOSITION OF CARL PADOUR - 2

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OCT 15 1986

hand delivered  
Department of Water Resources

Department of Water Resources  
Water Rights Section

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

PIONEER IRRIGATION DISTRICT,

Petitioner,

vs.

BOISE PROJECT BOARD OF CONTROL,

Respondent.

Permit No. 63-9019

PETITION TO INTERVENE

Raymond D. Givens, Esq.  
GIVENS, McDEVITT, PURSLEY,  
WEBB & BUSER  
Post Office Box 2720  
Boise, Idaho 83701

William F. Ringert, Esq.  
RINGERT, CLARK, HARRINGTON,  
REID, CHRISTENSON & KAUFMAN  
Post Office Box 2773  
Boise, Idaho 83701

Randall C. Fredericks, Esq.  
CLEMONS, COSHO & HUMPHREY  
1110 First Interstate Bank Bldg.  
Boise, Idaho 83702

Don A. Olowinski, Esq.  
Rita L. Berry, Esq.  
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Post Office Box 1617  
Boise, Idaho 83701

Larry Sullivan, Esq.  
SCHROEDER, HUTCHENS & SULLIVAN  
Post Office Box 220  
Vale, Oregon 97918

October 15, 1986

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COME NOW the Boise-Kuna Irrigation District, 129 North School Street, Kuna, Idaho 83634; the Nampa & Meridian Irrigation District, 1503 First Street South, Nampa, Idaho 83651; the New York Irrigation District, 214 Broadway Avenue, Boise, Idaho 83702; the Wilder Irrigation District, 709 Cleveland Boulevard, Caldwell, Idaho 83605; and the Big Bend Irrigation District, Route 3, Box 3193, Adrian, Oregon 97901, by and through their attorneys respectively, Clemons, Cosho & Humphrey; Ringert, Clark, Harrington, Reid, Christenson & Kaufman; Givens, McDevitt, Pursley, Webb & Buser; Hawley Troxell Ennis & Hawley; and Schroeder, Hutchens & Sullivan, and petition for leave to intervene in the above-captioned matter. In support of this Petition to Intervene, the Petitioners state as follows:

I.

That the Petitioners are the members of the Boise Project Board of Control in whose name Permit No. 63-9019 was issued by the Department of Water Resources. Permit 63-9019 is for use of water at the Lucky Peak Dam for hydropower purposes.

II.

As the application for Permit No. 63-9019 disclosed, the Boise Project Board of Control applied for the permit as the operating agent for the Petitioners.

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APR 24 1988

III.

Petitioners are the holders of Federal Energy Regulatory Commission, License No. 2832 for the construction, operation, and maintenance of hydroelectric generating facilities at the Lucky Peak Dam. As the holders of the FERC license and as the members of the Board of Control, the Districts will be affected by any proceedings in regard to Permit No. 63-9019.

IV.

Petitioner's immediate interest in the above-entitled proceedings is to resist any of the claims asserted by the Pioneer Irrigation District.

V.

The Petitioners have not filed a request to intervene earlier because the Department had not indicated an intention to hold a hearing.

VI.

Petitioners will present argument and evidence in support of the validity of Permit No. 63-9019. Petitioners will coordinate their response so as to expedite the proceedings and avoid duplication of argument and evidence.

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APR 04 1988

RESPECTFULLY SUBMITTED, this 15th day of October, 1986.

HAWLEY TROXELL ENNIS & HAWLEY

By Don A. Olowinski  
Don A. Olowinski

Raymond D. Givens, Esq.  
GIVENS, McDEVITT, PURSLEY,  
WEBB & BUSER

William F. Ringert, Esq.  
RINGERT, CLARK, HARRINGTON,  
REID, CHRISTENSON & KAUFMAN

Randall C. Fredericks, Esq.  
CLEMONS, COSHO & HUMPHREY

Larry Sullivan, Esq.  
SCHROEDER, HUTCHENS & SULLIVAN

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of October, 1986,  
I served the within and foregoing PETITION TO INTERVENE, by  
causing a true and correct copy thereof to be deposited in the  
United States Mail, Boise, Idaho, postage prepaid, addressed as  
follows:

Scott L. Campbell  
ELAM, BURKE & BOYD  
P.O. Box 1559  
Boise, Idaho 83701

Don A. Olowinski  
Don A. Olowinski

**MICROFILMED**

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Peter J. Boyd  
Scott L. Campbell  
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Boise, Idaho 83701  
(208) 343-5454

Department of Water Resources

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                             |
|                                 | ) |                             |
| Petitioner,                     | ) | Permit No. 63-9019          |
|                                 | ) |                             |
| v.                              | ) | MOTION TO LIMIT INTERVENORS |
|                                 | ) | AND PROTESTANTS             |
| BOISE PROJECT BOARD OF CONTROL, | ) |                             |
|                                 | ) |                             |
| Respondent.                     | ) |                             |

COMES NOW, Pioneer Irrigation District, and hereby moves the Director of the Department of Water Resources to limit the number of intervenors or protestants who will be permitted to testify, cross-examine witnesses, or to make and argue motions and objections with respect to the Petition to Cancel Water Permit No. 63-9019. Pioneer requests that the Boise Project Board of Control, respondent herein, be designated as the only entity which will be permitted to participate as a respondent in the proceedings before the Department with respect to this petition.

**MICROFILMED**

MOTION TO LIMIT INTERVENORS APR 17 1968  
AND PROTESTANTS - 1

This motion is brought pursuant to Rule 9,8 of the Rules of Practice and Procedure of the Idaho Department of Water Resources and is supported by the brief filed concurrently herewith.

DATED This 13<sup>th</sup> day of October, 1986.

ELAM, BURKE & BOYD

By Scott L. Campbell  
Scott L. Campbell, Of the Firm  
Attorneys for Petitioner

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 13<sup>th</sup> day of October, 1986, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Raymond D. Givens, Esq.  
P.O. Box 2720  
Boise, Idaho 83701

William F. Ringert, Esq.  
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Boise, Idaho 83701

Randall C. Fredericks, Esq.  
1110 First Interstate Bank Bldg.  
Boise, Idaho 83702

Don A. Olowinski, Esq.  
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Boise, Idaho 83701

Larry Sullivan, Esq.  
P.O. Box 220  
Vale, Oregon 97918

Scott L. Campbell  
Scott L. Campbell

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OCT 14 1986

Department of Water Resources

Peter J. Boyd  
Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                             |
|                                 | ) |                             |
| Petitioner,                     | ) | Permit No. 63-9019          |
|                                 | ) |                             |
| v.                              | ) | MEMORANDUM IN SUPPORT OF    |
|                                 | ) | MOTION TO LIMIT INTERVENORS |
| BOISE PROJECT BOARD OF CONTROL, | ) | AND PROTESTANTS             |
|                                 | ) |                             |
| Respondent.                     | ) |                             |

Pioneer Irrigation District instituted the present action by filing a Petition to Cancel Water Permit No. 63-9019 with the Idaho Department of Water Resources, on May 21, 1986. In its petition, Pioneer named the Boise Project Board of Control as the respondent, because water Permit No. 63-9019 had been issued to the Boise Project Board of Control by the Idaho Department of Water Resources.

On or about June 23, 1986, the Boise Project Board of Control, acting through its member irrigation districts, filed an Answer to Petition to Cancel Water Permit with the Department of Water Resources. At no time have the individual

MEMORANDUM IN SUPPORT OF MOTION TO  
LIMIT INTERVENORS AND PROTESTANTS - 1

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APR 04 1988

districts of the Board of Control filed applications or petitions to intervene in this proceeding.

Inasmuch as the Boise Project Board of Control is alleged to be a separate and distinct legal entity, Pioneer believes that the Director should exercise his authority under Rule 9,8 of the Rules of Practice and Procedure of the Department of Water Resources, and limit the involvement and participation in this proceeding to the Boise Project Board of Control as a separate entity. This action will eliminate the duplication of effort, scheduling problems, confusion, and delay which will result if the individual member irrigation districts of the Board of Control are allowed to participate in these proceedings, through their separate counsel. Since the Boise Project Board of Control was issued water Permit No. 63-9019, and since one attorney can obviously speak on behalf of the Boise Project Board of Control, and since the member irrigation districts of the Board of Control share "substantially the same interests and positions," (Rule 9,8), the Director should exercise his authority under the rule and limit participation in the proceedings of the Boise Project Board of Control, as a single entity.

DATED This 13<sup>th</sup> day of October, 1986.

ELAM, BURKE AND BOYD

By

Scott L. Campbell  
Scott L. Campbell, Of the Firm  
Attorneys for Petitioner

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APR 04 1988

MEMORANDUM IN SUPPORT OF MOTION TO  
LIMIT INTERVENORS AND PROTESTANTS - 2

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 13<sup>th</sup> day of October, 1986, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Raymond D. Givens, Esq.  
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\_\_\_\_\_  
Scott L. Campbell



**ELAM, BURKE AND BOYD**

ATTORNEYS AND COUNSELORS AT LAW

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M. ALLYN DINGEL, JR.  
JACK S. GJORDING  
JOHN MAGEL  
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DAVID E. COMSTOCK  
MELVILLE W. FISHER II  
WILLIAM G. DRYDEN  
TODD J. WILCOX  
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KENNETH M. SEBBY  
TRUDY HANSON FOUSER  
D. ALAN KOFOED  
SCOTT L. CAMPBELL  
BOBBI KILLIAN DOMINICK  
W. DALLAS BURKHALTER  
ALAN CONILOGUE  
ELAINE D. HANSON  
JEFFERY J. VENTRELLA  
BRENDA G. MEIER  
JOHN J. JANIS

October 13, 1986

David R. Tuthill, Jr., P.E.  
Manager, Western Regional Office  
Department of Water Resources  
State of Idaho  
450 W. State Street  
Boise, Idaho 83702



Department of Water Resources  
Western Regional Office

Re: Petition to Cancel Permit No. 63-9019

Dear David:

This correspondence is a response to Mr. Don Olowinski's letter to you, dated October 9, 1986.

Initially, I fail to see the connection between the amount of time required for a hearing before the Idaho Department of Water Resources on this matter, and the need to delay any action on the hearing until the Federal Energy Regulatory Commission acts on Pioneer's motion to reopen the license proceeding before that agency. Again, Mr. Olowinski is attempting to confuse the regulatory functions of the Idaho Department of Water Resources and the Federal Energy Regulatory Commission in order to obtain an advantage for his client. Moreover, it is quite possible that the approximation of three to four days of hearing time for presentation of evidence may be inaccurate. If both parties can reach an agreement with respect to certain basic factual issues, the hearing time could be substantially less.

Mr. Olowinski complains that Pioneer has not yet disclosed its witnesses or exhibits which it intends to introduce. I would like to point out that the same is true of the Board of Control. I would submit that if the Director mandates any disclosure, as

**MICROFILMED**

APR 04 1988

David R. Tuthill, Jr., P.E.  
October 13, 1986  
Page 2

suggested by Mr. Olowinski under Rules 8 and 9 of the Department, that such disclosure be bilateral. In this regard, I am certain that the list of witnesses which Pioneer intends to call at the hearing of this matter would change following the conduct of the depositions which are anticipated.

I cannot agree with Mr. Olowinski's reading of Rule 9,13 of Practice and Procedure before the Department of Water Resources. The rule reads:

Depositions. The Director, or any party, may, in an investigation or hearing before the Director or the Board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts.

(Emphasis added.)

This rule clearly permits parties, as well as the Director, to conduct depositions in the manner contemplated for depositions in civil actions in the district courts of this state. Such depositions extend to discovery matters in conformance with the Idaho Rules of Civil Procedure. Accordingly, under Rule 9,13, Pioneer is entitled to take the depositions of witnesses, with or without the cooperation of the respondent.

Mr. Olowinski did not indicate, in his October 9, 1986, correspondence, that he was writing on behalf of the Boise Project Board of Control or on behalf of Wilder Irrigation District. I would like to formally request that the Director exercise his authority under Rule 9,8 of the Rules of Practice and Procedure and "limit the number of intervenors or protestants who will be permitted to testify, cross-examine witnesses, or make and argue motions and objections." (Rule 9,8.) I have enclosed a formal motion to this effect.

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APR 04 1988

David R. Tuthill, Jr., P.E.  
October 13, 1986  
Page 3

Thank you for your cooperation.

Very truly yours,

ELAM, BURKE AND BOYD

  
Scott L. Campbell

SLC:ls

cc: Board of Directors  
Pioneer Irrigation District  
Ms. Hazel Robinson  
Mr. Raymond D. Givens, Esq.  
Mr. Randall C. Fredricks, Esq.  
Mr. Larry Sullivan, Esq.  
Mr. William F. Ringert, Esq.  
Mr. Donald A. Olowinski, Esq.  
Mr. Phillip Rassier, Esq.  
U.S. Department of Interior  
U. S. Army Corps of Engineers

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APR 04 1988

D/K

LAW OFFICES  
GIVENS, McDEVITT, PURSLEY, WEBB & BUSER

RAYMOND D. GIVENS  
CHAS. F. McDEVITT  
KENNETH L. PURSLEY  
JAY L. WEBB  
PAUL J. BUSER  
LEO EDWARD MILLER  
CHRISTOPHER J. BEESON  
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TELEPHONE  
(208) 342-8571

October 10, 1986

TELECOPIER  
(208) 343-9492

Mr. Scott L. Campbell  
Attorney at Law  
First Interstate Building  
Post Office Box 1559  
Boise, Idaho 83701

Dear Scott:

In response to your letter of October 3rd and in spite of our reservations as to the authority to take depositions in a matter before the Department of Water Resources for discovery purposes, as outlined in Don Olowinski's letter to Mr. Tuthill, dated October 9, 1986, a copy of which has been forwarded to you, we are willing to cooperate in the scheduling of such depositions, reserving the right to object to any use thereof at a later date.

The following dates are available for taking such depositions: November 6, 10 through 14, 17 through 21 and 24 through 30, and even on those dates Mr. Gerald Guentz is available only in the afternoon after 2:00.

I did not investigate the possibility of any later date because of Mr. Tuthill's indication that he would plan to schedule the hearing in this matter early in December.

In view of the reservations above noted, we will not insist on the issuance of subpoenas.

Yours very truly,

GIVENS, McDEVITT, PURSLEY, WEBB & BUSER

Raymond D. Givens

RDG:ph

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OCT 11 1986

Department of Water Resources  
Western Regional Office

# ELAM, BURKE AND BOYD

ATTORNEYS AND COUNSELORS AT LAW

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BRENDA G. MEIER  
JOHN J. JANIS

October 14, 1986

David R. Tuthill, Jr., P.E.  
Manager, Western Regional Office  
Department of Water Resources  
State of Idaho  
450 W. State Street  
Boise, Idaho 83702

Re: Petition to Cancel Permit No. 63-9019

Dear Mr. Tuthill:

I have enclosed a copy of the Motion to Limit Intervenors and Protestants and a copy of the Memorandum in Support of Motion to Limit Intervenors and Protestants. I inadvertently omitted these from Mr. Campbell's correspondence to you, dated October 13, 1986. Please accept my apology for any inconvenience this may have caused you.

Sincerely,

ELAM, BURKE AND BOYD

*Linda Stormes*  
Linda Stormes, Secretary

ls

*Copies and originals were received with Mr. Campbell's original letter dated Oct 13. Duplicates have been discarded to avoid confusion in the file.*

DET 10/15/86

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APR 04 1988

Dw

**HAWLEY TROXELL ENNIS & HAWLEY**  
ATTORNEYS AND COUNSELORS

ROBERT I. TROXELL  
JESS B. HAWLEY, JR.  
JOHN T. HAWLEY, P.A.  
THOMAS A. MILLER  
M. NEAL NEWHOUSE  
CRAIG L. MEADOWS  
JOSEPH D. MCCOLLUM, JR.  
WAYNE B. SLAUGHTER, JR.  
GARY D. SABBITT, P.A.  
P. CRAIG STORTI  
MERLYN W. CLARK  
RICHARD F. GOODSON, P.A.  
CARL W. HARDER  
PHILLIP M. BARBER  
DONALD E. KNICKREHM  
EDWIN V. APPEL, JR.  
EUGENE A. RITTI  
KAREN L. LANSING

RICHARD G. SMITH  
JOHN F. KURTZ, JR.  
ROBERT S. ERICKSON  
LINDA L. HOLDEMAN  
BRENT F. LLOYD  
JOHN MCGOWN, JR.  
ALBERT P. BARKER  
JOHN T. HAWLEY, JR.  
DON A. OLOWINSKI  
NICHOLAS G. MILLER  
RONALD E. BUSH  
STEVEN W. BERENTER  
CATHY R. SILAK  
KENNETH C. HOWELL  
RITA L. BERRY  
MICHAEL M. STODDARD  
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TELEPHONE  
(208) 233-0845

October 9, 1986

REC-11  
COTR 11/1/86

David R. Tuthill, Jr., P.E.  
Manager, Western Regional Office  
Department of Water Resources  
State of Idaho  
450 W. State Street  
Boise, ID 83702

Department of Water Resources  
Western Regional Office

Re: Pioneer Irrigation District's Petition to  
Cancel Permit No. 63-9019

Dear Mr. Tuthill:

This letter is in response to the letter from the  
Pioneer Irrigation District dated September 30, 1986.

As to the issue of whether to hold a hearing before or  
after the Federal Energy Regulatory Commission acts, we would  
still adhere to our views that it would be most economical and  
efficient to wait until after the decision by FERC. This view is  
reinforced by Pioneer's intention to take four days with the  
presentation of its "case" even though it only submitted one  
exhibit to the Department in its briefings. If Pioneer is going  
to take that long, we may have to present a case of equal length.  
To allow for rebuttal on behalf of Pioneer, it would appear that  
even more time will be necessary.

Of course, it is difficult for us to estimate the length  
of our case because Pioneer has not yet disclosed whom it intends  
to call as witnesses or what exhibits it intends to introduce. I  
would therefore request that the Director use his authority under  
Rules 8 and 9 of the Department and the Administrative Procedures  
Act to require Pioneer to list its proposed witnesses, its  
exhibits and the witnesses it desires to depose. After this is

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APR 11 1988

David R. Tuthill  
October 9, 1986  
Page 2

done, we would further request that the Director hold a prehearing conference to discuss issues and proposed proof and to schedule a hearing at a time convenient to the Department and the parties that would allow Pioneer and us time to conduct the depositions it apparently desires. We could then conduct the appropriate discovery and examine their exhibits and provide a list to Pioneer of our witnesses and proposed exhibits. This is a procedure similar to that followed in Rule 16 of the Idaho Rules of Civil Procedure. We believe this would facilitate the conduct of the hearing. If it were followed, we may be able to reduce the time required for the hearing.

As to the depositions requested by Pioneer, we can find no statutory authority for Rule 9,13 as promulgated by the Department and therefore cannot agree that Pioneer is entitled to take depositions. Nor does Rule 9,13 appear to authorize depositions for discovery purposes (as opposed to depositions as a substitute for hearing testimony). Even under Rule 9,13, depositions are entirely discretionary with the Director. We would be willing to cooperate with Pioneer in the scheduling of depositions, however, if they are reasonable in number and scope and limited to information relevant to the issues raised by Pioneer in its briefing to the Department, adequate notice is provided to us and the deponent so schedules may be worked out, and Pioneer reciprocates by identifying and making its witnesses available for us to depose them.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

*Don A. Olowinski*  
Don A. Olowinski

DAO/mmb

xc: Raymond D. Givens, Esq.  
Randall C. Fredricks, Esq.  
Larry Sullivan, Esq.  
William F. Ringert, Esq.  
Scott L. Campbell, Esq.  
U.S. Department of Interior  
U.S. Corp. of Engineers

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APR 14 1988

MEMO

October 10, 1986

*NLS*  
TO: Glen Saxton

SUBJECT: Condition K of the water right for Lucky Peak Dam

BY: Dam Safety

As you requested we have reviewed the dam files for the project to see if the conditions listed under part K had been met. As indicated to us by Royce Van Curen, the Boise Office Manager/District Coordinator for the Lucky Peak Power Plant Project, the Corps of Engineers are approving each portion of the plans for the project as they are developed. Since all portions of the plans have not been developed we have not yet received the certification from the Corps which is required under condition K. The second part of this condition also requires that we receive certification that the project has been completed in accordance with the approved plans, this cannot be accomplished until construction has been completed which is not the case at this time.

We will continue to monitor the progress of construction at the project and inform you when we receive the required certifications.

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State of Idaho  
**DEPARTMENT OF WATER RESOURCES**  
WESTERN REGION, 450 W. State Street, Boise, Idaho

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

Mailing address:  
Statehouse  
Boise, Idaho 83720  
(208) 334-2190

October 9, 1986

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U.S. Department of Interior  
Bureau of Reclamation  
Attn: Ron Golus  
Box 043-550 W. Fort St.  
Boise, ID 83724

U.S. Corp. of Engineers  
Attn: LTC Richard M. Ely  
Office of Council Bldg. 602  
City-County Airport  
Walla Walla, WA 99362-9265

Re: Water Rights for Power Purposes at Diversion Dam, Arrowrock and Lucky Peak

Dear Interested Party:

The purpose of this letter is to provide an updated status regarding the following water rights:

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| <u>No.</u> | <u>Name</u>                    | <u>Location</u> |
|------------|--------------------------------|-----------------|
| 63-10239   | U.S. Bureau of Rec.            | Diversion Dam   |
| 63-10240   | U.S. Bureau of Rec.            | Arrowrock Dam   |
| 63-9019    | Boise Project Board of Control | Lucky Peak Dam  |
| 63-10366   | Pioneer Irrigation Dist.       | Lucky Peak Dam  |

Water rights nos. 63-10239 and 63-10240 are both protested applications for permit for power purposes. As you are aware, on September 19, 1986, we sent letters to interested parties tentatively setting a hearing date of October 22, 1986 for review of both applications. Several parties responded that this is not an available date so the hearing has been postponed.

Because the hearing has been postponed and several months have passed since our last project update, the U.S. Bureau of Reclamation is requested to provide the Department with a letter describing (1) current activities with respect to both projects, (2) the current status of both projects with respect to the Federal Energy Regulatory Commission, (3) the extent of the urgency to have the Department take action on each application, and (4) proposed dates for a hearing on these applications.

Water right no. 63-9019 is a permit for which we have received a Petition to Cancel from Pioneer Irrigation District, and water right no. 63-10366 is a protested application for permit filed by Pioneer Irrigation District and protested by the U.S. Bureau of Reclamation, et al. In our letter dated September 11, 1986, we proposed that the validity of Permit No. 63-9019 be determined before proceeding with Application for Permit No. 63-10366. In a letter dated September 16, 1986, Scott L. Campbell concurred with this approach. In a letter dated September 25, 1986, Don A. Olowinski requested that the Department defer consideration of the petition to cancel the permit for a reasonable time to allow the Federal Energy Regulatory Commission (FERC) to rule on related matters. On the same date Mr. Olowinski submitted a Response Memorandum in Opposition to Petition to Cancel Water Permit. In a letter dated September 30, 1986, Mr. Campbell rebutted Mr. Olowinski's request to defer consideration.

The Department has reviewed the arguments of both Mr. Campbell and Mr. Olowinski in light of other information in the files and current Department policy and procedures. A determination has been made that the Petition to Cancel Permit No. 63-9019 should be heard by the Department irrespective of a similar review by FERC. Accordingly, interested parties are hereby notified that the matter has tentatively been scheduled for the week of December 1-5, 1986. Any party that cannot attend during certain days of the week is requested to notify this office of such dates no later than October 24, 1986. Mr. Campbell has requested three to four days of hearing time to present testimony and documentary evidence. We ask for suggestions regarding ways to abbreviate the hearing procedure and prepare a proper record in an expeditious manner.

Due to the increasingly complex interrelationship of water rights for power purposes on the Boise River, we ask that all parties continue the practice of sending copies of correspondence related to these water rights to the other parties involved in this matter. The Department will also attempt to apprise you of related progress.

Sincerely,

*David R. Tuthill*

DAVID R. TUTHILL, JR.,  
Manager, Western Region

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DRT:jp

|     |                  |                      |
|-----|------------------|----------------------|
| c.c | Niel Stessman    | Howard Fuller        |
|     | Carter Fritschle | John Hockberger, Jr. |
|     | Donald J. Sayre  | Fred Houston         |
|     | Lawrence V. Gray | Don Smitchger        |

APR 04 1988

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CARL A. BURKE (1898-1961)  
CARL P. BURKE  
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KAYE L. O'RIOURDAN  
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KENNETH M. SEBBY  
TRUDY HANSON FOUSER  
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SCOTT L. CAMPBELL  
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October 3, 1986

Raymond D. Givens, Esquire  
Givens, McDevitt, Pursley, Webb & Buser  
P.O. Box 2720  
Boise, Idaho 83701

Re: Petition to Cancel Water Permit No. 63-9019

Dear Ray:

As I indicated in my correspondence to Mr. David Tuthill, Jr., dated September 30, 1986, a copy of which was provided to you, I would like to take the depositions of several individuals which were involved in the application procedures dealing with the Lucky Peak hydroelectric project. Since you represent the Boise Project Board of Control, I assume that it is appropriate to coordinate the depositions of the following Board of Control participants through you:

Mr. Clarence L. Gharring, Mr. Royce Van Curen, Mr. Carl Padour, Mr. Lou Murgotio, and Mr. Gerald Guentz.

I would like to schedule the depositions of these individuals during the week of October 20-24 if possible. Please provide me with your available dates and those of the witnesses, so that we may coordinate appropriate times. After you have provided me with these dates, I will send out appropriate notices of deposition duces tecum. If you require that subpoenas be issued for any of the individuals, please notify me immediately, and I will obtain the required subpoenas from the Director of the Department of Water Resources.

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Department of Water Resources  
Western Regional Office

Raymond D. Givens, Esq.  
October 3, 1986  
Page Two

Thank you for your anticipated cooperation. If I do not receive a response to this correspondence within five business days, I will proceed to notice the depositions.

Very truly yours,

ELAM, BURKE AND BOYD

  
Scott L. Campbell

SLC:ls

cc: Board of Directors  
Pioneer Irrigation District  
Ms. Hazel Robinson  
Mr. David R. Tuthill, Jr. ✓  
Mr. Peter J. Boyd

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September 30, 1986

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OCT 3 1986

Norman Young  
Administrator, Administrative Division  
Department of Water Resources  
450 W. State  
Boise, ID 83702

Department of Water Resources

Re: Minimum Stream Flow Consultation Report

Dear Norm:

Thank you very much for your input into our Minimum Stream Flow Consultation Report. I have enclosed for your records a copy of the final report which we submitted to FERC. Except for minor proofreading changes, I believe it is the same report which you reviewed.

Thank you once again. If I can answer any questions, please do not hesitate to call me.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

*Don A. Olowinski*  
Don A. Olowinski

DAO/mmb

Enc.

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OCT 3 1986

Department of Water Resources

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

BOISE-KUNA IRRIGATION DISTRICT )  
NAMPA & MERIDIAN IRRIGATION DISTRICT )  
NEW YORK IRRIGATION DISTRICT ) Project No. 2832  
WILDER IRRIGATION DISTRICT )  
BIG BEND IRRIGATION DISTRICT )

REPORT OF MINIMUM STREAM FLOW CONSULTATION  
PURSUANT TO ARTICLE 35

PRELIMINARY STATEMENT

On June 10, 1980, the Federal Energy Regulatory Commission ("the Commission") issued a license to the New York Irrigation District, the Nampa & Meridian Irrigation District, the Boise-Kuna Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District (the "Districts" or the "Licensees") to construct and operate the Lucky Peak Power Plant Project, an approximately 101 megawatt hydroelectric project located on the Boise River at the Lucky Peak Dam in Ada County, Idaho. FERC License No. 2832, 11 FERC, ¶ 62, 199 (1980). Article 35 of the license required the Districts to discharge from the

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Project a continuous minimum stream flow of 160 cubic feet per second.<sup>1</sup>

The Districts, the Idaho Department of Water Resources, and the United States Army Corps of Engineers all filed appeals of the requirement in Article 35. The Districts appealed on the basis that they held no water rights for the purposes of minimum stream flow maintenance. This position was also urged by the Idaho Department of Water Resources. The Corps pointed out that the operation of the three reservoirs on the Boise River--the Lucky Peak, Arrowrock and Anderson Ranch Reservoirs--is a joint function of the Corps of Engineers and the Water and Power Resources Service (hereinafter the Bureau of Reclamation). The reservoir system is operated to provide a balance between several different purposes, including flood control, irrigation and wildlife.

Accordingly, the Commission amended Article 35 to direct the Districts to consult with the Bureau of

- 
1. Article 35. Licensee shall discharge from the project a continuous minimum flow of 160 cubic feet per second. This flow may be modified temporarily if required by operating emergencies beyond the control of the Licensee, and for short periods for fishery management purposes upon mutual agreement between the Licensee and the Idaho Department of Fish and Game.

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Reclamation, the Idaho Department of Water Resources, the Corps of Engineers and the Idaho Department of Fish and Game to determine the feasibility of providing a continuous minimum stream flow of 160 cfs from Lucky Peak Dam during the non-irrigation season to the extent surplus water is available.<sup>2</sup>

Preliminary consultations with the various agencies were made. The Districts then requested that the Commission allow them until October 1, 1986 to complete the consultations. The Commission granted this request on June 6, 1986. This report is the result of that consultation.

#### DESCRIPTION OF BOISE RIVER RESERVOIR SYSTEM

Within the Boise River Basin, four separate Federal reservoir projects are being operated as one

- 
2. Article 35 (as amended). Licensee shall consult with the Water and Power Resources Service of the U.S. Department of the Interior, U.S. Army Corps of Engineers, Idaho Department of Water Resources, and the Idaho Department of Fish and Game to determine the feasibility of providing, to the extent surplus water is available from the Federal dam, a continuous minimum flow of 160 cfs at the project dam during the non-irrigation season. Within one (1) year from the issuance of this order, Licensee shall file a report with the Commission that describes the results of the above consultation and any recommendation for ensuring the protection of downstream fishery resources.

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system, referred to as the "Boise River Reservoir System." This system is composed of three Boise River reservoirs (Anderson Ranch, Arrowrock, and Lucky Peak) and an offstream reservoir (Lake Lowell and its related facilities - Diversion Dam and the New York Canal). The three upper reservoirs have a combined gross storage capacity of approximately 1.109 million acre-feet and a usable (active) storage capacity of approximately 0.974 million acre-feet. The upper three reservoir systems are used to control Boise River water for irrigation, flood control, power generation, recreation, and fish and wildlife. See Water Control Manual for Boise River Reservoirs (April 1985) at 2-1.<sup>3</sup>

#### OWNERSHIP, OPERATION AND REGULATION

The Bureau of Reclamation owns and operates the Anderson, Arrowrock and Diversion Dam projects and facilities. The Bureau also owns the New York Canal, Lake Lowell and related distribution and drainage facilities, but the Boise Project Board of Control operates and maintains them under contracts between its five-member Districts and the Bureau. The United

- 
3. Copies of the Water Control Manual were previously submitted to the Commission with the Districts' request for an extension of time dated April 29, 1986.

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States Army Corps of Engineers owns and operates the Lucky Peak project and its facilities.

Regulation of the Anderson, Arrowrock and Lucky Peak projects is a joint effort between the Bureau of Reclamation, Corps of Engineers, and the Boise River Watermaster.<sup>4</sup> The Boise Project Board of Control operates the New York Canal, Lake Lowell and the related distribution system.

The Boise River reservoirs (Anderson Ranch, Arrowrock and Lucky Peak) are regulated jointly by the Bureau of Reclamation and the Corps of Engineers through a "Memorandum of Agreement between the Department of the Army and the Department of the Interior for Flood Control Operation of Boise River Reservoirs," dated 20 November 1953.

Since the operating criteria and procedures in the Agreement did not reflect current conditions, needs, and technology, the Bureau of Reclamation, the Corps of Engineers, and the State of Idaho jointly agreed to a revision of the operating criteria and

- 
4. The Boise River Watermaster is responsible for the measurement, accounting, and distribution of Boise River water according to all decreed, licensed, and permitted rights. The manner in which he measures, accounts, and distributes Boise River water is in accordance with Idaho law, and he is supervised by the Western Regional Supervisor, Department of Water Resources, Water Control Manual at 9-7.

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procedures in the Agreement through a Memorandum of Understanding signed in 1985 which incorporates a new operating agreement under authority contained in the original Agreement. A primary feature of the Memorandum of Understanding is that the Boise River reservoirs will be regulated according to the criteria and procedures in the Water Control Manual dated April 1985. Significant public input was solicited prior to the preparation of the Water Control Manual for Boise River Reservoirs. It was prepared in consultation with the applicable state and federal agencies. See Water Control Manual, pp. 1-1 to 1-4.

#### WATER RIGHTS

The Bureau of Reclamation has water rights and water permits from the State of Idaho, which allow storage of Boise River water in the Anderson Ranch, Arrowrock, and Lucky Peak Reservoirs. The rights and permits held by the Bureau of Reclamation are primarily for irrigation purposes, but, as will be seen, also include allocations for minimum stream flow purposes. See, infra, at 6-8. The Districts have contracts with the Bureau of Reclamation for use of the stored water for irrigation purposes. They also have some natural flow water rights from the Boise River for irrigation purposes. See Manual at 7-23 et seq. They have no

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rights for minimum stream flow purposes. Consultation with the respective agencies confirms these facts. Thus, the Districts could not legally provide a continuous minimum stream flow during the non-irrigation season (which generally lasts from about October 15 to April 1. See Water Control Manual at 7-24.) However, the agencies consulted do have minimum stream flow concerns and have worked out a release schedule so that in the non-irrigation season, a minimum stream flow of 150 cfs should generally be available.

#### MINIMUM STREAM FLOW

As mentioned, stream flow released through the Lucky Peak dam for flood control, irrigation, wildlife, and minimum stream flow purposes are regulated according to criteria and procedures in the Water Control Manual. Fish and wildlife and minimum stream flow concerns are addressed at pages 7-30 and 7-31. The relevant language is as follows:

7-10. Fish and Wildlife Plan. It is desirable to enhance fish and wildlife resources within the three reservoirs, in the Boise River, and adjacent areas as much as is practical. In order to accomplish this goal, specific policies and practices have been established. Lucky Peak Lake contains a minimum conservation pool of 28,767 acre-feet of storage (elevation 2824 to 2905). Anderson Ranch Reservoir contains a minimum conservation pool of 41,000 acre-feet storage (elevation 3992 to 4039.6).

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Arrowrock Reservoir it is desirable to maintain 28,700 acre-feet of storage (elevation 2974 to 3078.32) as a conservation pool. Occasionally it may be necessary (because of inspections, maintenance, or flood control) to evacuate some or all of this Arrowrock storage, but this should be avoided whenever possible.

In addition to conservation pools at each reservoir, there are provisions for minimum fish flows below Lucky Peak and Anderson Ranch dams. Lucky Peak Lake has a 50,000-acre-foot space allocation for the Idaho Fish and Game Department as required by the current Lucky Peak storage permit. This allocation is a primary use within Lucky Peak and is equal to flood control and irrigation. The purpose of this space allocation is to provide minimum fish and wildlife stream flows below Lucky Peak Dam during the non-irrigation season. The 50,000 acre-feet of stored water is sufficient to provide a continuous flow of 137 cfs over a 182-day period from 16 October to 14 April, or a continuous flow of 160 cfs for a 156-day period. The actual release pattern is to be established by the Director of the Idaho Fish and Game Department; however, since 102,300 acre-feet of non-contracted space will be used for stream maintenance flows along with the Idaho Department of Fish and Game space, the release from the Fish and Game space could vary from a minimum of about 70 cfs to larger releases.

7-11. Minimum Streamflow Maintenance. A continuous flow of 80 cfs as a minimum below Diversion Dam will be provided from Lucky Peak for the purpose of flow maintenance. This 80-cfs minimum requirement will not be violated unless required maintenance within the Lucky Peak outlet tunnel makes it temporarily impractical to do so. As specified within paragraph 7-10., a continuous minimum of 70 cfs will be released from the 50,000-acre-foot Idaho Fish and Game Department allocation during the non-irrigation season (if stored water is available). Thus, the normal total non-irrigation season minimum stream flow below Diversion Dam will generally be 150 cfs. This normal minimum can be larger than 150 cfs.

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if the Director of Idaho Fish and Game Department specifies a release larger than 70 cfs from the 50,000-acre-foot allocation. If water is not available in the Lucky Peak Lake non-contracted space to maintain an 80-cfs flow release to the Boise River, the 80-cfs flow release would be made from the Idaho Department of Fish and Game space, if water is available. . . .

The 50,000 acre-feet of storage space allocated to the Idaho Fish and Game Department and the 102,300 acre-feet mentioned above to be used for stream flow maintenance are included in the approved application for a water permit from the Bureau of Reclamation to the Department of Water Resources for 152,300-acre-feet for stream flow maintenance purposes. (Two acre feet equals approximately 1 cubic foot per second of stream flow per 24 hours.) A copy of that approved application is attached to this report as Exhibit 1.

Thus, the agencies responsible for the operation of the Lucky Peak Dam and possessing the requisite water rights have committed themselves to a general policy of maintaining a minimum 150 cfs stream flow. The main constraint on this minimum stream flow would appear to be the availability of water. Records indicate that, except in severe drought years, 150 cfs minimum stream flow or greater will be available.

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### OPERATION OF THE POWER PLANT PROJECT

It is important to realize that the Lucky Peak Power Plant Project should have no impact on these minimum stream flows. The Project plans to operate only on releases authorized for non-power production purposes and will not change the pattern of releases for those flows. As the Districts pointed out in their application for license: "No changes in the present release pattern are proposed at this time for the purpose of power and energy production, in order to be consistent with the current plan of operation."

Application for license: Project No. 2832 at H-5 (December 1978). Section 7 of the Power Sales Contract with Seattle also recognizes this: "The Lucky Peak Project will be operated to generate electrical energy whenever a sufficient flow of water is released from Lucky Peak Dam for irrigation, flood control or other authorized purposes . . . ." In addition, the water permit from the Idaho Department of Water Resources requires that the Project be operated in this manner:

This permit does not convey any authority to require or demand the release of water, but shall only be effective to allow generation of hydroelectricity using water released under existing rights and operating procedures for irrigation, flood control and fish and wildlife purposes.

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Finally, the Districts have entered into an interim agreement with the Corps of Engineers which requires that:

All water released from Lucky Peak will be determined, controlled and directed by the Corps in accordance with the memorandum agreement for flood control operation of Boise River Reservoirs, Idaho and Water Control Manual for Boise River Reservoirs and any amendments thereto between the Department of Army and Department of Interior.

Memorandum Agreement for hydroelectric facilities at Lucky Peak Dam and Reservoir, ¶ 6 (May 24, 1984). A final agreement is being prepared pursuant to Article 47 of the license. It is anticipated that a similar requirement will be included in the final agreement.

#### CONCLUSION

The Districts do not have the authority to require water releases for minimum stream flow purposes. Standard operating procedures adopted by those agencies with such authority should generally insure a minimum stream flow of 150 c.f.s. in the non-irrigation season.

#### CONSULTATION

The preparation of this Report of Consultation was made after consultation with the United States Army Corps of Engineers through Don Johnson and David

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Brownell, the Bureau of Reclamation through Jack Hansen, Chief, Water Operation and Recreation Division, Central Snake Projects Office, 208-334-1466, the Department of Water Resources through Norman Young, Administrator, Administration Division, 208-334-4437, and the Idaho Department of Fish and Game through Will Reid, Region 3, Fishery Manager, 208-334-3725. They have all reviewed the contents of this consultation. Letters with comments from the agencies are attached as Exhibits 2-5 to the Report.

We hope that this Report satisfies the requirements of Article 35 of the license. If further information is desired, please advise us.

Respectfully submitted this 30th day of September, 1986.

HAWLEY TROXELL ENNIS & HAWLEY

By Don A. Olowinski  
Don A. Olowinski  
Counsel for the Irrigation  
Districts

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EXHIBITS

- Exhibit 1            Approved Water Permit for Lucky  
Peak Dam dated February 14,  
1985
- Exhibit 2            Letter from State of Idaho  
Department of Water Resources  
dated September 26, 1986
- Exhibit 3            Letter from United States Corps  
of Engineers dated September  
18, 1986
- Exhibit 4            Letter from United States  
Department of the Interior,  
Bureau of Reclamation dated  
September 25, 1986
- Exhibit 5            Letter from State of Idaho  
Department of Fish and Game  
dated September 23, 1986

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EXHIBITS

- Exhibit 1            Approved Water Permit for Lucky Peak Dam dated  
February 14, 1985
- Exhibit 2            Letter from State of Idaho Department of Water  
Resources dated September 26, 1986
- Exhibit 3            Letter from United States Corps of Engineers  
dated September 18, 1986
- Exhibit 4            Letter from United States Department of the  
Interior, Bureau of Reclamation dated  
September 25, 1986
- Exhibit 5            Letter from State of Idaho Department of Fish  
and Game dated September 23, 1986

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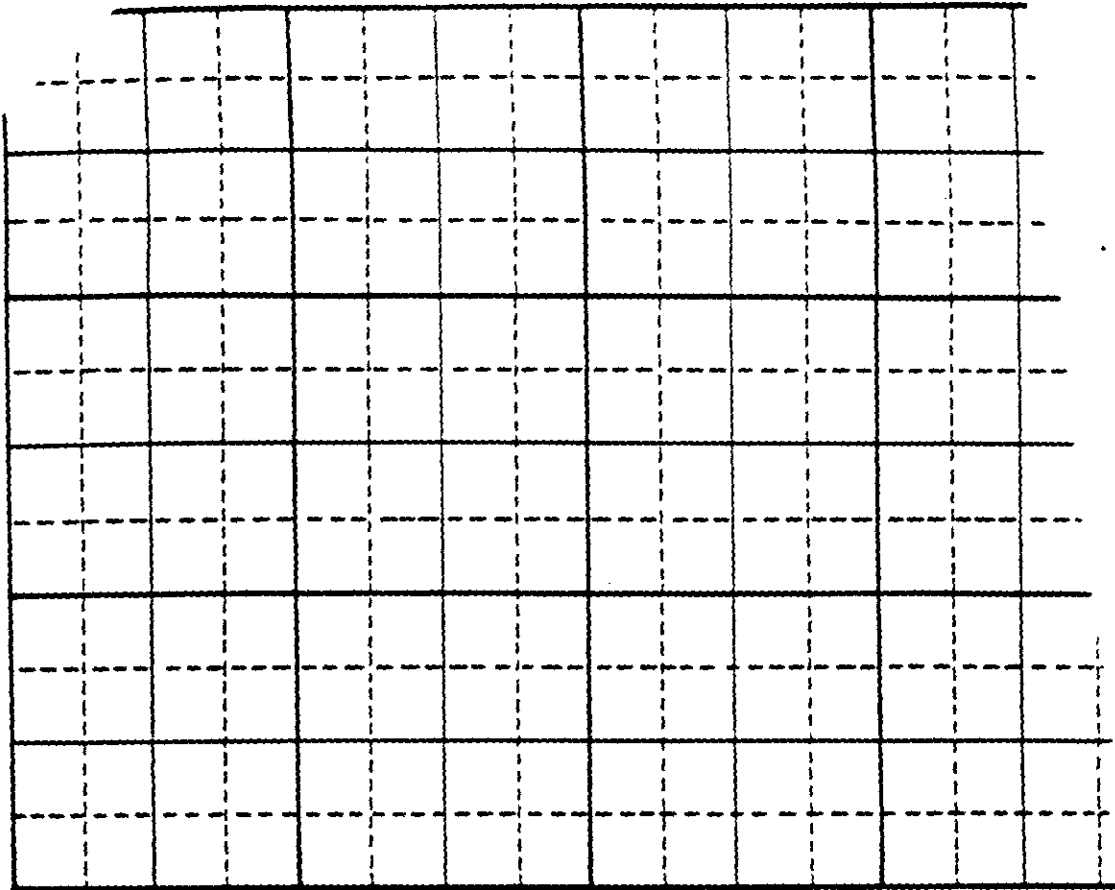
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the following map showing land and point of diversion as proposed by this amendment  
subdivisions, townships, ranges and ditches.

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Scale: 2 inches equal 1 mile.

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

Signed at Beise, Idaho this 9<sup>th</sup> day of March, 1984.

John W. Taylor  
(Signature)

**FOR DEPARTMENT USE ONLY**

Preliminary check by \_\_\_\_\_ Fee = \$20.00 # 325710 Received by JP Date 3/15/84

Publication prepared by JP Date 3/29/84 Published in Idaho State Engineer

Publication dates 4/5 & 4/12/84

**ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES**

I, \_\_\_\_\_, Director of the Department of Water Resources hereby  
APPROVE the above Application for Amendment of Permit No. R-1183 (63-3618) provided  
the following condition are met:

1. The allocation of 152,300 acre feet of storage space for stream flow maintenance includes 50,000 acre feet allocated for same purpose under the original permit.

Witness my hand this 14<sup>th</sup> day of February, 1985.

John W. Taylor

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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 DUHN

Director

Mailing address:

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Boise, Idaho 83720

(208) 334-4440

September 26, 1986

Don A. Olowinski  
Hawley, Troxel, Ennis & Hawley  
P.O. Box 1617  
Boise, ID 83701

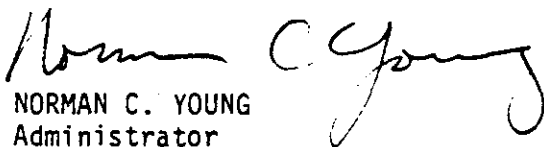
Re: Lucky Peak Minimum Release

Dear Mr. Olowinski:

As requested in your letter of September 15, 1986, the minimum stream flow consultation report has been reviewed. The report reflects the discussions held by representatives of the various agencies on August 14, 1986. I would suggest that the text of the second paragraph on page 5 should be revised to indicate that the Water Control Manual incorporates the allocation of storage space in Lucky Peak Reservoir for minimum stream flow maintenance resulting from the Bureau of Reclamation's Boise River Modification Study, which involved significant public input.

Thank you for the opportunity to review the report.

Very truly yours,

  
NORMAN C. YOUNG  
Administrator

1s

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DEPARTMENT OF THE ARMY  
WALLA WALLA DISTRICT, CORPS OF ENGINEERS  
BUILDING 602, CITY-COUNTY AIRPORT  
WALLA WALLA, WASHINGTON 99362-9265

REPLY TO  
ATTENTION OF

September 18, 1986

Engineering Division

Mr. Don A. Olowinski  
Hawley Troxell Ennis and Hawley  
Attorneys and Counselors  
One Capital Center, Suite 701  
Post Office Box 1617  
Boise, Idaho 83701

Dear Mr. Olowinski:

Reference is made to your September 15, 1986 letter on behalf of the Boise Project Board of Control transmitting the minimum streamflow consultation report as required under Federal Energy Regulatory Commission License No. 2832 for development of hydroelectric power at Lucky Peak Dam.

The District has reviewed and concurs with your report.

Sincerely,

  
Marvin G. Brammer, P.E.  
Chief, Engineering Division

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APR 6 1988

81



# United States Department of the Interior

BUREAU OF RECLAMATION  
CENTRAL SNAKE PROJECTS OFFICE  
214 BROADWAY AVENUE  
BOISE, IDAHO 83702

September 25, 1986

IS REPI  
REFER TO

400  
510.

Mr. Don Olowinski  
Hawley, Troxell, Ennis & Hawley  
P.O. Box 1617  
Boise, Idaho 83701

Dear Mr. Olowinski:

The Minimum Stream Flow Consultation Report has been reviewed and is satisfactory.

Please contact me if you need additional information.

Sincerely,

Jack H. Hansen, Chief  
Water Operations and Recreation Division

**MICROFILMED**

APR 04 1988

SEP 1986





Region 3  
109 W. 44th St  
Boise, Idaho 83714  
Telephone (208) 334-3725

September 23, 1986

Hawley, Troxell, Ennis and Hawley  
One Capital Center  
Suite 701  
P.O. Box 1617  
Boise, ID 83701

Attention: Don A. Olowinski

Re: Minimum Stream Flow Consultation Report

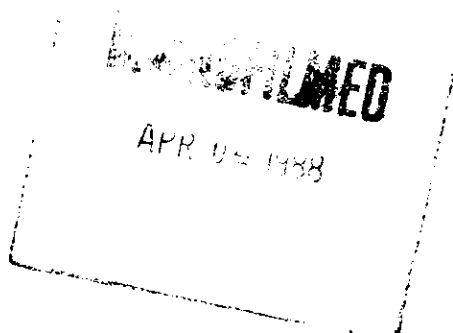
Dear Don:

Idaho Department of Fish and Game personnel have reviewed the minimum stream flow consultation report for FERC Project No. 2832, and find the material presented factual and accurate.

Sincerely,

*for Dale O. VonStein*  
Stacy Gebhards  
Regional Supervisor  
Region 3/Boise

SG:WR:1



EQUAL OPPORTUNITY EMPLOYER

SEP 23 1986

**ELAM, BURKE AND BOYD**

ATTORNEYS AND COUNSELORS AT LAW

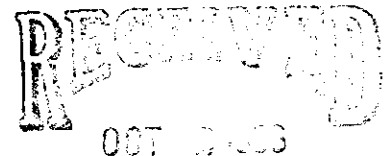
FIRST INTERSTATE BUILDING  
702 WEST IDAHO  
POST OFFICE BOX 1559  
BOISE, IDAHO 83701  
TELEPHONE 208-343-5454  
TELECOPIER 208-343-5454

LAUREL E. ELAM (1888-1974)  
CARL A. BURKE (1898-1961)  
CARL P. BURKE  
PETER J. BOYD  
J. RAY DURTSCHI  
M. ALLYN DINGEL, JR.  
JACK S. GJORDING  
JOHN MAGEL  
DAVID B. LINCOLN  
RICHARD C. MELLON, JR.  
ROBERT M. TYLER, JR.  
JAMES D. LARUE  
RANDALL A. PETERMAN  
WILLIAM J. RUSSELL  
KAYE L. O'RIORDAN  
RYAN P. ARMBRUSTER  
DAVID E. COMSTOCK  
MELVILLE W. FISHER II  
WILLIAM G. DRYDEN

TODD J. WILCOX  
PETER C. MARSHALL  
KENNETH M. SEBBY  
TRUDY HANSON FOUSSER  
D. ALAN KOFOED  
BRIAN D. HARPER  
SCOTT L. CAMPBELL  
BOBBY KILLIAN DOMINICK  
W. DALLAS BURKHALTER  
ALAN P. CONILOGUE  
JOHN K. DAVIS  
ELAINE D. HANSON  
JEFFERY J. VENTRELLA

September 30, 1986

Mr. David R. Tuthill, Jr., P.E.  
Manager, Western Regional Office  
Department of Water Resources  
State of Idaho  
450 W. State Street  
Boise, Idaho 83702



Department of Water Resources  
Western Regional Office

Re: Application for Permit No. 63-10366 and  
Permit No. 63-9019

Dear Mr. Tuthill:

I am responding to your correspondence of September 22, 1986, and to the correspondence from Mr. Don A. Olowinski to you, dated September 25, 1986.

In response to your correspondence of September 22, 1986, I believe that we will require approximately three to four days of hearing time in order to present all of the anticipated testimony and documentary evidence concerning the Petition to Cancel Water Permit No. 63-9019. We would be available to proceed with the hearing with respect to this matter December 2 through the 5th, 1986. Unfortunately, the November time period is unavailable.

I will address the points raised in Mr. Olowinski's correspondence of September 25, 1986.

I must totally disagree with Mr. Olowinski's statement that there are "compelling reasons why the Department should also defer consideration of Pioneer's petition to cancel the

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APR 04 1988

Mr. David R. Tuthill, Jr., P.E.  
September 30, 1986  
Page 2

Districts,<sup>1</sup> existing water permit for a reasonable period of time to allow the Federal Energy Regulatory Commission (FERC) to rule on Pioneer's pending motions to intervene, reopen the federal license proceeding and halt construction of the Lucky Peak Project (the FERC Motions)." (September 25, 1986, correspondence, page 1.)

Mr. Olowinski wrongly construes Pioneer's actions before FERC. Contrary to his suggestion, Pioneer has not selected FERC as the forum to litigate the issues raised in its petition to cancel Permit No. 63-9019. The issues presented by Pioneer in the petition to cancel Permit No. 63-9019 pertain to the validity of that permit, as issued by the Idaho Department of Water Resources. A thorough analysis of Pioneer's pleadings before FERC immediately reveals that its actions before that agency pertain to the federal jurisdiction with respect to hydroelectric licensing and do not extend to considerations of state law with respect to the appropriation of water and its application to a beneficial use.

This pertains, in particular, to Mr. Olowinski's out-of-context reference to the "failure of the license to be held by a legal entity." (September 25, 1986, correspondence, page 2.) This reference in the pleadings before FERC pertains to the FERC license.

Moreover, the discussion of the invalidity of the water Permit No. 63-9019, contained in Pioneer's Supplement, pages 59-61, in the FERC proceeding, bear directly upon the validity of the FERC license, inasmuch as the federal licenseholder must have all pertinent federal, state, and local authorizations in order to proceed to construction under the FERC authorization. Pioneer did not submit the state water law question to FERC for an adjudication with respect to that issue, and in fact indicated to FERC at footnote 18 in Pioneer's Supplement that it had concurrently filed a petition to cancel Permit No. 63-9019 with the Idaho Department of Water Resources.

Mr. Olowinski wrongly asserts that Pioneer selected FERC as the forum in which to litigate the issues raised in its petition to cancel Permit No. 63-9019. He has apparently confused the federal licensing function with respect to hydroelectric projects and the state jurisdictional authority over the use of water

---

<sup>1</sup>This reference to the "Districts'" water permit is a transparent attempt to strengthen the Board of Control's position by misstating the facts. Water Permit No. 63-9019 was issued to the Boise Project Board of Control not the "Districts." Additional references to the "Districts" in Mr. Olowinski's correspondence should be considered with this distinction in mind.

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APR 04 1988

Mr. David R. Tuthill, Jr., P.E.  
September 30, 1986  
Page 3

resources. State law regarding proprietary rights in water is expressly saved from the effects of the Federal Power Act. 16 U.S.C. section 821; Federal Power Commission v. Niagra Mohawk Power Corporation, 347 U.S. 239, 74 S.Ct. 487, 98 L.Ed. 686 (1954).

Mr. Olowinski suggests that since FERC has primary jurisdiction in hydroelectric licensing, its decision "will bear significantly on the proceedings before the Department." (September 25, 1986, correspondence, page 2.) This statement ignores the fundamental distinction between the FERC jurisdiction and the jurisdiction of the Department of Water Resources. Pioneer's petition to cancel deals with the validity of water Permit No. 63-9019 under state law. The Idaho Department of Water Resources is the state agency empowered to make the initial determination with respect to issuance of water permits and is the proper forum for the initial decision with respect to Pioneer's challenge of the water permit. Mr. Olowinski's suggestion that the FERC decision "will bear significantly on the proceedings before the Department" (September 25, 1986, correspondence, page 2) attempts to confuse the distinction between the state law authority of this Department and the federal jurisdictional authority of FERC. There is no reason why this Department cannot proceed to consider the state water law issues separate from, and prior to, a determination by FERC.

In this regard, the comments of Mr. Olowinski with respect to delay of a hearing on Pioneer's petition to cancel for "a reasonable period of time" (September 25, 1986, correspondence, page 2) are inappropriate. Pioneer has received no correspondence or communication from FERC to indicate that a decision with respect to its challenge in that forum can be "expected shortly." (September 25, 1986, correspondence, page 2.) In fact, absolutely nothing has been received from FERC since July 7, 1986.

Mr. Olowinski suggests that a "reasonable" delay in this matter "would not in any way prejudice Pioneer or compromise the Department's jurisdiction." (September 25, 1986, correspondence, page 2.) In fact, it does both. By delaying action before the Department of Water Resources, the Board of Control is attempting to strengthen its position before FERC. If this Department were to act, as Pioneer believes it ultimately should, to revoke and cancel water Permit No. 63-9019, such action would significantly impact the rights of the Board of Control to proceed under the FERC license, inasmuch as it would not possess all required federal, state, and local permits for construction and operation of the project. Similarly, if this Department awaits a determination by FERC, it could potentially be waiting for several years before it takes action. It is extremely likely, if not virtually certain, that the Board of Control of Pioneer will

APR 04 1988

Mr. David R. Tuthill, Jr., P.E.  
September 30, 1986  
Page 4

appeal the FERC decision to the United States Circuit Court of Appeals after a decision is rendered. Consequently, the additional time delays involved in such a proceeding will mean that the Department will not take action for several years if it awaits a final outcome with respect to the FERC proceedings. As the delays continue, the Board of Control proceeds with its construction of the project, incurring additional expenses and attempting to strengthen its arguments with respect to equitable estoppel. All of this would be to the detriment of Pioneer's legitimate claim to obtain a timely hearing on its Petition to Cancel Water Permit No. 63-9019.

With respect to Application for Permit No. 63-10366, again, Mr. Olowinski's arguments are incorrect. Contrary to his suggestion, Pioneer has not acknowledged what Mr. Olowinski suggests. And, just as "obviously," the Board of Control cannot assure the Department that the FERC license will not be rendered invalid, or that Pioneer will not obtain a license from FERC.

As a final matter, I wish to take the depositions of a number of witnesses prior to the hearing before the Department with respect to Pioneer's Petition to Cancel Permit No. 63-9019. These depositions will be taken pursuant to Rule 9,13 of the Rules and Regulation of Practice and Procedure Before the Department of Water Resources. Please provide me with copies of any required forms which the Department wishes to utilize with respect to such depositions. If there are no such forms, I will prepare a notice of deposition with respect to each witness. If the opposing parties do not voluntarily comply with these notices, I will be required to formally request a subpoena be issued by the Director of the Department of Water Resources for the attendance of the witnesses, in accordance with Rule 9,12. of the Rules and Regulations of Practice and Procedure Before the Department of Water Resources.

Thank you for your cooperation with respect to these matters.

Very truly yours,

ELAM, BURKE AND BOYD

  
Scott L. Campbell

SLC:ls

cc: Mr. Ramond D. Givens, Esq.  
Randall C. Fredricks, Esq.  
Larry Sullivan, Esq.  
William F. Ringert, Esq.  
Donald A. Olowinski, Esq.  
Phillip Rassier, Esq.  
U.S. Department of the Interior  
U.S. Army Corps of Engineers  
Board of Directors of Pioneer Irrigation District

**MICROFILMED**

APR 04 1988

Dnr

# HAWLEY TROXELL ENNIS & HAWLEY

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TELEPHONE  
(208) 233-0845

September 25, 1986

RECEIVED  
SEP 29 1986

David R. Tuthill, Jr., P.E.  
Manager, Western Regional Office  
State of Idaho  
Department of Water Resources  
Western Region, 450 W. State Street  
Statehouse  
Boise, ID 83720

Department of Water Resources  
Western Regional Office

Re: Petition to Cancel Permit No. 63-9019 and  
Application for Permit No. 63-10366

Dear Mr. Tuthill:

We are responding to your letter of September 11, 1986 on behalf of the Boise-Kuna Irrigation District, the Nampa & Meridian Irrigation District, the New York Irrigation District, the Wilder Irrigation District and the Big Bend Irrigation District (the Districts).

We agree with the Department that Pioneer's Application for Permit No. 63-10366 cannot logically be considered, if it is considered at all, until after the Department rules on Pioneer's petition to cancel the existing Permit No. 63-9019.

There are, however, compelling reasons why the Department should also defer consideration of Pioneer's petition to cancel the Districts' existing water permit for a reasonable time to allow the Federal Energy Regulatory Commission (FERC) to rule on Pioneer's pending motions to intervene, reopen the federal license proceeding and halt construction of the Lucky Peak Project (the FERC Motions).

Pioneer voluntarily selected FERC as the forum in which to litigate the issues raised in its petition to cancel Permit No. 63-9019. Pioneer filed its Motions with FERC within 30 days of the date of the Department's letter of September 11, 1986.

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David R. Tuthill, Jr., P.E.  
September 24, 1986  
Page 2

before it filed its petition with the Department of Water Resources (February 20, 1986 vs. May 20, 1986). FERC thus had jurisdiction first. Pioneer has raised similar issues before FERC as it has before the Department, including the "failure of the license to be held by a legal entity", Pioneer's Memorandum at 18-23, and that the Districts obtained their water permit without compliance with Idaho Code §§43-206 (Pioneer's Supplement, pages 59-61).

Pioneer's answer to the Districts' protest of its application for a permit reflects the importance of the FERC proceedings. See paragraphs III and VIII of Pioneer's answer. In those paragraphs, Pioneer essentially acknowledges that it cannot put the water it has requested to beneficial use unless FERC both invalidates the Districts' license and issues a license to Pioneer.

It also makes good common sense to allow FERC to proceed first. FERC has primary jurisdiction in hydroelectric licensing, and the decision it makes will bear significantly on the proceedings before the Department. It would also be time consuming, expensive, and wasteful of the resources of both the Department and the litigants to proceed while FERC is considering this matter.

For these reasons, it would be fair and proper for the Department to defer a hearing on Pioneer's petition to cancel the Districts' water permit for a reasonable period of time. The issues before FERC have been fully submitted since July 7, 1986, and a decision is expected shortly. If, however, the Department is concerned about the length of a deferral, the hearing could be postponed until after January 1, 1987, at which time the matter could be inquired into again and appropriate action taken.

This procedure would not in any way prejudice Pioneer or compromise the Department's jurisdiction. If necessary, a hearing on the petition to cancel could be held immediately following the FERC ruling. Moreover, this brief delay would clearly not prejudice Pioneer since it could not utilize a permit or proceed to even seek a FERC license until FERC rules on the pending Motions.

With respect to Pioneer's Application for Permit No. 63-10366, we submit that it would be proper to dismiss the

APR 04 1988

David R. Tuthill, Jr., P.E.  
September 24, 1986  
Page 3

Application based upon the admissions in its answer to the Districts' protest. As pointed out above, Pioneer acknowledges that it cannot put the water applied for to beneficial use unless two things happen: (1) FERC takes the unprecedented action of invalidating the Districts' license for a Project which is over 40% constructed; and (2) FERC issues a license to Pioneer and not to some other applicant for a license. Obviously, Pioneer cannot come close to assuring the Department that both of these events will happen let alone when they will happen. It is sheer speculation at this point, and thus it would be appropriate to dismiss Pioneer's application.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

*Don A. Olowinski*  
Don A. Olowinski

DAO/mmb

xc: Raymond D. Givens, Esq.  
Randall C. Fredricks, Esq.  
Larry Sullivan, Esq.  
William F. Ringert, Esq.  
Scott L. Campbell, Esq.  
U.S. Department of Interior  
U.S. Corp. of Engineers

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APR 04 1988





State of Idaho  
**DEPARTMENT OF WATER RESOURCES**  
WESTERN REGION, 450 W. State Street, Boise, Idaho

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

Mailing address:  
Statehouse  
Boise, Idaho 83720  
(208) 334-2190

September 22, 1986

Scott L. Campbell  
ELAM, BURKE AND BOYD  
First Interstate Bldg.  
Post Office Box 1559  
Boise, ID 83701

Re: Application for Permit No. 63-10366 and Permit No. 63-9019

Dear Mr. Campbell:

We are in receipt of your letter dated September 16, 1986 in which you requested a copy of the protest filed with respect to Application for Permit No. 63-10366 by the U. S. Corp of Engineers.

Enclosed please find copies of the protest, dated August 1, 1986 and received by this office on August 4, 1986.

Regarding the scheduling of a hearing on the Petition to Cancel Permit No. 63-9019, please be advised that at this time we are anticipating a late November time to early December time frame. Would you please provide this office with an estimate of the amount of time that you will need to present testimony and documentary evidence, and a list of dates that you would be available during the periods of November 24-26 and December 1-5, 1986? We will use these dates in attempting to identify a suitable time for the principle parties in this matter.

Sincerely,

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

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APR 04 1988

DRT:jp

Enclosures



State of Idaho

## DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 450 W. State Street, Boise, Idaho

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

Mailing address:  
Statehouse  
Boise, Idaho 83720  
(208) 334-2190

September 11, 1986

Raymond D. Givens, Esq.  
GIVENS, McDEVITT, PURSLEY,  
WEBB & BUSER  
P.O. Box 2720  
Boise, ID 83701

William F. Ringert, Esq.  
RINGERT, CLARK, HARRINGTON,  
REID, CHRISTENSON & KAUFMAN  
P.O. Box 2773  
Boise, ID 83701

Randall C. Fredricks, Esq.  
CLEMENS, COSHO & HUMPREHEY  
1110 First Interstate Bank Bldg.  
Boise, ID 83702

Don A. Olowinski, Esq.  
HAWLEY, TROXELL, ENNIS & HAWLEY  
P.O. Box 1617  
Boise, ID 83701

Larry Sullivan, Esq.  
SCHROEDER, HUTCHENS & SULLIVAN  
P.O. Box 220  
Vale, OR 97918

Scott L. Campbell  
ELAM, BURKE & BOYD  
P.O. Box 1559  
Boise, ID 83701

U.S. Department of Interior  
Bureau of Reclamation  
Attn: Ron Golus  
Box 043-550 W. Fort St.  
Boise, ID 83724

U.S. Corp. of Engineers  
Attn: LTC Richard M. Ely  
Office of Council Bldg. 602  
City-County Airport  
Walla Walla, WA 99362-9265

Re: Application for Permit No. 63-10366

Dear Interested Party:

The protest period for the above-referenced application ended on August 25, 1986. To date this office has received the following documents in response to the initial distribution and advertising of the application:

| <u>Author</u>                                          | <u>Nature</u>                        | <u>Date Recieved</u> |
|--------------------------------------------------------|--------------------------------------|----------------------|
| 1. U.S. Corps of Engineers                             | Protest                              | Aug. 4, 1986         |
| 2. Givens, Ringert, Fredericks,<br>Sullivan, Olowinski | Protest                              | Aug. 4, 1986         |
| 3. U.S. Dept. of Interior<br>Bureau of Reclamation     | Request for Condition<br>of Approval | Aug. 4,              |
| 4. Scott L. Campbell                                   | Response to Protest                  | Aug. 11, 1986        |

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Page 2

63-10366

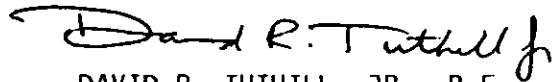
The purposes of this letter are to acknowledge receipt of the above referenced documents and to describe a proposed course of action by the Department with respect to the application.

A central issue of the Department's evaluation of the Application for Permit is the validity of a prior water right Permit, No. 63-9019, which describes the same location as this application for permit. All of the recipients of this letter are aware that Pioneer Irrigation District has requested that the Department cancel Permit No. 63-9019. The current status of the cancellation request is that the Department has received a request for hearing in the matter, and has determined that such a hearing will be held. This hearing is anticipated to be scheduled soon.

Because the validity of Permit No. 63-9019 is pivotal to consideration of Application for Permit No. 63-10366, the outcome of the hearing for Permit No. 63-9019 will be determined before proceeding with Application for Permit No. 63-10366.

If you object to the method of proceeding as described in this letter, please advise. Unless a compelling reason is offered to the contrary, the Department will proceed accordingly.

Sincerely,



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

DRT:nl

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APR 04 1988

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JUN 23 1986

Department of Water Resources

Don A. Olowinski  
HAWLEY TROXELL ENNIS & HAWLEY  
P.O. Box 1617  
Boise, Idaho 83701  
Telephone: (208) 344-6000

Office of the Attorney  
General

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                       |
|---------------------------------|---|-----------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                       |
|                                 | ) | Permit No. 63-9019    |
| Petitioner,                     | ) |                       |
|                                 | ) | ANSWER TO PETITION TO |
| vs.                             | ) | CANCEL WATER PERMIT   |
|                                 | ) |                       |
| BOISE PROJECT BOARD OF CONTROL, | ) |                       |
|                                 | ) |                       |
| Respondent.                     | ) |                       |

COMES NOW the Boise Project Board of Control, by and through its member irrigation districts, the Boise-Kuna Irrigation District, the Nampa & Meridian Irrigation District, the New York Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District (the "Districts"), and hereby answers the petition of the Pioneer Irrigation District ("Pioneer") to cancel Water Permit No. 63-9019 as follows. Pioneer's petition should be dismissed without a hearing for the following reasons:

1. Pioneer failed to protest approval of the application for Water Permit No. 63-9019 in the time provided by statute and cannot now contest the approved permit.

2. Pioneer's petition is barred by laches.

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APR 04 1988

3. Equitable estoppel prevents cancellation of the permit.

4. The Board of Control is the operating agent for the Districts. Since it is their agent, the true holder of the permit is the Districts who are qualified to hold the permit.

5. The Board of Control is qualified to apply for and hold a permit to appropriate the public waters of the State of Idaho.

6. The Idaho Department of Water Resources is specifically empowered to grant a permit for the appropriation of the public waters of Idaho for use in Oregon.

7. Federal law preempts the requirements of Idaho law if it would be interpreted to prohibit the Districts from holding a water permit through the Board of Control.

Pursuant to the Department's rules of practice and procedure, the Districts submit in support of their answer an accompanying memorandum and exhibits.

Based on the above, the Districts request that the petition of Pioneer be dismissed without a hearing.

GIVENS, McDEVITT, PURSLEY,  
WEBB & BUSER

By Raymond D. Givens  
Raymond D. Givens  
Counsel for New York  
Irrigation District

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APR 04 1988

HAWLEY TROXELL ENNIS & HAWLEY

By Don A. Olowinski  
Don A. Olowinski  
Rita L. Berry  
Counsel for Wilder Irrigation  
District

CLEMONS, COSHO & HUMPHREY

By R. Fredricks  
Randall C. Fredricks  
Counsel for Boise-Kuna  
Irrigation District

RINGERT, CLARK, HARRINGTON, REID,  
CHRISTENSON & KAUFMAN

By W. F. Ringert  
William F. Ringert  
Counsel for Nampa & Meridian  
Irrigation District

SCHROEDER, HUTCHENS & SULLIVAN

By Larry Sullivan  
Larry Sullivan  
Counsel for Big Bend  
Irrigation District

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 23rd day of June, 1986, I served the within and foregoing ANSWER TO PETITION TO CANCEL WATER PERMIT NO. 63-9019, by causing a true and correct copy thereof to be deposited in the United States Mail, Boise, Idaho, postage prepaid, addressed as follows:

Scott L. Campbell  
Elam, Burke & Boyd  
P.O. Box 1559  
Boise, Idaho 83701

Don A. Olowinski  
Don A. Olowinski

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APR 04 1988

June 3, 1986

Raymond D. Givens  
GIVENS, McDEVITT, PURSLEY,  
WEBB & RUSER  
Counsellors and Attorneys at Law  
P. O. Box 2720  
Boise, ID 83702

Dear Mr. Givens:

Enclosed as requested is the approved stipulation for additional  
time to respond.

Sincerely,

NORMAN C. YOUNG  
Administrator  
Resource Administration Division

NCY:alw  
Enc.

APR 04 1988



June 3, 1986

Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P. O. Box 1559  
Boise, ID 83701

Dear Mr. Campbell:

Enclosed as requested is the approved stipulation for additional time to respond.

Sincerely,

NORMAN C. YOUNG  
Administrator  
Resource Administration Division

NCY:alw  
Enc.

**MICROFILMED**

APR 04 1988

CLEMONS, COSHO & HUMPHREY, P. A.  
COUNSELORS AND ATTORNEYS AT LAW  
ELEVENTH FLOOR, FIRST INTERSTATE BUILDING  
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BOISE, IDAHO 83702

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JUN 2 1986

Department of Water Resources  
Western Regional Office

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Department of Water Resources

RAYMOND D. GIVENS  
GIVENS, McDEVITT, PURSLEY,  
WEBB & BUSER  
Counsellors and Attorneys at Law  
P. O. Box 2720  
Boise, Idaho 83702  
Telephone: (208)342-6571  
  
Attorneys for BOISE PROJECT BOARD  
OF CONTROL

BEFORE THE DEPARTMENT OF WATER RESOURCES, STATE OF IDAHO

|                                 |   |                            |
|---------------------------------|---|----------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                            |
|                                 | ) | Permit No. 63-9019         |
| Petitioner,                     | ) |                            |
|                                 | ) | STIPULATION FOR ADDITIONAL |
| vs.                             | ) |                            |
|                                 | ) | TIME TO RESPOND            |
| BOISE PROJECT BOARD OF CONTROL, | ) |                            |
|                                 | ) |                            |
| Respondent.                     | ) |                            |
| +++++                           | ) |                            |

COMES NOW SCOTT L. CAMPBELL of Elam, Burke and Boyd,  
Attorneys for Petitioner Pioneer Irrigation District and RAYMOND  
D. GIVENS of Givens, McDevitt, Pursley, Webb & Buser, Attorneys  
for Respondent, Boise Project Board of Control, and stipulate  
and agree that Respondent may have until the 23rd day of June,  
1986, in which to respond to the petition filed by Pioneer  
Irrigation District.

Dated this 2nd day of <sup>June</sup>~~May~~ 1986.

ELAM, BURKE and BOYD

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BY: Scott L. Campbell  
Scott L. Campbell  
Attorneys for Petitioner

STIPULATION, P. 1

GIVENS, McDEVITT, PURSLEY,  
WEBB & PURSLEY

By: Ray Givens  
Ray Givens  
Attorneys for Respondent

ORDER

IT IS SO ORDERED.

Dated this 3<sup>RD</sup> day of JUNE, 1986.

DEPARTMENT OF WATER RESOURCES

By: Norman C. Young  
ADMINISTRATOR

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MAY 21 1986

Peter J. Boyd  
Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Department of Water Resources

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                          |
|---------------------------------|---|--------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                          |
|                                 | ) |                          |
| Petitioner,                     | ) | Permit No. 63-9019       |
|                                 | ) |                          |
| v.                              | ) | PETITION TO CANCEL       |
|                                 | ) | WATER PERMIT NO. 63-9019 |
| BOISE PROJECT BOARD OF CONTROL, | ) |                          |
|                                 | ) |                          |
| Respondent.                     | ) |                          |
|                                 | ) |                          |

COMES NOW, Pioneer Irrigation District, and hereby petitions the Director of the Idaho Department of Water Resources for an order canceling and revoking Idaho Department of Water Resources Permit No. 63-9019.

This Petition is brought pursuant to Rule 3,1. of the Idaho Department of Water Resources Practice and Procedure Rules and Regulations, Idaho Code sections 42-205, 42-206, 42-208, and 42-302. This petition is supported by the memorandum in support of petition and the attachments thereto, which is filed concurrently herewith.

A hearing on this petition is requested.

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PETITION TO CANCEL WATER  
PERMIT NO. 63-9019 - 1

DATED This 21<sup>st</sup> day of May, 1986.

ELAM, BURKE & BOYD

By Scott L. Campbell  
Scott L. Campbell, Of the Firm  
Attorneys for Pioneer Irrigation  
District

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 21<sup>st</sup> day of May, 1986, I  
caused a true and correct copy of the above and foregoing instru-  
ment to be mailed, postage prepaid, to:

Boise Project Board of Control  
214 Broadway  
Boise, ID 83702

Scott L. Campbell  
Scott L. Campbell

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APR 04 1988

Peter J. Boyd  
Scott L. Campbell  
ELAM, BURKE AND BOYD  
1010 First Interstate Building  
P.O. Box 1559  
Boise, Idaho 83701  
(208) 343-5454

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

|                                 |   |                          |
|---------------------------------|---|--------------------------|
| PIONEER IRRIGATION DISTRICT,    | ) |                          |
|                                 | ) |                          |
| Petitioner,                     | ) | Permit No. 63-9019       |
|                                 | ) |                          |
| v.                              | ) | MEMORANDUM IN SUPPORT OF |
|                                 | ) | PETITION TO CANCEL WATER |
| BOISE PROJECT BOARD OF CONTROL, | ) | PERMIT NO. 63-9019       |
|                                 | ) |                          |
| Respondent.                     | ) |                          |
|                                 | ) |                          |

PRELIMINARY STATEMENT

Pioneer Irrigation District has filed a Petition to Cancel Water Permit No. 63-9019 with the Idaho Department of Water Resources. This memorandum discusses the applicable law and factual support for the petition.

ARGUMENT

On August 31, 1977, the Boise Project Board of Control filed with the Idaho Department of Water Resources, an Application for Permit for 5,700 cubic feet per second ("cfs") of water for power purposes on the Boise River. (See Exhibit 1, hereto.) Apparently in support of the Application for Permit, the Board of Control submitted a document with the Application for Permit. The Board of Control

MEMORANDUM IN SUPPORT OF PETITION  
TO CANCEL WATER PERMIT NO. 63-9019 - 1

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"Affidavit to Establish Qualification to do Business Under the Laws of the State of Idaho." (See Exhibit 2, hereto.) Based upon the Application for Permit and the supporting documentation, the application was accepted by the Idaho Department of Water Resources for processing on August 31, 1977. Subsequently, on May 24, 1984, Mr. A. Kenneth Dunn, Director of the Idaho Department of Water Resources, approved the issuance of Water Permit No. 63-9019 to the Boise Project Board of Control. (See Exhibit 1, hereto.) At the time of filing of the Application for Permit, at the time of approval and issuance of the permit, and at the present time, the permittee, the Boise Project Board of Control, did not and has not satisfied the requirements of Idaho Code sections 42-205 and 206. Consequently, the permit must be canceled and revoked by the Director of the Department of Water Resources.

Idaho Code sections 42-205 and 42-206 read as follows:

Issuance of permit--Restrictions--Preference.--(1) No permit shall be issued by the department of water resources of the state of Idaho, for the appropriation of water for power purposes, nor shall any such permit be assigned, transferred, mortgaged, sold or conveyed to any person, firm or corporation except in accordance with the provisions of this act.

(2) Water cannot be appropriated for hydropower development uses within or using existing man-made irrigation facilities without the permission of the owner thereof.

(3) When competing applications for a permit have been filed prior to the effective date [April 1, 1981] of this act for the additional use for hydropower purposes that would utilize facilities that are owned or controlled by the holder of an existing water permit, license, decree, or established constitutional water usage, the director shall

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give preference to the application of the owner of the existing rights or his agent.

Idaho Code section 42-205 (emphasis added)<sup>1</sup>.

Residence a requisite for issuance.--No permit to appropriate water for power purposes in the state of Idaho shall hereafter be granted to any person or association of persons not an actual bona fide resident or residents of the state of Idaho, nor to any corporation unless organized or qualified to do business in and under the laws of the state of Idaho.

Idaho Code section 42-206 (emphasis added).

The provisions of Idaho Code section 42-206 clearly prohibit the issuance of a permit to appropriate water for power purposes "to any person or association of persons not an actual bone fide resident or residents of the state of Idaho, (or) to any corporation unless organized or qualified to do business in and under the laws of the state of Idaho." The Boise Project Board of Control, both at the time of filing the Application for Permit with the Idaho Department of Water Resources, and at the present time, has failed to qualify under any of the categories listed in Idaho Code section 42-206. The Board of Control is neither a person, nor an association of persons, nor is it a corporation

---

<sup>1</sup>At the time of the filing of the Application for Permit, Idaho Code section 42-205 read as follows:

Issuance of permit--Restrictions.--No permit shall be issued by the department of water resources of the state of Idaho, for the appropriation of water for power purposes, nor shall any such permit be assigned, transferred, mortgaged, sold or conveyed to any person, firm or corporation except in accordance with the provisions of this act.

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"organized or qualified to do business in and under the laws of the state of Idaho."

Instead, the Board of Control is "an operating agent" of five irrigation districts,<sup>2</sup> which was created pursuant to a series of interconnecting contracts, executed in 1926 between the districts and the U.S. Department of the Interior, pursuant to federal law, which is now codified as 43 U.S.C. sections 500 and 501. Additionally, the pertinent federal authorizing statutes and the contract itself limited the operating authority of the Board of Control to the operation and maintenance of the transferred works of the Arrowrock Division of the Boise Project. Neither the federal statutes, nor the authorizing contracts empowered the Board of Control to seek and hold a water permit for power purposes under Idaho law.

Accordingly, it is clear that the Board of Control is neither a "person," nor an "association of persons" who are "actual bona fide resident(s) of the state of Idaho." Additionally, it should be pointed out that even if the Department construes the Board of Control as an "association of persons," the participation on the Board of Control of the Big Bend Irrigation District, an Oregon irrigation district, would clearly preclude qualification of the Board of Control under such an interpretation.

---

<sup>2</sup>The five irrigation districts with membership on the Board of Control are: the Nampa and Meridian Irrigation District, the Boise-Kuna Irrigation District, the Wilder Irrigation District, the New York Irrigation District, and the Big Bend Irrigation District (the Big Bend District is an irrigation district located wholly in the state of Oregon).

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Also, it is clear that the Board of Control is not a "corporation . . . organized or qualified to do business in and under the laws of the state of Idaho." Despite the affidavit which was filed with the Application for Permit (see Exhibit 2, hereto), the Board of Control did not and does not qualify to do business in and under the laws of the state of Idaho. This fact is clearly demonstrated by the Certificate of Mr. Peter T. Cenarrusa, Secretary of State of the State of Idaho (Exhibit 3, hereto). Exhibit 3 powerfully demonstrates that neither the Big Bend Irrigation District nor the Boise Project Board of Control have ever been "organized or qualified to do business in and under the laws of the state of Idaho." Consequently, the requirements of Idaho Code section 42-206 were not satisfied at the time of the filing of the Application for Permit No. 63-9019, nor are they satisfied at the present time. Therefore, because Idaho Code section 42-205 prohibits the issuance of any permit for the appropriation of water for power purposes, except in accordance with the provisions of the act, Permit No. 63-9019 must be canceled and revoked by the Director of the Idaho Department of Water Resources.

DATED This 21st day of May, 1986.

ELAM, BURKE & BOYD

By Scott L. Campbell  
Scott L. Campbell, Of the Firm  
Attorneys for Pioneer Irrigation  
District

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MEMORANDUM IN SUPPORTION OF PETITION  
TO CANCEL WATER PERMIT NO. 63-9019 - 5

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 21<sup>st</sup> day of May, 1986, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Boise Project Board of Control  
214 Broadway  
Boise, ID 83702

  
\_\_\_\_\_  
Scott L. Campbell

MEMORANDUM IN SUPPORTION OF PETITION  
TO CANCEL WATER PERMIT NO. 63-9019 - 6

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BOISE PROJECT BOARD OF CONTROL

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

APPROVED

To Appropriate the Public Waters of the State of Idaho  
(TYPE OR PRINT IN INK)

Identification No. \_\_\_\_\_

Application No. 63-9019

1. Name of applicant Boise Project Board of Control Phone: 344-1141  
post office address 214 Broadway, Boise, Idaho 83702

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

3 a. Location of point of diversion is SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 11 Township 2N  
Range 3E B.M. Ada County; additional points of diversion if any: \_\_\_\_\_

b. If water is not consumed, it will be discharged into Boise River at a point in SW  $\frac{1}{4}$   
of NE  $\frac{1}{4}$  of Section 11 Township 2N Range 3E B.M. Ada County

4. Water will be used for the following purposes:

Amount 5,700 or Power purpose from 1-1 to 12-31 (both dates inclusive)  
(cfs or acre-feet per annum)

Amount \_\_\_\_\_ for \_\_\_\_\_ purpose from 11 to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)

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

5. Total quantity to be appropriated:

a. 5,700 cubic feet per second ~~XXXXX~~

b. ~~XXXXXXXXXXXX~~

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. controlled reservoir  
discharge - to penstock - to hydro turbines.

b. Height of storage dam 340 feet, active reservoir capacity 278,200 acre feet; total reservoir  
capacity 306,000 acre feet, materials used in storage dam: rolled earth and gravel  
Period of year during which storage will occur January 15 to July 15 inclusive.  
Mo. Day Mo. Day

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

7. a. Time required for the completion of the works and application of the water to the proposed beneficial use  
is 5 years.

b. Estimated construction cost is \$ 40,450,000 select project \$ 48,400,000 alternative

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: SW  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 11 Township 2N  
Range 3E B.M. \_\_\_\_\_

(2) Amount of power to be generated: 462,645,000 115 median  
100,575 hp under feet of head  
per fall over w/ Otis Peterson 175 ft.

(3) List number of each kind of livestock to be watered: \_\_\_\_\_

(4) Name of municipality to be served \_\_\_\_\_, or number of families to be  
supplied with domestic water: \_\_\_\_\_

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

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

| TWP | RANGE | 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 |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |

Total number of acres to be irrigated.....

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

9. a. Who owns the property at the point of diversion U.S. Army Corps of Engineers  
(Public Flood Control Project)

b. Who owns the land to be irrigated or place of use U. S. Army Corps of Engineers

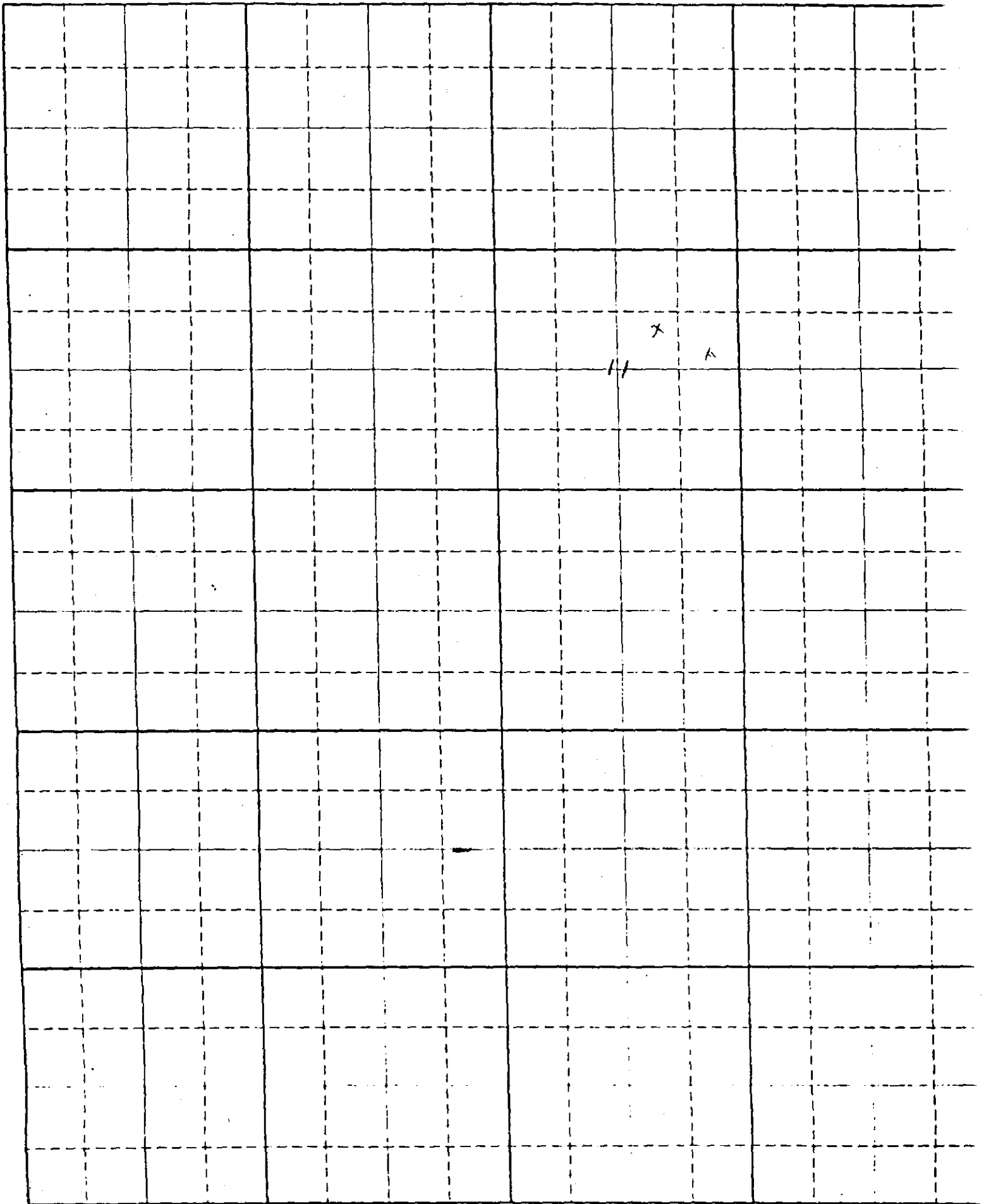
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing arrangement is non-existent - compensation for use of the facility would be determined by F.P.C.

10. Remarks 1,100,026 cfs represents the total annual diversion

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



Scale 2 inches equal 1 mile

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

BOISE PROJECT BOARD OF CONTROL

By Laramie L. Harrington  
Chairman

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Proposed Priority 8/31/77

Received by Y Date 8-31-77 Time 1:50 pm

Preliminary check by WPM Fee \$ 1,535.00

Received by Y Date 8-31-77 # 8369

Publication prepared by Y Date 9-2

Published in Idaho Statesman

Publication dates Sept 8-15

Publication approved Y Date 10-17-77

Priority reduced to Y Reason re-ad

Protests filed by: none

Copies of protests forwarded by Y

Hearing held by Y Date Y

Recommended for approval denial by kw

#### ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 63-9019, 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 May 1, 19 89.

c. This permit is subject to delivery by the watermaster of Water District No. 63, Boise River.

d. Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.

e. This permit does not convey any authority to require or demand the release of water but shall only be effective to allow generation of hydroelectricity using water released under existing rights and operating procedures for irrigation, flood control and fish and wildlife purposes.

f. The diversion and use of water under this permit and any license issued hereunder is subject to review by the Director on June 1, 2030. 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.

g. For licensing purposes, a scientific measurement of the diversion rate of the system as it is normally operated shall be provided by either properly installing an approved type of measuring device or access port or by having a professional engineer certify the rate of diversion to the department prior to submitting proof of beneficial use of water.

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

i. This permit is subject to the provisions of Section 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.

j. Use of water under this permit is subordinated to future diversion of water for irrigation or other consumptive beneficial uses.

k. Structural modification to the dam and storage of water is contingent upon certification to the Department of Water Resources that plans and specifications have been reviewed and approved by the U.S. Army Corps of Engineers and that construction has proceeded in full compliance with the final approved plans.

SEE CONDITIONS 1. and m. on ATTACHED SHEET.

Dated this 24th day of May, 19 89

Director

ATTACHMENT  
TO CONDITIONS OF APPROVAL  
For Permit No. 63-9019

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

m. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.

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AFFIDAVIT TO ESTABLISH QUALIFICATION TO  
DO BUSINESS UNDER THE LAWS OF THE STATE OF IDAHO.

STATE OF IDAHO     )  
                              ) ss  
County of Ada,     )

CLARENCE L. GHARRING, Being first on oath duly sworn,  
deposes and says:

That he is the Chairman of the Boise Project Board of Control; that the Boise Project Board of Control is an agency created as a result of contract entered into under the authority of Federal and State statutes, pursuant to which said Board of Control acts as operating agent for the Boise-Kuna Irrigation District, the Nampa-Meridian Irrigation District, the New York Irrigation District and Wilder Irrigation District, all located in the state of Idaho, and the Big Bend Irrigation District, located in the state of Oregon. Under the provisions of an Act of Congress dated June 17, 1902 (32 Stat. 388) and acts amendatory thereof and supplemental thereto, and particularly under the provisions of Section 4 of an Act of Congress dated December 5, 1924 (43 Stat. 672,701, now Sections 500 and 501, Chapter 12, Title 43 U.S.C.A.) and has such statutorial recognition as a quasi-municipal corporation, authorized to do business in the state of Idaho pursuant to the provisions of Section 57-104, Idaho Code; that the registered office of the Boise Project Board of Control is 214 Broadway Avenue, Boise, Idaho 83702, wherein are kept all of the records required to be kept under the provisions of Section 30-144 applicable to irrigation districts.

Clarence L. Gharring  
Clarence L. Gharring

SUBSCRIBED AND SWORN To before me this 26th day of August, 1977.

Margaret L. Linton  
Notary Public for Idaho  
Residence: Boise, Idaho

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APR 04 1988



# State of Idaho

## Department of State.

### C E R T I F I C A T E

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

I FURTHER CERTIFY That the records of this office fail to show that a corporation by the name of BIG BEND IRRIGATION DISTRICT has ever been authorized to do business in the State of Idaho as a foreign corporation or been incorporated under the laws of the State of Idaho as a domestic corporation, and there is, therefore, no corporation authorized to transact business in the State of Idaho under that name as of this date.

I FURTHER CERTIFY That the records of this office fail to show that a corporation by the name of BOISE PROJECT BOARD OF CONTROL has ever been authorized to do business in the State of Idaho as a foreign corporation or been incorporated under the laws of the State of Idaho as a domestic corporation, and there is, therefore, no corporation authorized to transact business in the State of Idaho under that name as of this date.

Dated: May 5, 1986



*Pete T. Cenarrusa*  
SECRETARY OF STATE

*Shirley J. Clark*  
Corporations Clerk

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APR 04 1988

# HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS

ROBERT I. TROXELL  
JESS B. HAWLEY, JR.  
JOHN T. HAWLEY, P.A.  
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M. NEAL NEWHOUSE  
CRAIG L. MEADOWS  
JOSEPH D. MCCOLLUM, JR.  
WAYNE S. SLAUGHTER, JR.  
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ONE CAPITAL CENTER  
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TELEPHONE  
(208) 344-6000

TELECOPIER  
(208) 342-3829

PAUL B. ENNIS  
(1916-1982)

POCATELLO OFFICE  
125 NORTH GARFIELD  
POST OFFICE BOX 4167  
POCATELLO, IDAHO 83205

TELEPHONE  
(208) 233-0845

April 29, 1986

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MAY 1 1986

Department of Water Resources

Norm Young  
Administrator, Administration Division  
Department of Water Resources  
450 W. State  
Boise, ID 83702

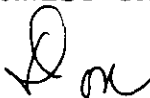
Dear Norm:

I have enclosed for your information a copy of our letter to FERC in Washington, D.C. concerning the recreation plan and minimum stream flow consultation in regard to Lucky Peak. As I previously discussed with you, we were advised that our letter to FERC in Portland should have been directed to FERC in Washington. As I also discussed with you, I have changed the date for completion of the Plan and consultation to "sixty days from the date of publication of the final version of the Corps Master Plan or October 1, 1986, whichever is earlier."

Thank you for your continued cooperation.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

  
Don A. Olowinski

DAO/mmb

Enc.

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APR 04 1988

# HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS

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KENNETH C. HOWELL  
TERRY K. ELLER  
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ONE CAPITAL CENTER  
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PAUL B. ENNIS  
(1916-1982)

POCATELLO OFFICE  
125 NORTH GARFIELD  
POST OFFICE BOX 4167  
POCATELLO, IDAHO 83205

TELEPHONE  
(208) 233-0845

April 29, 1986

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

63-9d9

Re: FERC License No. 2832, Articles 34 and 35

Dear Mr. Plumb:

We represent the irrigation districts which hold FERC License No. 2832. The purpose of this letter is to give the Commission a status report and plan concerning compliance with Articles 34 and 35 of our FERC license. On March 11, 1986, we sent a report to the Portland regional office of the Commission requesting until July 1, 1986 to complete compliance with Articles 34 and 35. A copy of that letter and its attachments is enclosed.

We were then advised by the regional office to submit our request to the Commission. Since the date of that request, I have discussed this matter further with the Army Corps of Engineers and FERC's regional office. The Corps of Engineers advises me that the June, 1986 publication date for the final version of its Master Plan for recreation development at the Lucky Peak Project may not be met and that it would be more realistic to expect the final version to be published sometime during the summer of 1986. Since so much depends on the publication of that Master Plan, we would revise our request for an extension of time to "sixty days from the date of publication of the final version of the Corps' Master Plan or October 1, 1986, whichever is earlier."

RECEIVED

APR 04 1986

HAWLEY TROXELL ENNIS    HAWLEY

Kenneth Plumb  
Page 2  
April 29, 1986

I have discussed the request for an extension of time with the individuals mentioned in our letter of March 11, 1986, and they all have informed me they have no objection to this request for an extension of time.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

*Don A. Olowinski*  
Don A. Olowinski

DAO/mmb

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APR 04 1988



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

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

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

March 29, 1985

Don A. Olowinski  
Hawley, Troxell, Ennis & Hawley  
P. O. Box 1617  
Boise, ID 83701

RE: Permit No. 63-9019 in the Name of Boise Project Board of Control  
for the Lucky Peak Hydroelectric Project

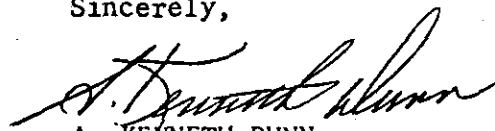
Dear Mr. Olowinski:

You filed on June 11, 1984 a Petition For Hearing on conditions "f" and "j" being included on permit No. 63-9019. Your Petition For Hearing on condition "j" was withdrawn on July 3, 1984, but we have heard nothing from you in response to my July 31, 1984 letter regarding a hearing on condition "f". A copy of that letter is enclosed.

I would like to resolve the issue of including condition "f" in permit No. 63-9019 without undue delay; therefore, unless we hear otherwise within 30 days we will set the matter for hearing.

If you have any questions, please let me know.

Sincerely,

  
A. KENNETH DUNN  
Director

AKD:alw  
Enc.  
cc: Boise Project Board of Control

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APR 02 1988



CONSULTING  
ENGINEERS

**INTERNATIONAL ENGINEERING COMPANY, INC.**  
A MORRISON-KNUDSEN COMPANY

HEADQUARTERS OFFICE  
180 HOWARD STREET  
SAN FRANCISCO, CALIFORNIA 94105/USA  
TELEX: (WUI) 677058, (ITT) 470040, (RCA) 278362, (WUD) 34376  
PHONE: (415) 442-7300

**RECEIVED**

DEC 24 1984

Department of Water Resources

21 December 1984

Subject: Lucky Peak Power Plant Project  
Intake Gate, Hoist, Trashracks and Bulkhead  
Procurement Contract  
Contract No. 4040-PC-3  
Boise, Idaho

ADDENDUM No. 1

NOTICE TO ALL PLANHOLDERS:

Transmitted herewith, for your use and records, please find the below listed items for the above subject contract document. This transmittal consists of the following:

- o Addendum No. 1
  - Description of Changes (6 pages)
  - 6 Drawings

Bidder's acknowledgement of receipt of this transmittal must be included within your bid submittal.

Very truly yours,

INTERNATIONAL ENGINEERING COMPANY, INC.

  
John E. Walters  
Procurement Manager

enclosure

cc: Gen File  
Bid Doc Distr File

**RECEIVED**

APR 04 1988

Boise-Kuna Irrigation District  
Nampa & Meridian Irrigation District  
Wilder Irrigation District  
The Big Bend Irrigation District

---

# **Lucky Peak Power Plant Project**

## **Furnishing and Delivering Intake Gate, Hoist, Trashracks and Bulkhead**

---

**Bid and Contract Documents No. 4040-PC-3  
Addendum No. 1**

December 1984

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APR 04 1988



**INTERNATIONAL ENGINEERING COMPANY, INC.**  
A MORRISON-KNUDSEN COMPANY



Boise-Kuna Irrigation District  
Nampa & Meridian Irrigation District  
Wilder Irrigation District  
The Big Bend Irrigation District

---

# **Lucky Peak Power Plant Project**

## **Furnishing and Delivering Intake Gate, Hoist, Trashracks and Bulkhead**

---

**Bid and Contract Documents No. 4040-PC-3  
Addendum No. 1**

December 1984



**INTERNATIONAL ENGINEERING COMPANY, INC.**  
A MORRISON-KNUDSEN COMPANY

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APR 04 1988

LUCKY PEAK POWER PLANT PROJECT  
CONTRACT FOR FURNISHING AND DELIVERING  
INTAKE GATE, HOIST, TRASHRACKS AND BULKHEAD  
BID AND CONTRACT DOCUMENTS NO. 4040-PC-3

ADDENDUM NO. 1

DECEMBER 21, 1984

TO: All Listed Planholders:

The Bidding Documents for the Lucky Peak Power Plant Project, Contract for Furnishing and Delivering Intake Gate, Hoist, Trashracks and Bulkhead, Documents No. 4040-PC-3, dated November 1984, are hereby modified by the following items in this Addendum No. 1. By this reference, such modifications are hereby made a part of the Documents; all other conditions and provisions therein remain in full force and effect.

| <u>Item</u><br><u>No.</u> | <u>Page</u> | <u>Description of Change</u>                                                                                                                                                                                                                                                                                                                                       |
|---------------------------|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1                         | 1           | In the table of contents for Document 00100 - Instructions to Bidders, change the numbers of Articles "10" and "11" to "11" and "12" respectively, and insert the following new Article 10:<br><br>"10. Permits, Licenses, Taxes and Assessments".                                                                                                                 |
| 2                         | 00100-4     | Instructions to Bidders - Article 3: After Paragraph B., insert the following new Paragraph C.:<br><br>"C. A copy of the Bond Resolution, referred to in Paragraph 6.6 of the Agreement, and associated documents (three large volumes) may be examined at the offices of the Owner and the Engineer."<br><br>Change the number of existing Paragraph "C." to "D." |

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APR 04 1988

| Item No. | Page     | Description of Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3        | 00100-6  | Instructions to Bidders - Paragraph 5.E.: In the Eighth Line of Subparagraph 2. and the Second Line of Subparagraph 4., change "110 days" to "150 days".                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 4        | 00100-7  | <p>Instructions to Bidders - Paragraph 5.K.: Delete the Paragraph and replace with the following:</p> <p>"K. <u>Conditional Bids</u>: If the Bidder in his Bid furnishes anything not called for by these Contract Documents (for example, a cover letter, his own forms, his terms and conditions, exceptions to the requirements of the Contract specified, or other notations not called for by the Contract Documents), the Bidder is cautioned that he runs the risk that he has submitted a Bid which does not conform to the Contract Documents, and the Bid may be rejected.".</p>                                                                                                                                                                           |
| 5        | 00100-7  | Instructions to Bidders - Paragraph 6.A., First Line: Change "The Bid" to "One original and three copies of the Bid".                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 6        | 00100-9  | Instructions to Bidders - Paragraph 8.B., Fifth Line: Change "Performance Bond" to "Perfor- mance and Payment Bonds".                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 7        | 00100-10 | <p>Instructions to Bidders: After Article 9., insert the following new Article 10.</p> <p><u>"10. PERMITS, LICENSES, TAXES, AND ASSESSMENTS</u></p> <p>A. The Bidder, in submitting a Bid for this Contract, shall include in the Bid Price all costs and liabilities for the amounts assessed or which may be assessed under any sale or use tax, permits, licenses, any taxes or assessments upon the wages and salaries paid to employees of the Contractor and subcontractors under the Contract, or any other taxes and permits which may be assessed by Federal, State, or local governments.</p> <p>B. Prices shall include State of Idaho Sales Tax, Use Tax, and all other Federal and State taxes and duties in effect and applicable to the Contract.</p> |

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APR 04 1988

| Item No. | Page     | Description of Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3        | 00100-6  | Instructions to Bidders - Paragraph 5.E.: In the Eighth Line of Subparagraph 2. and the Second Line of Subparagraph 4., change "110 days" to "150 days".                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| 5        | 00100-7  | Instructions to Bidders - Paragraph 6.A., First Line: Change "The Bid" to "One original and three copies of the Bid".                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 6        | 00100-9  | Instructions to Bidders - Paragraph 8.B., Fifth Line: Change "Performance Bond" to "Perfor- mance and Payment Bonds".                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 7        | 00100-10 | <p>Instructions to Bidders: After Article 9., insert the following new Article 10.</p> <p>"10. <u>PERMITS, LICENSES, TAXES, AND ASSESSMENTS</u></p> <p>A. The Bidder, in submitting a Bid for this Contract, shall include in the Bid Price all costs and liabilities for the amounts assessed or which may be assessed under any sale or use tax, permits, licenses, any taxes or assessments upon the wages and salaries paid to employees of the Contractor and subcontractors under the Contract, or any other taxes and permits which may be assessed by Federal, State, or local governments.</p> <p>B. Prices shall include State of Idaho Sales Tax, Use Tax, and all other Federal and State taxes and duties in effect and applicable to the Contract.</p> |

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APR 6 1988

| <u>Item No.</u> | <u>Page</u> | <u>Description of Change</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 |             | <p>C. The Contractor shall accept exclusive liability and hold the Owner harmless for payment of social security taxes, unemployment insurance, worker's compensation, contributions, or other taxes measured by the wages of employees attributable to or performing the work herein mentioned or described.</p> <p>D. The successful Bidder (Contractor) shall be responsible for obtaining all licenses and permits required for manufacture and delivery of the Work by the Contractor under this Contract."</p> <p>Change the number of the existing Articles "10" and "11" to "11" and "12".</p> |
| 8               | 00310-1     | Bid Schedule - Paragraph 1.2.A.: In Item Nos. 1, 2, and 4, change "frames and guides" to "frames, guides, and anchor bolts (except inserts)"; and in Item No. 3, change "assembly" to "assembly, and all anchor bolts including any required inserts".                                                                                                                                                                                                                                                                                                                                                 |
| 9               | 00430-6     | <p>Contractor's Qualification Affidavit, Paragraph 16: At end of the paragraph, insert the following:</p> <p>"(The provisions of this Paragraph 16 will be deemed satisfied upon submission of a statement by the Bidder that it will comply with the provisions of Paragraph 8.D. of the Instructions to Bidders.)".</p>                                                                                                                                                                                                                                                                              |
| 10              | 00500-2     | Agreement - Paragraph 3.1: In the Second Line, change "December 2, 1985" to "January 6, 1986"; in the Eighth Line, change "February 1, 1986" to "August 1, 1986"; and in the Eleventh Line, change "February 1, 1985" to "March 1, 1985".                                                                                                                                                                                                                                                                                                                                                              |
| 11              | 00700-3     | General Conditions - Paragraph 1.1.G., First Line: Change "power plant," to "power plant and appurtenant facilities,".                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 12              | 00700-22    | General Conditions - Paragraph 29.2, Eleventh Line: Change "attached hereto," to "attached hereto by reference"                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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APR 11 1988

| Item No. | Page                      | Description of Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 13       | 01010-1                   | Summary of Work - Paragraph 1-1.B, Third through Fifth Lines: Delete the last sentence and replace with the following two sentences:<br><br>"A new outlet works tunnel will be constructed and the power plant will utilize an existing outlet tunnel which will be modified for use as a power tunnel. The equipment to be furnished under this Contract will be installed (by others) in an intake structure at the upstream end of the new outlet works tnnnel.".                                                                                                                      |
| 14       | 01010-4                   | Summary of Work - Paragraph 1.4.E.: Third and Seventh Lines: Change "February 1, 1985" to "March 1, 1985" (two places).                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 15       | 01010-4<br>and<br>01010-5 | Summary of Work - Article 1.5 Drawings: Delete the following drawings and replace with drawings of the same Drawing Nos. and Titles, marked Revision No. 1, and dated December 14, 1984:<br><br>"Drawing No. Title<br>"D24525 Intake - General Arrangement - Plan, Elevation and Section<br>D24575 Intake - Wheel Gate - Assembly and Details, Sheet 1 of 2<br>D24577 Intake-Wheel Gate - Embedded Parts<br>D24580 Intake - Wheel Gate - Hoist - Hydraulic and Electric Control Diagram<br>D24584 Intake - Bulkhead Gate - Embedded Parts<br>D24588 Intake - Trashrack - Embedded Parts". |
| 15A      | 01760                     | Services of Installation Supervisors - Paragraph 1.3 A.: Delete the Paragraph and replace with the following:                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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APR 04 1988

| Item<br>No. | Page     | Description of Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|             |          | <p>"A. Measurement for payment for the services of an installation supervisor will be the number of 8-hour work days as ordered in writing by the Owner. (Work days hereby defined as Mondays through Fridays, excluding legal holidays). The number of work days will include all the work days within the period or periods of time that services of the installation supervisor are provided at the directed location in response to written request by the Engineer, plus two additional days travel allowance for each period. However, if the installation supervisor is absent when his or her services are scheduled by the Engineer to be available, those days will not be included for payment. The two day travel allowance will include the day prior to the first day of the period and the day following the last day of the period and will be paid for at the same rate. The first and last days of a period will be designated by the Engineer. Saturdays, Sundays, or legal holidays within a period will be excluded from payment, except as provided for in Paragraph B. below. Full days spent providing supervision services for work done to correct deficiencies in the equipment supplied under this Contract will also be excluded from payment."</p> |
| 15B         | 01760-2  | <p>Services of Installation Supervisors - Paragraph 1.3 B., Sixth Line: Change "eight hours." to "eight hours on a work day or 40 hours in a work week."</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 16          | 14346-16 | <p>Intake Gate Hoist - Article 2.12: After Paragraph D., insert the following new Paragraph E.:</p> <p>"E. Preparation for Shipment:</p> <ol style="list-style-type: none"> <li>1. Attention is directed to General Conditions Article 25. The hoist equipment shall be packed for shipping in a manner that shall prevent contamination or damage to components which</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

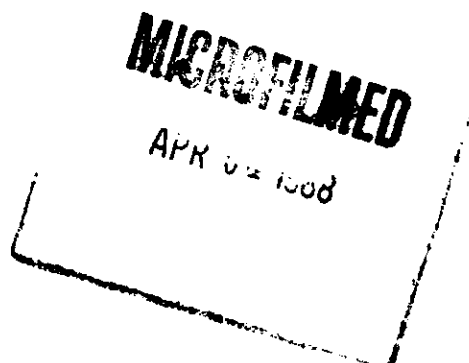
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APR 14 1968

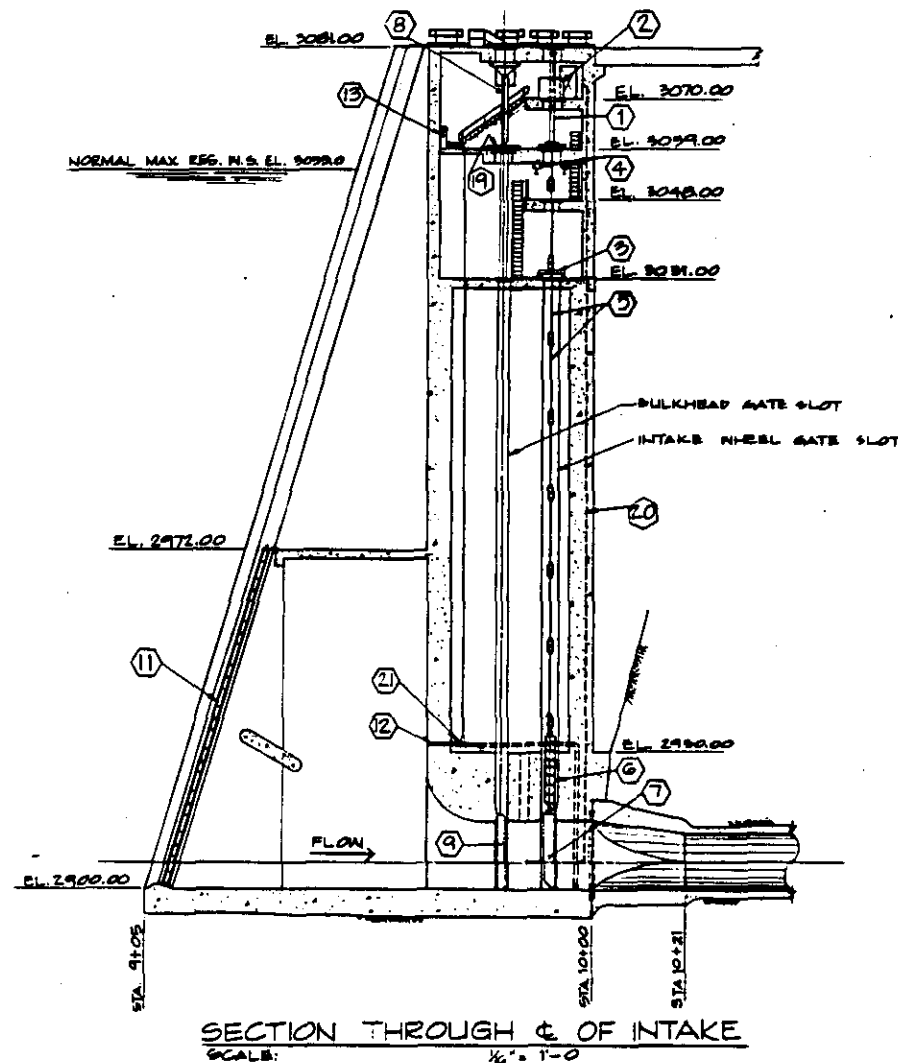
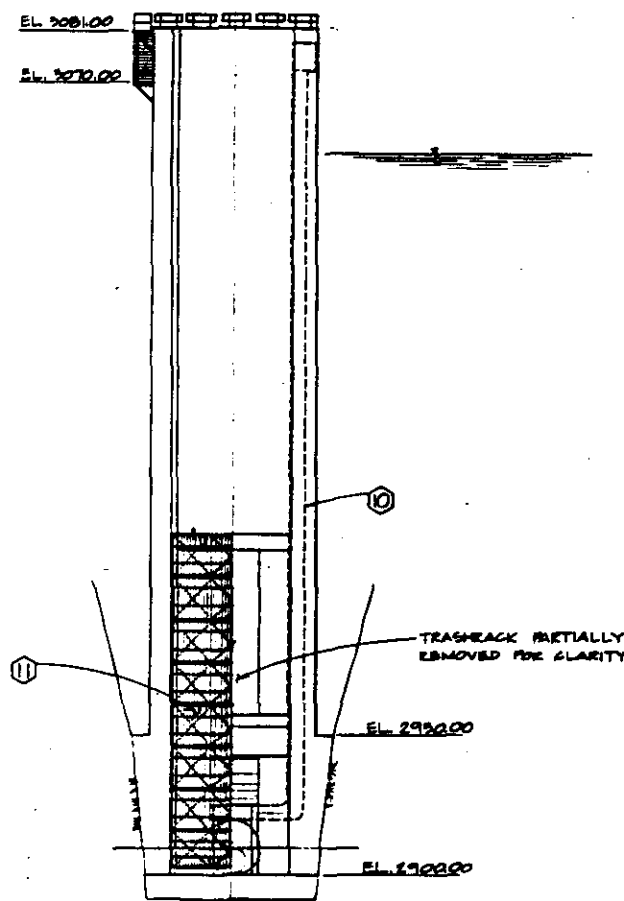
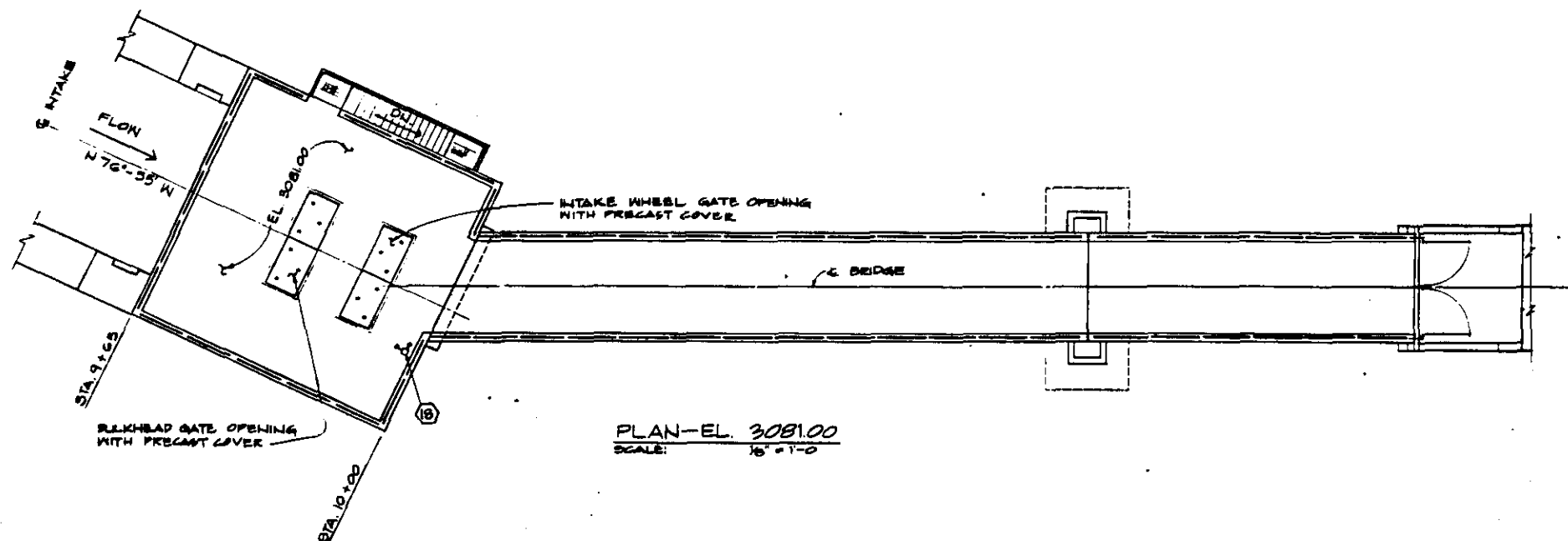
| <u>Item<br/>No.</u> | <u>Page</u> | <u>Description of Change</u>                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                     |             | have been shop cleaned and tested. All openings shall be securely closed with appropriate plugs, caps and blind flanges with gaskets. The hydraulic cylinder hoist shall be filled with the specified oil and shipped assembled. The piston rod shall be internally braced or blocked if required to prevent damage during handling and shipping. Exposed surfaces of the piston rod shall be protected with rust preventive compound as specified in Section 09800. |
|                     |             | 2. Hydraulic control equipment shall be packed to protect from shocks, vibrations and humidity during transport and storage by including within the packing the necessary amounts of dampening materials and hydroscopic substances such as silica-gel to protect the hydraulic piping and oil sump tank.".                                                                                                                                                          |

END OF ADDENDUM NO. 1

ATTACHMENT: 6 Drawings.







- | ITEM NO. | DESCRIPTION                                      |
|----------|--------------------------------------------------|
| 1        | HYDRAULIC CYLINDER HOIST                         |
| 2        | HYDRAULIC POWER UNIT                             |
| 3        | DOCKING DEVICE                                   |
| 4        | 2-TON TROLLEY HOISTS                             |
| 5        | GATE LINKS                                       |
| 6        | INTAKE GATE IN RAISED POSITION                   |
| 7        | INTAKE GATE IN CLOSED POSITION                   |
| 8        | BULKHEAD GATE IN SERVED POSITION                 |
| 9        | BULKHEAD GATE IN CLOSED POSITION                 |
| 10       | AIR VENT (NIC)                                   |
| 11       | TRASHRACKS                                       |
| 12       | TUNNEL FILLING LINE (NIC)                        |
| 13       | FILLING VALVE POSITION INDICATOR UNIT (NIC)      |
| 14       | CONTROL CABINET                                  |
| 15       | HYDRAULIC HAND PUMP UNIT FOR FILLING VALVE (NIC) |
| 16       | LIGHTING PANEL LP18 (NIC)                        |
| 17       | 480VAC POWER PANEL (NIC)                         |
| 18       | LIGHTING STANDARDS (NIC)                         |
| 19       | BULKHEAD GATE STORAGE BEAMS                      |
| 20       | PUSHER SYSTEM AIR LINES (NIC)                    |
| 21       | GUARD AND FILLING VALVES (NIC)                   |

**NOTE:**

- ITEMS 14, 15, 16 AND 17 ARE SHOWN ON DRAWING DC06
- SEE DETAILS OF ITEMS 12, 13 AND 15 SEE MECHANICAL EQUIPMENT DRAWING EMB05
- NIC = NOT IN CONTRACT ALSO SEE EMB05

5 0 5 10 15 20  
SCALE 1/8"=1' FEET

5 0 10 20 30 40  
SCALE 1/16"=1' FEET

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APR 04 1988

| REV. | DATE     | BY  | DESCRIPTION |
|------|----------|-----|-------------|
| 1    | 12/14/84 | WAC | DESIGN      |
| 2    | 12/14/84 | WAC | DESIGN      |
| 3    | 12/14/84 | WAC | DESIGN      |
| 4    | 12/14/84 | WAC | DESIGN      |
| 5    | 12/14/84 | WAC | DESIGN      |

|                 |                |                    |              |
|-----------------|----------------|--------------------|--------------|
| DESIGNED BY WAC | CHECKED BY WAC | RECOMMENDED BY WAC | DATE 11/2/84 |
| APPROVED BY WAC | DATE 11/2/84   | APPROVED BY WAC    | DATE 11/2/84 |

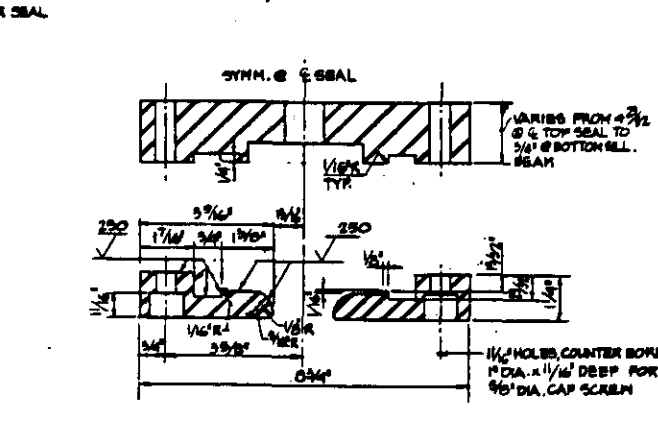
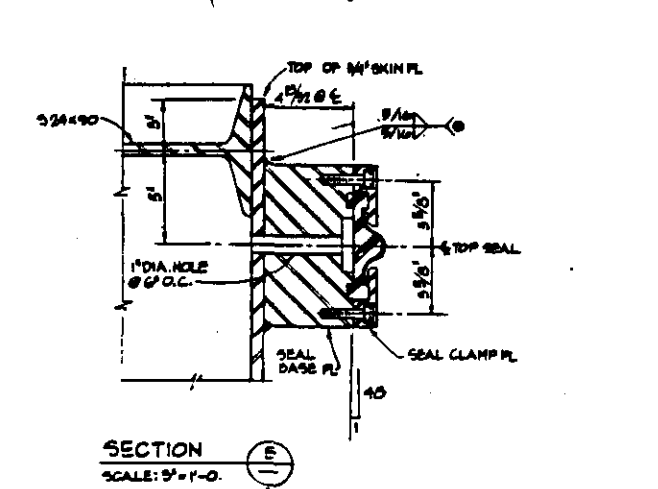
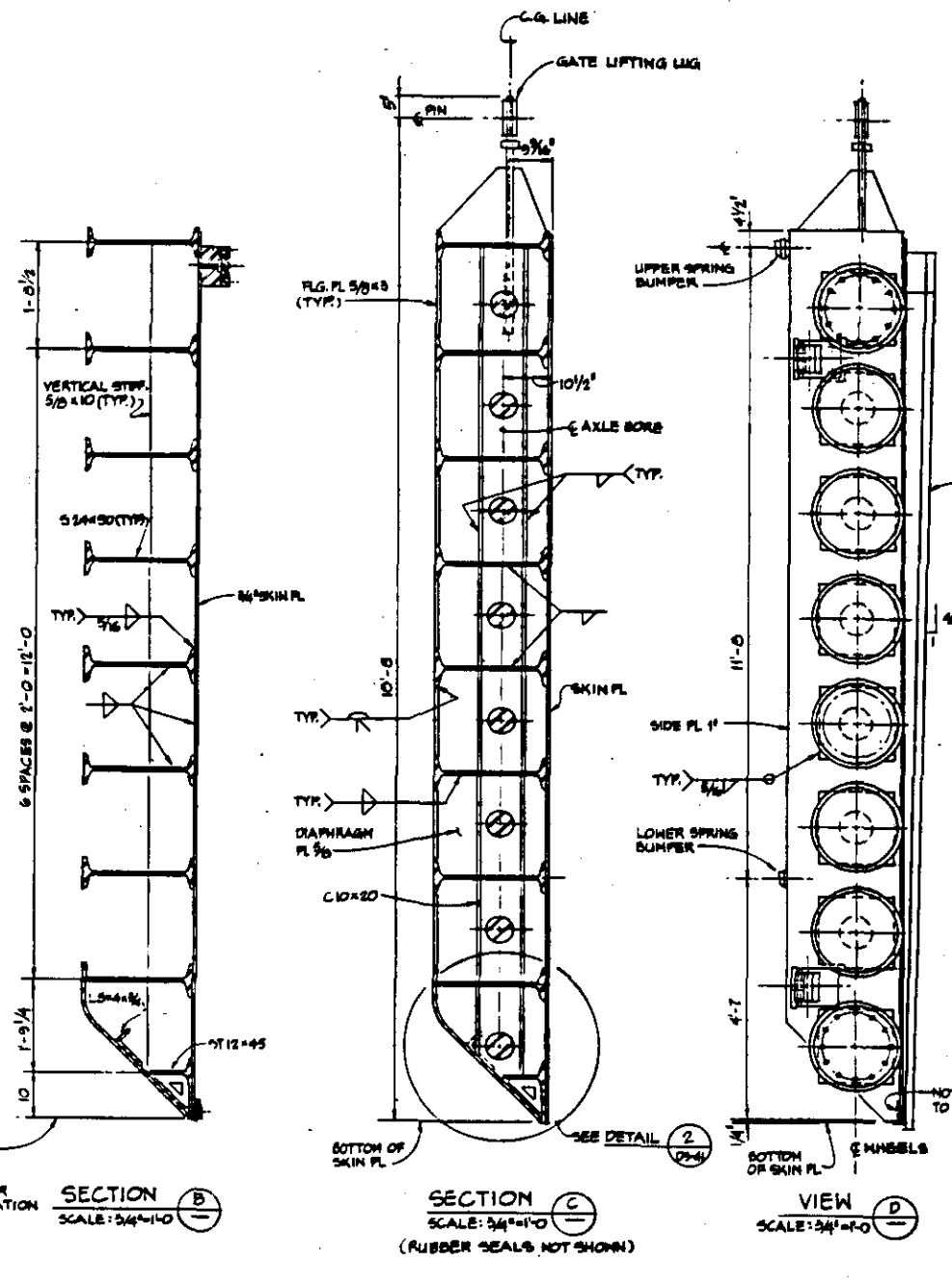
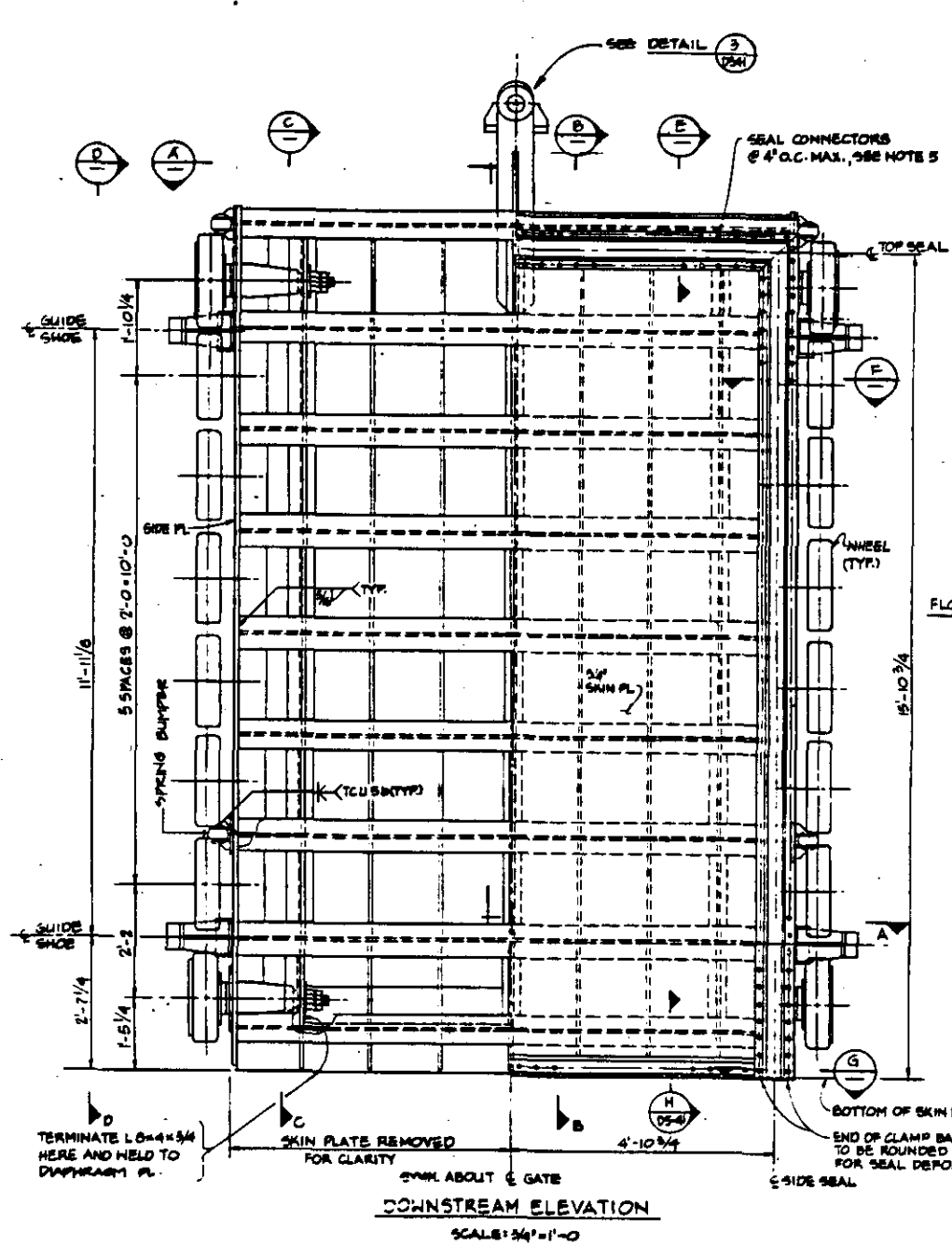
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|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| CONSULTING ENGINEERS<br><b>INTERNATIONAL ENGINEERING COMPANY, INC.</b><br>180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105 | ENDORSEMENTS<br>SIGNATURE DATE<br>WAT / DE BROS<br>DATE 11/2/84 |
|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|

|                                          |                           |
|------------------------------------------|---------------------------|
| CITY OF SEATTLE<br>CITY LIGHT DEPARTMENT | DATE 11-5-84<br>C.F. Gaby |
|------------------------------------------|---------------------------|

|                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| LUCKY PEAK POWER PLANT PROJECT<br>BOISE-KUNA IRRIGATION DISTRICT<br>NAMPA & MERIDIAN IRRIGATION DISTRICT<br>WILDER IRRIGATION DISTRICT<br>THE BIG BEND IRRIGATION DISTRICT |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                                                                       |                                                                 |
|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| DIVERSION AND OUTLET TUNNEL<br><b>INTAKE<br/>GENERAL ARRANGMENT<br/>PLAN, ELEVATION &amp; SECTION</b> | CLASS. C<br>DRAWING NO. D-24525<br>SCALE AS NOTED<br>REV. NO. 1 |
|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|

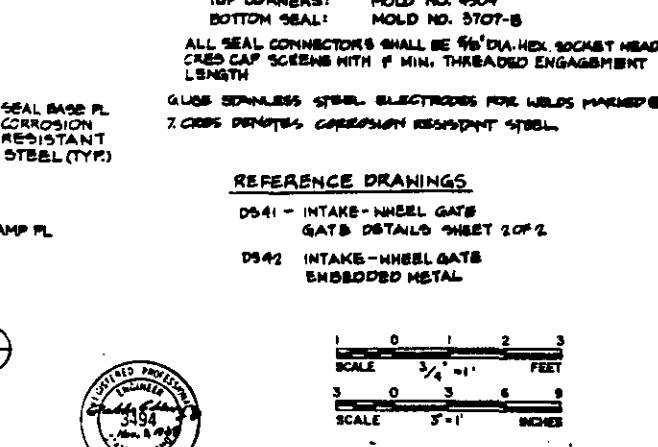
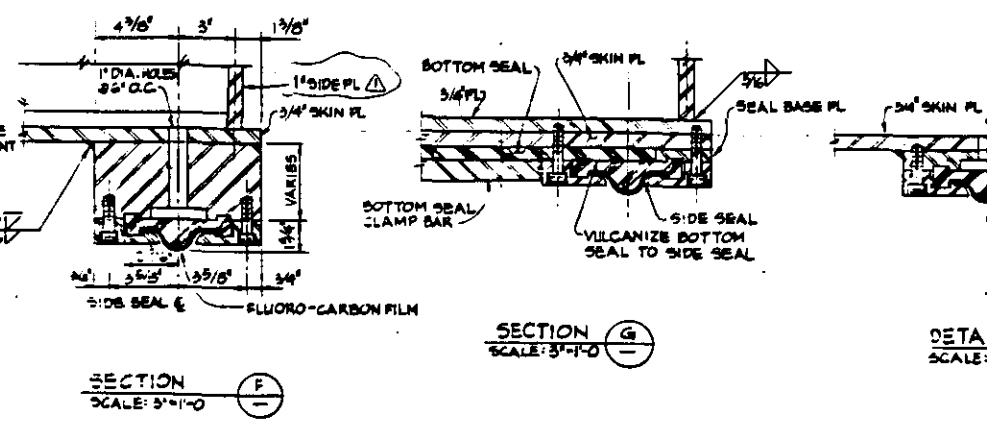
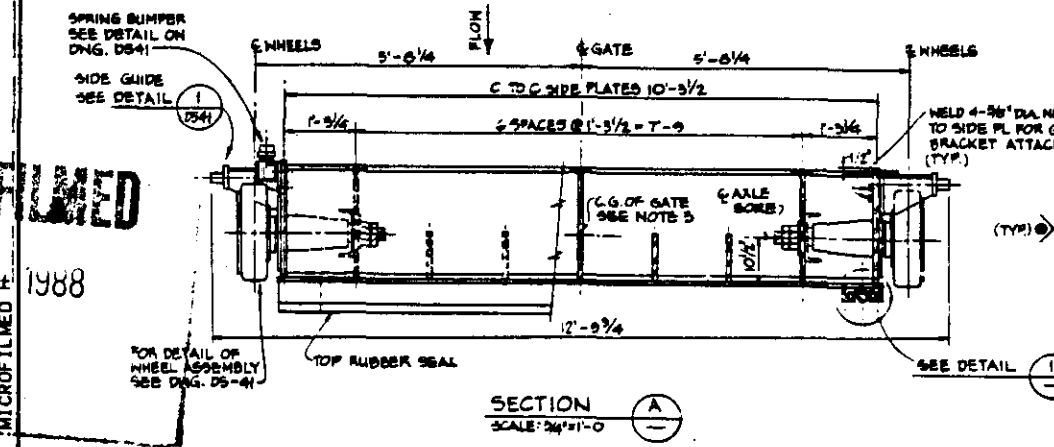
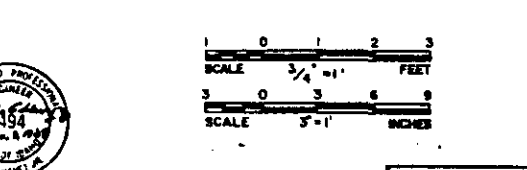
ISSUED BY WAC  
4040D-DC05



DETAILS OF SEAL BASE PLATE & CLAMP PLATE  
FOR SIDE SEAL & TOP SEAL  
SCALE: NONE

- NOTES**
1. STRUCTURAL STEEL SHAPES AND PLATES SHALL CONFORM TO ASTM-A36 UNLESS OTHERWISE NOTED.
  2. PROVIDE WEEP HOLES IN ALL GIRDER WELDS TO DRAIN ROCKET.
  3. GATE FABRICATOR TO VERIFY DIMENSION OF CENTER OF GRAVITY OF GATE. GATE TO BE SUSPENDED IN THE SHOP AND CHECKED FOR BALANCE. BALANCE PLATES SHALL BE WELDED IF REQUIRED TO INSURE VERTICALITY OF SUSPENDED GATE.
  4. ALL WELDS NOT SHOWN SHALL BE CONTINUOUS FILLET WELDS. THE MINIMUM WELD SIZE SHALL BE 1/4" DOUBLE FILLET WELDS AND SHALL BE IN ACCORDANCE WITH AWS SPECIFICATIONS.
  5. RUBBER SEAL MOLDS BY HUNTINGTON RUBBER COMPANY:  
TOP & SIDE SEALS: MOLD NO. 4499  
TOP CORNERS: MOLD NO. 4504  
BOTTOM SEAL: MOLD NO. 5707-B
  6. ALL SEAL CONNECTORS SHALL BE 3/8" DIA. HEX. SOCKET HEAD CAP SCREWS WITH 1" MIN. THREADED ENGAGEMENT LENGTH.
  7. C.R.S. DENOTES CORROSION RESISTANT STEEL.

- REFERENCE DRAWINGS**
- DS41 - INTAKE-WHEEL GATE GATE DETAILS SHEET 2 OF 2
  - DS42 - INTAKE-WHEEL GATE EMBEDDED METAL

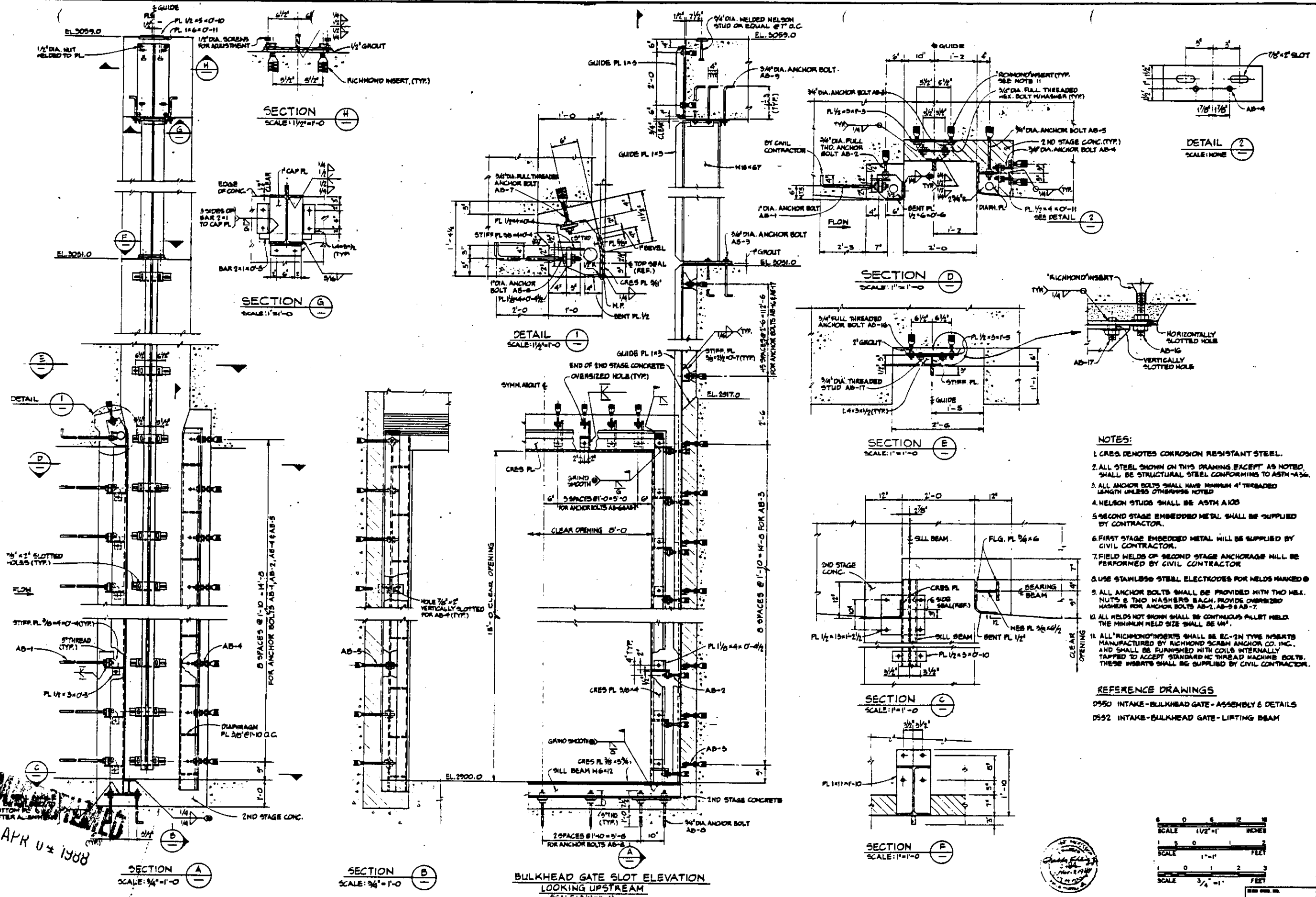


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| REVISIONS | DATE    | BY  | DESCRIPTION                     |
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| 1         | 11/2/84 | JUL | REVISIONS TO SUIT FIELD REQUEST |

CONSULTING ENGINEERS  
**INTERNATIONAL ENGINEERING COMPANY, INC.**  
180 HONARD STREET, SAN FRANCISCO, CALIFORNIA 94105

DESIGNED BY: *DRANESY/2.0* CHECKED BY: *RECOMMENDED* APPROVED BY: *ECR*  
DATE: 11/2/84

ENDORSEMENTS

| STAMP             | DATE           |
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| <i>JUL</i>        | <i>11/2/84</i> |
| <i>ITC Miller</i> | <i>11/2/84</i> |
| <i>PLH</i>        | <i>11/2/84</i> |

CITY OF SEATTLE  
CITY LIGHT DEPARTMENT

LUCKY PEAK POWER PLANT PROJECT  
BOISE-KUNA IRRIGATION DISTRICT  
NAMPA & MERIDIAN IRRIGATION DISTRICT  
WILDER IRRIGATION DISTRICT  
THE BIG BEND IRRIGATION DISTRICT

DIVERSION AND OUTLET TUNNEL

**INTAKE-BULKHEAD GATE  
EMBEDDED PARTS**

CLASS: **S**

DRAWING NO.: **D-24584**

SCALE: AS NOTED

4040D-DS51







# United States Department of the Interior

BUREAU OF RECLAMATION  
CENTRAL SNAKE PROJECTS OFFICE  
214 BROADWAY AVENUE  
BOISE, IDAHO 83702

September 12, 1984

**RECEIVED**

SEP 13 1984

Department of Water Resources

IN REPLY 100  
REFER TO:  
511.-

Boise Project Board of Control  
214 Broadway  
Boise, ID 83702

Ladies and Gentlemen:

In your letter of September 6 and in discussions with me, you requested further discussion regarding the system storage release required for Lucky Peak Powerplant construction and subsequent refill of the system.

Our letter of August 28, 1984, outlined the storage accounting procedure to be used. Item 5 of the letter deals with storage space refill in Lucky Peak Reservoir. The storage space has rights to storage carryover from 1984 and to refill in 1985 in accordance with the Boise reservoir system refill priority. These rights must not be diminished or jeopardized or greater risk of refill placed upon them by someone else's actions by the change in drawdown for the Lucky Peak Powerplant construction. Therefore, Item 5 of the letter specified a change to last refill priority as to your districts for the amount of storage which will be released solely to draft for powerplant construction.

By changing your storage priority, the Boise reservoir system storage priorities do not assume a greater risk of not refilling their space because of the storage released solely for powerplant construction.

I hope this adequately explains our position regarding the need for protecting the system water users in this matter. We would appreciate written concurrence of the procedures as outlined in our August 28, 1984 letter as soon as possible since the drawdown has already commenced and the continuation of the drawdown is conditioned on your acceptance of these terms.

We understand that changes from normal drawdown operations will also be needed for powerplant construction activities in each of the next 2 years. We will need to confer on and have agreements

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with respect to the specific details of those changes prior to the commencement of the drawdowns. We will expect to apply criteria similar to the above with respect to refill priority on those operations.

Sincerely,

*Neil Stessman*

Neil Stessman  
Project Superintendent

cc: Corps of Engineers, Walla Walla, Washington  
Boise Watermaster  
Department of Water Resources  
Mr. Gerald Guentz, Chairman, Boise Project Board of Control

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HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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(1916-1982)

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JESS B. HAWLEY, JR.  
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J. CHARLES HEPWORTH  
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RONALD E. BUSH  
STEVEN W. BERENTER  
CATHY R. SILAK

August 28, 1984

ONE CAPITAL CENTER  
POST OFFICE BOX 1617  
BOISE, IDAHO 83701

TELEPHONE  
(208) 344-6000

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

RECEIVED  
AUG 30 1984

Re: Permit Number 63-9019

Department of Water Resources

Dear Ken:

This is in response to your letter of July 31, 1984. We feel that in order to determine whether or not a hearing is necessary in this matter we must obtain the following information:

1. Your deposition as provided in Rule 9, 13 of the Department;
2. The entire Department file on Permit No. 63-9019; and
3. Any documents that the Idaho Water Resource Board considered in adopting the "Resolution Adopting a Position Term Permits" to which you referred in your letter.

I would suggest that I telephone you to set up an appropriate time and place to take your deposition. We could then discuss the production of the relevant documents.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

*Don A. Olowinski*  
Don A. Olowinski

DAO:ls

cc: Raymond Givens, Esq.  
William F. Ringert, Esq.  
Randall R. Fredricks, Esq.  
Larry Sullivan, Esq.  
Boise Project Board of Control  
Wilder Irrigation District

MAILED

APR 04 1988



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

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

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

July 31, 1984

Don A. Olowinski  
HAWLEY, TROXELL, ENNIS & HAWLEY  
P. O. Box 1617  
Boise, ID 83701

RE: Permit No. 63-9019 in the Name of Boise Project Board of Control  
for the Lucky Peak Hydroelectric Project

Dear Mr. Olowinski:

The purpose of this letter is twofold. First, the department needs to advise you of further action by the department regarding Permit No. 63-9019. Second, the department needs to obtain some information from you regarding your request for a hearing on condition "f" of Permit No. 63-9019.

On July 25, 1984 the Idaho Water Resource Board adopted a "Resolution Adopting a Position on Term Permits." Since this resolution is relevant to the present proceeding, the department has taken official notice of this resolution and a copy has been included in the department's file on Permit No. 63-9019. A copy of this resolution is enclosed for your convenience.

The department has reviewed your request for hearing on condition "f" of Permit No. 63-9019. While you are entitled to a hearing under the provisions of I.C. Section 42-1701(A)(3), it appears questionable whether a fact determining hearing is necessary to address the issues raised by your Petition for Hearing. Unless there are facts which you feel require testimony to establish, I propose that the issues you have raised regarding the authority of the department to place condition "f" on the permit be submitted upon the record, which may be opened for augmentation, and upon written brief.

Please let me know if there are facts for which you feel a fact determining hearing is required, and if not, whether oral argument is requested on your brief.

Sincerely,

A. KENNETH DUNN  
Director

AKD:alw  
Encl.

cc: Boise Project Board of Control

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RECEIVED

JUL 3 1984

Don A. Olowinski  
HAWLEY TROXELL ENNIS & HAWLEY  
Post Office Box 1617  
Boise, Idaho 83701  
Telephone: (208) 344-6000

Department of Water Resources

Attorneys for Petitioner

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

|                            |   |                        |
|----------------------------|---|------------------------|
| IN THE MATTER OF THE BOISE | ) |                        |
| PROJECT BOARD OF CONTROL,  | ) | WITHDRAWAL OF PETITION |
| PERMIT NO. 63-9019         | ) | FOR HEARING            |
|                            | ) |                        |

COMES NOW the Petitioner, Boise Project Board of Control, and hereby withdraws its Petition for Hearing on Condition j as set forth in paragraphs IV and V of its Petition for Hearing filed with the Department on June 8, 1984.

Respectfully submitted this 3rd day of July, 1984.

HAWLEY TROXELL ENNIS & HAWLEY

By Don A. Olowinski  
Don A. Olowinski

GIVENS, McDEVITT, PURSLEY, WEBB  
& BUSER

By Don A. Olowinski for Raymond D. Givens  
Raymond D. Givens

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CLEMONS, COSHO & HUMPHREY

*Don Olowinski for*  
By *Randall C. Fredricks*  
Randall C. Fredricks

ANDERSON, KAUFMAN, RINGERT  
& CLARK

*Don Olowinski for*  
By *William F. Ringert*  
William F. Ringert

SCHROEDER & HUTCHINS

*Don Olowinski*  
By *Larry A. Sullivan*  
Larry A. Sullivan

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of July, 1984,  
I served the foregoing WITHDRAWAL OF PETITION FOR HEARING by  
causing an original and one legible copy to be served upon the  
Director at the Statehouse, Boise, Idaho 83720.

*Don A. Olowinski*  
Don A. Olowinski

RECEIVED

APR 04 1988

RECEIVED  
JUL 8 1984

Don A. Olowinski  
HAWLEY TROXELL ENNIS & HAWLEY  
Post Office Box 1617  
Boise, Idaho 83701  
Telephone: (208) 344-6000

Department of Water Resources

Attorneys for Petitioner

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

|                            |   |                        |
|----------------------------|---|------------------------|
| IN THE MATTER OF THE BOISE | ) |                        |
| PROJECT BOARD OF CONTROL,  | ) | WITHDRAWAL OF PETITION |
| PERMIT NO. 63-9019         | ) | FOR HEARING            |
|                            | ) |                        |

COMES NOW the Petitioner, Boise Project Board of Control,  
and hereby withdraws its Petition for Hearing on Condition j as  
set forth in paragraphs IV and V of its Petition for Hearing filed  
with the Department on June 8, 1984.

Respectfully submitted this 3rd day of July, 1984.

HAWLEY TROXELL ENNIS & HAWLEY

By Don A. Olowinski  
Don A. Olowinski

GIVENS, McDEVITT, PURSLEY, WEBB  
& BUSER

By Don A. Olowinski for Raymond D. Givens  
Raymond D. Givens

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CLEMONS, COSHO & HUMPHREY

*Don Olowinski for*  
By *Randall C. Fredricks*  
Randall C. Fredricks

ANDERSON, KAUFMAN, RINGERT  
& CLARK

*Don Olowinski for*  
By *William F. Ringert*  
William F. Ringert

SCHROEDER & HUTCHINS

*Don Olowinski*  
By *Larry A. Sullivan*  
Larry A. Sullivan

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I HEREBY CERTIFY that on the 3rd day of July, 1984,  
I served the foregoing WITHDRAWAL OF PETITION FOR HEARING by  
causing an original and one legible copy to be served upon the  
Director at the Statehouse, Boise, Idaho 83720.

*Don A. Olowinski*  
Don A. Olowinski

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APR 04 1985

July 3, 1984

Boise Project Board of Control  
214 South Broadway  
Boise, ID 83702

Gentlemen:

I have received the Withdrawal filed by the Project on July 3, 1984 of its Petition for Hearing on Condition j (subordination) and find it valid.

I further conclude that the continued Petition for Hearing by the Project on Condition f will in no way affect the validity of the water permit for Lucky Peak Hydroelectric Project and this permit remains in full force and effect.

Sincerely,

A. KENNETH DUNN  
Director, Idaho Department  
of Water Resources

AKD:rf

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JUN 11 1984

Don A. Olowinski  
HAWLEY TROXELL ENNIS & HAWLEY  
Post Office Box 1617  
Boise, Idaho 83701  
Telephone: (208) 344-6000

Department of Water Resources

Attorneys for Petitioner

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF THE BOISE )  
PROJECT BOARD OF CONTROL, )  
PERMIT NO. 63-9019 ) PETITION FOR HEARING  
\_\_\_\_\_ )

COMES NOW the Petitioner, Boise Project Board of Control, and petitions the Director for a hearing pursuant to Idaho Code Sections 42-204 and 42-1701A as follows:

I.

On May 24, 1984, the Director approved the Petitioner's application for a water permit subject to certain limitations and conditions. A true copy of that permit, No. 63-9019, is attached as Exhibit A to this petition.

II.

One of the limitations and conditions is Condition f, to wit:

f. The diversion and use of water under this permit and any license issued hereunder is subject to review by the Director on June 1, 2030. Upon appropriate findings relative to the interest of the public, the Direct may cancel all or any part of the use authorized

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APR 11 1988



herein and may revise, delete or add conditions under which the right may be exercised.

III.

Petitioner believes that the insertion of this condition is beyond the scope of the Director's authority under Idaho law, and further is arbitrary, capricious, and not warranted by the facts.

IV.

Another one of the limitations and conditions in the permit is Condition j, to wit:

j. Use of water under this permit is subordinated to future diversion of water for irrigation or other consumptive beneficial uses.

V.

Petitioner believes that this condition is beyond the scope of the authority of the Director under Idaho law, and further is arbitrary, capricious, and not warranted by the facts.

WHEREFORE, Petitioner requests a hearing and that these conditions be removed from its permit.

Respectfully submitted this 8th day of June, 1984.

HAWLEY TROXELL ENNIS & HAWLEY

By Don A. Olowinski  
Don A. Olowinski

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APR 04 1988

GIVENS, McDEVITT, PURSLEY, WEBB  
& BUSER

By Raymond D. Givens  
Raymond D. Givens

CLEMONS, COSHO & HUMPHREY

By *Randall C. Fredricks*  
Randall C. Fredricks

ANDERSON, KAUFMAN, RINGERT  
& CLARK

By *W. F. Ringert*  
William F. Ringert

SCHROEDER & HUTCHINS

By *Don Olowinski for Larry Sullivan*  
Larry A. Sullivan

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of June, 1984, I served the foregoing PETITION FOR HEARING by causing an original and one legible copy to be served upon the Director at the Statehouse, Boise, Idaho 83720.

*Don A. Olowinski*  
Don A. Olowinski

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MAY 30 1984

Identification No. \_\_\_\_\_

Application No. 63-9019

BOISE PROJECT BOARD OF CONTROL

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

APPROVED

To Appropriate the Public Waters of the State of Idaho  
(TYPE OR PRINT IN INK)

1. Name of applicant Boise Project Board of Control Phone: 344-1141  
post office address 214 Broadway, Boise, Idaho 83702
2. Source of water supply Boise River which is a tributary of Snake River
3. a. Location of point of diversion is SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 11 Township 2N  
Range 3E B.M. Ada County; additional points of diversion if any: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
b. If water is not consumed, it will be discharged into Boise River at a point in SW  $\frac{1}{4}$   
of NE  $\frac{1}{4}$  of Section 11 Township 2N Range 3E B.M. Ada County
4. Water will be used for the following purposes:  
Amount 5,700 or Power purpose from 1-1 to 12-31 (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purpose from 11 to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)  
Amount \_\_\_\_\_ for \_\_\_\_\_ purpose from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:  
a. 5,700 cubic feet per second ~~XXXXXX~~  
b. ~~XXXXXX~~
6. Proposed diverting works:  
a. Description of ditches, flumes, pumps, headgates, etc. controlled reservoir  
discharge - to penstock - to hydro turbines.  
\_\_\_\_\_  
\_\_\_\_\_  
b. Height of storage dam 340 feet, active reservoir capacity 278,200 acre feet; total reservoir  
capacity 306,000 acre feet, materials used in storage dam: rolled earth and gravel  
Period of year during which storage will occur January 15 to July 15 inclusive.  
Mo. Day Mo. Day  
c. Proposed well diameter is \_\_\_\_\_ inches; proposed depth of well is \_\_\_\_\_ feet
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use  
is 5 years.  
b. Estimated construction cost is \$40,450,000 select project \$48,400,000 alternative
8. Description of proposed uses:  
a. If water is not for irrigation:  
(1) Give the place of use of water: SW  $\frac{1}{4}$  of NE  $\frac{1}{4}$  of Section 11 Township 2N  
Range 3E B.M. \_\_\_\_\_  
(2) Amount of power to be generated 462,645,000 115 median  
100,575 hp under \_\_\_\_\_ feet of head  
per fall from w/ Otis Peterson 13/5 11/6  
(3) List number of each kind of livestock to be watered: \_\_\_\_\_  
\_\_\_\_\_  
(4) Name of municipality to be served \_\_\_\_\_, or number of families to be  
supplied with domestic water \_\_\_\_\_  
(5) If water is to be used for other purposes describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

| TWP | RANGE | 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 |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
|     |       |     |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |

Total number of acres to be irrigated. \_\_\_\_\_

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

9. a. Who owns the property at the point of diversion U.S. Army Corps of Engineers  
(Public Flood Control Project)

b. Who owns the land to be irrigated or place of use U. S. Army Corps of Engineers

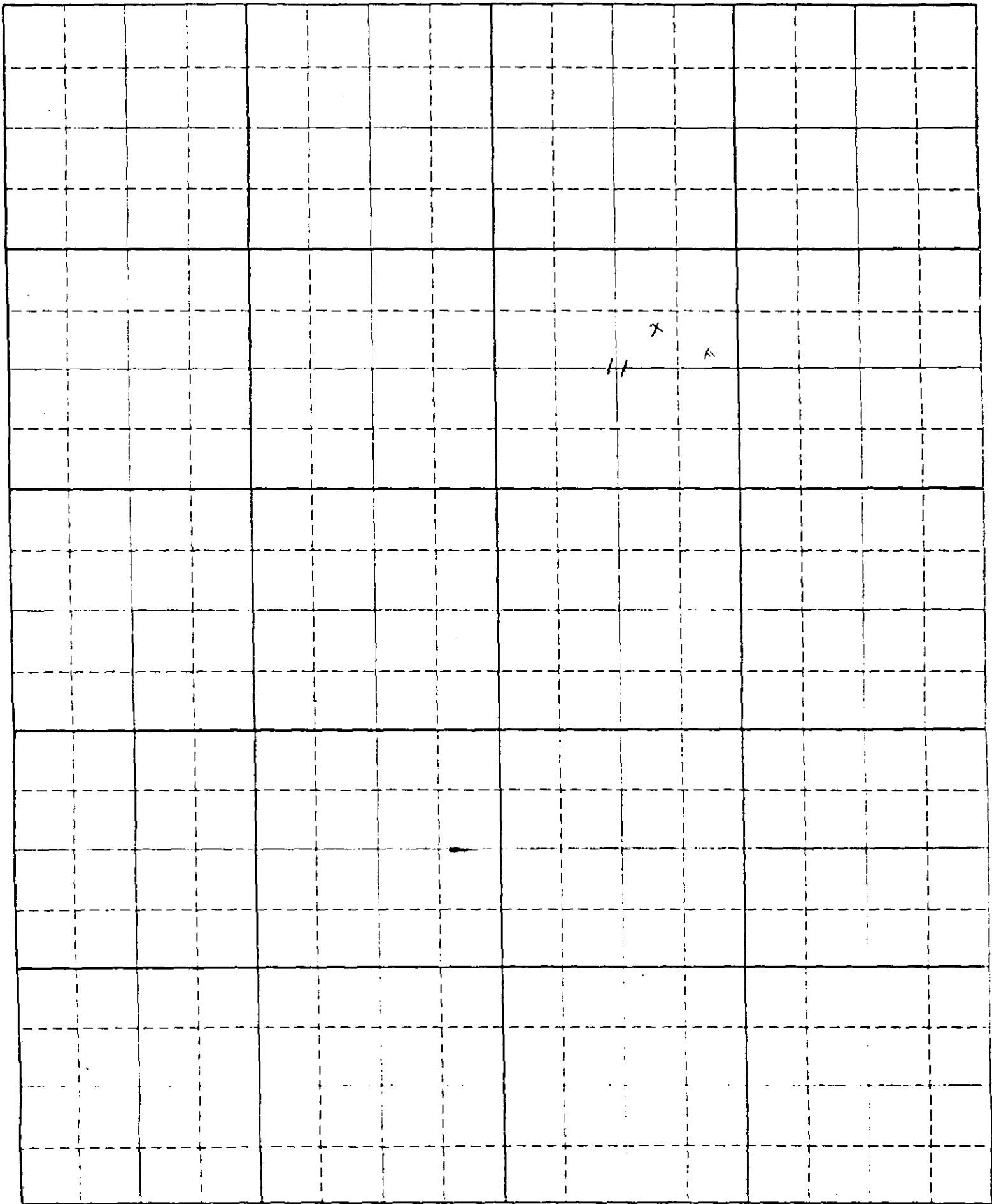
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing arrangement is non-existent - compensation for use of the facility would be determined by F.P.C.

10. Remarks 1,100,026 cfs represents the total annual diversion

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



Scale 2 inches equal 1 mile

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

BOISE PROJECT BOARD OF CONTROL

By L. L. Harrison  
(Applicant)

Chairman

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APR 04 1988

Proposed Priority 8/31/77

Received by Y Date 8-31-77 Time 1:50 pm

Preliminary check by WRL Fee \$ 1,535.00

Received by Y Date 8-31-77 # 8869

Publication prepared by Y Date 9-2

Published in Idaho Statesman

Publication dates Sept 8 & 15

Publication approved Y Date 10-17-77

Priority reduced to 6 Reason

*re-ad*  
9-29  
10-6, 1977

Protests filed by: none

Copies of protests forwarded by

Hearing held by  Date

Recommended for approval denial by kw

#### ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 63-9019, 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 May 1, 19 89.

c. This permit is subject to delivery by the watermaster of Water District No. 63, Boise River.

d. Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.

e. This permit does not convey any authority to require or demand the release of water but shall only be effective to allow generation of hydroelectricity using water released under existing rights and operating procedures for irrigation, flood control and fish and wildlife purposes.

f. The diversion and use of water under this permit and any license issued hereunder is subject to review by the Director on June 1, 2030. 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.

g. For licensing purposes, a scientific measurement of the diversion rate of the system as it is normally operated shall be provided by either properly installing an approved type of measuring device or access port or by having a professional engineer certify the rate of diversion to the department prior to submitting proof of beneficial use of water.

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

i. This permit is subject to the provisions of Section 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.

j. Use of water under this permit is subordinated to future diversion of water for irrigation or other consumptive beneficial uses.

k. Structural modification to the dam and storage of water is contingent upon certification to the Department of Water Resources that plans and specifications have been reviewed and approved by the U.S. Army Corps of Engineers and that construction has proceeded in full compliance with the final approved plans.

SEE CONDITIONS l. and m. on ATTACHED SHEET.

Dated this 24th day of May, 1984.

APR 14 1988

Director

ATTACHMENT  
TO CONDITIONS OF APPROVAL  
For Permit No. 63-9019

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

m. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.

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APR 02 1988

[CONFORMED COPY]

**POWER PURCHASE AND SALE CONTRACT**

**Executed by**

**THE CITY OF SEATTLE**

**BOISE-KUNA IRRIGATION DISTRICT**

**NAMPA & MERIDIAN IRRIGATION DISTRICT**

**WILDER IRRIGATION DISTRICT**

**and**

**BIG BEND IRRIGATION DISTRICT**

**for**

**THE LUCKY PEAK POWER PLANT PROJECT**

**Dated April 23, 1984, as amended**





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**POWER PURCHASE AND SALE CONTRACT**

**Executed by**

**THE CITY OF SEATTLE**

**BOISE-KUNA IRRIGATION DISTRICT**

**NAMPA & MERIDIAN IRRIGATION DISTRICT**

**WILDER IRRIGATION DISTRICT**

**and**

**BIG BEND IRRIGATION DISTRICT**

**for**

**THE LUCKY PEAK POWER PLANT PROJECT**

This contract is entered into this 23rd day of April, 1984, by, between and among The City of Seattle, a municipal corporation organized and existing under the laws of the State of Washington, and Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District and Wilder Irrigation District, all irrigation districts organized and existing under the laws of the State of Idaho, and Big Bend Irrigation District, an irrigation district organized and existing under the laws of the State of Oregon.

WHEREAS, the Districts are irrigation districts organized under the laws of the States of Idaho and Oregon and are authorized to own hydroelectric generating facilities to supply electrical energy and to sell surplus electrical energy; and

WHEREAS, the Districts are licensees under a Federal Energy Regulatory Commission License for the construction, operation and maintenance of the Lucky Peak Project; and

WHEREAS, Seattle desires to purchase surplus electrical energy from the Lucky Peak Project under applicable provisions of Washington law and the Districts desire to sell Seattle surplus electrical energy from the Lucky Peak Project under the applicable provisions of Idaho law, particularly Chapter 23, Title 43, Idaho Code, in the case of the Idaho Districts, and the applicable provisions of Oregon law, in the case of the Oregon District, all under the terms and conditions of this contract; and

WHEREAS, the parties to this contract recognize that the primary purpose of the Districts is to provide irrigation water, that the Districts operate extensive irrigation facilities, and that the Districts receive revenue from assessments and other sources in payment for irrigation water supplied and for the purposes of operating the Districts, maintaining, operating, constructing, reconstructing, repairing and acquiring irrigation facilities and for payment of obligations of the Districts incurred to finance the construction or acquisition of irrigation facilities; and

WHEREAS, it is intended by the parties to this contract that none of the assessments or other revenues received or to be received by the Districts in payment for or relating to irrigation water supplied for the purposes of operating the Districts, maintaining, operating, constructing, reconstructing, repairing or acquiring irrigation facilities or for payment of obligations of the Districts incurred to finance the construction or acquisition of irrigation facilities be utilized or available for payment

of any of the Districts' obligations contained in this contract, nor shall the Districts be required to exercise any statutory assessment authority as a result of this contract, nor shall any lien be established upon any lands within the Districts as a result of this contract; and

WHEREAS, it is intended by the parties to this contract strictly to limit the funds which may be available to the Districts to fulfill the Districts' obligations contained in this contract to those revenues actually received by the Districts from the sale to Seattle of surplus electrical energy from the Lucky Peak Project;

NOW, THEREFORE, the parties hereto, for and in consideration of the mutual covenants and agreements herein contained, hereby agree as follows:

#### SECTION 1. DEFINITION AND EXPLANATION OF TERMS

As used herein:

(a) "Adjusted Project Cost" shall mean all Ownership and Operation Costs incurred prior to the Date of Commercial Operation, including, without limitation, (i) those Ownership and Operation Costs paid from Bond proceeds, (ii) Bond proceeds deposited in the Reserve Account, the Renewal and Replacement Fund, and the Principal and Interest Account, and (iii) amounts of non-Bond proceed funds required by the Bond Resolution to be deposited in the Reserve Account, the Renewal and Replacement Fund and the Principal and Interest Account to accomplish their initial funding, reduced by the Steering Committee by the amount in the Principal and Interest Account and the uncommitted balance of the Construction Fund on the Date of Commercial Operation.

(b) "Boise Project Board of Control" shall mean the Boise Project Board of Control, as established under the several contracts between the United States of America and the Districts with respect to the Boise Project, which acts as the operating agent of the Districts and the New York Irrigation District, Ada County, Idaho, for the purpose of caring for, operating and maintaining the main canal and other works of the Arrowrock Division of the Boise Project, the operation of which was transferred by contract from the United States to the Districts and the New York Irrigation District, Ada County, Idaho.

(c) "Bonds" shall mean the bonds, notes or other instruments of indebtedness issued at any time by Boise-Kuna Irrigation District to obtain funds to pay Ownership and Operation Costs or to refund such bonds, notes or other instruments of indebtedness, all as authorized by a Bond Resolution.

(d) "Bond Fund" shall mean the bond fund created by the Bond Resolution.

(e) "Bond Resolution" shall mean the resolution or resolutions adopted by Boise-Kuna Irrigation District authorizing the issuance and sale of Bonds and providing the terms and conditions thereof.

(f) "Bureau" shall mean the Bureau of Reclamation, United States Department of Interior, or its successor agency.

(g) "Construction Fund" shall mean the construction fund created by the Bond Resolution.

(h) "Contract Year" shall mean the twelve-month period commencing at 12:01 a.m. on January 1 of each year that this contract is in effect, except that the first Contract Year shall begin on the date of this contract and end at 12:01 a.m. on the following January 1.

(i) "Corps of Engineers" shall mean the United States Army Corps of Engineers or its successor.

(j) "Corps of Engineers Agreement" shall mean any agreement or agreements among the Districts, the New York Irrigation District, Ada County, Idaho, and the Corps of Engineers relating to the Lucky Peak Project.

(k) "Date of Commercial Operation" shall mean 12:01 a.m. on the day the Lucky Peak Project is installed, tested and ready to deliver continuous electrical energy.

(l) "Debt Service" shall mean all payments required by the Bond Resolution to be made into the Principal and Interest Account, Reserve Account and Renewal and Replacement Fund and other funds established under the Bond Resolution, the Trustee's and paying agents' fees and all other amounts required to be paid by the Bond Resolution.

(m) "Defaults" or "Events of Default" shall mean any one or more of the following events:

(1) failure by Seattle to make a Debt Service payment when due pursuant to the requirements of Section 5(c);

(2) failure by Seattle to pay all or any part of any amount, other than a payment of Debt Service, required to be paid by it under the provisions of this contract at the times and places required for a period of thirty days after written notice from the Districts specifying such failure and requesting that it be remedied; or

(3) failure by Seattle or the Districts to observe and perform any covenant, condition or agreement to be observed or performed hereunder, for a period of ninety days after written notice specifying such failure and requesting that it be remedied, given to the non-performing party by the other party, unless the party giving notice shall agree in writing to extension of such time prior to the expiration thereof.

(n) "District" shall mean one of the Districts.

(o) "Districts" shall mean the Boise-Kuna Irrigation District, the Nampa & Meridian Irrigation District, the Wilder Irrigation District and the Big Bend Irrigation District.

(p) "FERC" shall mean the Federal Energy Regulatory Commission, United States Department of Energy, or its successor agency.

(q) "License" shall mean FERC License No. 2832 issued for the construction, operation and maintenance of the Lucky Peak Project, and any amendments or modifications to that License.

(r) "Lucky Peak Project" shall mean those facilities for the generation of electrical energy to be constructed and located at the downstream toe of the Corps of Engineers' Lucky Peak Dam near Boise, Idaho, consisting of intake structures, by-pass facilities, powerhouse, and mechanical, electrical and primary transmission equipment from the high voltage bus to an interconnection with a transmission line owned by others.

(s) "Month" shall mean a calendar month.

(t) "Net Output" shall mean Output made available after the Date of Commercial Operation less the Pumping Requirement at Lake Lowell.

(u) "Output" shall mean the amount of electrical energy made available at the meter located at the high side of the step-up transformer at the Lucky Peak Project generating station during the term of this contract under the operating conditions which exist during that term.

(v) "Ownership and Operation" shall mean development, acquisition, financing, design, construction, ownership, operation, maintenance, repair, renewal, replacement, reconstruction, addition and betterment of the Lucky Peak Project.

(w) "Ownership and Operation Costs" shall mean all costs of Ownership and Operation, including, but not limited to:

(1) amounts required to be set aside for the payment of Debt Service;

(2) amounts which may be required to pay ordinary operating and maintenance expenses of the Lucky Peak Project;

(3) Seattle's costs of managing the construction, operation and maintenance of the Lucky Peak Project;

(4) amounts not in excess of \$50,000 in any Contract Year which may be required to pay for the prevention or correction of any loss or damage or for replacements to keep the Lucky Peak Project in good operating condition, to the extent that such costs are not covered by insurance and the then amount of the Renewal and Replacement Fund;

(5) amounts which a governmental entity or agency may require to be paid following the Date of Commercial Operation as a condition of Ownership and Operation, amounts which otherwise may be incurred to assure the continuous operation of the Lucky Peak Project, or taxes or in lieu of taxes which may be imposed on the Districts as a result of Ownership and Operation or their receipt of payments for Output, but not taxes on any Royalty Payment; and

(6) all Districts' costs and expenses of Ownership and Operation (excluding depreciation) not accounted for by the payments out of funds and reserves specified in the foregoing subsections and properly chargeable to the Lucky Peak Project in accordance with the Uniform System of Accounts, including, but not limited to, administrative and general expenses, fees and costs of attorneys and experts for services rendered in connection with Ownership and Operation or in connection with actions or other proceedings with third parties relating to the Lucky Peak Project, costs of accounting required by this contract and premiums for the insurance required by this contract, less any credits against the said costs by reason of net revenues from sources other than the direct sale of electrical energy, received as a result of Ownership and Operation.

(x) "Principal and Interest Account" shall mean the principal and interest account created by the Bond Resolution.

(y) "Project Consultant" shall mean an individual or firm having a national reputation for expertise in the field of the matter or item referred to it appointed for the resolution of a difference regarding a matter or item referred to it. A different Project Consultant may be appointed for each item or matter referred.

(z) "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.

(aa) "Pumping Requirement at Lake Lowell" shall mean 500,000 kilowatt hours per year.

(bb) "Renewal and Replacement Fund" shall mean the renewal and replacement fund created by the Bond Resolution.

(cc) "Reserve Account" shall mean the reserve account created by the Bond Resolution.

(dd) "Royalty Payment" shall mean the payment from Seattle to the Districts described in Section 4(c) of this contract.

(ee) "Seattle" shall mean The City of Seattle, Washington, a municipal corporation organized and existing under the laws of the State of Washington.

(ff) "Seattle's Allocated Project Costs" shall mean all of Seattle's costs, other than its costs and payments included in the computation of Ownership and Operation Costs, related to the supply of Output as if it were supplied to a Bonneville Power Administration substation located at La Grande, Oregon, properly chargeable to the Lucky Peak Project in accordance with the Uniform System of Accounts, including, but not limited to, administrative and general expenses, fees and costs of attorneys and experts for services rendered in connection with its purchase of Output or in connection with actions or other proceedings with third parties relating to the Lucky Peak Project and costs of accounting required by this contract.

(gg) "Steering Committee" or "Committee" shall mean the Steering Committee formed under the provisions of this contract.

(hh) "Test Output" shall mean that Output made available prior to the Date of Commercial Operation.

(ii) "Trustee" shall mean the trustee for the Bonds appointed pursuant to the Bond Resolution.

(jj) "Uncontrollable Force" shall mean any cause beyond the control of Seattle or the Districts, and which by the exercise of Prudent Utility Practices, Seattle or the Districts are unable to prevent or overcome, including but not limited to an act of God, fire, flood, explosion, strike, sabotage, an act of the public enemy, lack of fuel for construction, operation or maintenance purposes, civil or military authority, including court orders, injunctions, and orders of government agencies with proper jurisdiction, insurrection or riot, act of the elements, failure of equipment, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers, but for purposes of Section 8 of this contract, Uncontrollable Force shall not include any governmental action that permits the sale of Output to others but not to Seattle.

(kk) "Uniform System of Accounts" shall mean the Uniform System of Accounts prescribed by FERC for Electrical Utilities and Licenses.

## SECTION 2. TERM OF CONTRACT

This contract shall become effective upon its execution by the Districts and Seattle and shall expire at midnight fifty years after the Date of Commercial Operation. Prior to the expiration of the License, the Districts shall take all necessary, reasonable and timely steps to apply for and procure a new license for the Lucky Peak Project or annual extensions of the License to enable them to supply Output to Seattle for the entire term of this contract.

## SECTION 3. PURCHASE AND SALE OF OUTPUT

(a) *Test Output.* The Districts shall make available and sell to Seattle all Test Output and Seattle shall purchase all Test Output solely from the gross revenues of its light and power system and as a purchase power expense of that system.

(b) *Net Output.* The Districts shall make available and sell to Seattle all Net Output, and Seattle shall purchase all Net Output solely from the gross revenues of its light and power system and as a purchase power expense of that system. The Districts may elect to make the Pumping Requirement at Lake Lowell available to Seattle after the Date of Commercial Operation, in which event Seattle shall purchase such portion of the Output and pay for such portion from the gross revenues of its light and power system and as a purchase power expense of that system at a rate equal to the then current replacement cost to the Districts of electrical energy of the same quality.

BPA Priority Firm Rate Energy Charge shall be the highest Bonneville Power Administration energy charge (expressed in dollars/kwh) for priority firm power in effect during the Month for which the calculation is being made.

BPA Priority Firm Rate Demand Charge shall be the highest Bonneville Power Administration demand charge (expressed in dollars/kwh) for priority firm power in effect during the Month for which the calculation is being made.

Ownership and Operation Costs shall be as defined in Section 1(w) of this contract paid by Seattle during the Month for which the calculation is being made.

Debt Service shall be as defined in Section 1(1) of this contract paid by Seattle during the Month for which the calculation is being made.

Adjusted Project Cost shall be as defined in Section 1(a) of this contract.

Seattle's Allocated Project Costs shall be as defined in Section 1(ff) of this contract for the Month for which the calculation is being made.

If the foregoing calculation results in a negative Royalty Payment for any Month, that negative amount shall be applied to reduce Royalty Payments for the next following Months until it is offset completely.

#### SECTION 5. BUDGET PREPARATION AND MANNER OF PAYMENT

(a) *Budget Preparation.* The Steering Committee shall prepare and deliver an annual budget to Seattle and the Districts on or before July 1 of each Contract Year. The annual budget shall set forth the estimated Ownership and Operation Costs and an estimate of Seattle's Allocated Project Costs for the next succeeding Contract Year in a format consistent with the requirements of the Uniform System of Accounts.

(b) *Budget Revision.* In the event of extraordinary receipts or the incurring of unusual costs substantially affecting Ownership and Operation Costs or Seattle's Allocated Project Costs during any Contract Year, the Steering Committee shall prepare and mail to Seattle and the Districts a revised budget which shall supersede the previous budget as a basis for Seattle's monthly payments for the balance of that Contract Year.

(c) *Payment Due Date.* Seattle shall pay the Ownership and Operation Costs contained in the budget and not attributable to Debt Service as they are incurred and shall pay in immediately available funds the Ownership and Operation Costs attributable to Debt Service at the time and in the manner required by the Bond Resolution without the necessity of receiving statements therefor, whether or not the Lucky Peak Project is then operating. Seattle shall pay amounts for Test Output, the Pumping Requirement at Lake Lowell or as Royalty Payments on or before the last day of the Month following the Month when Output for which such payments are to be made was made available. Payments shall be deemed made when received at the place designated in Section 5(d) below.

(d) *Place of Payment.*

(1) *Test Output and Pumping Requirement at Lake Lowell.* Payments for Test Output and the Pumping Requirement at Lake Lowell shall be made to a payee designated by the Districts.

(2) *Debt Service.* Payments of Debt Service shall be made to the Trustee in accordance with the provisions of the Bond Resolution.

(3) *Ownership and Operation Costs.* Seattle shall pay all Ownership and Operation Costs other than those attributable to Debt Service directly to the persons or entities to whom they are owed and shall account annually to the Districts for those payments.



(4) *Royalty Payments.* All Royalty Payments shall be made by Seattle to a payee designated by the Districts unless on the due date of any Royalty Payment, Seattle has actual knowledge that an event of default as defined in the Bond Resolution has occurred and is continuing, in which case the Royalty Payment then payable shall be made to the Trustee and, in accordance with the applicable provisions of the Bond Resolution, shall be held by the Trustee in trust in a special account in the Bond Fund. Royalty Payments paid to the Trustee shall be applied by the Trustee to the payment of the indebtedness evidenced by the Bonds if the Bonds, in accordance with the applicable provisions of the Bond Resolution, are declared to be due and payable as a result of the occurrence of such event of default and if and to the extent that Debt Service payments made by Seattle are not sufficient to pay and discharge in full the unpaid principal of, interest and premium, if any, on the Bonds remaining outstanding on any such accelerated maturity date and all other amounts then payable under the Bond Resolution. If and to the extent that any such Royalty Payments paid to the Trustee are not required for application pursuant to this Section 5(d)(4), such Royalty Payments shall be paid over by the Trustee to a payee designated by the Districts.

(e) *Utilization of Condemnation Awards.* Any payment or compensation received by the Districts as a result of the taking or depletion of the whole or any portion of Output or of the Lucky Peak Project by any state or state or federal governmental agency or entity shall be used by the Districts consistent with the Bond Resolution.

(f) *Late Test Output, Pumping Requirement at Lake Lowell or Royalty Payment Penalty.* If a Test Output, Pumping Requirement at Lake Lowell or Royalty Payment in full is not received at the place of payment designated in Section 5(d) above on or before the close of business on the last day of the month, a delayed-payment charge of one percent (1%) per month of the unpaid amount due will be made.

(g) *Payment Adjustments.* Adjustments to payments by Seattle shall be made in the following manner:

(1) For payments of Ownership and Operation Costs made to the Districts, if any, the Steering Committee shall submit to Seattle on or before one hundred twenty days after the end of each Contract Year a detailed statement of the actual Ownership and Operation Costs made to the Districts in the immediately preceding Contract Year, based on the annual audit of the accounts of the Lucky Peak Project provided for in this contract, and will compare such actual Ownership and Operation Costs with the estimated Ownership and Operation Costs to be made to the Districts for that Contract Year. If such actual Ownership and Operation Costs exceeded such estimated Ownership and Operation Costs, Seattle shall pay that excess promptly. If such actual Ownership and Operation Costs were less than such estimated Ownership and Operation Costs, Seattle shall be given credit against Seattle's current Ownership and Operation Costs payment obligation to the Districts, if any, of an amount equal to the difference between the actual Ownership and Operation Costs and the estimated Ownership and Operation Costs. If this comparison is made following the expiration of this contract or during a Contract Year when the estimated payments of Ownership and Operation Costs to be made to the Districts are less than the overpayment during the prior Contract Year, the Districts promptly shall make a cash refund to Seattle of the entire overpayment if this contract has expired or, if this contract has not expired, the difference between the overpayment for the prior Contract Year and the payments of Ownership and Operation Costs to be made to the Districts during the Contract Year when the computation is made.

(2) For Royalty Payments, Seattle shall submit to the Steering Committee on or before one hundred twenty days after the end of each Contract Year a detailed statement of Seattle's Allocated Project Costs during the immediately preceding Contract Year. These actual Seattle's Allocated Project Costs plus Seattle's actual Ownership and Operation Costs will be compared with the amounts of such costs used to determine the Royalty Payment for the immediately

preceding Contract Year. If the sum of such actual costs is less than the sum of such estimated costs, Seattle shall pay the Districts promptly the increased Royalty Payment resulting from such excess. If such actual costs exceed such estimated costs, the Districts shall give Seattle credit against the current Royalty Payment of an amount equal to the decreased Royalty Payment resulting from the difference between such actual costs and such estimated costs. If this comparison is made following the expiration of this contract, the Districts promptly shall make a cash refund of the entire overpayment to Seattle.

(h) *Unconditional Obligation to Pay.* Seattle recognizes and acknowledges that Boise-Kuna Irrigation District intends to issue Bonds in reliance upon Seattle's payment of the amounts set forth in this contract and that the sole and exclusive security for the Bonds will be those amounts so paid. Therefore, Seattle covenants and agrees to make the payments required under this contract at the time and in the manner required of it by this contract regardless of whether it disputes the amount of such payments or its obligation to make them. Any disputes by Seattle over the amount of payments required of it under this contract or its obligation to make them shall be resolved after such payments are made.

The obligation of Seattle to pay Debt Service is absolute and unconditional, shall accrue as of the date the Bonds are issued regardless of whether the Bonds are issued prior to the Date of Commercial Operation, shall continue as long as any Bonds remain outstanding, shall be payable whether or not any Output is produced, or is capable of being produced, for any reason whatsoever, including, without limitation, failure to complete construction of the Lucky Peak Project or termination of this contract and shall not be affected by any circumstance whatsoever, including, without limitation:

(1) any abatement, reduction, set-off, defense, counterclaim or recoupment whatsoever or any right to any thereof, including, without limitation, abatements, reductions, set-offs, credits, defenses, counterclaims and recoupments for or on account of any past, present or future claim of any kind or character which Seattle may have against any person whatsoever, including without limitations, the Districts, or any of their directors, employees, agents or representatives or any holder of Bonds, or any contractor, or arising out of or in connection with the Ownership and Operation of the Lucky Peak Project, and

(2) any other circumstance or happening or event whatsoever, including Uncontrollable Force, whether or not similar to any of the foregoing.

Seattle shall be obligated to make payments under this contract only from the gross revenues of its light and power system.

#### SECTION 6. ADDITIONAL COVENANTS OF SEATTLE

Seattle covenants and agrees with the Districts to establish from time to time and maintain such rates for electrical power and energy as will maintain its power and light system in sound financial condition and provide sufficient revenues to permit the payment of the sums it is required to pay under this contract. Seattle further covenants and agrees that it will take no action with respect to the purchase of electrical energy from the Lucky Peak Project which would cause the Bonds to become industrial development bonds for any purpose of Section 103(b) of the Internal Revenue Code of 1954, as amended, or which would adversely affect the eligibility for exemption from federal income taxes of the interest paid or to be paid on the Bonds.

#### SECTION 7. SCHEDULING OF DELIVERIES

The Lucky Peak Project will be operated to generate electrical energy whenever a sufficient flow of water is released from Lucky Peak Dam for irrigation, flood control or other authorized purposes,

but subject to the primary purpose of the Districts as irrigation districts to supply water for irrigation purposes and shall not be operated to impair the Districts' ability to fulfill that purpose. Subject to and consistent with the irrigation operations of the Districts, and the operations of the Bureau and the Corps of Engineers, the Districts shall use their best efforts to schedule the release of water to maximize the Output available to Seattle at all times during which the Lucky Peak Project is generating electrical energy and shall advise Seattle as required by Seattle of their best estimate of the daily release of water which may be made available to generate Output for each of the following seven days. The scheduling of the delivery of Output shall be the sole responsibility of Seattle.

#### SECTION 8. CHARACTER AND CONTINUITY OF SERVICE

Output supplied hereunder shall be three-phase, 60-hertz current. Seattle may cause temporary interruptions of or reductions in deliveries of Output if Seattle determines that such interruptions or reductions are necessary in case of emergencies or in order to install equipment in, to make repairs to, replacements, investigations and inspections of, or to perform other maintenance work on the Lucky Peak Project or transmission lines carrying electrical energy from the Lucky Peak Project.

Except as interrupted by Uncontrollable Force or as provided otherwise by this contract, Output shall be made available in accordance with this contract during its term.

#### SECTION 9. METERING

(a) *Meters.* Suitable metering and telemetry equipment as required by Seattle shall be located at the Lucky Peak Project to indicate and record Output. Output shall be determined from the total metering, which shall be read by Seattle, and records thereof shall be made available to the Districts as may be reasonably required.

(b) *Testing Meters.* The Steering Committee shall plan, schedule, and conduct an annual accuracy validation of all Lucky Peak Project metering devices. Meters found to be defective or inaccurate shall be adjusted, repaired, or replaced to provide accurate metering. The expenses of testing the meters shall be included as Ownership and Operation Costs for the Contract Year of the test.

(c) *Adjustments for Defective Meters.* If any meter fails to register, or if the measurement made by such meter during a test made as provided in this section varies by more than one percent from the measurement made by the standard meter used in such test, an adjustment shall be made correcting all measurements made by such inaccurate meter for the actual period during which such inaccurate measurements were made if such period can be determined or, if not, the period immediately preceding the test of such meter which is equal to the lesser of one-half the time from the date of the last preceding test of such meter or six months. Such corrected measurements shall be used to recompute the amount due from Seattle for Output made available under this contract during such period and shall be used, when applicable, in future billings to Seattle. If the total amount due from Seattle for such period as recomputed varies from the total amount due as theretofore computed, the amount of the variance shall be paid to the party entitled thereto within thirty days after the recomputation is made.

#### SECTION 10. ACCOUNTS

The parties agree to keep, separate and apart from their other accounting records, accurate records and accounts of their activities relating to the Lucky Peak Project in accordance with the Uniform System of Accounts. Those records and accounts shall be the subject of an annual audit by a firm of certified public accountants, experienced in electrical utility accounting and of national reputation, to be employed by the parties for the accounts they are responsible to maintain. A copy of each annual audit shall be furnished to the Districts and Seattle.

## SECTION 11. INFORMATION TO BE MADE AVAILABLE BY THE PARTIES

All drawings, designs, plans, specifications, data and contracts relating to Ownership and Operation shall be placed on file in the office of the Boise Project Board of Control at its principal place of business and shall be subject to inspection and copying by any party at all reasonable times.

## SECTION 12. STEERING COMMITTEE

(a) *Purpose.* The Steering Committee is hereby established to enable Seattle and the Districts to exercise their respective rights and to fulfill their respective obligations in the manner provided by this contract, to provide a forum for the parties to discuss all aspects of Ownership and Operation and to promote the free exchange of information during construction and operation of the Lucky Peak Project.

(b) *Composition of the Steering Committee.* The Steering Committee shall be comprised of five members, each with one vote. Each District and Seattle shall appoint one member to the Committee. A Chairman and Secretary shall be elected by a majority vote of the members of the Committee. Each Committee member is authorized to act on behalf of the party appointing him or her, and any action taken by a Committee member shall bind the party appointing him or her and may be relied upon conclusively by all other members of the Committee.

(c) *Meetings.* The Committee shall meet monthly on the second Thursday of each Month, or as otherwise determined by the Committee, and special meetings may be called by any Committee member upon at least forty-eight hours notice, except in an emergency, when special meetings may be called on shorter notice. All meetings will be held at the main office of the Boise Project Board of Control in Boise, Idaho, or at such other place or places as may be determined by the Committee, and minutes of all meetings shall be prepared by the Secretary of the Committee and approved by the Committee.

(d) *Responsibilities of the Steering Committee.*

(1) *Prior to Date of Commercial Operation.* The responsibilities of the Committee prior to the Date of Commercial Operation shall be:

(i) to establish general policies and practices to be followed in the administration of this contract and, to the extent applicable, in connection with the construction of the Lucky Peak Project;

(ii) to consult with the Corps of Engineers and the Bureau as provided in the Corps of Engineers Agreement concerning the coordination of construction of the Lucky Peak Project with the operation of Lucky Peak Dam and the operation of Arrowrock Dam;

(iii) to establish procedures for consultation with respect to notices received by the Districts from the Corps of Engineers or the Bureau, as provided in the Corps of Engineers Agreement;

(iv) to approve the designations of the design engineer and the construction engineer for the Lucky Peak Project;

(v) to approve the plans and specifications with respect to the design and construction of the Lucky Peak Project;

(vi) to approve the issuance and sale of Bonds prior to the Date of Commercial Operation;

(vii) to approve the award of each design, construction and procurement contract to be entered into by the Districts in connection with the Lucky Peak Project;

(viii) to oversee construction of the Lucky Peak Project and to authorize payment of bills relating to the Ownership and Operation Costs incurred prior to the Date of Commercial Operation as they fall due;

(ix) to determine the Date of Commercial Operation;

(x) to employ an insurance consultant to advise it concerning the appropriate amounts and types of insurance to carry prior to the Date of Commercial Operation; and

(xi) to employ any other consultants.

(2) *After Date of Commercial Operation.* The responsibilities of the Steering Committee after the Date of Commercial Operation shall be:

(i) to establish general policies and practices to be followed in the administration of this contract in connection with Ownership and Operation of the Lucky Peak Project;

(ii) to establish general policies and practices in accordance with the Corps of Engineers Agreement to be followed in the administration and coordination of the operation of the Lucky Peak Project with the operation by the Corps of Engineers of Lucky Peak Dam and the operation by the Bureau of Arrowrock Dam;

(iii) to consult with the Corps of Engineers, the Bureau and any other agency concerning any policies which might hereafter be required concerning the Ownership and Operation of the Lucky Peak Project;

(iv) to establish procedures for consultation with respect to notices received by the Districts from the Corps of Engineers or Bureau pursuant to the Corps of Engineers Agreement;

(v) to establish annual budgets for the Lucky Peak Project;

(vi) to establish procedures pertaining to the receipt of payments required to be made by Seattle pursuant to the provisions of this contract;

(vii) to implement the obligations of the Districts to provide water to the Lucky Peak Project in accordance with the covenants and undertakings of the Districts contained in this contract;

(viii) to approve the issuance and sale of Bonds after the Date of Commercial Operation;

(ix) to oversee operation, maintenance, repair, replacement and reconstruction or termination of the Lucky Peak Project;

(x) to employ an insurance consultant to advise it concerning the appropriate amounts and types of insurance to carry after the Date of Commercial Operation;

(xi) to employ any other consultants;

(xii) to make provision for the continuation of the Renewal and Replacement Fund after the retirement of all Bonds; and

(xiii) such other things as are specifically assigned to the Committee by the express terms of this contract or in a written direction agreed to by each of the parties hereto.

(e) *Steering Committee Decisions.* Before the Steering Committee may take any action concerning Ownership and Operation, that action must be approved by the Committee member appointed by Seattle and by three other Committee members, except for actions relating to the issuance and sale of Bonds or the calculation of Royalty Payments, when unanimous approval shall be required. If a proposed action relating to the construction, operation or maintenance of the Lucky Peak Project does not receive Committee approval, and Seattle determines that such action is necessary or appropriate for the proper construction, operation or maintenance of the Lucky Peak Project,

Seattle may take or require the Districts to take the proposed action subject to the right of one or more of the Districts to seek subsequent review and correction of the action by a Project Consultant pursuant to Section 13 below.

(f) *Notices to the Steering Committee.* Except in the event of an emergency requiring immediate action, Seattle shall give the Committee at least thirty days' notice prior to the date it plans to take action on any matter relating to construction, operation or maintenance of the Lucky Peak Project and not included in an annual budget.

#### SECTION 13. DISPUTE RESOLUTION

If any of the Districts feels aggrieved by Seattle's taking action relating to the construction, operation or maintenance of the Lucky Peak Project, which action did not receive Steering Committee approval, the sole recourse of that District shall be to submit its grievance to a Project Consultant for binding resolution.

The Project Consultant shall be appointed by the parties unless they are unable to do so unanimously, as soon as possible but in no event later than sixty days after a demand for the appointment of a Project Consultant is made by a District, in which event any party may make immediate application to the Chief Judge of the United States District Court for the District of Idaho for the appointment of a Project Consultant.

The Project Consultant shall decide whether the action taken by Seattle that is the subject matter of the District's grievance was taken in accordance with the priority of requirements set forth in Section 15 hereof and was consistent with Prudent Utility Practices.

The Project Consultant shall consider all written arguments and factual material which have been submitted to him or her by any party to this contract and enter a decision within sixty days following his or her appointment. Insofar as the parties may legally do so, they agree to abide by the decision of the Project Consultant.

#### SECTION 14. INSURANCE

The Districts agree to obtain and maintain in full force and effect during the term of this contract, subject to its availability at reasonable cost and in accordance with the Steering Committee's instructions, insurance with responsible insurers, with coverage in no event less than that required under the terms of the Bond Resolution and with policies payable to the Districts for the benefit of the Districts and Seattle, against:

- (a) obligations of the parties under the worker's compensation law of the State of Idaho, and employer's liability;
- (b) public liability for bodily injury and property damage;
- (c) physical loss or damage to the Lucky Peak Project on replacement cost basis; and
- (d) any other losses determined by the Steering Committee to be insured against.

The Districts shall provide Seattle copies of the insurance policies obtained pursuant to this section.

#### SECTION 15. CONSTRUCTION, OPERATION AND MAINTENANCE

The Districts shall own the Lucky Peak Project pursuant to the License. Seattle shall manage the construction, operation and maintenance of the Lucky Peak Project in accordance with the terms of this contract and subject to and consistent with the following requirements in the following order of importance:

- (a) operation of the Lucky Peak Project for generation of electrical energy at all times subject to the primary purpose of the Districts to supply water for irrigation purposes and in a manner that does not impair the Districts' ability to fulfill that purpose;

(b) the terms and conditions of the License or other license or permit applicable to the Lucky Peak Project;

(c) the requirements of the Bond Resolution;

(d) operation of the Lucky Peak Project to generate electrical energy whenever a sufficient flow of water is available therefor at its intake structure; and

(e) achieving from the Lucky Peak Project the optimum generation of Output consistent with economy, reliability and facility of operation.

#### SECTION 16. SITE ACCESS

Subject to reasonable regulations prescribed by the Steering Committee and any applicable Corps of Engineers rules, the parties and their duly appointed representatives shall have access to the Lucky Peak Project site at all times and shall have the right to monitor construction, start-up, operation, maintenance, and environmental compliance.

#### SECTION 17. FINANCING AND CONSTRUCTION OF THE LUCKY PEAK PROJECT

(a) *Duty to Proceed Diligently.* The Districts agree to obtain all necessary licenses and permits and proceed diligently with arrangements to finance and construct the Lucky Peak Project in accordance with the provisions of Chapter 23, Title 43, Idaho Code, their primary purpose as irrigation districts to supply irrigation water and Prudent Utility Practices, subject to Uncontrollable Force and all of the terms of this contract.

(b) *Termination if Bonds Cannot be Delivered.* Prior to the date for delivery of the initial Bonds, if the Districts cannot, despite their best efforts, proceed with construction of the Lucky Peak Project under the terms of this contract, or if the Districts are unable to deliver or make arrangements to deliver such Bonds within ninety days after the date first established for their delivery, the parties shall confer and endeavor to reach a solution that will permit the Lucky Peak Project to proceed under terms equivalent to the terms of this contract. If the parties are unable to agree upon a solution within a period of six months after the parties first so confer, unless otherwise agreed, Seattle shall be deemed to have withdrawn from participation in the Lucky Peak Project and thereby its obligations to the Districts under this contract shall be terminated.

Upon such termination, the Districts' obligation to sell Output to Seattle shall terminate, and the Districts shall be free to contract for the sale of Output to others. If, within three years after such termination, the Districts are able to obtain funds for the construction of the Lucky Peak Project from another source, all payments made to the Districts by Seattle shall be repaid with interest at the rate of eight percent per annum, thirty days after the Districts obtain funds for the construction of the Lucky Peak Project.

(c) *Termination After Bonds are Delivered.* In the event of any loss or damage or replacement to the Lucky Peak Project which will cost in excess of the amount of any insurance proceeds, the then amount of the Renewal and Replacement Fund, and \$50,000, the Districts shall, upon the request of the Steering Committee, use their best efforts to issue and sell Bonds payable solely from the revenues of the Lucky Peak Project to pay the portion of such costs which shall exceed insurance proceeds, if any, and the then amount of the Renewal and Replacement Fund. If such Bonds cannot then be legally issued and sold, such costs shall be included as Ownership and Operation Costs to be paid by Seattle in the year the costs of the repair or replacement are paid unless Seattle decides not to do so, in which event any insurance proceeds shall be deposited into the Bond Fund and the obligation of the Districts to sell Output to Seattle shall terminate without relieving Seattle from its obligation to make payments of Ownership and Operation Costs attributable to Debt Service.

#### SECTION 18. DEVELOPMENT COSTS

All payments of Ownership and Operation Costs made by Seattle, the Districts and the New York Irrigation District, Ada County, Idaho prior to the issuance of Bonds shall be repaid to the party that made them from the Construction Fund. Such Ownership and Operation Costs paid by Seattle shall be repaid together with interest, computed monthly from the date each payment was made until the date of repayment, at the rate of eight percent per annum, at the time the Districts receive proceeds from the initial sale of Bonds.

Any amounts required to be paid to the Idaho Power Company by the Districts under their Memorandum of Understanding dated May 9, 1978 shall be repaid at the time the Districts receive the proceeds from the initial sale of Bonds.

#### SECTION 19. LIABILITIES OF PARTIES

Any loss, cost, liability, damage or expense to the Districts resulting from the Ownership and Operation of the Lucky Peak Project and based upon injury to or death of persons, or damage to or loss of property of others, to the extent not covered by collectible insurance, shall be charged as Ownership and Operation Costs.

Any liability resulting from Ownership and Operation which is incurred by the Districts and is not covered by insurance shall be paid by Seattle as Ownership and Operation Costs. It is expressly understood and agreed that the primary purpose and function of the Districts is to provide irrigation water for the irrigation of land, and under no circumstances will any of the assessments or other revenues received by the Districts in payment for or relating to irrigation water supplied, the ownership and operation of irrigation facilities or payment of obligations of the Districts incurred to finance irrigation facilities be used to pay or be subject to claim by Seattle for payment of any liability or obligation of the Districts contained in this contract or arising out of Ownership and Operation.

Seattle and the Districts release each other, their agents and employees from any claim for loss or damage arising out of Ownership and Operation, including any loss of profits or revenues, loss of use of power system, cost of capital, cost of purchased or replacement power (other than payments made under Section 3(b)), other substantially similar liability or other consequential loss or damage, but not from any claim by the Districts for payments from Seattle, nor any claim by Seattle for refunds for overpayments made to the Districts, nor any claim for specific performance of the Districts' obligation to deliver Output to Seattle during the term of this contract nor any other claims by a party for performance hereunder, nor any claim by a party against an independent contractor hired in the course of Ownership and Operation.

Seattle and the Districts shall cause their insurers to waive any rights of subrogation against each other, their agents and employees, but not independent contractors, for losses, costs, liabilities, damages or expenses arising out of Ownership and Operation.

#### SECTION 20. ATTORNEYS' AND EXPERTS' FEES AND COSTS

In the event of litigation or the referral to the Project Consultant concerning any provision of this contract, the losing party shall not be entitled to include its attorneys' and experts' fees as Ownership and Operation Costs, in the case of the Districts, or Seattle's Allocated Project Costs, in the case of Seattle.

#### SECTION 21. REMEDIES ON DEFAULT

(a) *Sale of Output.* If Seattle commits an act of Default, the Districts may sell Output to others so long as the Default continues without relieving Seattle from its obligations under this contract or impairing any of the Districts' or the Trustee's remedies against Seattle.

(b) *Defaults Following the Issuance of Bonds.* If Seattle commits an act of Default while any of the Bonds is outstanding, the Districts may take any one or more of the following steps, but only with the consent of the Trustee:



(1) the Districts may give a notice of termination of this contract on a date specified in such notice, which date shall be not less than thirty days after the date of such notice. If Seattle is given notice as provided herein, the interest of Seattle in, to and under this contract shall terminate upon the date specified in such notice, and Seattle thereafter shall have no right, title or interest in, to or with respect to the Lucky Peak Project, or any Output, but shall remain liable to pay Debt Service subject to the Districts' duty to mitigate their damages;

(2) the Districts may, prior to the termination of this contract pursuant to Section 21(b)(1) above, suspend any and all rights of Seattle to Output upon not less than five days' notice to Seattle. Subject to the provisions of this section, the Districts may without further notice to Seattle grant any or all of such suspended rights to any person or entity for the duration of the suspension. In such event, Seattle shall, in addition to its other obligations under this contract, upon demand, pay to the Districts all expenses incurred in connection with such suspension and any grant of the suspended rights to another person or entity, and Seattle shall be and remain liable to make all payments, when due, required to be made by Seattle under this contract, without regard to any such suspension and as if any suspended rights exercised by another person or entity were exercised by Seattle. No suspension of any or all of the rights of Seattle to Output shall be construed as an election to terminate the interests of Seattle in, to and under this contract unless a notice of termination is given to Seattle or unless such termination be decreed at the instance of the Districts by a court of competent jurisdiction;

(3) the Districts or the Trustee on behalf of Boise-Kuna Irrigation District may bring and maintain successive proceedings against Seattle for the recovery of damages or for a sum equal to any and all payments required to be made by Seattle pursuant to this contract; and

(4) the Districts or the Trustee on behalf of Boise-Kuna Irrigation District may take whatever action at law or in equity may appear necessary or desirable to collect the amounts payable by Seattle under this contract then due and thereafter to become due, or to enforce performance and observation of any obligation, agreement or covenant of Seattle under this contract.

(c) *Non-Waiver.* No right or remedy herein conferred upon or reserved to the Districts is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing, upon the occurrence of any Event of Default. Failure of the Districts to insist at any time on the strict observance or performance by Seattle of any of the provisions of this contract, or to exercise any right or remedy provided for in this contract, shall neither impair any such right or remedy nor be construed as a waiver or relinquishment thereof for the future. Receipt by the Districts of any payment required to be made hereunder with knowledge of the breach of any provisions of this contract shall not be deemed a waiver of such breach. In addition to all other remedies provided in this contract, and except as limited by Section 13 hereof, the Districts shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the provisions of this contract, or to a decree requiring performance of any of the provisions of this contract or to any other remedy legally allowed to the Districts. Any waiver by a party of its rights with respect to any Event of Default under this contract, or with respect to any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other matter arising in connection with this contract. No delay in asserting or enforcing any rights hereunder shall be deemed a waiver of such rights.

## SECTION 22. NOTICES AND COMPUTATION OF TIME

Any notice or demand by any party under this contract shall be deemed properly given if mailed postage prepaid and addressed to each of the other parties with a copy to the Boise Project Board of Control at the addresses indicated for those parties. In computing any period of time from such notice, such period shall commence at 12:01 a.m. on the date mailed. The designations of the name and address to which any such notice or demand is directed may be changed at any time and from

time to time by any party by giving notice as above provided. The following persons are designated and appointed the representatives of the following parties:

| <u>Party</u>                         | <u>Addressee</u>                                                                           | <u>Address</u>                                             |
|--------------------------------------|--------------------------------------------------------------------------------------------|------------------------------------------------------------|
| Seattle .....                        | Director, Energy Resources<br>Planning and Management,<br>Seattle City Light<br>Department | 1015 Third Avenue<br>Seattle, Washington 98104             |
| Boise-Kuna Irrigation District ..... | Board of Directors                                                                         | 311 South School Avenue<br>Kuna, Idaho 83634               |
| Nampa & Meridian Irrigation District | Board of Directors                                                                         | 1503 First Street South<br>Nampa, Idaho 83651              |
| Wilder Irrigation District .....     | Board of Directors                                                                         | 709 Cleveland<br>P. O. Box 416<br>Caldwell, Idaho 83606    |
| Big Bend Irrigation District .....   | Board of Directors                                                                         | c/o Ben Witty<br>Route 3, Box 3253<br>Adrian, Oregon 97901 |
| Boise Project Board of Control ..... | Manager, Boise Project Board<br>of Control                                                 | 214 Broadway Avenue<br>Boise, Idaho 83702                  |

#### SECTION 23. CONSENT TO ISSUANCE OF BONDS

In accordance with the provisions of Section 43-2301(d), Idaho Code, as amended, Nampa & Meridian Irrigation District and Wilder Irrigation District each consent and, in accordance with the applicable provisions of Oregon law, Big Bend Irrigation District consents to the issuance of Bonds by Boise-Kuna Irrigation District.

#### SECTION 24. NON-PARTITIONMENT AND NON-DISSOLUTION

(a) *Non-Partitionment.* Each District waives any rights which it may have to partition the Lucky Peak Project, whether by partitionment in any kind or by sale and division of the proceeds, and shall not resort to any action, in law or in equity, to partition the Lucky Peak Project. Each District waives the benefits of all laws that may now or hereafter authorize such partitionment for the term of this contract or for such lesser period as may be required under applicable laws.

(b) *Non-Dissolution.* Each of the Districts, to the extent that each may legally do so, covenants and agrees with Seattle and with the other Districts and the Trustee that it will not dissolve or otherwise abandon its existence so long as this contract is in existence without the written consent of Seattle and the other Districts and, so long as any of the Bonds is outstanding, without the written consent of the Trustee.

#### SECTION 25. SUPPLEMENTAL OWNERSHIP AGREEMENTS

The Districts shall enter into and execute such agreements and other instruments and documents as are necessary for the purpose of recording, filing or publishing notice of the rights and interests of the Districts to the easements, land, land rights, interests in land, and permits which are required for the Lucky Peak Project.

#### SECTION 26. ENTIRE AGREEMENT — MODIFICATION OF CONTRACT TERMS

This contract constitutes the entire agreement of the parties with regard to the Lucky Peak Project. All prior or contemporaneous written or oral agreements between or among Seattle and the

Districts are merged in or revoked by this contract. Seattle has made an independent determination of the projected cost of the Lucky Peak Project and is satisfied from that determination that it is in Seattle's best interest to proceed with the development of the Lucky Peak Project. Although the Districts' engineers and the Corps of Engineers have estimated the cost of the Lucky Peak Project, Seattle has not relied upon those estimates, but rather has relied upon its own verification of those estimates and its independent determination of the projected costs and feasibility of the Lucky Peak Project in making its decision to enter into this contract.

The parties may not amend, modify or otherwise alter this contract in any manner that will impair or adversely affect the security afforded by the provisions of this contract for the payment of Debt Service so long as any Bonds are outstanding or until provision is irrevocably made for the payment thereof, but may otherwise amend, modify or alter this contract if during any period when Bonds are outstanding they first obtain the written permission of the Trustee to do so, which permission will not be withheld unreasonably.

#### SECTION 27. CAPTIONS

The captions of the sections of this contract are for convenience only and shall not be deemed relevant in resolving any question of interpretation or construction.

#### SECTION 28. BOND RESOLUTION AND FERC LICENSE

It is recognized by the parties hereto that Ownership and Operation of the Lucky Peak Project and the delivery of Output hereunder to Seattle must comply with the requirements of the Bond Resolution and with the License and amendments thereof from time to time made, and therefore this contract is made subject to the terms and provisions of the Bond Resolution and the License. However, no amendment to the Bond Resolution or the License may be made without the prior written unanimous consent of the parties.

#### SECTION 29. CONFLICT OF LAWS

The parties agree that, except as to questions of authority under the respective state laws of the parties, this contract shall be governed by the laws of the State of Idaho and that the venue of any action brought by any of the parties to this contract shall be in the United States District Court for the District of Idaho.

#### SECTION 30. VALIDITY OF CONTRACT

In the event any section, sentence, clause or phrase of this contract shall be adjudicated by a court of last resort and of competent jurisdiction to be invalid or illegal, the remainder of this contract shall be unaffected by such adjudication, and all other provisions of this contract shall remain in full force and effect as though the section, sentence, clause or phrase so adjudicated to be invalid had not been included herein.

#### SECTION 31. ASSIGNMENT OF CONTRACT

This contract shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the parties to this contract. No assignment or transfer of this contract shall relieve the parties hereto of any obligation incurred hereunder without the prior written approval of the assignment by all of the parties and, after its appointment, the Trustee.

The Districts may each assign their respective interest in, and pledge any money receivable pursuant to, this contract to the Trustee pursuant to the Bond Resolution as security for payment of Debt Service, but each such assignment or pledge shall not affect or impair the rights of Seattle under this contract.

SECTION 32. EXECUTION IN COUNTERPARTS

This contract may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. This contract shall be fully executed at such time as all parties to it have signed at least one counterpart regardless of whether each counterpart is signed by all parties.

THE CITY OF SEATTLE

BOISE-KUNA IRRIGATION DISTRICT

By /s/ CHARLES ROYER  
Mayor

By /s/ CARL GERMAN  
President

ATTEST:

ATTEST:

/s/ THERESA DUNBAR  
Deputy City Comptroller

/s/ EULA M. COLE  
Secretary

NAMPA & MERIDIAN IRRIGATION DISTRICT

WILDER IRRIGATION DISTRICT

By /s/ JOHN J. GALE  
President

By /s/ VERNON E. CASE  
President

ATTEST:

ATTEST:

/s/ DAVID G. OVERMAN  
Secretary

/s/ IOLA L. SARGENT  
Secretary

BIG BEND IRRIGATION DISTRICT

By /s/ BEN WITTY  
Voting Delegate

ATTEST:

/s/ ELMA WITTY  
Secretary

**LUCKY PEAK  
POWER PLANT PROJECT**

HC-33 BOX 1026  
BOISE, IDAHO 83706  
(208) 344-7022

**RECEIVED**

**APR 13 1990**

April 5, 1990

Department of Water Resources

State of Idaho  
Department of Water Resources  
1301 North Orchard Street  
Boise, ID 83706-2237

To Whom It May Concern:

Subject: New Mailing Address

This letter is to advise you that the Lucky Peak Power Plant Project office has been relocated to the Powerhouse site ten miles southeast of Boise, Idaho.

Our current telephone number, (208) 344-7022, will continue to be used. Our new mailing address is as follows:

Lucky Peak Power Plant Project  
HC-33 Box 1026  
Boise, Idaho 83706

Should you have any questions, please feel free to contact us.

Very truly yours,

**MANAGEMENT  
LUCKY PEAK POWER PLANT PROJECT**

DL/slc

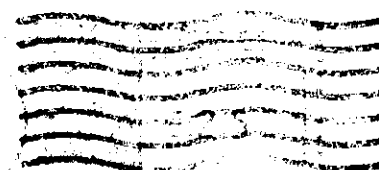
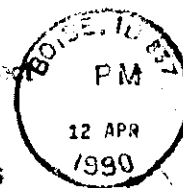
**LUCKY PEAK  
POWER PLANT PROJECT**

HC-33 Box 1026  
Boise, Idaho 83706

L.P. Power Plant Project

HC-33, Box 1026

Boise, Idaho 83706



State of Idaho  
Department of Water Resources  
1301 North Orchard Street  
Boise, ID 83706-2237





212  
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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

RECEIVED  
OCT 6 1986

Boise/Kuna Irrigation District )  
New York Irrigation District )  
Nampa and Meridian Irrigation ) Project No. 4656-002  
District )  
Wilder Irrigation District )  
Big Bend Irrigation District )

Department of Water Resources

NOTICE GRANTING INTERVENTION

(September 25, 1986)

A motion to intervene has been filed by the following movant:

Pioneer Irrigation District

This motion has been filed with respect to the following application:

Project No. 4656-002

Applicants: Boise/Kuna, New York, Nampa and Meridian, Wilder,  
Big Bend Irrigation Districts

The applicants have jointly filed an objection to the motion, contending that the movant has not demonstrated any interest which may be directly affected by the outcome of the proceeding and that the movant has failed to raise any issue which is subject to Commission jurisdiction. Despite the applicants' arguments, good cause exists for granting intervention. The movant has legitimate interests under law which are not adequately represented by other parties. Granting the intervention will not cause a delay nor prejudice any other party. It appears to be in the public interest to allow the movant to appear in the proceeding.

Pursuant to § 375.302 of the Commission's regulations, 18 C.F.R. § 375.302 (1986), the movant is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r). Participation of the intervenor shall be limited to matters set forth in its motion to intervene. The admission of the intervenor shall not be construed as recognition by the Commission that it might be aggrieved by any order entered in this proceeding.

Kenneth F. Plumb  
Secretary

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APR 04 1988

DC-A-16



FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE: \$300



POSTAGE AND FEES PAID  
FEDERAL ENERGY  
REGULATORY COMMISSION  
FENC 351

Phillip J. Rassier P-4656-  
Deputy Attorney General  
Idaho Dept. of Water Resources  
450 West State Street  
Boise, Idaho 83720

PS  
KAT

**RECEIVED**  
OCT 6 1986

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Department of Water Resources

|                                |   |                      |
|--------------------------------|---|----------------------|
| Boise/Kuna Irrigation District | ) |                      |
| New York Irrigation District   | ) |                      |
| Nampa and Meridian Irrigation  | ) | Project No. 4656-002 |
| District                       | ) |                      |
| Wilder Irrigation District     | ) |                      |
| Big Bend Irrigation District   | ) |                      |

NOTICE GRANTING LATE INTERVENTION  
(September 25, 1986)

An untimely motion to intervene has been filed by the following movant:

Idaho Department of Fish and Game

This motion has been filed with respect to the following application:

Project No. 4656-002

Applicants: Boise/Kuna, New York, Nampa and Meridian, Wilder, Big Bend Irrigation Districts

The movant has legitimate interests under the law that are not adequately represented by other parties. Granting the intervention will not cause a delay nor prejudice any other party. Good cause exists for granting the late intervention. It appears to be in the public interest to allow the movant to appear in this proceeding.

Pursuant to § 375.302 of the Commission's regulations, 18 C.F.R. § 375.302 (1985), the movant is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r). Participation of the intervenor shall be limited to matters set forth in its motion to intervene. The admission of the intervenor shall not be construed as recognition by the Commission that it might be aggrieved by any order entered in this proceeding.

Kenneth F. Plumb  
Secretary

**MICROFILMED**

APR 04 1988

DC-A-5

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300



POSTAGE AND FEES PAID  
FEDERAL ENERGY  
REGULATORY COMMISSION  
FERC-351

Phillip J. Rassier P-4656-  
Deputy Attorney General  
Idaho Dept. of Water Resources  
450 West State Street  
Boise, Idaho 83720

RECEIVED

MAR 21 1986

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Department of Water Resources

*filed under  
212*

New York Irrigation District, )  
Nampa-Meridian Irrigation District, )  
Boise-Kuna Irrigation District, ) Project No. 2832-000  
Wilder Irrigation District, )  
Big Bend Irrigation District )

NOTICE OF EXTENSION OF TIME  
(March 12, 1986)

On March 6, 1986, the New York Irrigation District, Nampa-Meridian Irrigation District, Boise-Kuna Irrigation District, the Wilder Irrigation District and Big Bend Irrigation District (Districts) filed a joint motion for an extension of time to file an answer to Pioneer Irrigation District's (Pioneer) Motion to Reopen License Proceedings, Halting Construction filed February 20, 1986, in the above-docketed proceeding. In their motion, the Districts state that because of the lengthy nature of Pioneer's filing and the number of issues addressed in the documents, additional time is required for the coordination and preparation of the District's response. The Districts further state that Pioneer could not consent to this extension of time.

Upon consideration, notice is hereby given that an extension of time for filing an answer is granted to and including April 21, 1986.

*Kenneth F. Plumb*

Kenneth F. Plumb  
Secretary

MICROFILMED

APR 04 1988

DC-A-51

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE: \$300



POSTAGE AND FEES PAID  
FEDERAL ENERGY  
REGULATORY COMMISSION  
FERC-351

C. Steven Silrod, Director, et al  
Idaho Department of Water Resources  
Statehouse P-2832  
Boise, Idaho 83720

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Charles B. Curtis, Chairman;  
Georgiana Sheldon, Matthew Holden, Jr.,  
George R. Hall and J. David Hughes.

|                                    |   |                  |
|------------------------------------|---|------------------|
| New York Irrigation District       | ) |                  |
| Nampa-Meridian Irrigation District | ) |                  |
| Boise-Kuna Irrigation District     | ) | Project No. 2832 |
| Wilder Irrigation District         | ) |                  |
| Big Bend Irrigation District       | ) |                  |

ORDER ON APPEAL MODIFYING ORDER ISSUING  
LICENSE (MAJOR) AND GRANTING INTERVENTION

(Issued October 9, 1980)

On June 10, 1980, the Director of the Office of Electric Power Regulation (Director) issued an "Order Issuing License (Major)" for the Lucky Peak Power Plant Project No. 2832 [11 FERC ¶62, 119] pursuant to authority delegated under Section 375.308 of the Commission's regulations, 45 Fed. Reg. 21216 (1980), amending 44 Fed. Reg. 46449 (1979) and 18 C.F.R. 3.5(g) (1979). Boise Project Board of Control (Board), <sup>1/</sup> Idaho Department of Water Resources (IDWR) <sup>2/</sup>, and the U.S. Army Corps of Engineers (Corps) filed appeals of the order issuing license on July 7, 9, and September 3, 1980, respectively.

Minimum Flow Release

All appellants have requested the Commission to delete Article 35 of the Director's order. Article 35 requires the licensee to discharge from the project a continuous minimum flow of 160 cfs with a provision for waiving that requirement during critical drought years. This minimum flow release was recommended by the City of Boise and the U.S. Environmental Protection Agency. In a letter to the Director dated March 17, 1980, the Board indicated that it proposed to maintain that minimum flow, except during critical drought years. On appeal, the Board explained that its proposal was based not on its ability to control releases, but rather upon the historic use of the waters in

- 1/ The Boise Project Board of Control is composed of five member irrigation districts, New York Irrigation District, Boise-Kuna Irrigation District, Nampa-Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District. These five irrigation districts are collectively the applicant for license in this proceeding and will be referred to hereinafter as the "Board."
- 2/ IDWR simultaneously filed a petition to intervene in this proceeding. IDWR states that it seeks intervention to protect the authority of the State of Idaho to regulate the allocation and distribution of the State's water resources. The public interest may be served by granting the petition to intervene. If the petition is granted in ordering paragraph (B).

APR 04 1988

DC-A-3

the Boise River since the construction of Lucky Peak Dam. As explained by IDWR in its appeal, the Board holds no water rights in the Lucky Peak reservoir. The proposed Lucky Peak Project will utilize the flood control and irrigation releases from the reservoir for electric power generation. IDWR states that no additional waters are available for appropriation in the Boise River System which would allow the Board to meet the 160 continuous flow requirement.

The Corps in its appeal asserts that Article 35 would alter an agreement between the Department of the Army and the Department of the Interior, dated November 20, 1953, which provides for the joint use of the storage in the three-reservoir system on the Boise River--Lucky Peak, Arrowrock, and Anderson Ranch Reservoirs--and provides for controlled releases as a joint function of the Water and Power Resources Service (WPRS) and the Corps of Engineers. Releases are coordinated with the Board, to meet irrigators' demands, and Idaho Department of Fish and Game (IDFG), who may call releases from 50,000 acre-feet of Lucky Peak reservoir storage for maintaining minimum wintertime flow in the Boise River. The Corps maintains that the mandatory minimum streamflow requirement of Article 35 would "destroy a delicate balance of interests achieved through an effective management plan of the three-reservoir system on the Boise River..."

In light of the management plan in effect for the operation of the three reservoirs on the Boise River, we shall relieve the Board of the mandatory minimum flow requirement in Article 35. We do, however, feel that further attention to minimum flow needs below Lucky Peak Dam is required. Article 35 will be revised to direct the Board to consult with WPRS, the Corps and IDFG to determine the feasibility of providing a continuous minimum flow from Lucky Peak dam during the non-irrigation season.

#### Power for Operation of Federal Facilities

The Corps recommends that the license include a condition requiring the provision of power free of cost to the United States for operation and maintenance of the government project. The Corps explains that this is item "e" of the "General Requirements for Federal Hydroelectric Plant Construction at U.S. Army Corps of Engineers Water Resource Projects," as forwarded to the Commission by the Corps of Engineers' letter of March 17, 1980.

Under Section 11(c) of the Federal Power Act (Act), 16 U.S.C. 804(c), the Commission is authorized to require a licensee of a project located across, along, or in navigable waters of the United States to furnish free of cost to the United States power for the operation of navigation facilities, whether constructed by the licensee or the United States. The federal facilities at the Lucky Peak Project are not navigation facilities and are thus outside the scope of the Commission's authorization under Section 11(c). We also note that, under the terms of the license, the Corps will be reimbursed directly for expenses it incurs incident to the construction of the hydropower

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project and the United States will be compensated for the use of the government dam by annual charges imposed pursuant to Section 10(e). The Corps has provided no showing of good cause for any additional requirement for free power to operate the non-navigational Corps project, and therefore we reject its recommendation.

#### Corps Review and Supervision of Construction

The Corps, on appeal, restated its concerns regarding the close proximity of constructing an additional tunnel adjacent to the Corps' existing tunnel and recommended extensive engineering investigations to establish whether such a plan can be constructed without threatening the integrity and safety of the existing dam embankment. Article 37 of the Director's order adequately provides for consultation with and the approval of the Corps regarding the design and construction of the additional tunnel. Article 37 directs that the design and construction of all facilities that will be an integral part of the Lucky Peak Dam shall be done in consultation with and subject to the review and approval of the Corps. The Corps maintains that this provision does not adequately satisfy its legal responsibility for the safety and integrity of the dam and facilities heretofore or hereafter constructed at the Lucky Peak project. The Corps would revise Article 37 to direct that "[t]he location, design, construction and flow regulation of all hydropower facilities that will be an integral part of the Lucky Peak dam shall be accomplished by or under the direct supervision of the Department of the Army, Corps of Engineers, Walla Walla District... The purpose of this supervision is to assure the safety and integrity of the dam." The original language of Article 37 that provides for Corps "review and approval" of the design and construction of all facilities integral to the Lucky Peak Dam assures the Corps' authority with respect to the safety and integrity of the dam. To include the revised language proposed by the Corps providing for location, design, construction and flow regulation to be "accomplished by or under the direct supervision of the" Corps would be tantamount to requiring the licensee to hire the Corps as its designer/contractor. Although we would have no objection should the licensee decide to so employ the services of the Corps, we find it inappropriate to require this action. The authority of the Corps to review and approve designs and plans for construction is confirmed by the provisions of the Director's order.

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The Corps also asserts that the requirement of Article 37 that provides for the resolution of any dispute between the Corps and the licensee regarding the design and construction of facilities integral to the dam by the Director, Office of Electric Power Regulation, would infringe on the Corps' Section 4(e) approval authority. We need not resolve that question now. We believe it quite unlikely that the Corps and the licensee would be unable to resolve on their own any differences that might initially arise. We shall therefore remove the dispute resolution procedure from Article 37. Should a dispute arise, however, about whether the Corps' requirements are unreasonable or beyond the scope of the Corps' statutory authority, the licensee may-- as with any other requirement under its license--petition the Commission to clarify its responsibilities under the license. Or the licensee



may petition to amend Article 37 of the license. Only in such an instance would we need to address the scope of the Corps' authority and, if appropriate, resolve the dispute. The Corps would, in either event, have full opportunity then to present its position on the law and the facts applicable to the dispute.

The Corps urges the Commission to expand Article 38 by adding a requirement that the Licensee shall hold and save the United States free from any and all claims and damages resulting from construction, operation, and use of the Lucky Peak dam and facilities for power purposes. Such a requirement will be included as Article 46.

The Corps asserts that Article 42, which provides for reimbursement to the United States for reasonable construction costs, does not include provision for reimbursement of reasonable costs for engineering, administrative and supervisory costs incurred by the Corps resulting from review of design, plans and specifications, and supervision of construction. We shall revise Article 37 to include provision for reimbursement of reasonable costs incurred by the Corps in its review and approval of design and construction.

#### Land Use and Recreational Development

The Corps states that the provisions of Article 34 and 45 could be construed to allow the licensee to engage in recreational development or initiate other land use features that might infringe on Corps jurisdiction cover existing federal project lands. Article 34 requires the licensee to conduct a study to determine the need for recreational development in the vicinity of its hydroelectric project and prepare a plan for any recreational facilities by the licensee. The licensee is required by Article 34 to consult with the Corps, in addition to the Idaho Department of Parks and Recreation and the Heritage Conservation and Recreation Service of the U.S. Department of the Interior. This consultation requirement will provide for consistency of the licensee's plans with the Corps' recreational master plan. By directing a study of recreational needs in the vicinity as opposed to within the boundaries of the licensed project, the licensee is afforded some flexibility regarding the possible location of its recreational development should a cooperative arrangement be possible with the Corps or some other governmental agencies in the project area. No extraordinary authority is implied or intended by this article.

Article 45 is the standard shoreline control article now included in all project licenses. The language of that article refers exclusively to "project lands and waters" and as such cannot be read to to affect anything beyond the licensed project boundaries.

#### Annual Charges for Use of Government Dam

The Board has also suggested that Article 41(3), which provides for the future determination of annual charges for the use of the Government dam, be revised to provide for adjustment of the annual

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charge for expenditures by the licensee that result in enhancement of the federal facility. The Board asserts that the proposed additional tunnel to be constructed at Lucky Peak dam will benefit the federal project in that it will permit the release of all irrigation and wintertime minimum flows when the single tunnel is closed for inspection or repair and double the ability to release flood control waters through the Lucky Peak dam during periods of unprecedented flood without resort to use of the spillway. In its appeal, the Corps requested the opportunity to provide pertinent information should the Commission consider credits to the licensee for benefits and project enhancement.

At such time as the annual charge for use of the Lucky Peak Dam is to be determined, the Board may present its contentions with respect to the proper computation of that charge including any credits claimed. Input from the Corps at that time will also be welcome. We need not at this time address the question of the permissibility or extent of any adjustment to the annual charge for enhancement to the federal project anticipated by the Board. No revision of Article 41 is required.

The Commission orders:

(A) Ordering Paragraph (D) of the "Order Issuing License (Major)" for the Lucky Peak Power Plant Project No. 2832, issued June 10, 1980, is revised by substituting the following Articles 35 and 37 for the like-numbered articles in that order and by adding Article 46, set forth below:

Article 35. Licensee shall consult with the Water and Power Resources Service of the U.S. Department of the Interior, U.S. Army Corps of Engineers, Idaho Department of Water Resources, and the Idaho Department of Fish and Game to determine the feasibility of providing, to the extent surplus water is available from the Federal dam, a continuous minimum flow of 160 cfs at the project dam during the nonirrigation season. Within 1 year from the issuance of this order, Licensee shall file a report with the Commission that describes the results of the above consultation and any recommendation for ensuring the protection of downstream fishery resources.

Article 37. The design and construction of all facilities that will be an integral part of the Lucky Peak Dam shall be done in consultation with and subject to the review and approval of the U.S. Army Corps of Engineers, Walla Walla District, Walla Walla, Washington. To the extent that the Corps incurs reasonable costs directly related to the review and approval of design and construction of licensed facility, the Licensee shall reimburse the Corps.

Article 46. The Licensee shall hold and save the United States of America free from any and all claims and damages resulting from construction, operation, and use of the Lucky Peak Dam and facilities for power purposes.

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(B) Pursuant to §375.302 of the Commission's regulations, 45 Fed. Reg. 21216 (1980), amending 18 C.F.R. §3.5(a) 1979, as promulgated by Federal Energy Regulatory Commission rulemaking RM78-19 (issued August 14, 1978), Idaho Department of Water Resources is permitted to intervene in this proceeding subject to the Commission's Rules and Regulations under the Federal Power Act, 16 U.S.C. §§791(a)-825(r). Participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in its petition to intervene. The admission of the intervenor shall not be construed as recognition by the Commission that it might be aggrieved by any order entered in this proceeding.

(C) This order is final unless an application for rehearing is filed within 30 days of the date of its issuance, as provided in Section 313(a) of the Federal Power Act. The filing of an application for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. Failure of the Licensee to file an application for rehearing shall constitute acceptance of the order of June 10, 1980, issuing major license for Project No. 2832, as modified by this order. In acknowledgment of acceptance of this license, this order shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

By the Commission.

( S E A L )

*Lois D. Cashell*

Lois D. Cashell,  
Acting Secretary.

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# Lucky Peak work expected to start by June

By RON ZELLAR  
The Idaho Statesman

Two representatives of the irrigation districts seeking to build the Lucky Peak hydroelectric plant said Monday they are optimistic that construction can be started by June 1, as required by the project's license.

Bill Bienapfl, Meridian, and John Hockberger, Caldwell, said they met last week in Washington, D.C., with staff members of the Federal Energy Regulatory Commission and received no assurances, but "positive questions."

The meeting was arranged by congressional aides from Idaho, Oregon and Washington, who participated in the discussions, Hockberger said.

Five Boise Valley Irrigation districts are seeking to develop the project in partnership with Seattle City Light, a Washington municipal utility. Washington lawmakers were involved because Seattle would buy the power generated at the plant.

Under terms of the FERC license issued four years ago, the irrigators have until June 1 to start construction, or they face relicensing. If a new license is issued, other potential developers could offer competing proposals.

Although each of the five districts and the Seattle City Council still must approve the final contract, the biggest hurdle seems to be getting FERC to acknowledge the need for a bypass tunnel at Lucky Peak Dam, Bienapfl said.

The second tunnel would be used to maintain water in the Boise River while the power plant is being built, and would provide assurance sought by irrigators that they will have water for crops in the event of problems or construction delays.

The Army Corps of Engineers, which owns the dam, supports the irrigators' plan to build a second tunnel south of the dam spillway.

The FERC plan calls for a smaller tube to be built next to the main tunnel. Congress authorized the smaller bypass tunnel shortly after the dam was built, but never provided financing for it.

Hockberger said the discussion

last Wednesday between congressional staffers and FERC indicated that Congress may have to de-authorize the second tunnel, thereby making it the responsibility of the hydroelectric plant.

On Monday, lawyers for two of the five irrigation districts were in Seattle working on details of the power purchase agreement with Seattle City Light, Hockberger said. Elections will be held in the five districts once the contract is ready.

And Lawerance Gray, Nampa, spokesman for 36 mostly smaller irrigation districts and canal companies who are protesting the Seattle contract, said Monday he has asked state Water Resources Director Ken Dunn to hold a hearing on the project.

Dunn said he has informed the license-holding districts informally he will issue a water permit for the project once FERC requirements are met, but will insert a clause asking that the permit be reviewed with the federal license expires in 45 years.

If a bill being considered by the state Legislature is approved, he might have to reconsider that position, Dunn said. The bill would require that Idaho utilities be given first chance at any power developed in the state.

Idaho Power Co. had sought to build the project cooperatively with the irrigation districts, but broke off negotiations after a district rejected its offer.

THE IDAHO STATESMAN  
BOISE, IDAHO

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# Lucky Peak Power plans progress

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Two members of the power committee appointed by the Boise Projects Board of Control met last week with authorities in Washington D.C. to obtain approval for building a second but larger by-pass tunnel at Lucky Peak Dam. It would be used to maintain water in the Boise River while Lucky Peak Power plant is being built.

Construction on the Power plant must begin by June 1 for the five irrigation districts represented by the Boise Project Board to maintain their power generating license, issued to them by the Federal Energy Regulatory Commission.

Former long range plans had authorized a seven foot by-pass tunnel but federal financing of that tunnel had never been authorized. The Boise Project Board is proposing to build a larger tunnel that would be twelve foot in diameter on the southside of the present dam spillway as a safeguard. It would be financed from the sale of electricity from the power plant. It would allow a minimum flow of 5000 cubic feet of water per second and would guarantee ample water for all irrigators on the Boise River during construction of the power plant and would be a safeguard in time of any other emergencies such as dam repairs and inspection. The by-pass tube would cost \$16 million dollars.

Boise Project Committee members, John Hockberger of Caldwell and Bill Bienapfl of Meridian, their lawyers and engineers met with Congressional aides and the staff of the Senate Energy Committee last week. They were told that Congress may have to de-authorize the original 7 foot second tunnel before the larger tunnel proposed could be authorized as a responsibility of the hydroelectric plant.

This week, lawyers of the five irrigation districts are in Seattle working out details of the power purchase with Seattle City Light, Hockberger reports. He further stated that an election for approval of revenue bonding to finance the dam construction and the power contract with Seattle City Light will go before the members of the five irrigation districts involved. He said he anticipates that election will be set within the next week to ten days, and will be a "yes" or "no" type of ballot.

Other irrigation districts and canal companies who use Lucky Peak water are protesting the Seattle contract because they have been denied a share in the proceeds from the sale of the power. They had chosen not to become a part of the group seeking the power license at the time it was granted. They have asked State Water Resources Director, Ken Dunn, to hold a hearing on the project.

Dunn has informed the five license holding districts which include Wilder, Nampa-Meridian, Boise-Kuna, New York and Big Bend Districts that he will issue a water permit for the project once FERG requirements are met, but will insert a clause asking that the permit be reviewed when the federal license expires in 45 years.

Dunn further stated he might have to change this position if a bill being considered by the Idaho legislature is passed requiring that Idaho utilities be given first chance on any power developed in the state. An offer by Idaho Power Co. to build the power plant had been rejected by voters in the Wilder irrigation district.

Hockberger concluded that the Boise Project Board is continuing with it's plans to get construction underway as soon as the district irrigator members give their vote of approval.

THE PARMA REVIEW

Parma, Idaho

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# The Lucky Peak Hydro Project

## *Questions and answers about the proposed contract between Seattle and the five irrigation districts*

Nampa & Meridian, New York, Boise-Kuna, Wilder, Big Bend Irrigation Districts

**Q. Will the proposed contract for the Lucky Peak Project affect our water rights or our ability to get water as required?**

A. NO. The contract expressly provides that operation of the Lucky Peak Project for generation of electrical energy shall at all times be SUBJECT TO AND SHALL NOT IMPAIR THE IRRIGATION DISTRICTS' PRIMARY PURPOSE OF SUPPLYING WATER FOR IRRIGATION PURPOSES.

**Q. Will either the proposed contract or the revenue bonds to be sold to finance the Lucky Peak Project become an obligation of the Irrigation Districts or impose a lien on properties within the Districts?**

A. NO. The contract expressly provides that:

- (1) ALL PAYMENTS by the Districts are to be made SOLELY FROM REVENUES RECEIVED FROM SEATTLE;
- (2) NO LIEN will be placed upon any lands within the Districts;
- (3) NO ASSESSMENTS will be required;
- (4) SOLE AND EXCLUSIVE SECURITY for the Bonds will be AMOUNTS PAID BY SEATTLE.

**Q. Who will own the Lucky Peak Project?**

A. The proposed contract provides that the IRRIGATION DISTRICTS WILL OWN THE LUCKY PEAK PROJECT and be the license holder for it. After the contract with Seattle expires, the Districts may sell to the highest bidder the electrical energy produced by the Project.

**Q. Who will construct the Lucky Peak Project?**

A. The proposed contract provides that Seattle will manage the construction, operation and maintenance of the Lucky Peak Project under the direction of a Steering Committee comprised of the five district representatives and one from Seattle.

**Q. What is Seattle's experience in operating an electric system and, in particular, hydroelectric generation?**

A. Seattle City Light is the 7th largest publicly-owned electric system in the nation in terms of customers served (nearly 300,000) and had operating revenues last year in excess of \$150 million. It owns and operates four large and two small hydroelectric projects and has contractual rights to power and energy output from numerous other hydroelectric resources.

**Q. What are the benefits to the Districts under the proposed contract?**

A. The contract provides for:

- (1) OWNERSHIP by the Irrigation Districts of all hydroelectric facilities of the Project;
- (2) LAKE LOWELL PUMPING ENERGY (500,000 kwh per year) AT NO COST to the Districts; and
- (3) ROYALTY PAYMENTS to the Districts for each kilowatt hour (kwh) of energy sold to Seattle from the Project:

DURING THE FIRST 20 YEARS AFTER COMMERCIAL OPERATION BEGINS — The royalty rate will be fixed following completion of the Project according to the final Project cost: the higher the cost, the lower the royalty rate; the lower the cost, the higher the royalty rate. However, the royalty rate cannot drop below 2 mills per kwh (a payment of \$680,000 in a year with average water flows). The current estimated Project cost is \$130 million, which would result in a royalty rate of 5.9 mills per kwh (a payment of about \$2 million in a year with average water flows).

DURING THE REMAINING 30 YEARS OF THE CONTRACT TERM — The royalty rate will be a fixed percentage (not less than 25%) of the cost savings which Seattle experiences by acquiring energy from the Project rather than from the Bonneville Power Administration. Since there will be no revenue bond payments during this period, THE DISTRICTS' "SHARE-OF-THE-SAVINGS" ROYALTY PAYMENTS FOR THE REMAINING 30 YEARS ARE PROJECTED TO BE SIGNIFICANTLY HIGHER THAN THOSE MADE DURING THE FIRST 20 YEARS.

**Q. Are there better power sales contracts available for the Lucky Peak Project?**

A. NO. After seven years of effort by the Districts, this is the best contract available. Construction of the Lucky Peak Project must begin by June 1 or the Districts' license will terminate. APPROVAL OF THE PROPOSED CONTRACT BY THE VOTERS OF ALL DISTRICTS (a YES vote on April 17) IS NECESSARY to begin construction. Rejection of the contract means the license and all the benefits under the contract will be lost.

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**Vote YES on April 17**

# **NEW YORK IRRIGATION DISTRICT**

214 BROADWAY AVENUE  
BOISE, IDAHO 83702

Listed below are New York Irrigation District's three polling places for the Special Contract Election, April 17, 1984, authorizing this district and four other districts to enter into a Power Purchase and Sale Contract with the City of Seattle, Washington:

|                        |                                                                                            |
|------------------------|--------------------------------------------------------------------------------------------|
| <u>Precinct No. 1:</u> | Southminster United Presbyterian Church<br>6500 Overland Road, Boise, Idaho                |
| <u>Precinct No. 2:</u> | Maple Grove School<br>2800 S. Maple Grove Road, Boise, Idaho                               |
| <u>Precinct No. 3:</u> | Ten Mile Grange Hall, Southwest Corner<br>of Eagle Road & Columbia Road<br>Meridian, Idaho |

FOR ADDITIONAL INFORMATION CALL  
THE NEW YORK IRRIGATION DISTRICT OFFICE:  
**343-2962**

|                                                        |          |
|--------------------------------------------------------|----------|
| Precinct No. 1, Burton Guiles, Director .....          | 343-8102 |
| Precinct No. 2, Lou Murgoitio, Director .....          | 362-1262 |
| Precinct No. 3, Charles F. (Dick) Wood, Director ..... | 888-5597 |

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APR 04 1988

# Lucky Peak

## EDITOR:

This writer has followed closely the subject of electrical generation at the Lucky Peak Dam ever since the Army Corps of Engineers began holding hearings on it in Boise and is convinced that the contract between the Boise Project Board of Control and the City of Seattle is the best that could be obtained, in view of the fact the Idaho Power Co. (IPCo) withdrew from the contract and billed the Board for expenses incurred during the negotiations; also since the proposed Simplot contract had some escape clauses in it.

Simplot could not be absolutely sure he could sell the power to the highest bidder since IPCo did not have to wheel (transmit) the Lucky Peak power over its transmission lines as the FERC rating of the plant was over 80 Megawatts of rated generation capacity.

Actually, the Lucky Peak power will not leave Idaho and will flow East for use by the 20 Bonneville Power Administration's (BPA) customers supervised by the Idaho Falls District of BPA. Seattle is also a preference customer of BPA, and as BPA has a wheeling agreement with IPCo. Seattle can exchange power with BPA and receive power from a Federal Dam closer to Seattle, and the 20 Idaho Falls District BPA customers will receive Lucky Peak power instead of power IPCo now wheels for BPA from Federally generated power outside of Idaho, since they are closer to Lucky Peak than Seattle and electricity still follows the line of least resistance; providing another benefit due to less transmission line losses.

The Board of Control will receive

from two to six mills more for Lucky Peak power than it will cost them to produce it, and the Southern Idaho BPA customers will pay BPA less for this Lucky Peak power than if they purchased it directly from the Board of Control as BPA's rates to its preference customers for Firm Power is based on its average system costs.

Thus, this transaction also benefits Idahoans as they will be receiving more BPA power at a cheaper rate than if this same amount of power were purchased from an Investor Owned Utility in Idaho such as IPCo or Utah Power Co. A point also to be considered is that these Idaho Falls District BPA customers use more power than is produced by the Federal dams in Southern Idaho, consequently power not being generated by water from Idaho's watersheds has been imported by Southern Idaho's BPA customers for many years.

Hence, this contract by the Board of Control and Seattle is in conformance with the State of Idaho Water Plan in that it reduces the reliance of Idaho to import power generated outside the state.

Another point to be considered, when Idaho's dependence on outside generation is an issue, in that IPCo., alone, sold four billion eight hundred million kilowatt hours of electricity out of state in 1983, and is considering building a transmission line to sell surplus power to California, so the Board of Control should not be criticized for consummating an agreement with Seattle as this contract too will bring outside money into Idaho and this profit will remain in Idaho. Whereas, over 93 percent of the profit from IPCo's out of state power sales goes to out of state stockholders.

Idaho should keep more of its profits in Idaho.

Additional facts to be considered, is that the Boise River is a navigable stream as it will float a log ten inches in diameter, consequently, sale of power from a federal dam by a public entity holding a FERC license, such as the Boise Project Board of Control, could possibly or probably would come under the "Commerce" clause of the U. S. Constitution.

Therefore, any attempt to block the sale of Lucky Peak power to Seattle, most likely is illegal. Also, it should be pointed out that the Board of Control now holds the "falling water right" for electrical power generation at Lucky Peak and that former Director of the Idaho Department of Water Resources issued a State of Idaho Water Permit to the Boise Project Board of Control on December 7, 1977 Permit No. 63-2019, also, additional hydro generation in the Northwest increases its systems' reliability which benefits all of us.

Harold C. Miles

## THE IDAHO STATESMAN BOISE, IDAHO

FEB 11 1984

## INDEPENDENT-ENTERPRISE Payette, Idaho

FEB 8 1984

## MESSENGER-INDEX Emmett, Idaho

FEB 8 1984

## THE PARMA REVIEW Parma, Idaho

FEB 9 1984

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MAR 15 1984

Department of Water Resources

M E M O R A N D U M

TO: Phil Rassier  
FROM: Pat Kole *PK*  
DATE: March 13, 1984  
RE: Lucky Peak

Attached hereto is a note and a press release received in this office from Harold C. Miles. Mr. Miles take the position that the Department of Water Resources is obligated to issue a permit to the irrigators and the city of Seattle because of some agreement between Steve Allred and the Boise Project Board of Control. Phil, if you know anything about this, I would sure appreciate your comments.

*Attached  
letter to  
sent to  
Pat 3-15-84  
JSZ*

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3-2-84  
Dear A.G. Jones PK??

It would seem  
that the commitment  
made by former Idaho  
Dept of Water Resource  
Director, Steve Allred to  
issue a permit to the  
Boise Project Board of  
Control when the  
Board received its  
FERC license &  
had completed the other  
necessary arrangements  
would be binding on

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the present Director.  
and the State of Idaho,  
as regards the Lucky  
Peak Power project.

What is your opinion  
regarding this very  
important matter?

Respectfully yours,

Herald B. Miles

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March 1, 1984

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To the Media:

Office of The Attorney General

The position taken by those who want to place a recall provision in the Water Permit issued by the Director of the Idaho Department of Water Resources for the production of electricity at the proposed Lucky Peak generating plant is short sighted and misguided.

Other products grown or produced in Idaho, such as apples, potatoes, beans, wheat, corn, lambs, wool, cattle, minerals, timber and wood products are not sold subject to recall, neither should be electricity. After all, Idaho Power (IPCo) alone sold 4.8 billion kilowatt hours (kwh) to utilities, who are not its firm power customers in 1983, without a recall provision, and this electricity was produced primarily from Idaho water. Also, over 90% of the dividend profit from this IPCo sale went to non-Idaho resident stockholders. The well over one billion dollars the Arrowrock Project Board of Control water districts will receive from the City of Seattle for this Lucky Peak electricity will remain in Idaho. And since Idaho wants to increase its sale of products, it makes good economic sense for Idahoans to receive revenue from a product from which they have not had to indirectly pay a subsidy on its production, such as most agricultural products.

As a rule, in the electrical generation sale industry, when a recall provision is tied to the sale contract, the economic value of the electricity is reduced, therefore, if the sale of the Lucky Peak power to Seattle for the life of the contract, (50 years) has a recall provision, Seattle most likely will reject the contract out of hand or will reduce the amount it is willing to pay the Board of Control for the Lucky Peak electricity. In addition, Seattle can buy non-firm surplus or firm surplus power from the Bonneville Power Administration (BPA) at a kwh rate considerably less than Seattle has offered to pay the Board of Control for the Lucky Peak power. For example, BPA sold 20.4 billion kwh to Southwest utilities in 1983 for 10 mills kwh, which is about 25% of the rate IPCo residential ratepayers are currently paying.

In addition, Seattle is a winter peaking area and Southern Idaho is a summer peaking area, which means Seattle uses most of its electricity during the winter and Southern Idaho uses most of its electricity during the summer. This makes for an ideal contract, and in my view, Idahoans could look the entire United States over and not receive as good an offer as Seattle has made the Board of Control.

The installation of electrical generating turbines in the Lucky Peak outlet will save approximately \$50,000 yearly maintenance charges the Army Corps of Engineers has to pay for repairs to the outlet, also water released from the outlet will not have to be drastically reduced while these repairs are being made, thus this Seattle Contract provides additional side benefits for all of us.

A final point is that since the laws of physics state that electricity follows the line of least resistance and the City of Boise uses nearly three times as much electricity as the Lucky Peak Plant will generate, this electricity will not leave the Boise Area; and Seattle, by exchange of Power with BPA,

most likely will receive an equivalent amount of the Lucky Peak generated power from a Federal generating plant, such as Bonneville Dam, which is closer to Seattle.

The proponents of "free enterprise" should have no objection to seeing that IPCo has competition, as this Seattle-Board of Control provides IPCo; also there should be no valid objection to the Board of Control's receiving a better offer from Seattle than was made by either Idaho Power or Mr. Simplot.

Respectfully submitted,

*Harold B. Miles*

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March 1, 1984

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Office of The Attorney General

The position taken by those who want to place a recall provision in the Water Permit issued by the Director of the Idaho Department of Water Resources for the production of electricity at the proposed Lucky Peak generating plant is short sighted and misguided.

Other products grown or produced in Idaho, such as apples, potatoes, beans, wheat, corn, lambs, wool, cattle, minerals, timber and wood products are not sold subject to recall, neither should be electricity. After all, Idaho Power (IPCo) alone sold 4.8 billion kilowatt hours (kwh) to utilities, who are not its firm power customers in 1983, without a recall provision, and this electricity was produced primarily from Idaho water. Also, over 90% of the dividend profit from this IPCo sale went to non-Idaho resident stockholders. The well over one billion dollars the Arrowrock Project Board of Control water districts will receive from the City of Seattle for this Lucky Peak electricity will remain in Idaho. And since Idaho wants to increase its sale of products, it makes good economic sense for Idahoans to receive revenue from a product from which they have not had to indirectly pay a subsidy on its production, such as most agricultural products.

As a rule, in the electrical generation sale industry, when a recall provision is tied to the sale contract, the economic value of the electricity is reduced, therefore, if the sale of the Lucky Peak power to Seattle for the life of the contract, (50 years) has a recall provision, Seattle most likely will reject the contract out of hand or will reduce the amount it is willing to pay the Board of Control for the Lucky Peak electricity. In addition, Seattle can buy non-firm surplus or firm surplus power from the Bonneville Power Administration (BPA) at a kwh rate considerably less than Seattle has offered to pay the Board of Control for the Lucky Peak power. For example, BPA sold 20.4 billion kwh to Southwest utilities in 1983 for 10 mills kwh, which is about 25% of the rate IPCo residential ratepayers are currently paying.

In addition, Seattle is a winter peaking area and Southern Idaho is a summer peaking area, which means Seattle uses most of its electricity during the winter and Southern Idaho uses most of its electricity during the summer. This makes for an ideal contract, and in my view, Idahoans could look the entire United States over and not receive as good an offer as Seattle has made the Board of Control.

The installation of electrical generating turbines in the Lucky Peak outlet will save approximately \$50,000 yearly maintenance charges the Army Corps of Engineers has to pay for repairs to the outlet, also water released from the outlet will not have to be drastically reduced while these repairs are being made, thus this Seattle Contract provides additional side benefits for all of us.

A final point is that since the laws of physics state that electricity follows the line of least resistance and the City of Boise uses nearly three times as much electricity as the Lucky Peak Plant will generate, this electricity will not leave the Boise Area; and Seattle, by exchange of Power with BPA, most likely will receive an equivalent amount of the Lucky Peak generated power from a Federal generating plant, such as Bonneville Dam, which is closer to Seattle.

The proponents of "free enterprise" should have no objection to seeing that IPCo has competition, as this Seattle-Board of Control contract provides IPCo; also there should be no valid objection to the Board of Control's receiving a better offer from Seattle than was made by either Idaho Power or Mr. Simplot.

Respectfully submitted,

*Harold C. Miles*

Harold C. Miles

APR 04 1988

December 5, 1979

Boise Project Board of Control  
214 Broadway  
Boise, ID 83702

Attention: Mr. Gharring

Gentlemen:

Re: Application for Permit No. 63-9019  
Boise Project Board of Control

When I have corresponded with you on December 7, 1977 and on December 19, 1978 relative to the above referenced application for power generation at Lucky Peak Dam. The application currently is being held by the Department pending issuance of a FPC license and other agreements necessary for the Boise Project Board of Control to proceed with the development of the proposed water right. To date, I have received no response to either letter.

Please advise me of progress to date before March 1, 1980, or the application may be viewed as filed for speculative purposes and may be voided pursuant to Section 42-204, Idaho Code.

If you have questions relative to this letter, please contact me.

Sincerely,

C. STEPHEN ALLRED  
Director

CSA:rf

MICROFILMED  
APR 04 1988

December 19, 1978

Boise Project Board of Control  
214 Broadway  
Boise, Idaho

Attention: Mr. Gharring

Gentlemen:

Our last correspondence with you in connection with the above referenced permit application was on December 7, 1977. In that correspondence, we indicated that the application could be approved pending issuance of an FPC license and completion of any other agreements necessary for the Boise Project Board of Control to use Lucky Peak Dam for power generation.

Please advise this office of progress to date in the completion of these matters.

Sincerely,

C. STEPHEN ALLRED  
Director

CSA:LGS:rf

**MICROFILMED**

APR 04 1988

December 7, 1977

Re: Permit No. 63-9019

*Have Delivered  
to O.H.'s  
Peterson.*

Boise Project Board of Control  
214 Broadway  
Boise, Idaho 83702

Attn: Mr. Gharring

Gentlemen:

The Department of Water Resources has reviewed your application number 63-9019 for power production at Lucky Peak Dam. The Department has determined that the requested water is available to be appropriated for power production at the dam location.

Your application will be approved pending issuance of an FPC license and completion of any other agreements necessary for the Boise Project Board of Control to use Lucky Peak dam for power production.

Please keep the Department informed of your progress in acquiring the license and agreements.

Very truly,

C. STEPHEN ALLRED  
Director

CSA:DBS:jfr

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APR 04 1988



# Water board refuses to block

## Seattle's Lucky Peak bid

By RON ZELLAR  
The Idaho Statesman

The state Water Resources Board declined Tuesday to block a plan by five Idaho irrigation districts to sell power to a Seattle utility, but did ask the Legislature to consider laws governing future energy sales.

Water Resources Director Ken Dunn, however, said he had not decided whether the water permit sought by the five districts is in the public interest, as required by state law, because the power would be sold outside Idaho.

Attorneys for the Boise Project Board of Control said a recent U.S. Supreme Court case makes it doubtful the state could interfere with a contract between the irrigators and the City of Seattle.

The Board of Control represents the five districts, which jointly own a federal license to generate electricity at Lucky Peak Dam east of Boise. The districts tentatively agreed last week to sell power to Seattle City Light.

Two representatives of a group of 36 irrigation districts not included in the Lucky Peak negotiations asked the board to block the Seattle agreement. Group spokesman Harry Vogt of Eagle said a new contract should be drawn up that would spread the benefits to all Boise River water users.

The board took no action on the complaint. Board member Gene Gray of Payette said after the meeting that the dispute over the license is between water users and not something in which the state should become involved.

Ray Givens, attorney for the Board of Control, said the irrigators tried for several years to sell the power to Idaho Power Co., but could not negotiate an agreement satisfactory to all five districts.

"The districts share your feelings on this," Givens told the water board. "That is why they worked so long with Idaho Power Co., right up until the last minute."

Water Resources Board member J.D. Williams, a Preston attorney, acknowledged that the

state may lack the authority to limit power sales because interstate commerce is regulated by the federal government.

Williams authored a resolution urging the Legislature to consider laws to clarify the state's authority, giving the water board guidance in future cases of power sales outside Idaho.

The board passed the resolution, along with a statement urging the Water Resources Department to consider goals in the 1976 State Water Plan when issuing water permits for new hydroelectric plants.

Dunn said after the meeting that he will meet with representatives of the five districts to seek an agreement to return the power to Idaho if it is needed in the future.

He said he raised the issue because the water board in December refused to provide state revenue-bond financing for a hydroelectric plant near Murtaugh, in which the developer planned to sell the power out of state.

Ottis Peterson of Boise, a landowner in one of the five districts, said the power generated at Lucky Peak probably will be used by public power cooperatives and municipalities near Burley and Idaho Falls through a power exchange between Seattle and the Bonneville Power Administration.

Seattle would still receive major benefits from the project, however, or the utility would not have become involved, Dunn replied.

"How much of it will leave the state is something you can't measure," Dunn said.

Asked what would happen if delays keep the districts from starting the project by June 1, as required in the federal license, Givens said the Federal Energy Regulatory Commission probably would cancel the license and seek new proposals.

"There undoubtedly would be no shortage of applicants," he said, including irrigation districts, private utilities and municipalities such as Seattle and San Francisco.

FEB 1 1994

THE IDAHO STATESMAN  
BOISE, IDAHO

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1988

JAN 25 1984

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## Lucky Peak power play

# Seattle utility endorsed for venture

BOISE (UPI) — The leaders of five southwestern Idaho irrigation districts have agreed to pursue a long-term venture with Seattle City Light to build an 80-megawatt power plant at a dam near Boise.

The Boise Project Board of Control voted unanimously Tuesday to urge members of all five irrigation districts to approve the tentative agreement for the Lucky Peak Dam project.

Directors of two of the irrigation districts met Tuesday to endorse the Seattle offer. Three others were set to conduct similar sessions Wednesday.

Board Chairman Gerald Guentz said the decision in favor of the Seattle plan virtually eliminates the chance that Idaho industrialist J.R. Simplot or any other builder could get back into the bidding before the irrigators'

federal license for the hydro project expires July 1.

The irrigation districts jointly own the license to produce power at the dam, which is about 15 miles east of Boise at Lucky Peak Reservoir.

The board had been told Simplot's offer would have provided more income in the first 20 years of the contract, with the Seattle City Light offer holding an edge once construction costs had been paid.

Simplot consultant Harry Hossy said the Seattle proposal would provide income of \$1.3 billion over 50 years, compared to \$1 billion under the Simplot plan.

Ray Givens, attorney for the irrigation board, said he probably would recommend each district conduct a special election so members could ratify the pact.

Guentz said he preferred the Simplot offer to arrange financing and find contractors over that of Seattle City

Light, but he bowed to the wishes of other board members in the hope of maintaining a unanimous negotiating front.

But other members said they were persuaded by a presentation last week by investment counselors of the municipal utility.

Warren Tolmie of the Wilder Irrigation District said there were "too many escape clauses" in the Simplot offer, including one that would have allowed termination of the agreement if no buyer for the electricity were found in three years.

Simplot said he would not get into a bidding war over the project.

"I said I was willing to gamble about \$10 million to \$12 million, and that's about all I can say," he said.

## DWR may block Lucky Peak hydro project

By ELLEN MARKS

BOISE (UPI) — State Water Resources Department Director Ken Dunn said Thursday he may block a plan by five irrigation districts to build a hydroelectric project at Lucky Peak Dam with Seattle City Light.

Dunn said he may refuse to grant the districts a water permit at the Boise River site unless Idaho has first claim to the electricity during a shortage in the state.

"It certainly is possible we'll issue no permit," Dunn said.

The Boise Project Board of Control, which is comprised of the five districts, has given initial approval to entering a contract with Seattle City Light to develop an 80-megawatt power plant at the dam east of Boise.

The agreement now must be approved by the five districts.

"I got word to the Boise Project that the question would come up whether this

is in the public interest to dedicate our hydropower to another state," Dunn said.

He suggested board members insert in their contract a provision ensuring Idaho would receive power from the project when needed.

Board Manager Royse Van Curen said the irrigation districts would like to provide some of the power to Idaho users, but contract terms have not been decided yet.

"We have no idea what

the contract will look like, other than the dollar end," Van Curen said.

Seattle City Light officials have said they may try to exchange the power for electricity from a generating source closer to their customers or transmit it directly over Bonneville Power Administration lines.

Dunn said he fears all the energy would leave the state, which would violate the philosophy of the state Water Resources Board.

The panel recently refused to grant low-interest financing to an applicant seeking to develop a hydroelectric project near Bliss, with plans to sell the energy to the same Washington utility.

"The board said there would be no financing under the bond program unless there was a mechanism for (Idaho) citizens to recall the energy," Dunn said.

Dunn said the department has postponed granting the

districts' water right application until officials settled a contract for sale of the power.

The districts, which have obtained a federal power license for the project, considered developing the project with Idaho Power Co.

Those plans were scrapped when offers were made by Simplot Co. and Seattle City Light.

Dunn said he would notify the board "fairly soon" on whether its water right application will be granted.

ONTARIO  
ARGUS OBSERVER  
Ontario, Oregon

IDAHO PRESS - TRIBUNE  
NAMPA/CALDWELL, IDAHO

JAN 27 1984

JAN 27 1984

# Letters to the Editor 2-11-84

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## Benefits of Lucky Peak-Seattle contract

Editor, The Statesman:

I have followed the subject of electrical generation at the Lucky Peak Dam closely, and I am convinced that the contract between the Boise Project Board of Control and the City of Seattle is the best that could be obtained in view of Idaho Power Co.'s withdrawal from the picture. The escape clauses in a contract that J.R. Simplot proposed are another reason I feel as I do.

Actually, the Lucky Peak power will not leave Idaho, but will flow east for use by 20 Bonneville Power Administration customers supervised by the Idaho Falls District of BPA. The city of Seattle is also a preference customer of BPA, and as BPA has a transmission agreement with Idaho Power, Seattle can exchange power with BPA and receive power from a federal dam closer to Seattle.

The Board of Control will receive from 2 to 6 mills more for the Lucky Peak power than it will cost to produce it, and the BPA customers in southern Idaho will pay BPA less for this power than if they purchased it directly from the Board of Control.

Thus, this transaction also benefits Idahoans as they will be receiving power at a cheaper rate than if they bought it from an investor-owned utility such as Idaho Power Co. or Utah Power Co.

A point also to be considered is that

these BPA customers use more power than is produced by the federal dams in southern Idaho. Hence, this contract conforms with the State Water Plan in that it reduces Idaho's reliance on power imports.

Idaho Power sold 4.8 billion kilowatt-hours of electricity out of state in 1983, and is considering building a transmission line to sell surplus power to California. The Board of Control should not be criticized for consummating an agreement with Seattle; its contract, too, will bring outside money into Idaho, and its profit will remain in Idaho, whereas over 93 percent of Idaho Power's dividends are paid to out-of-state stockholders. Idaho should keep more of its profits in Idaho.

The Boise River is a navigable stream, so the sale of power from a federal dam by a public entity holding a Federal Energy Regulatory Commission license probably would come under the "commerce" clause of the U.S. Constitution. Therefore, any attempt to block the sale of Lucky Peak power to Seattle most likely is illegal.

Finally, back in 1977 the director of the Idaho Department of Water Resources promised to issue a state water permit to the Board of Control when it received its power-generating license from the Federal Energy Regulatory Commission. — HAROLD C. MILES, Nampa

PJZ  
2/10/89

## HYDROPOWER POLICY

SECTION 1. That Chapter 2, Title 42, Idaho Code, be and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 42-206~~(a)~~, Idaho Code, and to read as follows:

42-206~~(a)~~ No application for permit to appropriate water for hydropower generation purpose shall be hereafter granted unless the director of the department of water resources finds that the provisions of contracts and agreements for sale or use of the energy insure that the energy is available for use in the state of Idaho at such time as it is projected by the director of the department of water resources with the advise of the Idaho public utilities commission to be needed within the state of Idaho. Applicants for permit to appropriate water for hydropower generation purposes shall provide to the director of the department of water resources a copy of any and all contracts and agreements providing for the long-term sale of electrical energy from the facility proposed to be developed. The director shall review the contracts and agreements to insure that provisions such as, but not limited to, the following have been included to insure that the energy is made *the energy* available for use in Idaho: (1) A first right of refusal for use within the state of Idaho, (2) a recall of the energy for use in the state of Idaho, (3) exchange provisions which make other energy available for use within the state of Idaho, or (4) a termination date that will cause the contract or agreement to be renegotiated at a time before the energy is projected to be needed for use within the state of Idaho. *in what respect*

*Mr. Tom* No multi-year contract or agreement for sale or use of energy generated under a permit or license hereafter granted to appropriate water may be initiated, renewed, changed or amended without a certification by the director of the department of water resources that such new, renewed, changed or amended contract or agreement has provisions to insure that the energy is available for use in the state of Idaho at such time as it is projected by the director of the department of water resources with the advise of the Idaho public utilities commission to be needed for use within the state of Idaho. The sale and resale *for* firm and dump power during the year to other electric utilities and to cities or other public authorities for distribution to the ultimate customer is permitted on an annual basis. *)?*

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

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APR 04 1988

RESOLUTION

WHEREAS the Idaho Water Resources Board has adopted a policy for hydroelectric water development projects which provides that in projects in which the Board is involved there may be restrictions imposed on the use of this electricity outside of Idaho which are deemed in the public interest, and

WHEREAS it now appears that there are major hydroelectric projects in which the IWRB is not a party which involve proposals for the sale of generated power outside of Idaho, and

WHEREAS there appears to be a need for the Legislature to prescribe additional legislation establishing reasonable restrictions on projects in which the Board is not a party or providing assistance,

NOW THEREFORE the Board urgently requests the Legislature now in session to review the laws regulating the use of Idaho water for hydroelectric generation to determine if additional legislation is necessary to restrict the sale of Idaho hydroelectric power outside the State of Idaho.

*Torald Kramer*

*Franklin Jones, Sec.*

*JANUARY 31, 1984*

**MICROFILMED**

APR 04 1988

RESOLUTION OUTLINING IWRB POLICY FOR  
HYDROPOWER PROJECTS  
IN THE STATE OF IDAHO

WHEREAS, the Idaho Water Resource Board is charged by Article 15, Section 7 of the Idaho Constitution with the power to formulate and implement a state water plan for optimum development of water resources in the public interest; and

WHEREAS, Section 42-1731, Idaho Code declares that the welfare of the people of Idaho is dependent upon conservation, development and optimum use of water resources to be achieved through coordinated, integrated, multiple use water resource policy, and

WHEREAS, the Idaho State Water Plan as adopted by the Idaho Water Resource Board in 1976 and as amended in 1982, is a coordinated integrated, multiple use policy and calls for reducing Idaho's reliance upon imported electric power by promoting and encouraging projects and programs which provide for the development of new electrical energy and more efficient use of existing energy sources and providing a regulatory climate and incentives which will encourage development of hydropower sites that are economically feasible and environmentally acceptable,

NOW, THEREFORE, BE IT RESOLVED that the Idaho Water Resource Board will encourage and assist those hydropower projects which provide for the development of new electrical energy resulting in a reduction in the reliance upon imported electric power which are economically feasible and environmentally acceptable; and

BE IT FURTHER RESOLVED that the Director of the Idaho Department of Water Resources is directed to take such actions as may be

RECORDED  
APR 04 1988

necessary to develop mutually acceptable terms and conditions for power sales agreements, financial agreements or other agreements and requisite governmental approvals including the right of first refusal limitations on licenses including termination, and the recall of power for use in Idaho which shall preserve to the citizens of Idaho the long term benefits of a hydropower project and that such agreements, representations and certifications be presented to the Idaho Water Resource Board for a finding and determination that the hydropower project is a public purpose and promotes the public interest, and

BE IT FURTHER RESOLVED that as part of this policy all hydroelectric water rights involved in these projects shall be subordinated to all other beneficial uses as described in the STATE WATER PLAN.

*Donald Kramer*

*Franklin Jones, Sec.*

JANUARY 31, 1984

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APR 04 1988

Gene Hess secures one of his cows as Dr. Clarence Siroky gives her a shot of vaccine. Siroky and Hess have vac-

inated about 450 head of cattle in the past two days on Hess' Double Diamond Ranch in Horseshoe Bend.

hatchery last Friday. A picture of Parker with a net of several dead fish appeared in Sunday's Times-News.

"pitiful and disgusting." In the same article, Magic Springs owner Ken Ellis said the feeding pattern was normal.

2-1-84

# Water board refuses to block Seattle's Lucky Peak bid

By RON ZELLAR  
The Idaho Statesman

The state Water Resources Board declined Tuesday to block a plan by five Idaho irrigation districts to sell power to a Seattle utility, but did ask the Legislature to consider laws governing future energy sales.

Water Resources Director Ken Dunn, however, said he had not decided whether the water permit sought by the five districts is in the public interest, as required by state law, because the power would be sold outside Idaho.

Attorneys for the Boise Project Board of Control said a recent U.S. Supreme Court case makes it doubtful the state could interfere with a contract between the irrigators and the City of Seattle.

The Board of Control represents the five districts, which jointly own a federal license to generate electricity at Lucky Peak Dam east of Boise. The districts tentatively agreed last week to sell power to Seattle City Light.

Two representatives of a group of three irrigation districts not included in the Lucky Peak negotiations asked the board to block the Seattle agreement. Group spokesman Harry Vogt of Eagle said a new contract should be drawn up that would spread the benefits to all Boise River water users.

## 1976 plan upheld for irrigation over power use

Idaho should continue to allow new irrigation from the Snake River unless it changes the goals in the State Water Plan, the Idaho Water Resources Board said Tuesday.

During its monthly meeting in Boise, the board passed a resolution saying the 1976 plan's provision for a minimum stream flow of 3,300 cubic feet per second in the river at Swan Falls supports new irrigation over use of the water to generate cheap power.

Board member Reed Hansen, an Idaho Falls irrigator, said he proposed the resolution because Idaho Power Co. has contended

the state has no policy giving new irrigation priority over power.

A court case and several pieces of legislation are pending to determine whether Idaho Power's water rights of 8,400 cfs at Swan Falls should be subordinate to other water uses, such as irrigation.

The 1976 water plan called for development of 850,000 new farm acres by the year 2020.

"Maybe this plan is obsolete now," Hansen said. "But it is our adopted plan and this should make perfectly clear we endorse subordination down to 3,300 cfs."

The board took no action on the complaint. Board member Gene Gray of Payette said after the meeting that the dispute over the license is between water users and not something in which the state should become involved.

Ray Givens, attorney for the Board of Control, said the irrigators tried for several years to sell the power to Idaho Power Co., but

could not negotiate an agreement satisfactory to all five districts.

"The districts share your feelings on this," Givens told the water board. "That is why they worked so long with Idaho Power Co., right up until the last minute."

Water Resources Board member J.D. Williams, a Preston attorney, acknowledged that the

The 3,300 cfs minimum also protects Idaho Power and sportsmen by assuring that the river will not be dried up, Hansen said.

In a related move, the water board expressed support for House Bill 459, a bill written by Attorney General Jim Jones and addressing the Swan Falls controversy.

Jones' bill, which is backed by Gov. John Evans, would subordinate power rights while requiring the state Water Resources Department to consider impacts on electricity costs when considering applications for new water permits.

state may lack the authority to limit power sales because interstate commerce is regulated by the federal government.

Williams authored a resolution urging the Legislature to consider laws to clarify the state's authority, giving the water board guidance in future cases of power sales outside Idaho.

The board passed the resolu-

Hansen said the water board might be willing to consider raising the minimum flow if new studies show that leaving more water in the river is in the state's best interest.

Arizona and other western states have been forced to cut off water for irrigation, Hansen acknowledged.

But Arizona has only 2.8 million acre-feet of water passing through its borders per year, he said, while Idaho allows more than 30 million acre-feet a year in the Snake River to flow past Lewiston and into the Columbia River.

tion, along with a statement urging the Water Resources Department to consider goals in the 1976 State Water Plan when issuing water permits for new hydroelectric plants.

Dunn said after the meeting that he will meet with representatives of the five districts to seek an agreement to return the power to Idaho if it is needed in the fu-

ture. He said he raised the issue because the water board in December refused to provide state revenue-bond financing for a hydroelectric plant near Murtaugh, in which the developer planned to sell the power out of state.

Ottis Peterson of Boise, a landowner in one of the five districts, said the power generated at Lucky Peak probably will be used by public power cooperatives and municipalities near Burley and Idaho Falls through a power exchange between Seattle and the Bonneville Power Administration.

Seattle would still receive major benefits from the project, however, or the utility would not have become involved, Dunn replied.

"How much of it will leave the state is something you can't measure," Dunn said.

Asked what would happen if delays keep the districts from starting the project by June 1, as required in the federal license, Givens said the Federal Energy Regulatory Commission probably would cancel the license and seek new proposals.

"There undoubtedly would be no shortage of applicants," he said, including irrigation districts, private utilities and municipalities, such as Seattle and San Francisco.

## Phone firm shuts doors; BBB, police investigate

Dial International, a firm that sold long-distance telephone service at a discount, has closed its office at 4696 Overland Road. Boise Manager Jerry Cartwright said that he and a secretary were dismissed on Monday and he was ordered to close the

## Ada coroner decides not to run, considers other political offices

Ada County Coroner Mike Johnson announced Tuesday that he will not run for election to a

plished what he wanted to do as coroner — improve the reputation

## Bureau warns of pornography in magazine

Idaho residents should beware of a magazine that contains



DEC 14 1983

DEC 15 1983

DEC 14 1983

# Water board expects deluge

443-285-458  
BOISE (AP) — The Idaho Water Resources Board, expecting a deluge of applications for its tax-free bond financing on hydropower projects, wants state electric utilities to have some right to buy the power any of those facilities might produce.

Board members say they believe utilities providing power to the state should have either the first right of refusal or a so-called "right of recall" on power generated by hydroelectric plants financed with its bonds.

Under first right of refusal, operators of a bond financed project would have to give Idaho power companies the first chance to buy their power. They could then sell to out-of-state buyers whatever power Idaho companies don't want.

A "right of recall," according to Wayne Haas, administrator of the state division of resource analysis, would give utilities that don't need additional power now the right to reclaim power being generated by private facilities in the future when they will need it. In the meantime, those private generators could sell their power to anyone they wish.

The Water Resource Board's deci-

sion to push for such terms in any bond agreements with hydroelectric developers came Tuesday as it opened the way for negotiations toward possible issuance of \$55 million in bonds to finance a hydroelectric power plant at Star Falls on the Snake River near Murtaugh in south-central Idaho.

In addition, the board approved a \$4 million bond issue for the Boise Water Corp., which operates the system serving the state's largest city. The money will be used to improve, rehabilitate, construct and acquire facilities for the system.

The bond issue is the largest yet approved by the board.

But developers of the Star Falls project are the first to express interest in securing bond financing for a major hydroelectric project, Haas said. Negotiations spanning the next six months to a year will cover the board's concern that state utilities have access to the power that would be generated by the 30 megawatt facility, he said.

Although the board wants to place conditions on projects financed with its bonds, officials believe they would be countered by the interest rate on board bonds, which runs about a third lower than the rate charged by conventional lenders.