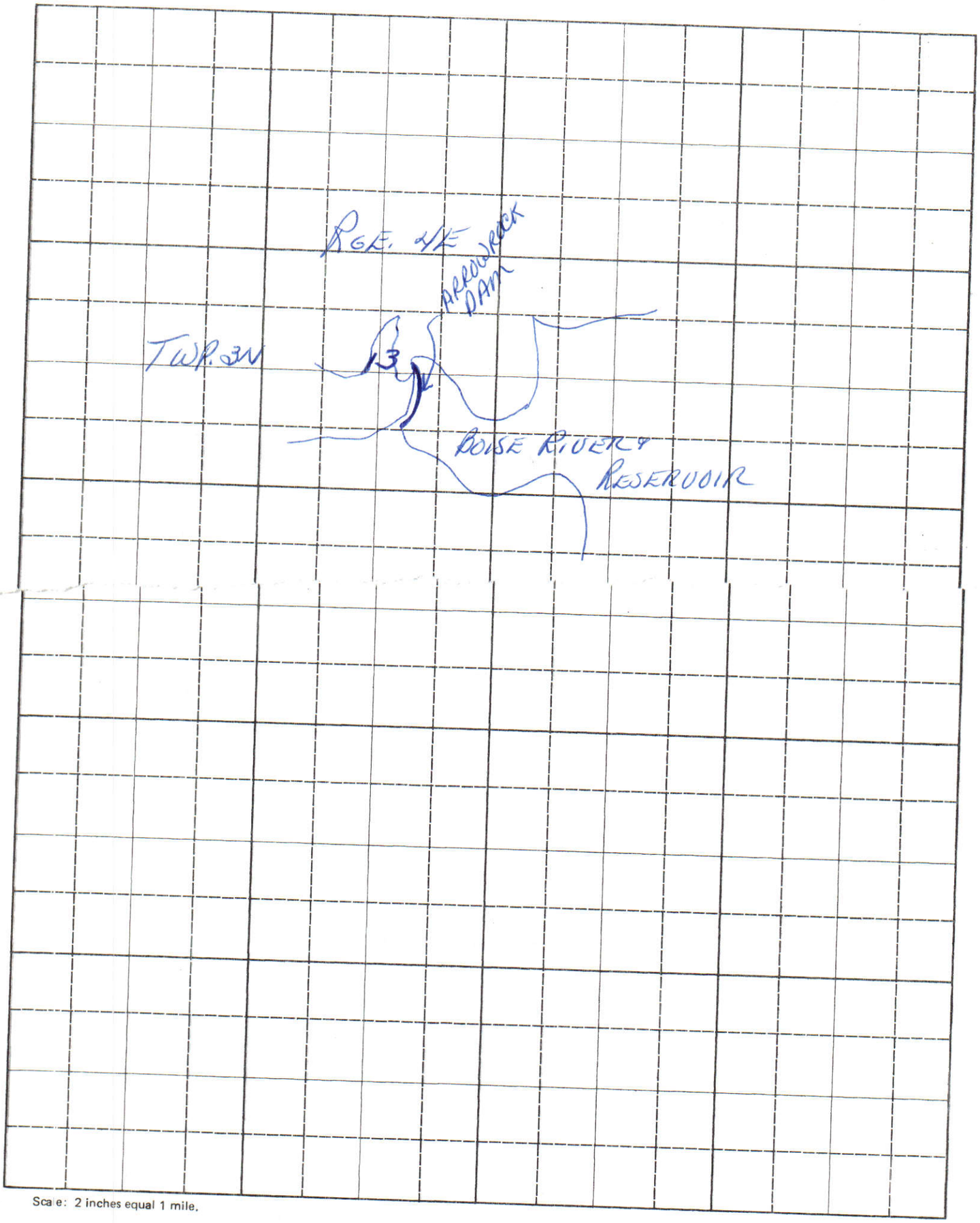
11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

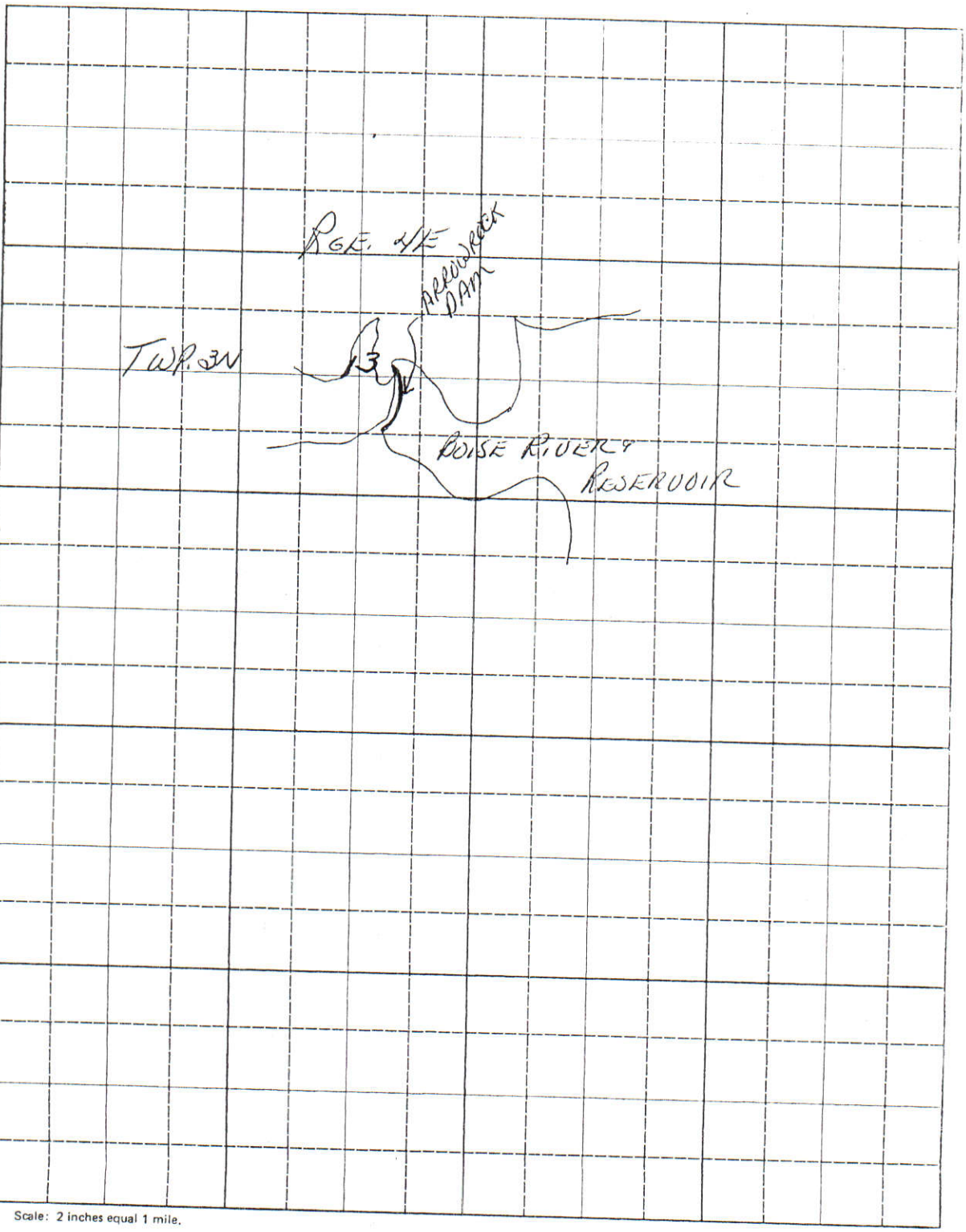
BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

R. W. Lloyd

REGIONAL (Applicant) DIRECTOR

MICROFILMED
NOV 12 2002

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.

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R. W. Floyd
REGIONAL (Applicant) DIRECTOR

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

Date 051492 INVOICE No. L00327425

Account No. 964760 63-10240

Description 27425NOTIC

Times 2 Lines 27

Tab Lines

$ 30.38

LEGAL ADVERTISING INVOICE

SOLD TO:

DEPT. OF WATER RESOURCES
2735 AIRPORT WAY
BOISE
ID 83705

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

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

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

NOTICE OF APPLICATION

attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication being on 050792, or once a WEEK for 2 consecutive WEEKS, the first publication thereof being on the 050792, and the last publication thereof being on the 051492, and said NOTICE OF APPLICATION was so published in the regular and entire issue of said newspaper and not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Sue Baumeister

SUBSCRIBED AND SWORN BEFORE ME THIS THE 21 day of May 1992

Sherral M Lantz

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

27425
NOTICE OF APPLICATION FOR WATER RIGHT

The Following application(s) have been filed to appropriate the public waters of the State of Idaho:
63-10240
US DEPT OF INTERIOR
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
550 W FORT ST BOX 043
BOISE, ID 83724
Source: BOISE RIVER
Tributary: SNAKE RIVER
Diversion Pt: NWSE Sec 13 T 03N R 04E in BOISE County.
Use: POWER (5470.000 CFS)
Total Diversion: (5470.000 CFS)
Date Filed: 4/19/1984
In: BOISE County
T03N R04E S13 NWSE

The permit(s) will be subject to all prior water rights. Protests must be filled with the Director, Dept of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before MAY 26, 1992.

R. KETIH HIGGINSON, Director

RECEIVED
MAY 26 1992
Department of Water Resources
Western Regional Office

MICROFILMED
NOV 12 2002

Proof of Publication

The Post-Register

RECEIVED
MAY 26 1992
Department of Water Resources
Western Regional Office

State of Idaho,
County of Bonneville } ss

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

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for Two consecutive weeks, first publication having been made on the 7th day of May, 19 92, last publication having been made on the 14th day of May, 19 92, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

S. Bob Bright

Subscribed and sworn to before me, this 20th day of May, 19 92.

Susan Haggen
Notary Public

My commission expires July 1st, 19 97

B10

NOTICE OF APPLICATION FOR WATER RIGHT 63-10240

US DEPT OF INTERIOR
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
550 W FORT ST BOX 043
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Date Filed: 4/19/1984
In: BOISE County
T03N R04E S13 NWSE
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R. KEITH HIGGINSON, Director
PUBLISHED: MAY 7,14, 1992

MICROFILMED
NOV 12 2002

NOTICE OF APPLICATION FOR WATER RIGHTS

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

63-10240

US DEPT OF INTERIOR BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
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BOISE, ID 83724
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Use: POWER (5470.000 CFS)
Total Diverson: (5470.000 CFS)
Date Filed: 4/19/1984
In: BOISE County
T03N R04E S13 NWSE

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R. KEITH HIGGINSON, Director

PUBLISH: Thursday, May 7, and 14, 1992.

Affidavit of Publication

№ 23573

STATE OF IDAHO }
COUNTY OF TWIN FALLS } ss.

I, Linda Capps McGuire being first duly sworn upon oath, depose and say that I am Legal Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive Weeks, commencing with the issue dated May 7, 1992, and ending with the issue dated May 14, 1992.

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

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

STATE OF IDAHO
COUNTY OF TWIN FALLS

On this 28 day of May in the year of 1992, before me, a Notary Public, personally appeared Linda Capps McGuire, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Ineva R. Feltman
Notary Public for Idaho
Residing at Twin Falls County
My commission expires: 5/19/94

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NOV 12 2002

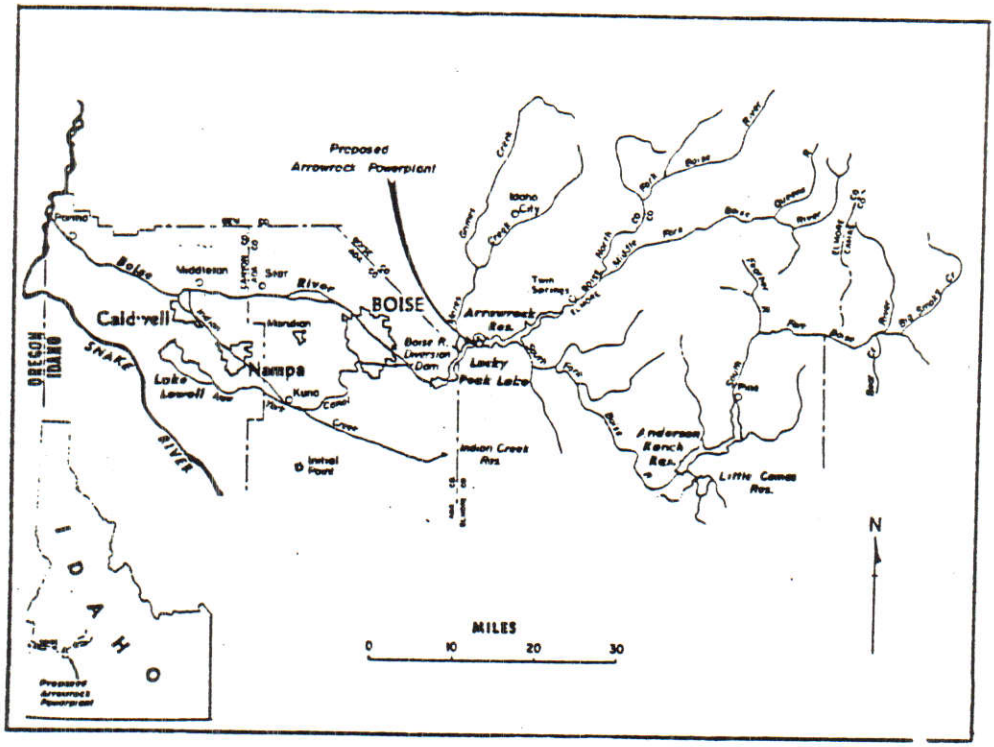


Figure 1. Location of the proposed Arrowrock Dam Hydroelectric Project, FERC No. 4656, Idaho (Source: Boise-Kuna Irrigation District et al., 1984, application, exhibit E).

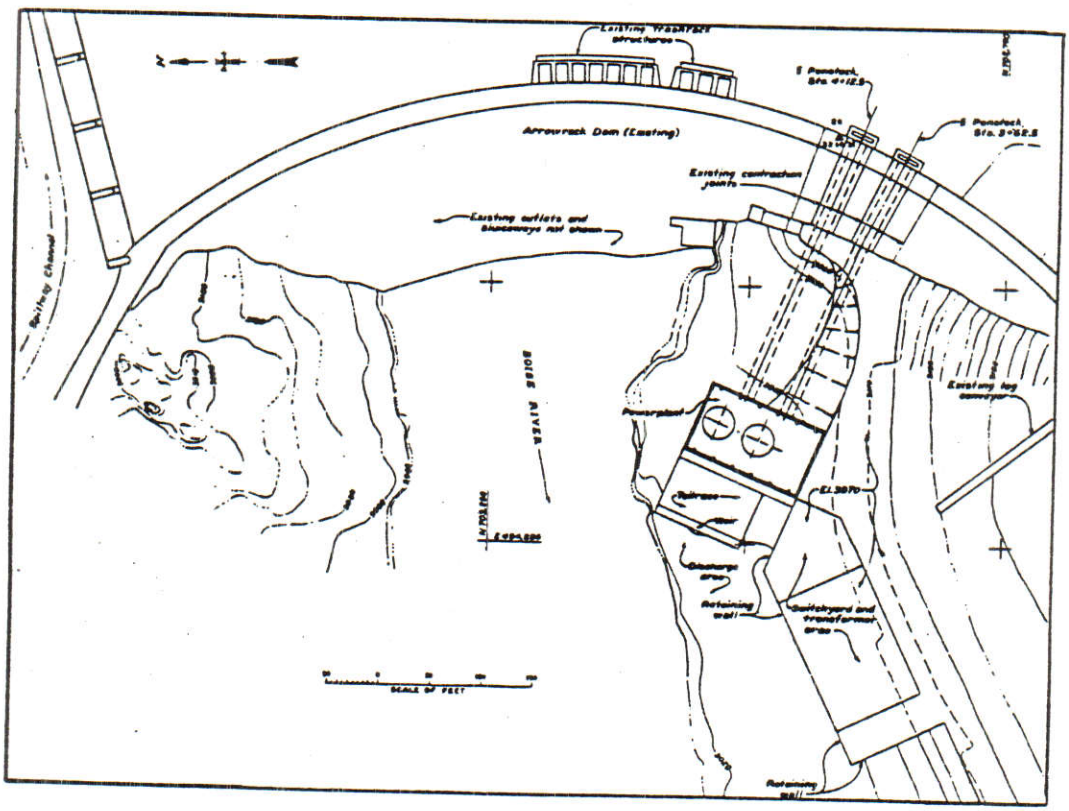
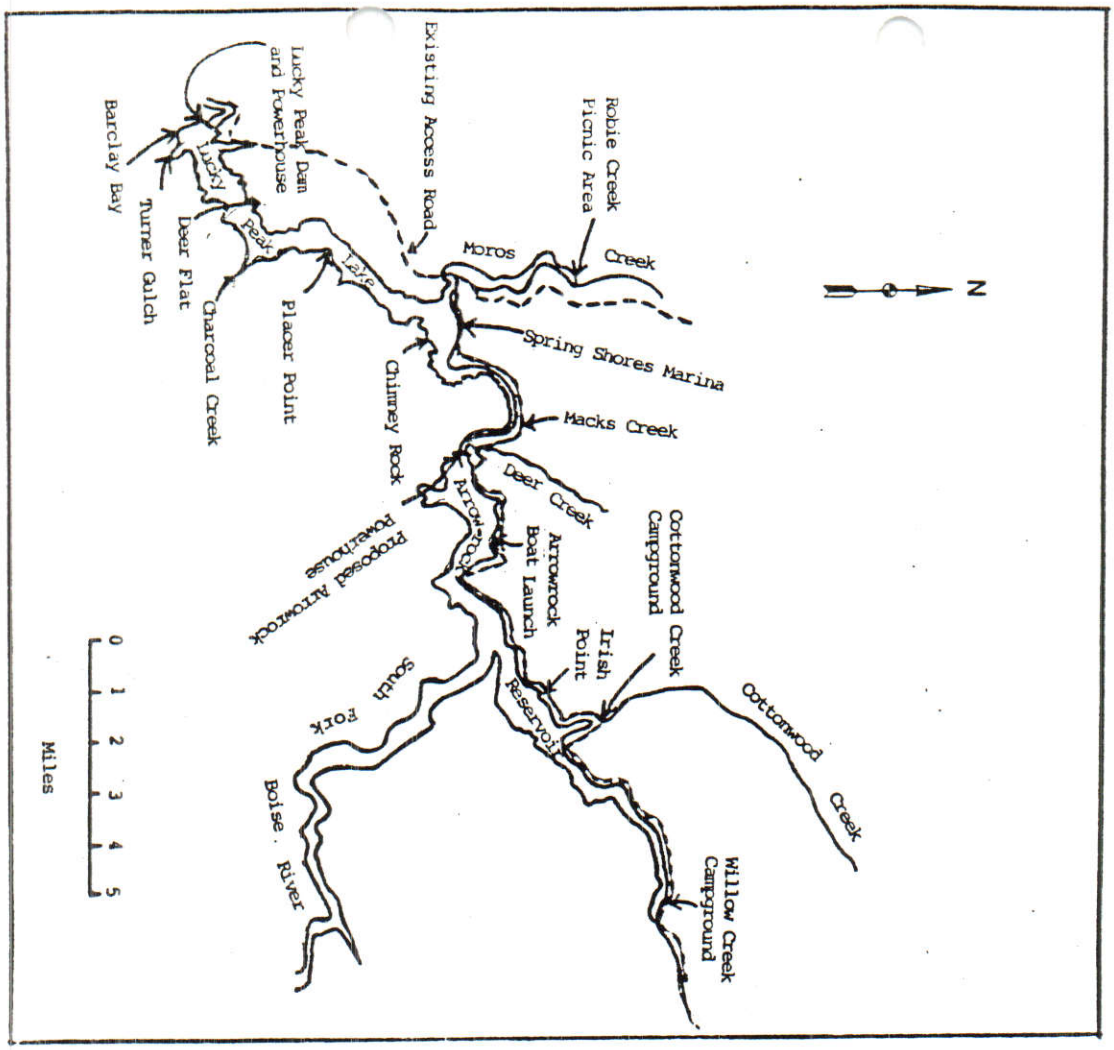


Figure 2. Project features of the proposed Arrowrock Dam Hydroelectric Project, FERC No. 4656, Idaho (Source: the staff, as modified from Boise-Kuna Irrigation District et al., 1984, application, exhibit F).

MAIL ROOM
NOV 12 2002



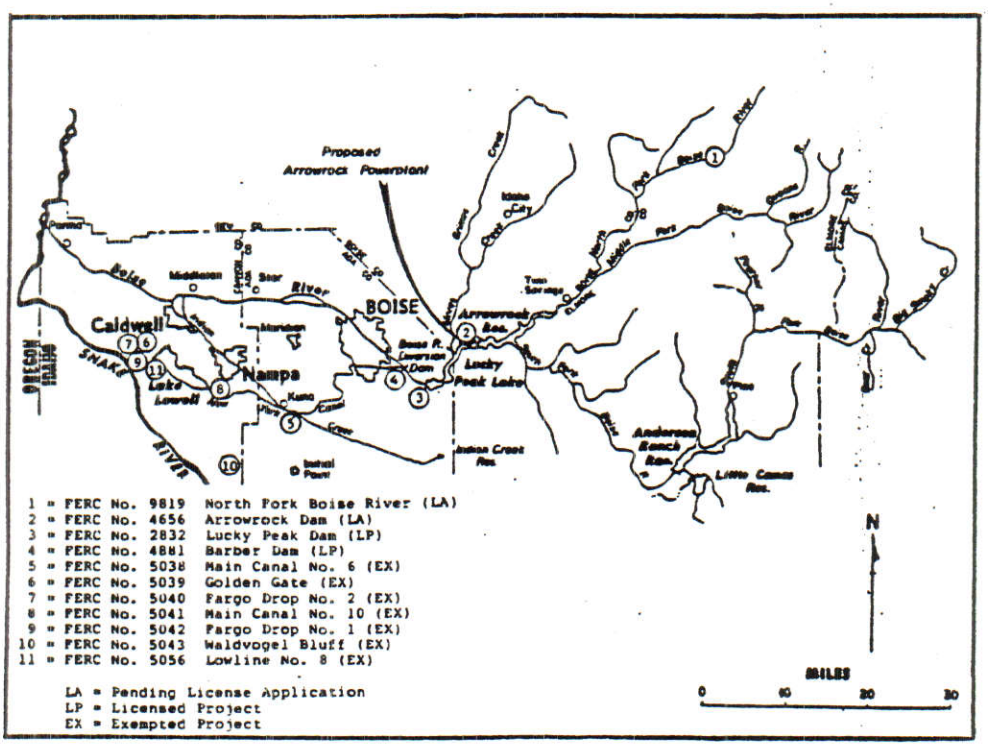


Figure 4. Existing and proposed hydroelectric projects in the Boise River Basin (Source: the staff).

Figure 3. Existing recreational facilities at Arrowrock Reservoir and Lucky Peak (Source: the staff, as modified from Bureau of Reclamation, 1985).

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NOV 1 2 2002

Competing Applications - This application was filed as a competing application to the Arrowrock Dam Project No. 3692 filed on November 7, 1980, by Mitchell Energy Company, Inc., under 18 C.F.R. §4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

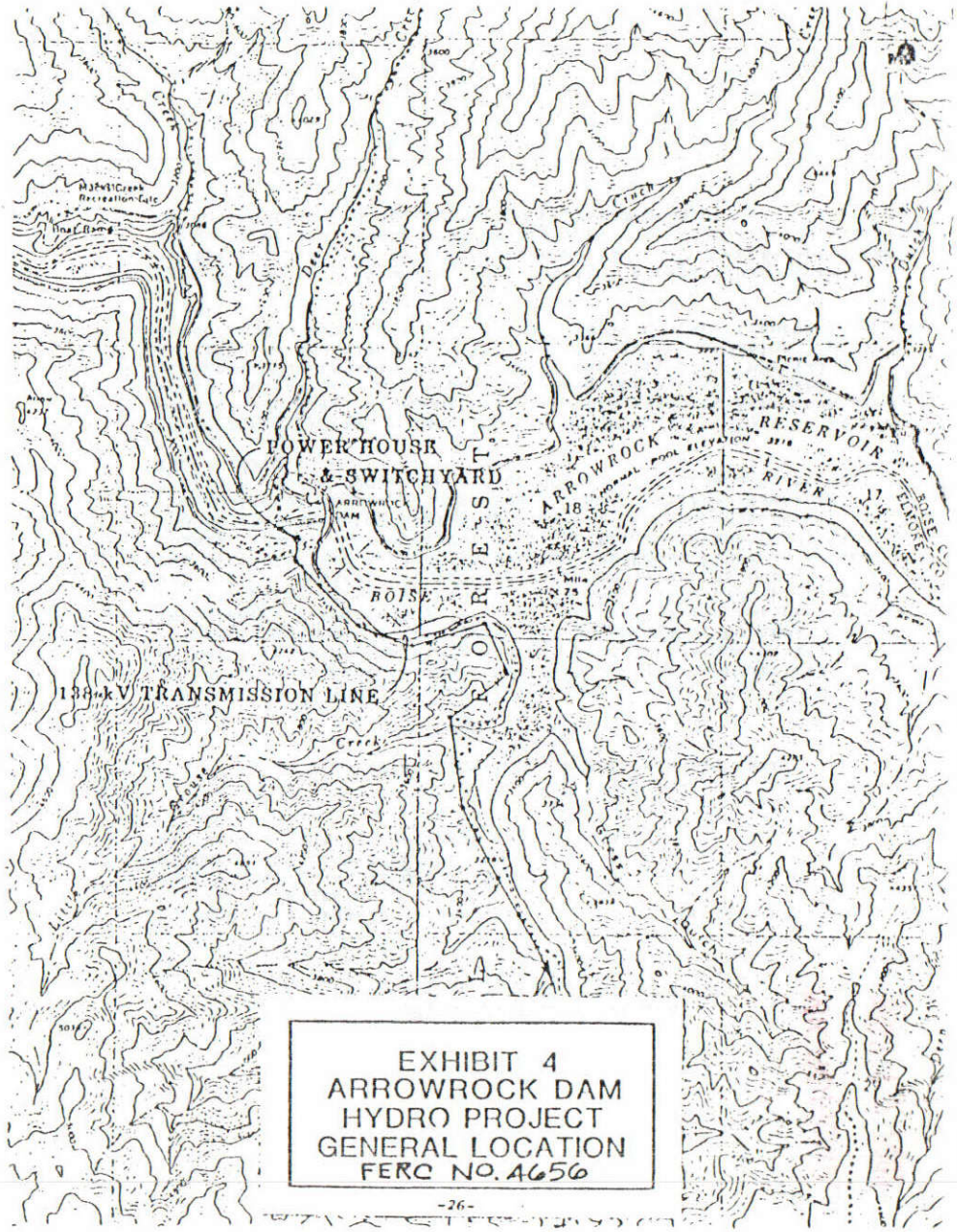
Agency Comments - Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene - Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §1.8 or §1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before July 24, 1981.

Filing and Service of Responsive Documents - Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 4656. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB Building, Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb
Secretary

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NOV 12 2002



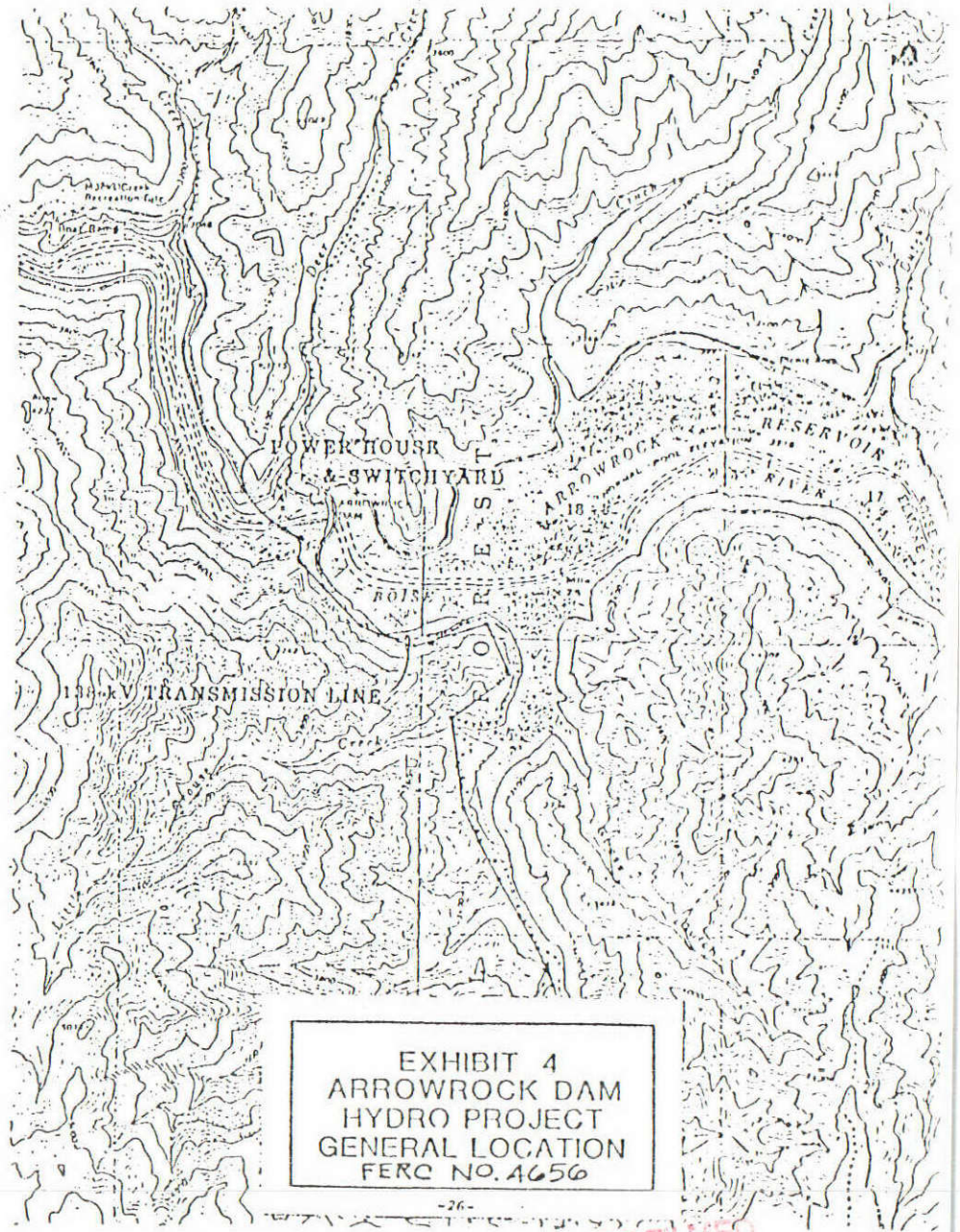
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Kenneth F. Plumb
Secretary



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NOV 12 2002

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

June 11, 1984

Peter J. Boyd, Esq.
ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 First Interstate Building
P. O. Box 1559
Boise, ID 83701

Re: Nos. 63-10239 & 63-10240/Bureau of Reclamation

Dear Mr. Boyd:

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

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

1. Will the proposed use reduce the quanity of water under existing water rights?

2. Is the proposed water supply insufficient for the purposes intended?

3. Is the application made in good faith or for delay or speculative purposes?

4. Has the applicant sufficient financial resources with which to complete the project?

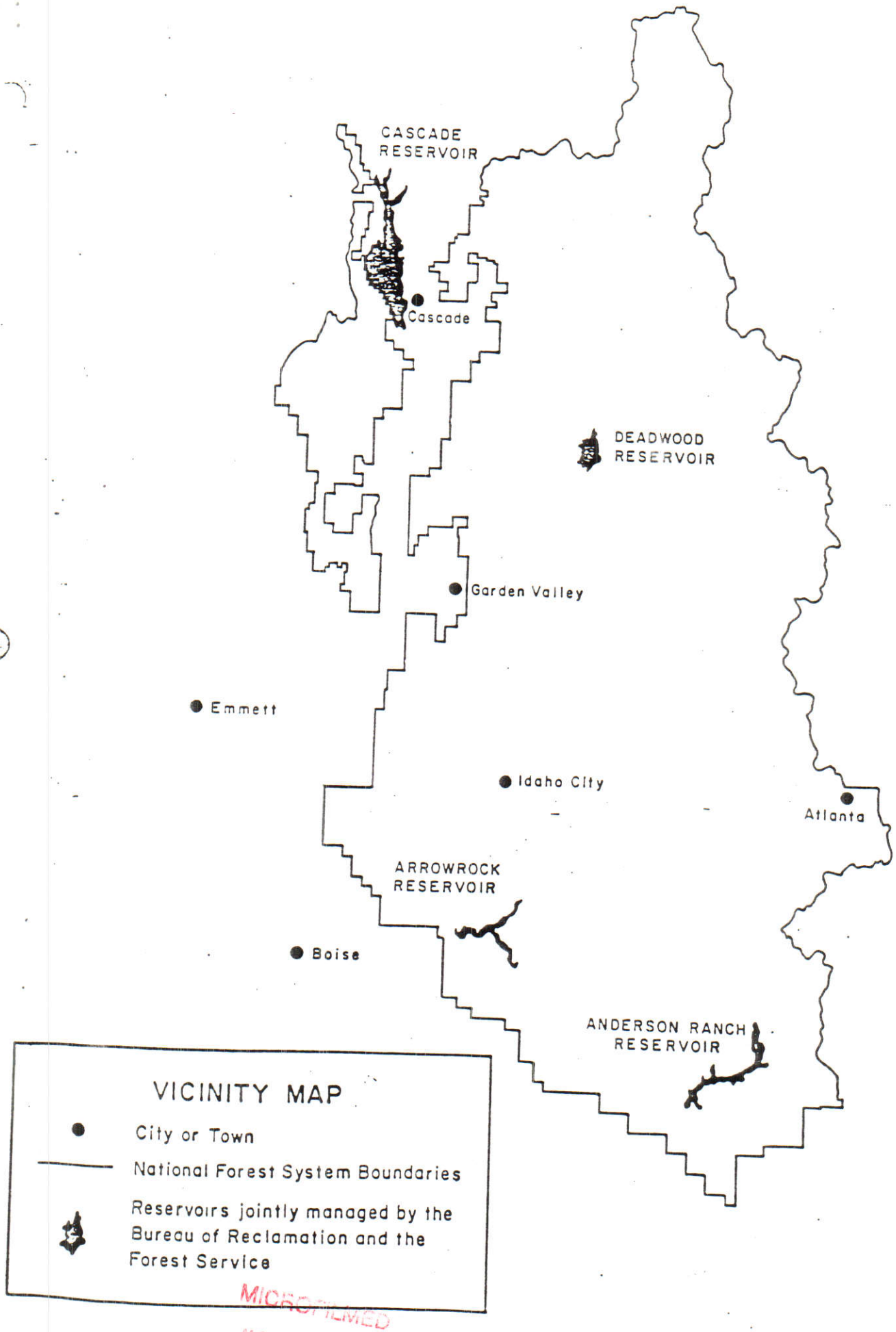
5. Will the propsed use under this permit conflict with the local public interest?

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

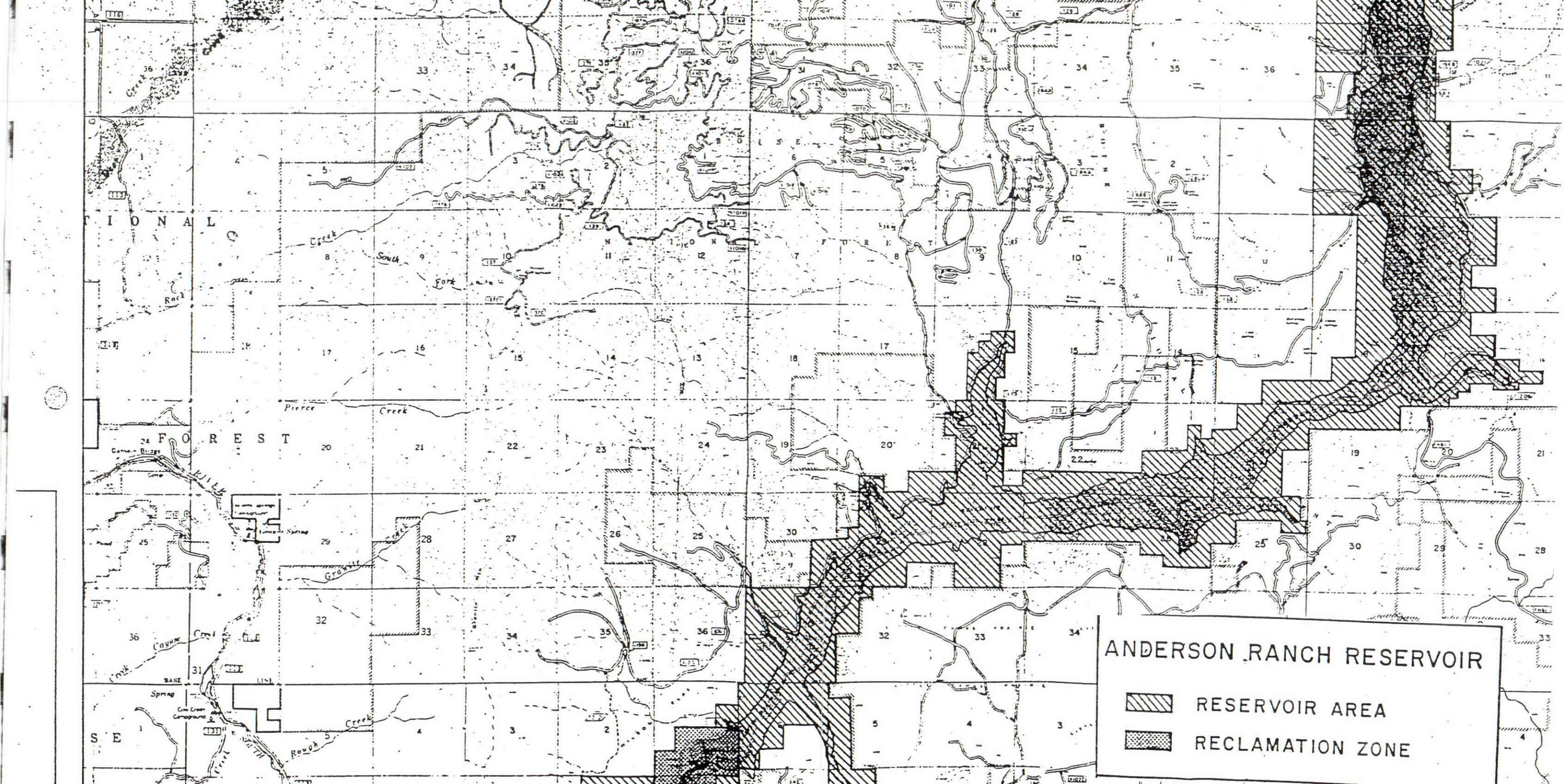
Yours truly,

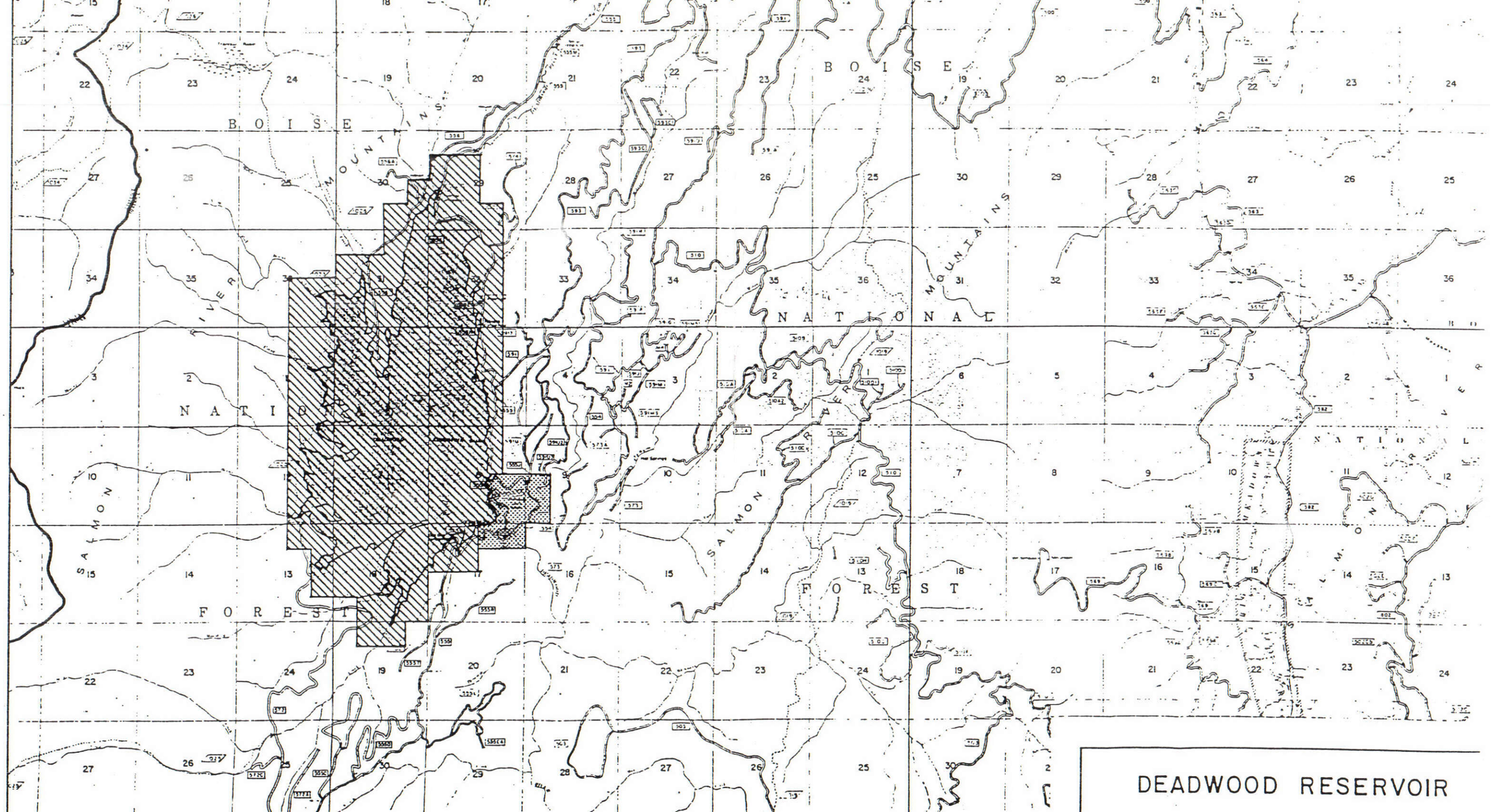
DAVID B. SHAW
Western Regional Supervisor

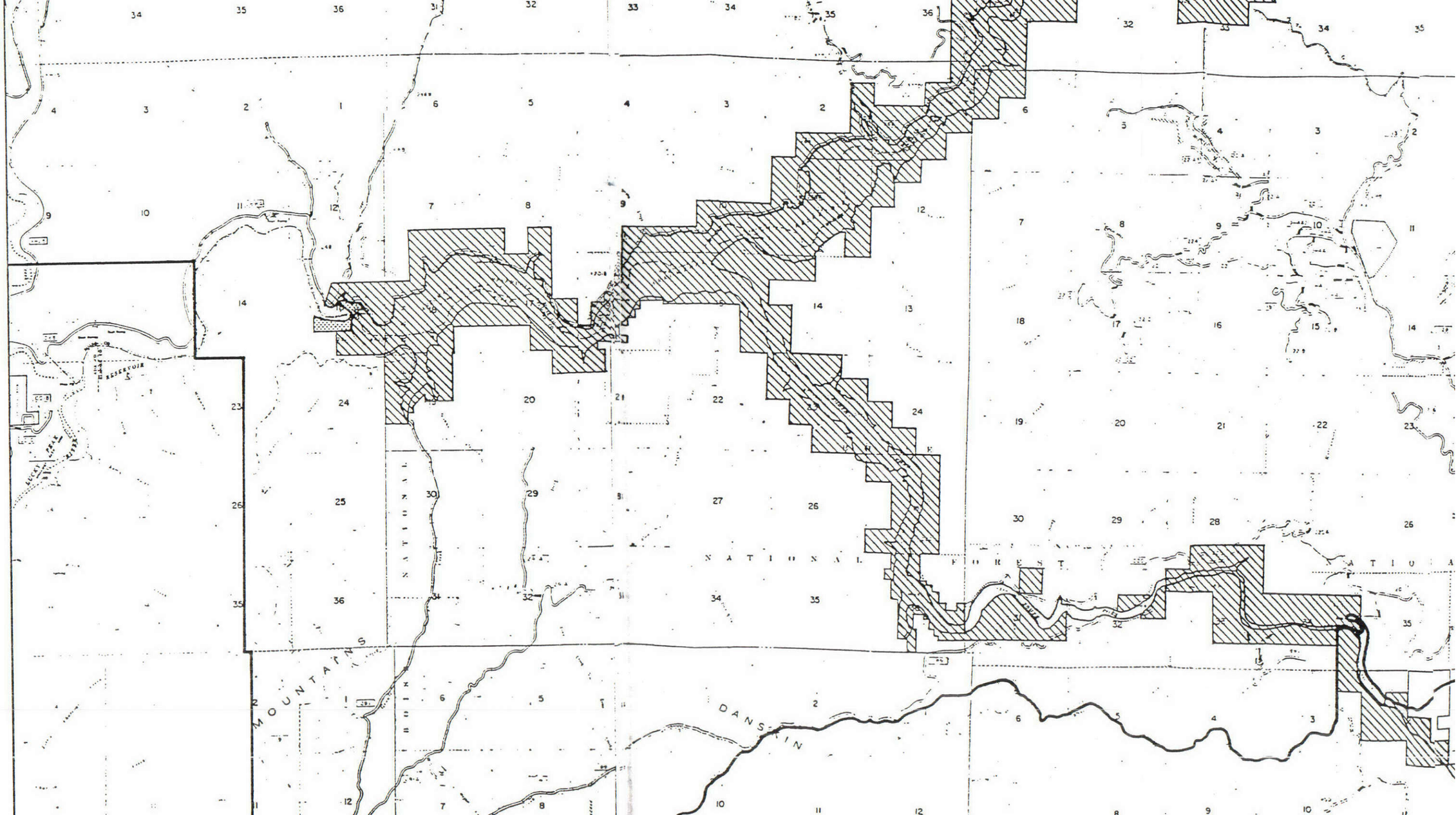
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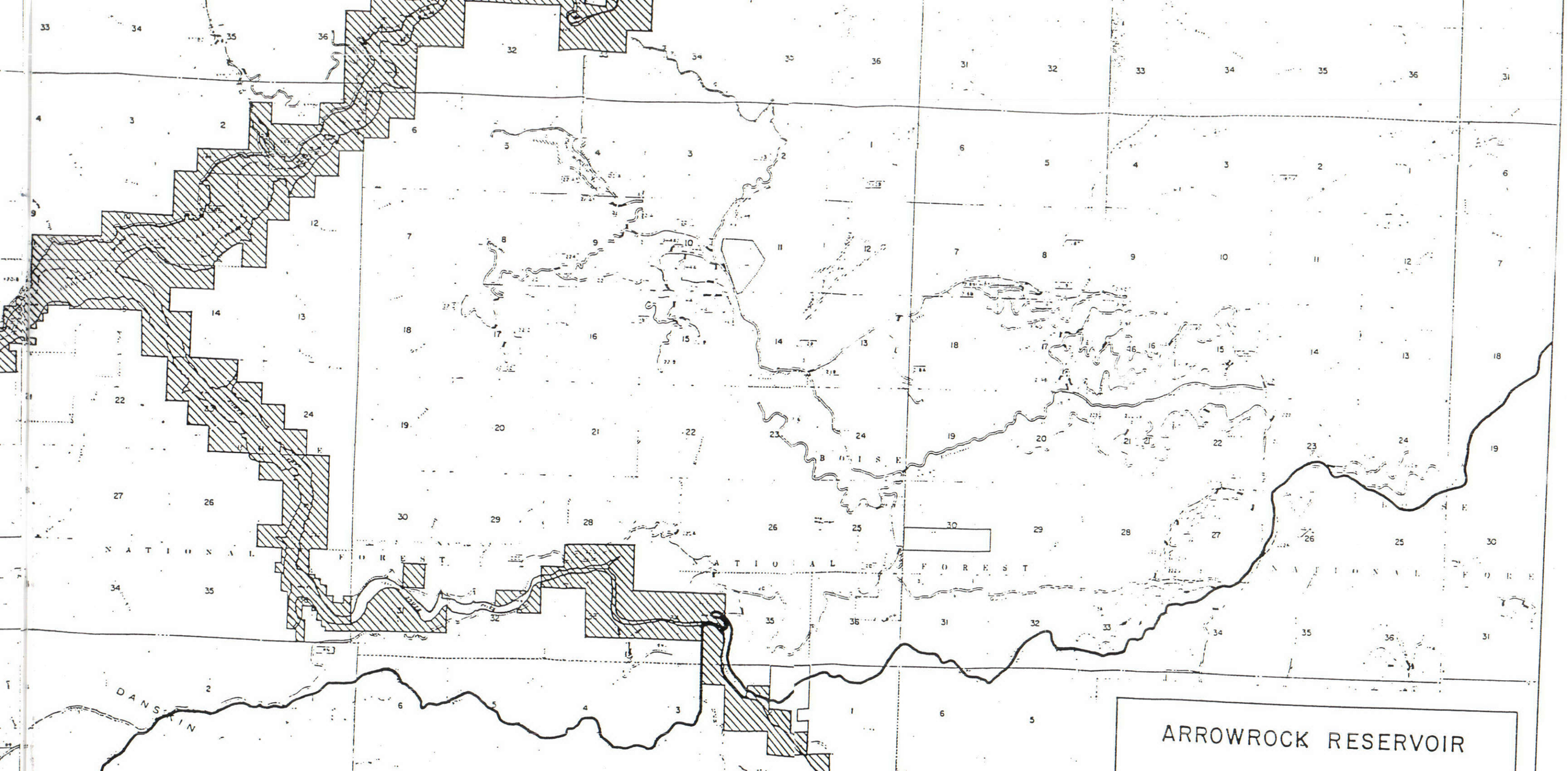


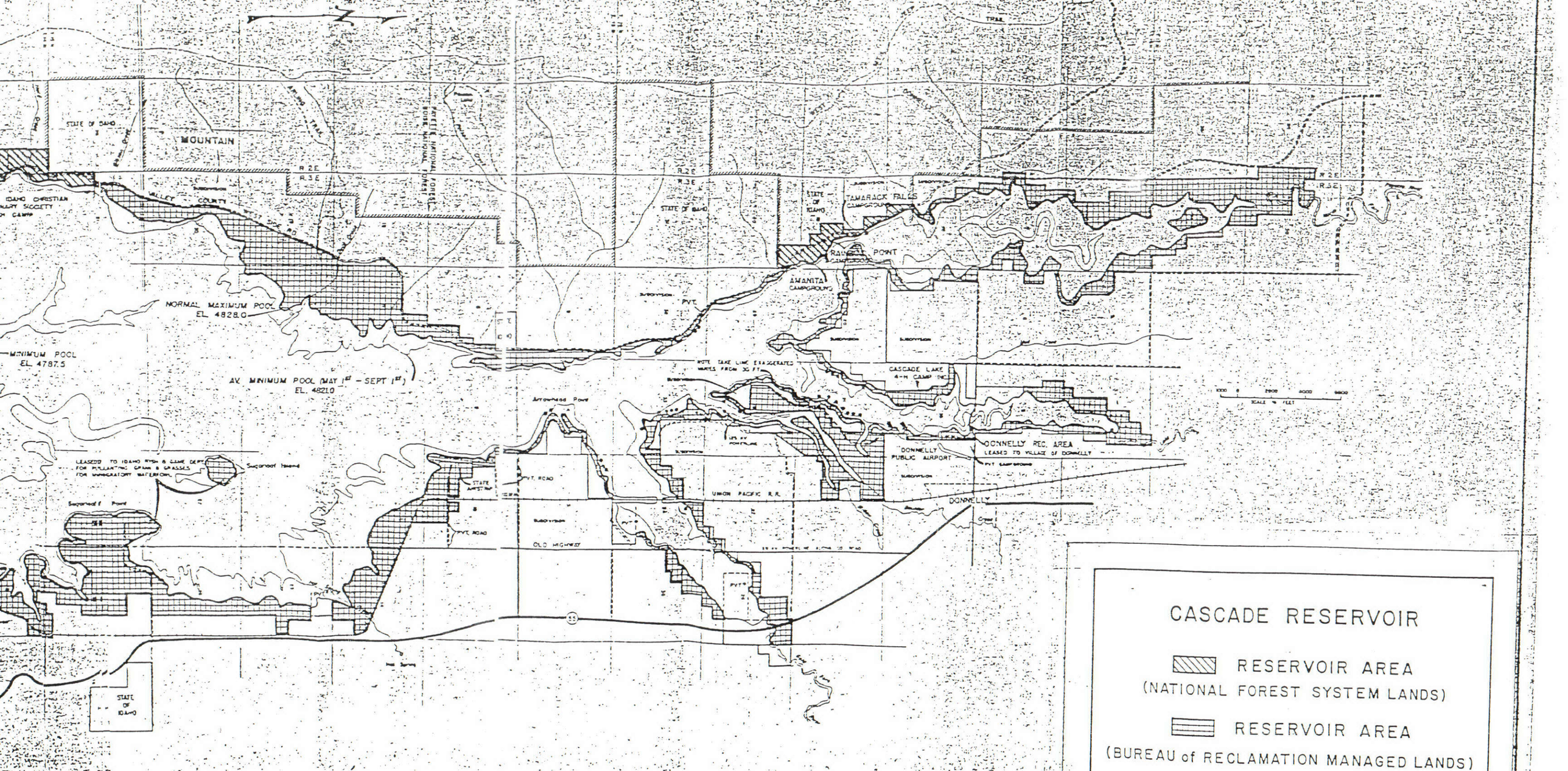
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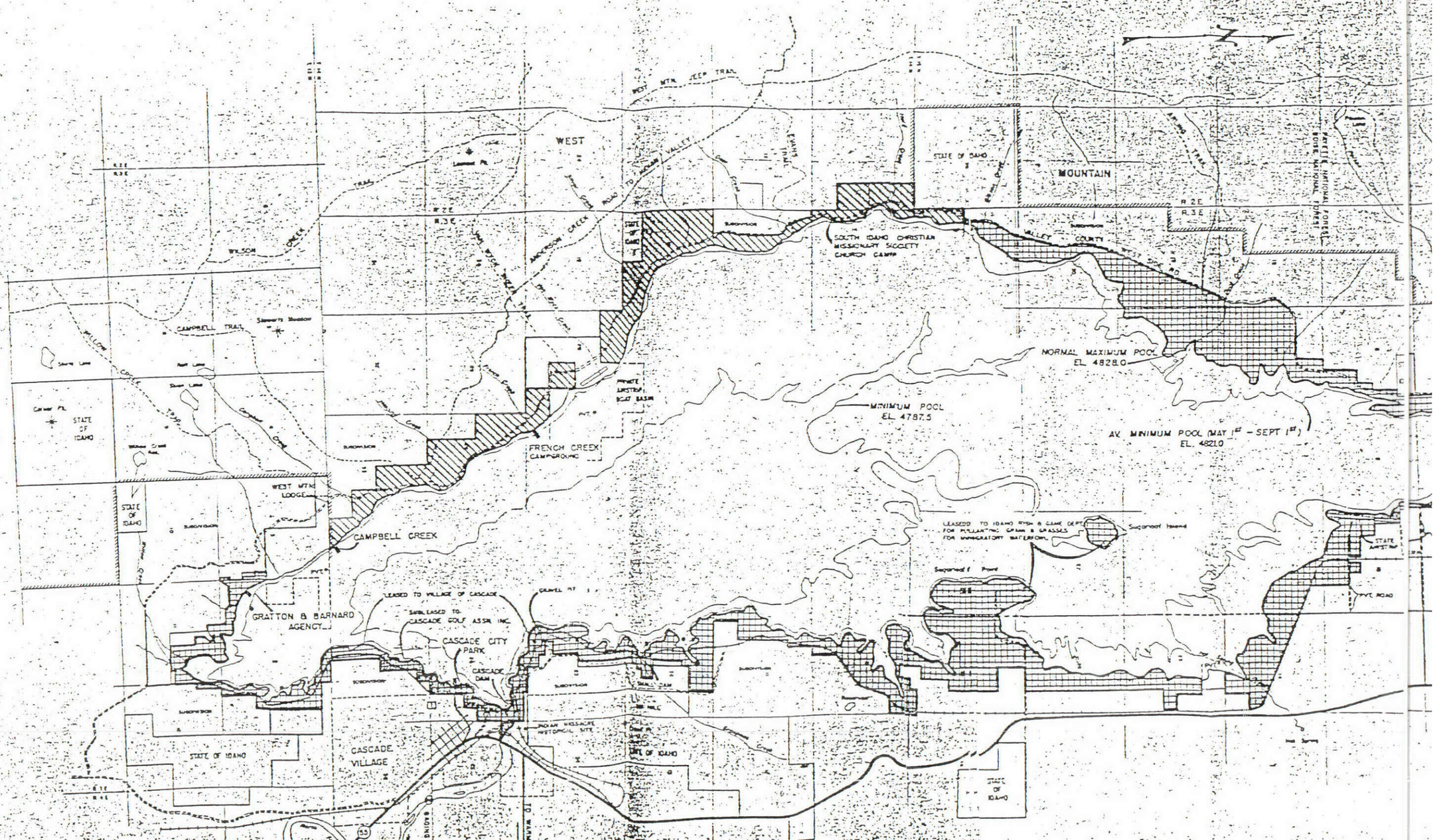

ANDERSON RANCH RESERVOIR
RESERVOIR AREA
RECLAMATION ZONE
Pierce Creek
South Fork
Rock Creek
Grouse Creek
Rough Creek
Spring Creek Campground
BASE LINE
F O R E S T
T I O N A L


DEADWOOD RESERVOIR
BOISE
NATIONAL
FOREST
SALMON RIVER
MOUNTAINS


NATIONAL FOREST
MOUNTAINS
DANSIN
RESERVOIR


ARROWROCK RESERVOIR
NATIONAL FOREST
BOISE
DANSIN


MOUNTAIN
R2E
R3E
STATE OF IDAHO
NORMAL MAXIMUM POOL
EL. 4828.0
MINIMUM POOL
EL. 4787.5
AV. MINIMUM POOL (MAY 1ST - SEPT 1ST)
EL. 4821.0
TAMARACK FALLS
CAMPGROUND
RAINBOW POINT
AMANITA
CAMPGROUND
CASCADE LAKE
4-H CAMP INC.
DONNELLY REC. AREA
LEASED TO VILLAGE OF DONNELLY
DONNELLY
PUBLIC AIRPORT
UNION PACIFIC R.R.
OLD HIGHWAY
PVT. ROAD
PVT.
SUBDIVISION
Arrowhead Point
Sugarloaf Island
Sugarloaf I. Point
LEASED TO IDAHO FISH & GAME DEPT.
FOR PURPLE MARTIN, GOOSE & DUCK NEST
FOR MIGRATORY WATERFOWL
IDAHO CHRISTIAN
CAMP
SCALE IN FEET
CASCADE RESERVOIR
RESERVOIR AREA
(NATIONAL FOREST SYSTEM LANDS)
RESERVOIR AREA
(BUREAU of RECLAMATION MANAGED LANDS)


WEST
MOUNTAIN
WEST MTN. JEEP TRAIL
WILSON CREEK
CAMPBELL TRAIL
STATE OF IDAHO
WEST MTN. LODGE
CAMPBELL CREEK
FRENCH CREEK CAMPGROUND
SOUTH IDAHO CHRISTIAN MISSIONARY SOCIETY CHURCH CAMP
VALLEY COUNTY
NORMAL MAXIMUM POOL EL. 4828.0
MINIMUM POOL EL. 4787.5
AV. MINIMUM POOL (MAY 1ST - SEPT 1ST) EL. 4821.0
LEASED TO IDAHO FISH & GAME DEPT. FOR REGULATING GRAVEL & GRASSES FOR SPAWNING WATERFOWL
Sugarloaf Island
Sugarloaf Point
GRATTON & BARNARD AGENCY
LEASED TO VILLAGE OF CASCADE
SUBLEASED TO CASCADE GOLF ASSN. INC.
CASCADE CITY PARK
CASCADE DAM
CASCADE VILLAGE
INDIAN MASSACRE HISTORICAL SITE
PAVT. ROAD
BOISE NATIONAL FOREST

RECEIVED
AUG 13 1985
Department of Water Resources

Before the
Federal Energy Regulatory Commission

63-10240
F.L. #3

Application for License for Major Project -- Existing Dam

Arrowrock Dam Hydroelectric Project

FERC Project No. 4656

Boise-Kuna Irrigation District
New York Irrigation District
Nampa and Meridian Irrigation District
Wilder Irrigation District
Big Bend Irrigation District

July 1984

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NOV 12 2002
Entire Book!

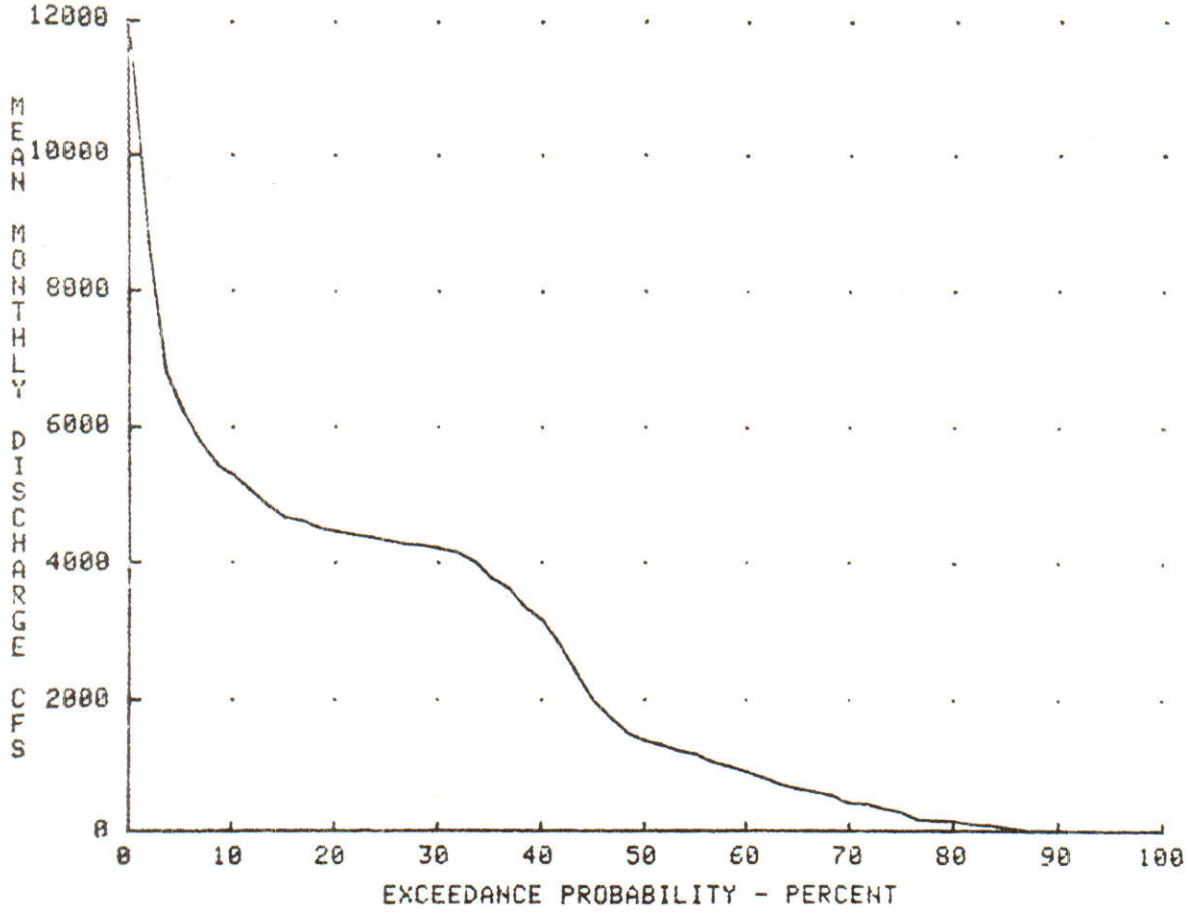


Figure B-1.--Flow duration curve, mean monthly discharge at Arrowrock Dam, in cubic feet per second (Study BS23, 1928 through 1977)

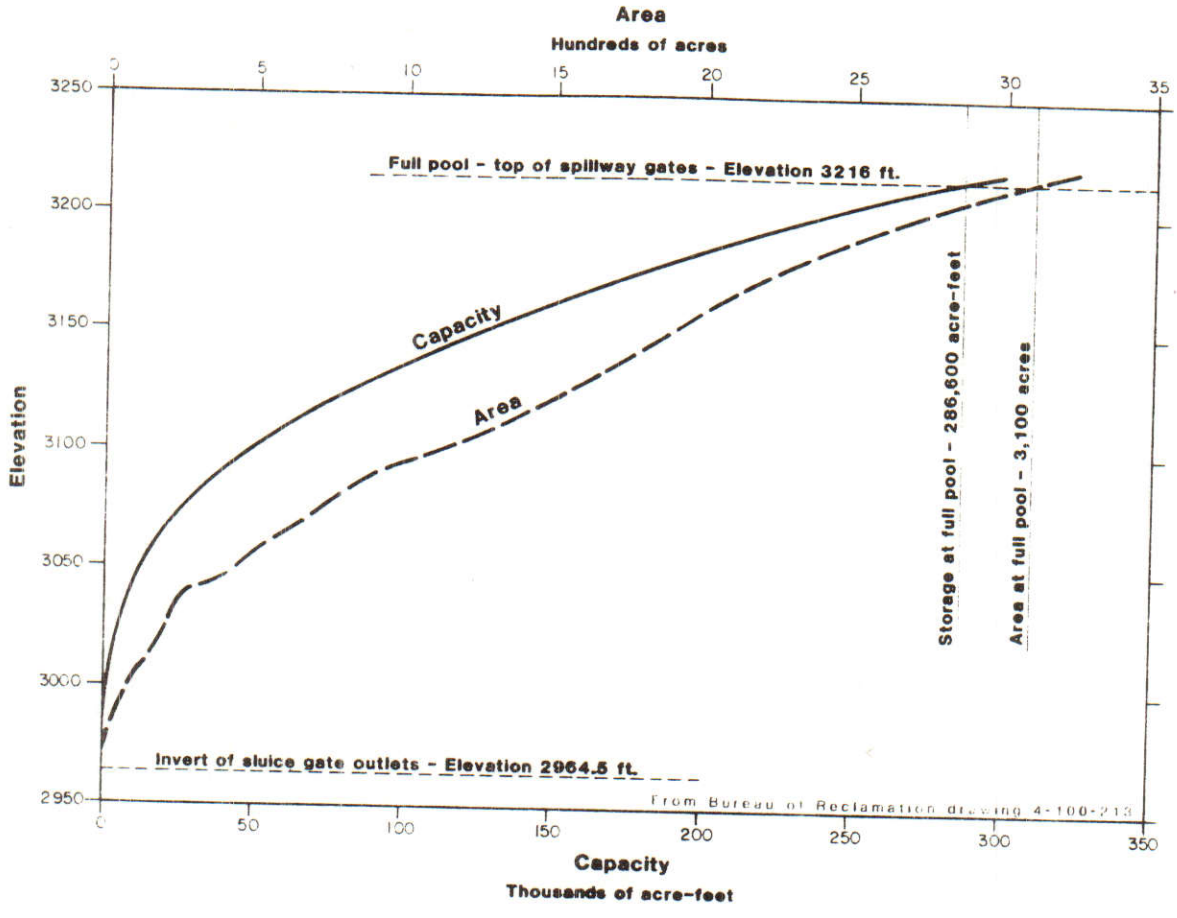
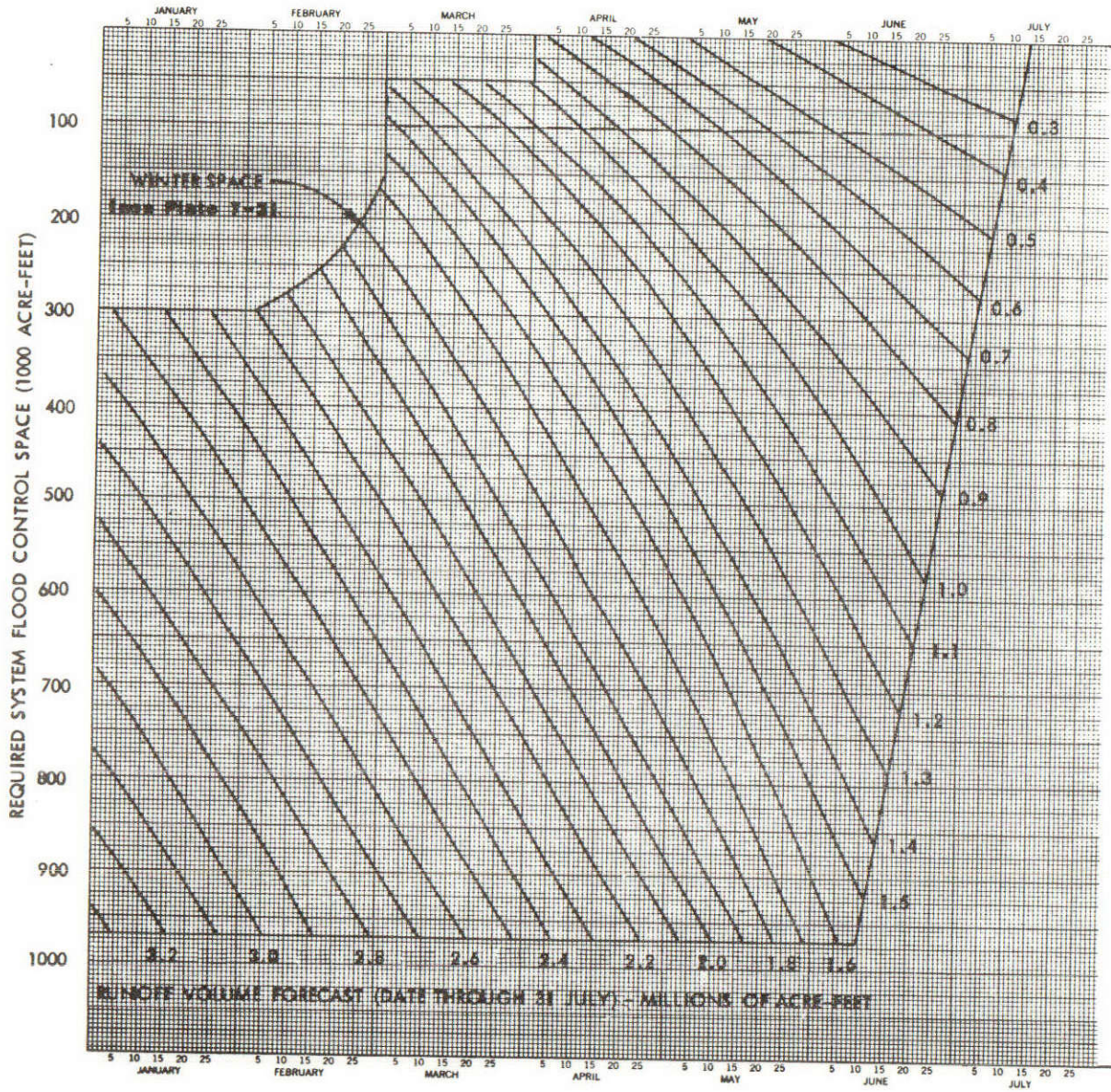


Figure B-2--Arrowrock Reservoir area and capacity curves



NOTES:

1. Parameters represent forecasted Lucky Peak Lake natural inflow volumes between the forecast date and 31 July. Operational rule curves were derived as follows:

a. Flood Control: For a given volume forecast, the flood control space required for a 1-percent forecast error risk and the space which could be refilled with a 95-percent assurance were determined. If the refillable space plus 100,000 acre-feet exceeded the flood control space, then the flood control space value was used. If the refillable space (95-percent assurance) plus 100,000 acre-feet were less than the flood control space, then the value used was an arithmetic average of the refillable space plus 100,000 acre-feet and the flood control space.

b. Safety Factors - Operational Flood Control Curves:

FLOOD CONTROL ASSURANCES
(Control to 6,500 cfs at Glenwood Bridge)

Forecast Date (Thru 31 July)	Assumed Volume Forecast Error (Under Forecast) (Acre-Feet)	Percent Chance of Volume Error (Smaller Volume)	Less Critical Timing Sequence
1 January	800,000	99	98
16 January	780,000	99	98
1 February	700,000	99	98
15 February	640,000	99	98
1 March	580,000	99	98
16 March	490,000	99	98
1 April	400,000	99	98
16 April	380,000	99	98
1 May	370,000	99	98
16 May	360,000	99	98
1 June	350,000	99	80
16 June	310,000	98	50

REFILL ASSURANCES
(Total System - 974,149 Acre-Feet)

Forecast Date (Thru 31 July)	Assumed Volume Forecast Error (Over Forecast) (Acre-Feet)	Percent Chance of Volume Error (Larger Volume)	Less Critical Timing Sequence
1 January	610,000	95	98
16 January	550,000	95	98
1 February	490,000	95	98
15 February	450,000	95	98
1 March	410,000	95	98
16 March	350,000	95	98
1 April	280,000	95	98
16 April	270,000	95	98
1 May	140,000	80	50
16 May	110,000	75	50
1 June	40,000	60	50
16 June	10,000	52	50

2. To determine total vacant space required in all three reservoirs, select parameter corresponding to predicted runoff between that date and 31 July, then read the ordinate of this parameter corresponding to forecast date.

3. Minimum of 50,000 acre-feet of space required in Lucky Peak reservoir from 1 January through 31 March.

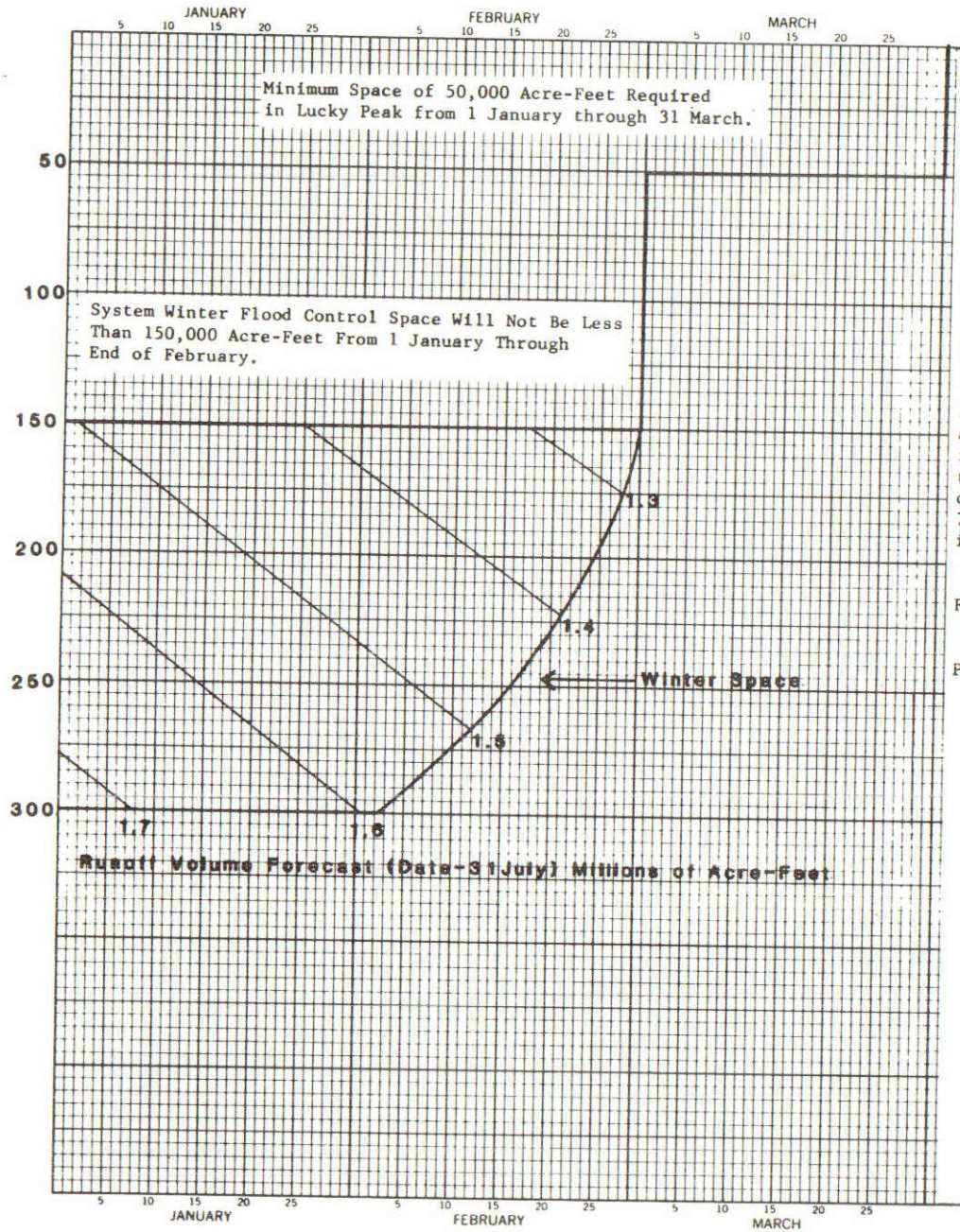
Boise River Reservoirs
Boise River Basin, Idaho

OPERATIONAL FLOOD CONTROL
RULE CURVES

U. S. Army Corps of Engineers
Walla Walla District
Hydrology Branch
December 1982

PLATE 7-1

Figure B-3--Rule curves for flood control operations--Boise River reservoirs
(sheet 1 of 4)



NOTES:

1. Curves define winter flood control space requirements when runoff volume forecasts are below normal during the 1 January through 1 March period.

2. Curves provide 100-year winter flood protection and a 95 percent refill assurance for 871,728 acre-feet of system space.

3. Parameters represent forecasted Lucky Peak Lake unregulated inflow volumes between the forecast date and 31 July.

4. To determine total vacant space required in all three reservoirs, select parameter corresponding to the predicted runoff between that date and 31 July, then read the ordinate of this parameter corresponding to the forecast date. For runoff volume forecasts not defined by these curves, use the space requirements of Plate 7-1. For example, a runoff volume forecast of 1.8 million acre-feet on 1 February is not defined, hence entering Plate 7-1, the space required on 1 February for a 1.8 million acre-feet forecast is defined by the winter space curve and is 300,000 acre-feet.

5. Minimum allowable system space is 150,000 acre-feet, January through February time period.

6. A minimum of 50,000 acre-feet of space must be maintained in Lucky-Peak reservoir from 1 January through 31 March.

Boise River Reservoirs
Boise River Basin, Idaho

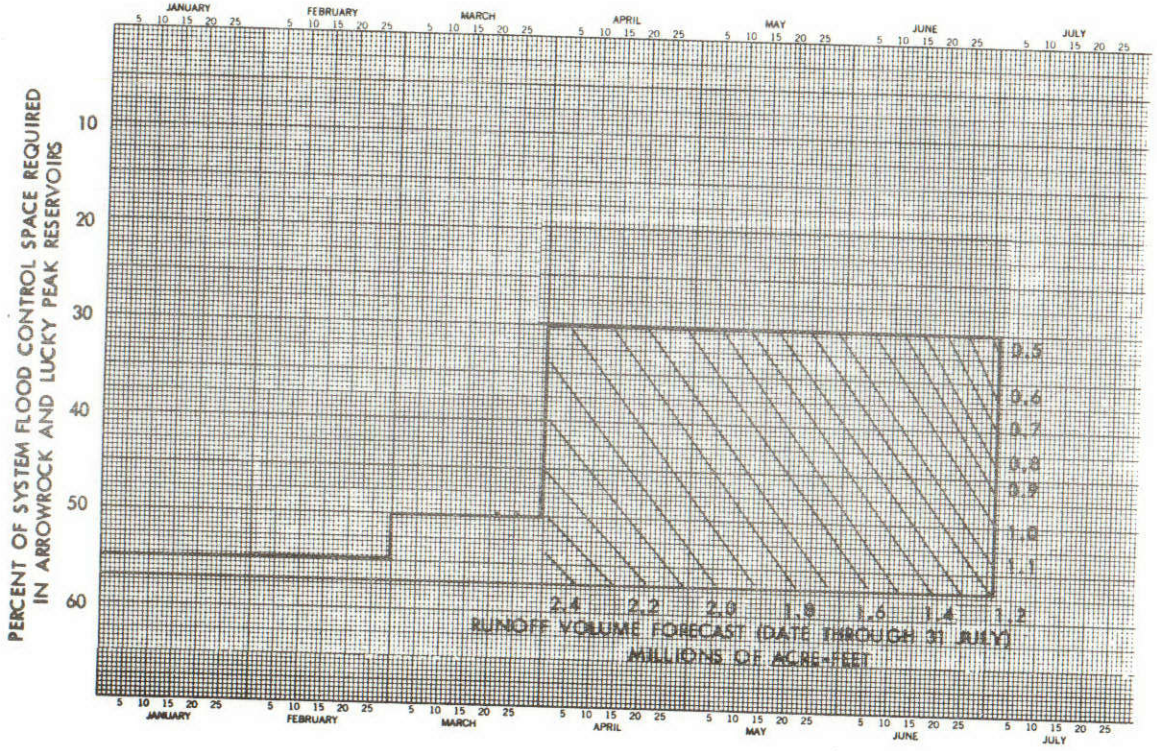
WINTER FLOOD CONTROL
RULE CURVES

For Below Normal Forecasts Occurring
Between 1 January and 1 March

U.S. Army Corps of Engineers
Walla Walla District
Hydrology Branch
December 1982

PLATE 7-2

Figure B-4--Rule curves for flood control operations--Boise River reservoirs
(sheet 2 of 4)



NOTES:

1. Parameters represent forecasted Lucky Peak Lake natural inflow volumes between the forecast date and 31 July. Distribution curves were derived based on the following assumptions:

a. Arrowrock-Lucky Peak Release Schedule.

Date	Assumed Allowable Flow of Boise River at Glenwood Bridge (cfs)	Assumed Irrigation Diversions, Lucky Peak to Glenwood Bridge (cfs)	Total Assumed Maximum Allowable Lucky Peak Flood Control Releases (cfs)
1 Apr-30 Apr	6,500	1,600	8,100
1 May-31 May	6,500	3,700	10,200
1 Jun-31 Jul	6,500	3,800	10,300

b. Percentage values are based on (1) the 1-percent forecast error risk on the Arrowrock-Lucky Peak local volume forecast, (2) the 95-percent upper confidence limit timing sequence, and (3) a constant 300-cfs inflow (1 April - 31 July minimum Anderson Ranch release). Percentages were determined by dividing the Arrowrock-Lucky Peak local flood control space requirement by the Boise River system flood control space requirement for a given Lucky Peak Lake natural inflow volume forecast.

c. Arrowrock-Lucky Peak Local Volume Forecast and Standard Error. The Arrowrock-Lucky Peak local volume forecast is determined by multiplying the forecasted Lucky Peak Lake natural inflow volume by the appropriate contribution factor shown below:

Forecast Date	Contribution Factor	Standard Error (AF)	Forecast Error (2.3267)x(Standard Error)(AF)
1 April	0.6331	103,400	241,000
15 April	0.6270	86,950	202,000
1 May	0.6209	70,500	164,000
15 May	0.6196	70,500	164,000
1 June	0.6182	70,500	164,000
15 June	0.6300	70,500	164,000
1 July	0.6418	70,500	164,000

2. To determine the minimum percentage of system flood control space required in Arrowrock-Lucky Peak reservoirs, select the parameter corresponding to the predicted runoff between that date and 31 July. Then read the ordinate of this parameter corresponding to the forecast date. This ordinate is the minimum percent of the system flood control space required in Arrowrock-Lucky Peak reservoirs. The minimum space required is the minimum percent multiplied by the system flood control space requirement.

The following allocation has been made of the acre-feet of storage capacity available:

Reservoir	Flood Control	Dead	Total
Arrowrock	286,600	0	286,600
Lucky Peak	264,300	28,800	293,100
Total Space	550,900	28,800	579,700

Boise River Reservoirs
Boise River Basin, Idaho

FLOOD CONTROL SPACE
DISTRIBUTION CURVES

Percent of system flood control space required in Arrowrock and Lucky Peak Reservoirs

U. S. Army Corps of Engineers
Walla Walla District
Hydrology Branch
December 1982

PLATE 7-3

Figure B-5--Rule curves of flood control operations--Boise River reservoirs
(sheet 3 of 4)

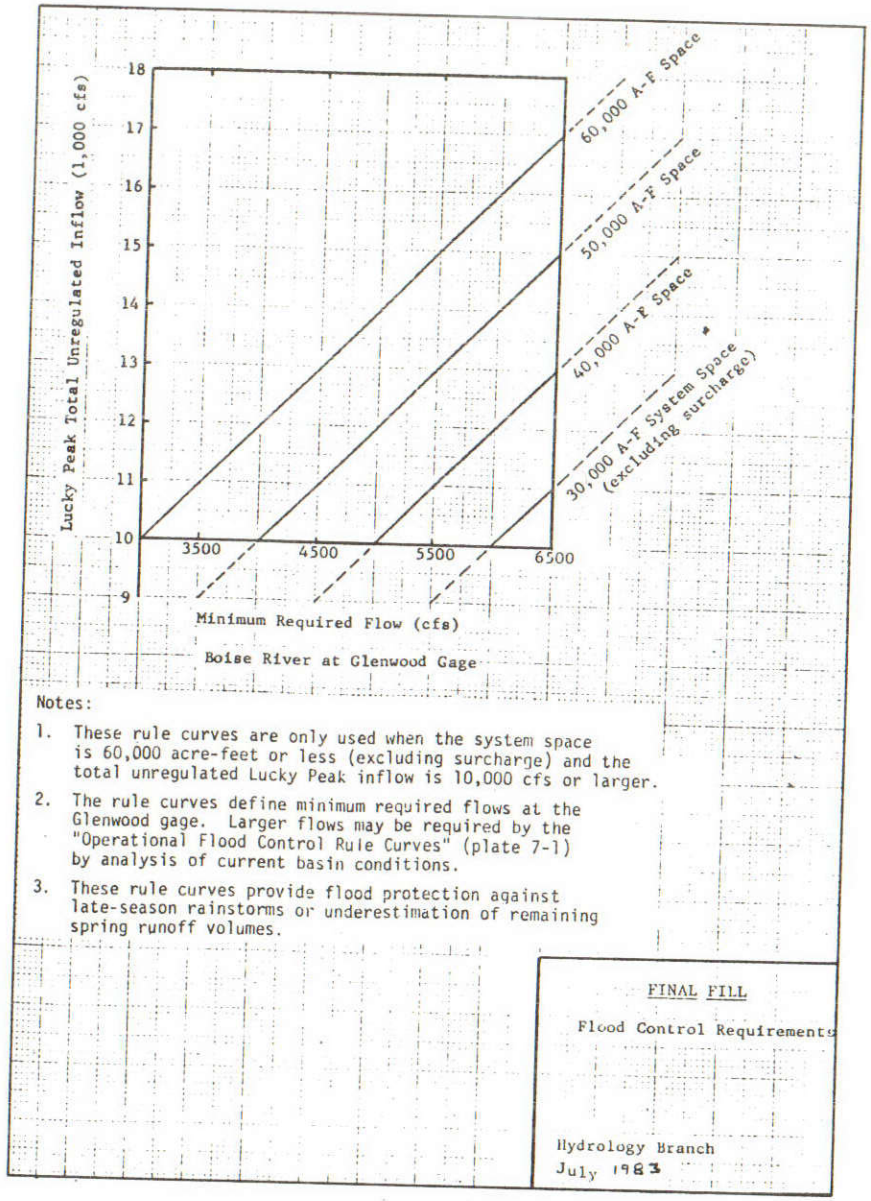


Figure B-6.--Rule curves for flood control operations--Boise River reservoirs (sheet 4 of 4)

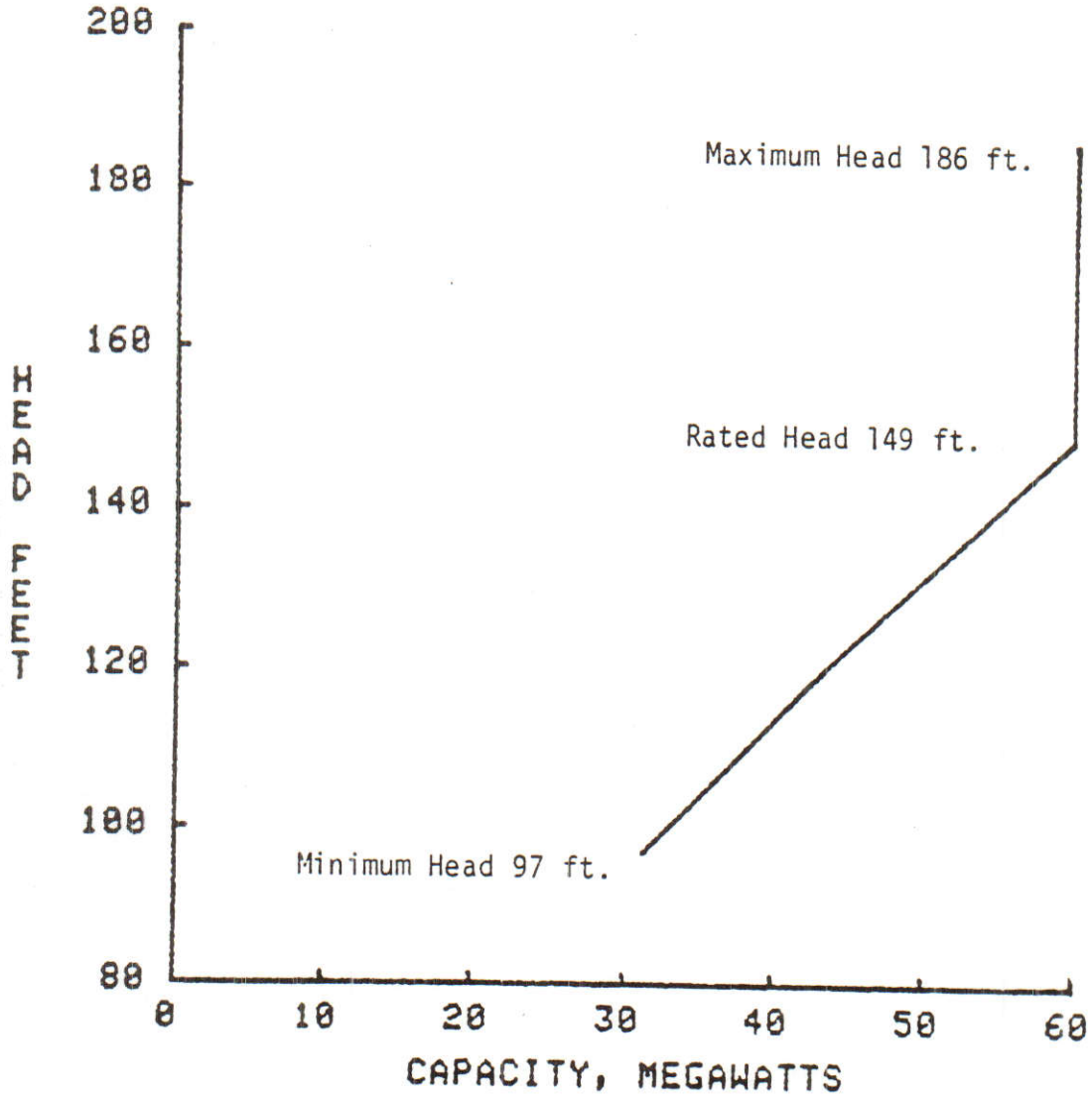


Figure B-7.--Arrowrock Powerplant Capability Versus Head

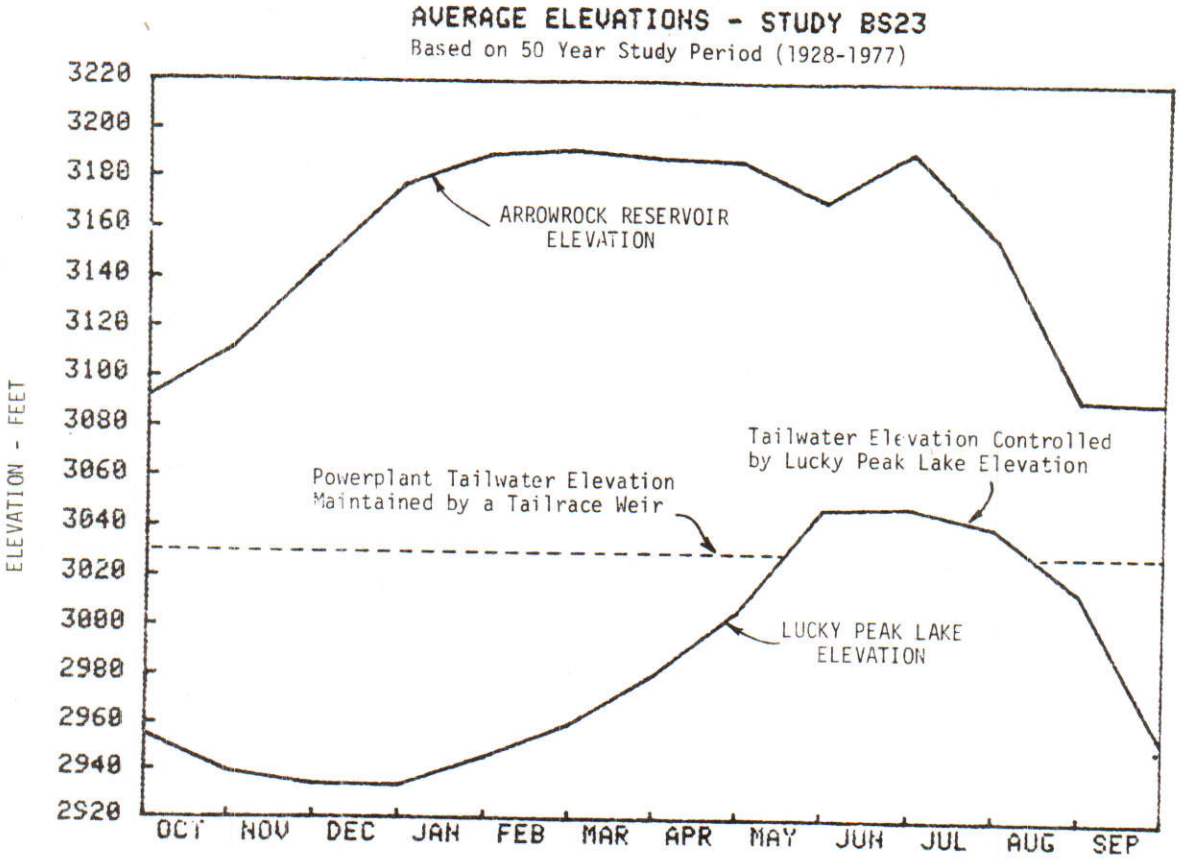


Figure B-8--Arrowrock Powerplant tailwater elevation control by tailrace weir or by Lucky Peak Lake

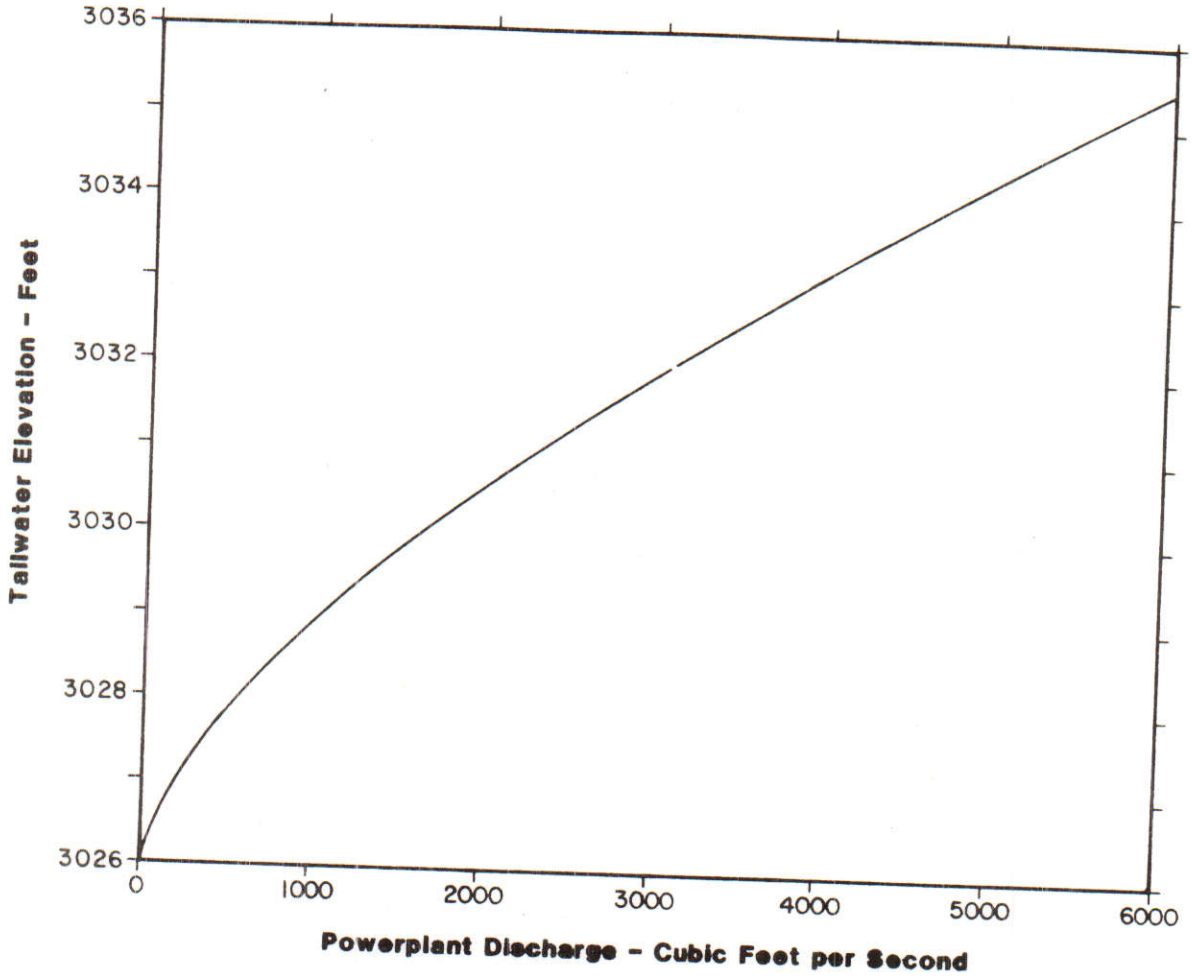


Figure B-9.--Arrowrock Powerplant tailwater rating curve for control by tailrace weir

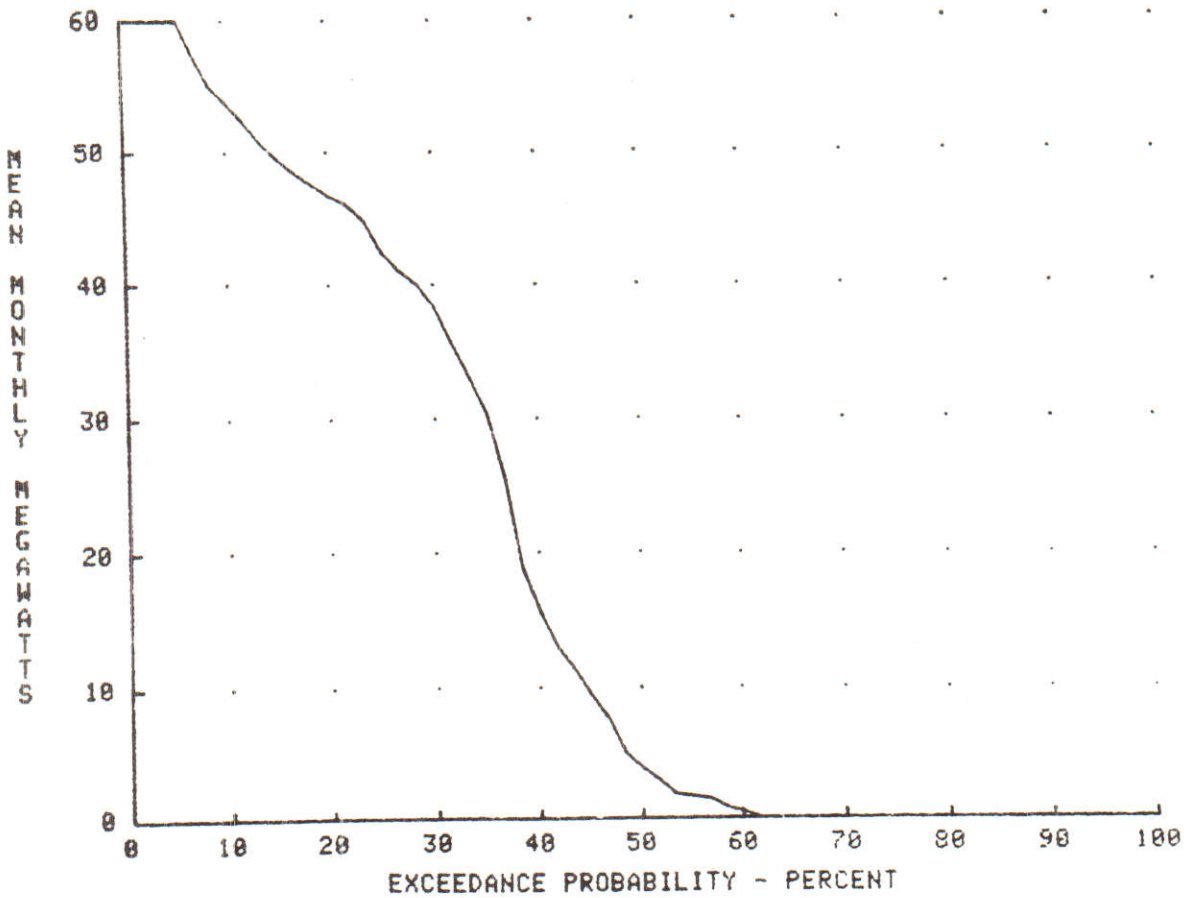


Figure B-10--Duration curve of estimated mean monthly generation at Arrowrock Powerplant (Study BS23, 1928 through 1977)

1.--GENERAL DESCRIPTION OF THE LOCALE

Location

The Arrowrock Powerplant site is located at Arrowrock Dam in the Boise River basin in southwest Idaho. The dam lies about 12 air miles east of Boise, the largest city in the area (figure E-1).

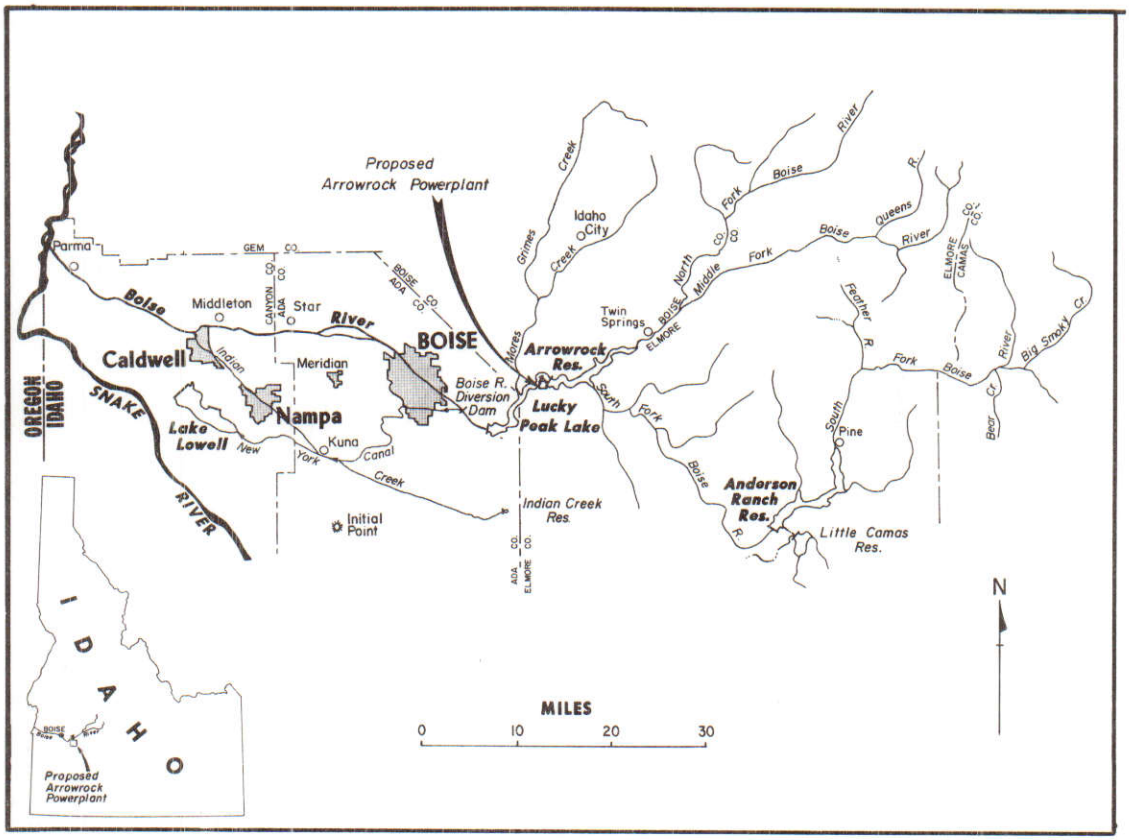


Figure E-1--Boise River basin

Climate

The climate of the project vicinity is generally semiarid, with warm summers and moderately cold winters (1, 2).[1/] Average annual precipitation varies from 11.5 inches in Boise to about 20 inches at Arrowrock

1/ A number in parentheses refers to the number of the reference in the List of Literature at the end of exhibit E.

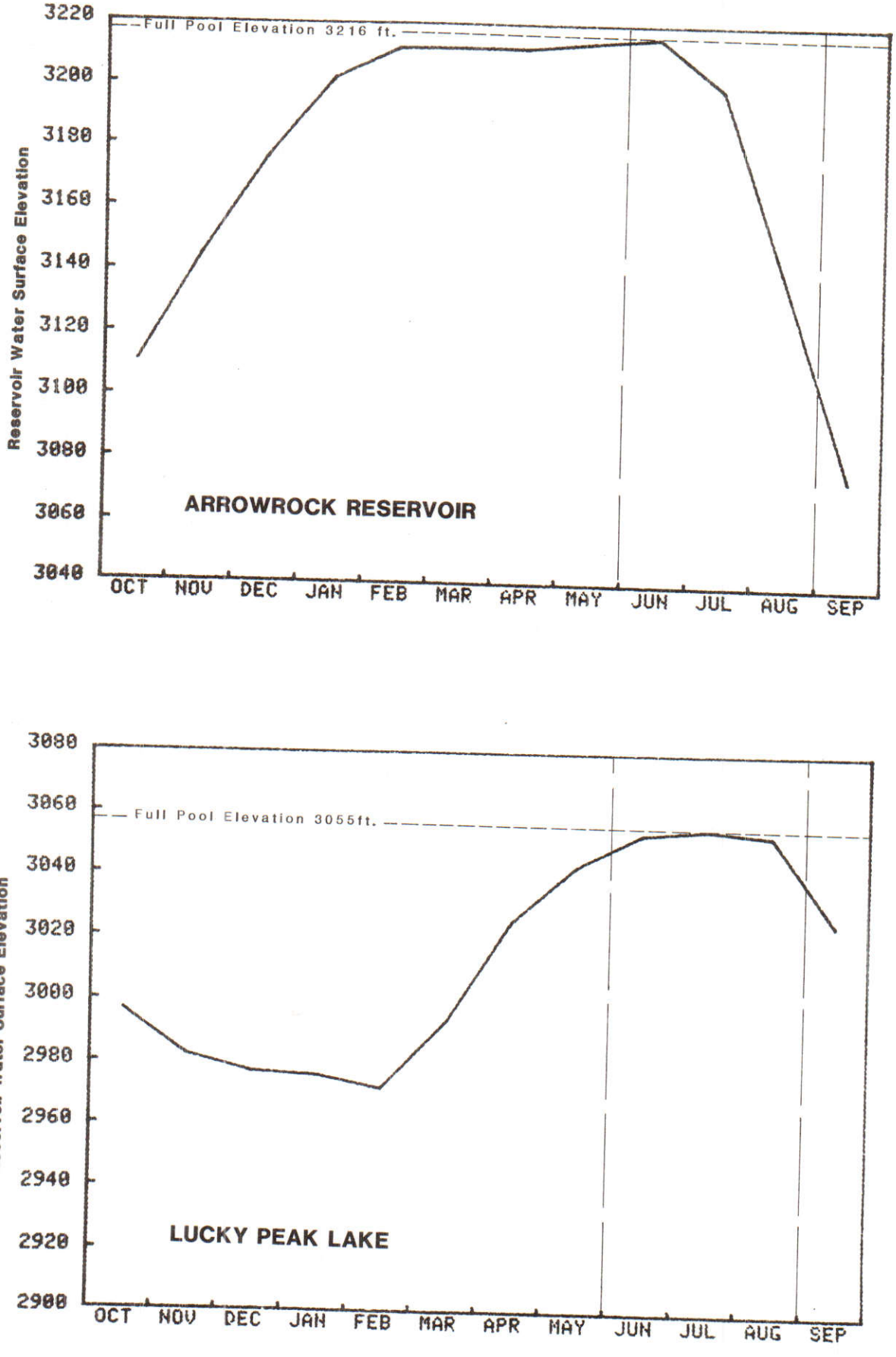


Figure E-2--Water surface elevations of Arrowrock Reservoir (top) and Lucky Peak Lake during a typical year. Lucky Peak Lake is held at higher levels than Arrowrock Reservoir during the summer.

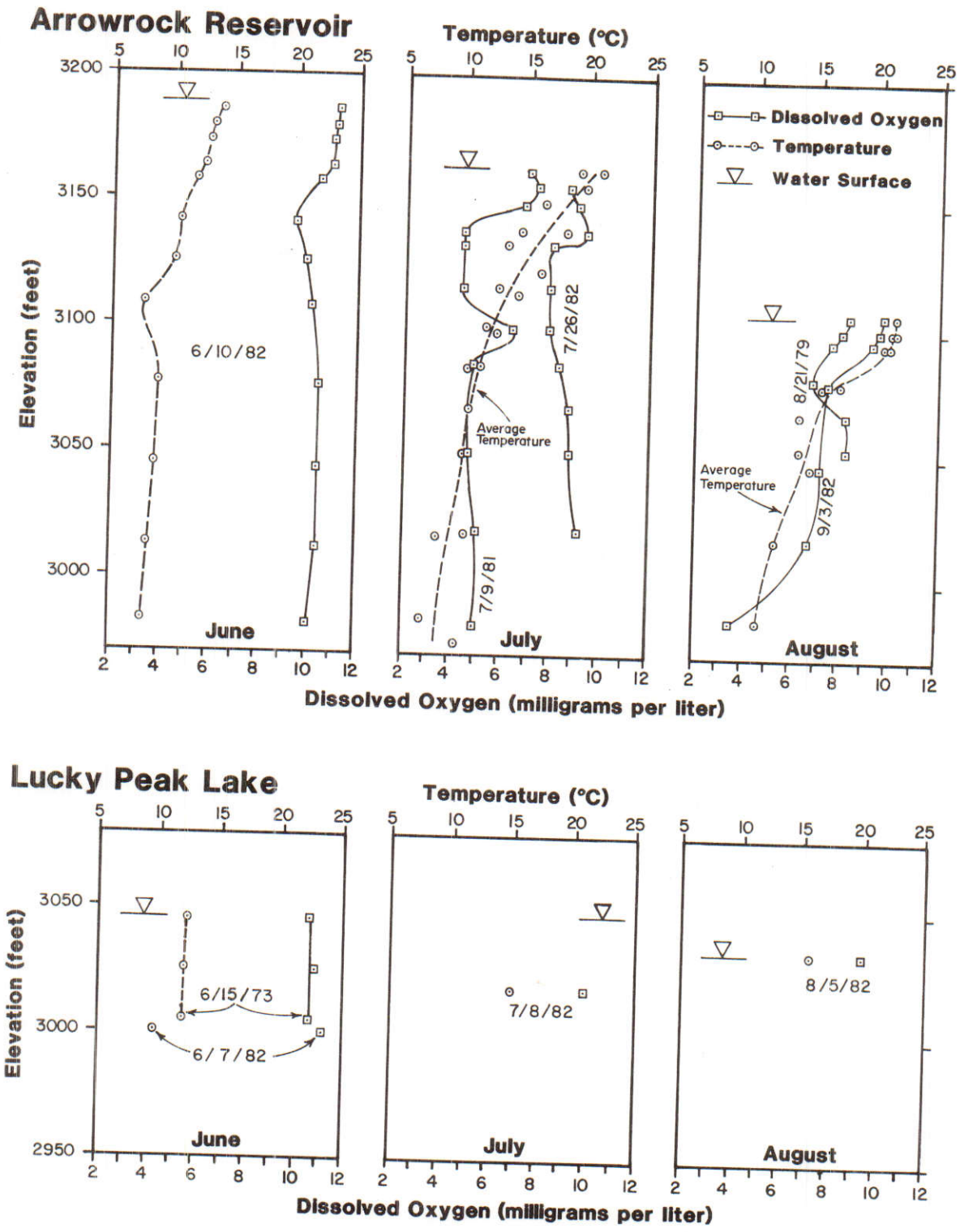


Figure E-3--Water temperatures and dissolved oxygen profiles for Arrowrock Reservoir and Lucky Peak Lake

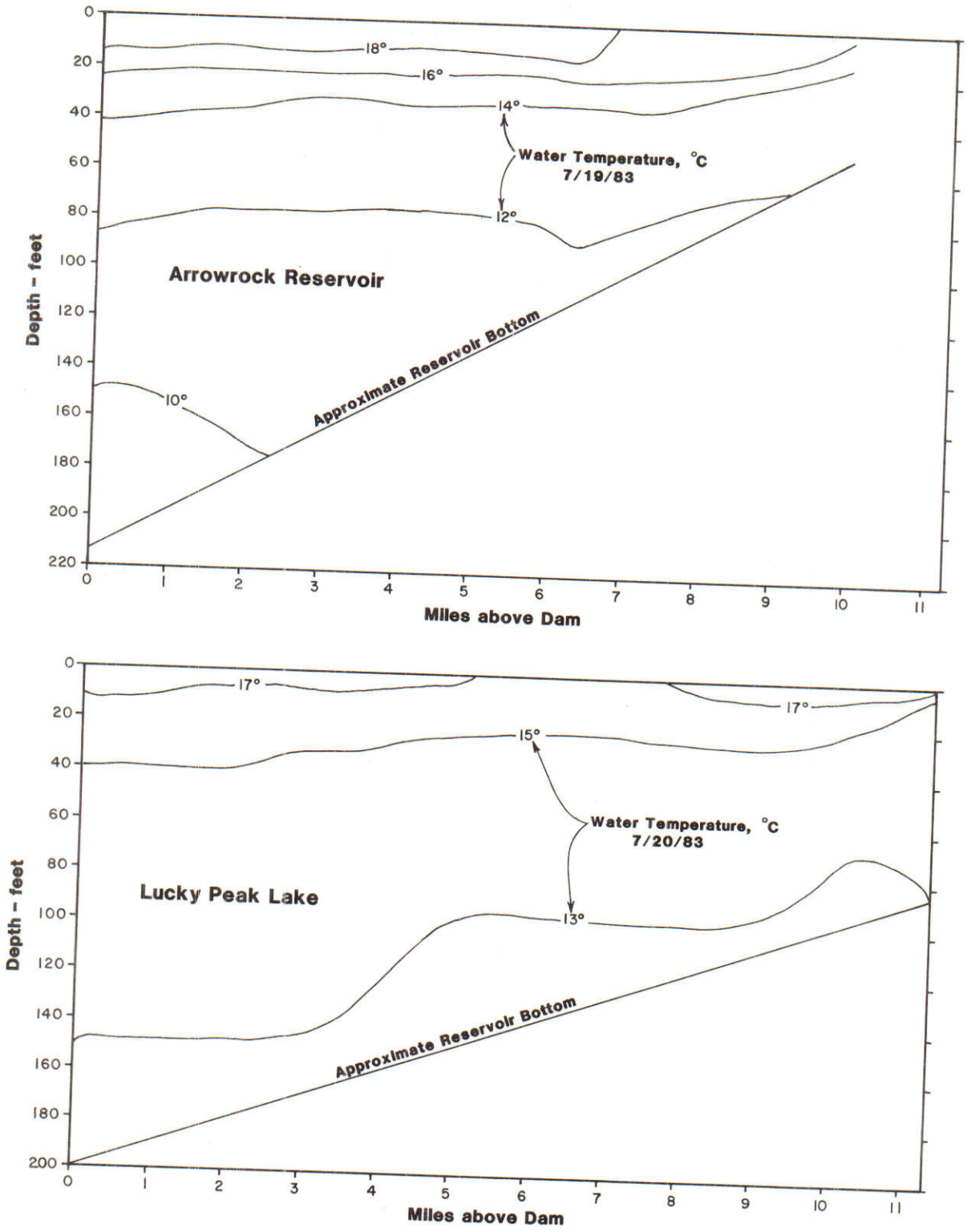


Figure E-4--Temperature profiles--Arrowrock Reservoir and Lucky Peak Lake, July 1983. Dissolved oxygen levels in the entire profile in both reservoirs were at or near saturation.

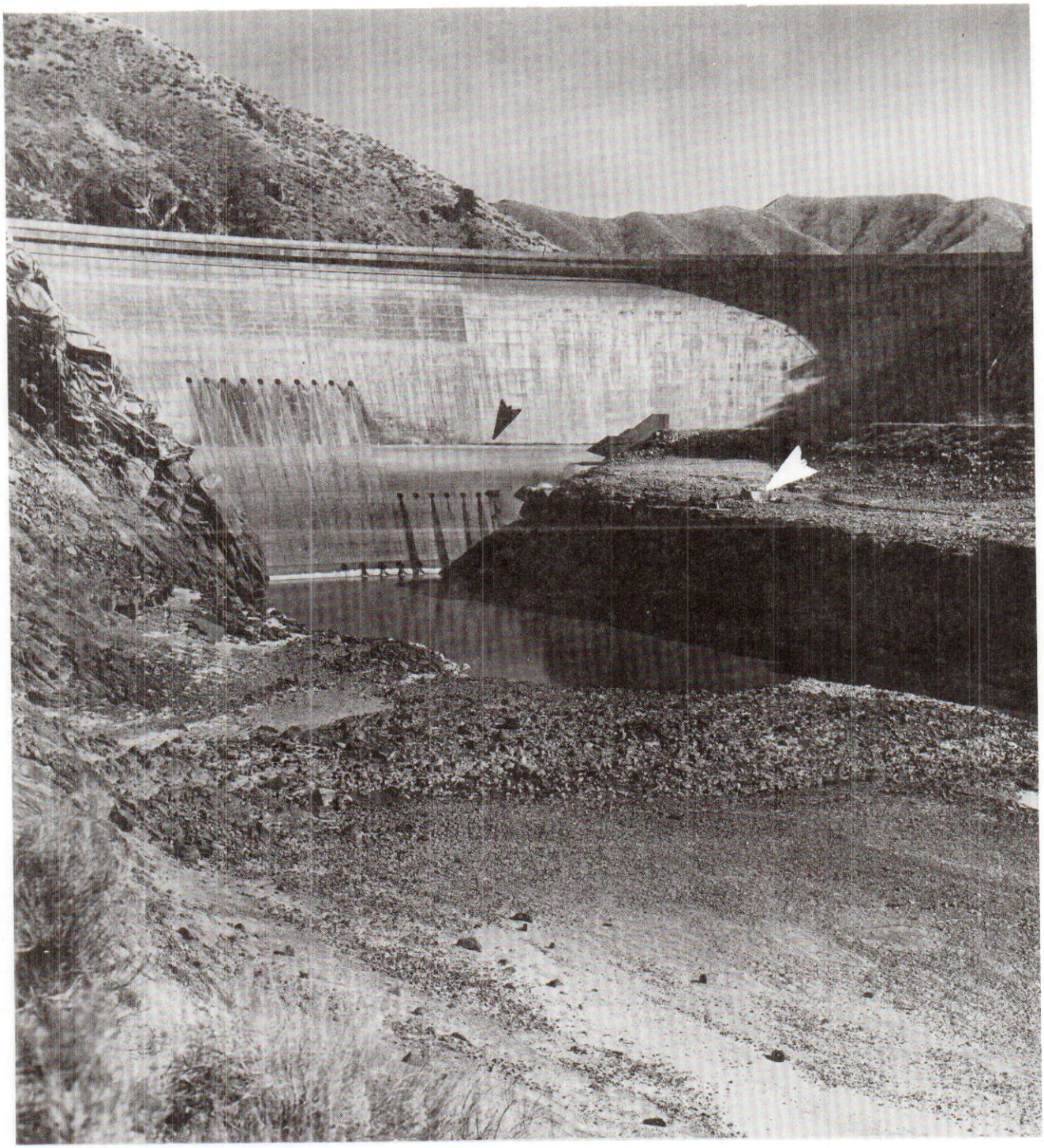


Figure E-5--Arrowrock Powerplant site (large arrow). Lucky Peak Lake is drawn down in this view. When full, Lucky Peak Lake backs water onto the face of Arrowrock Dam (small arrow shows Lucky Peak Lake high water line).

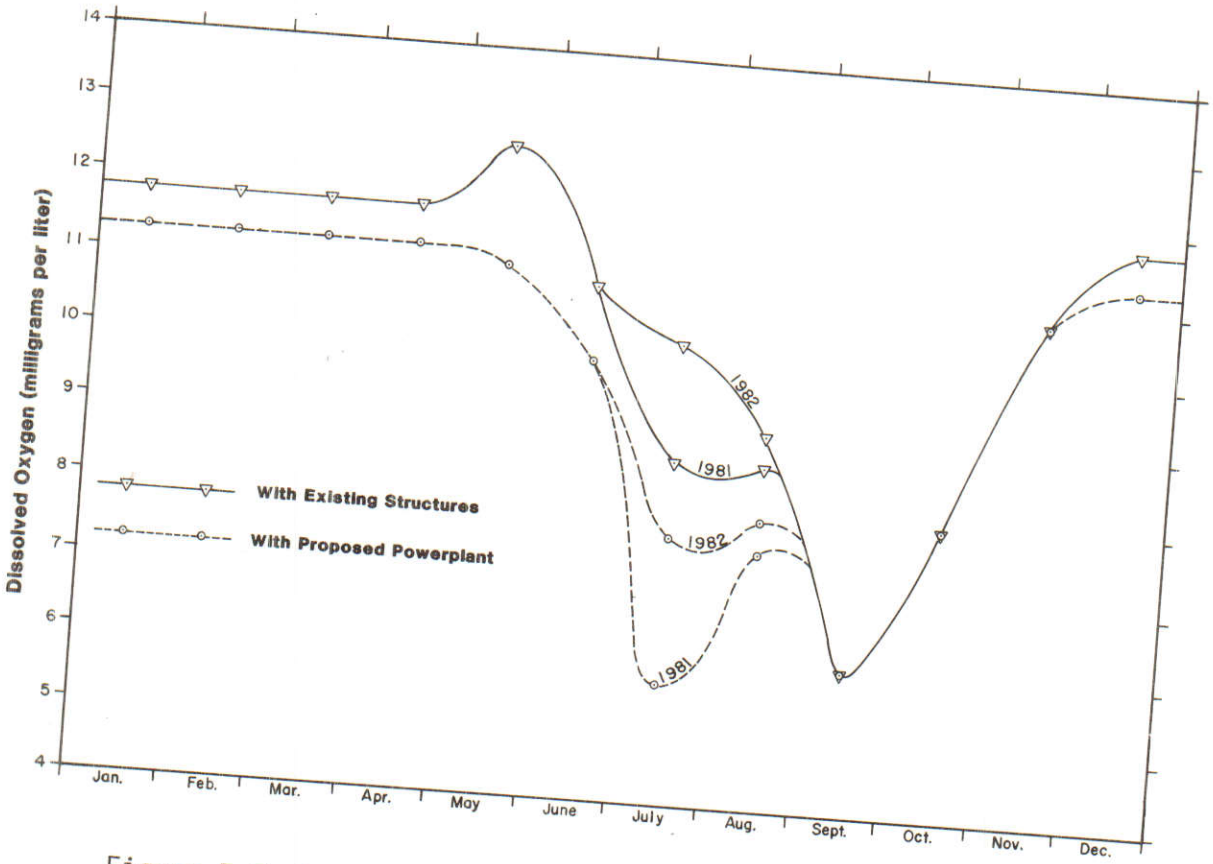
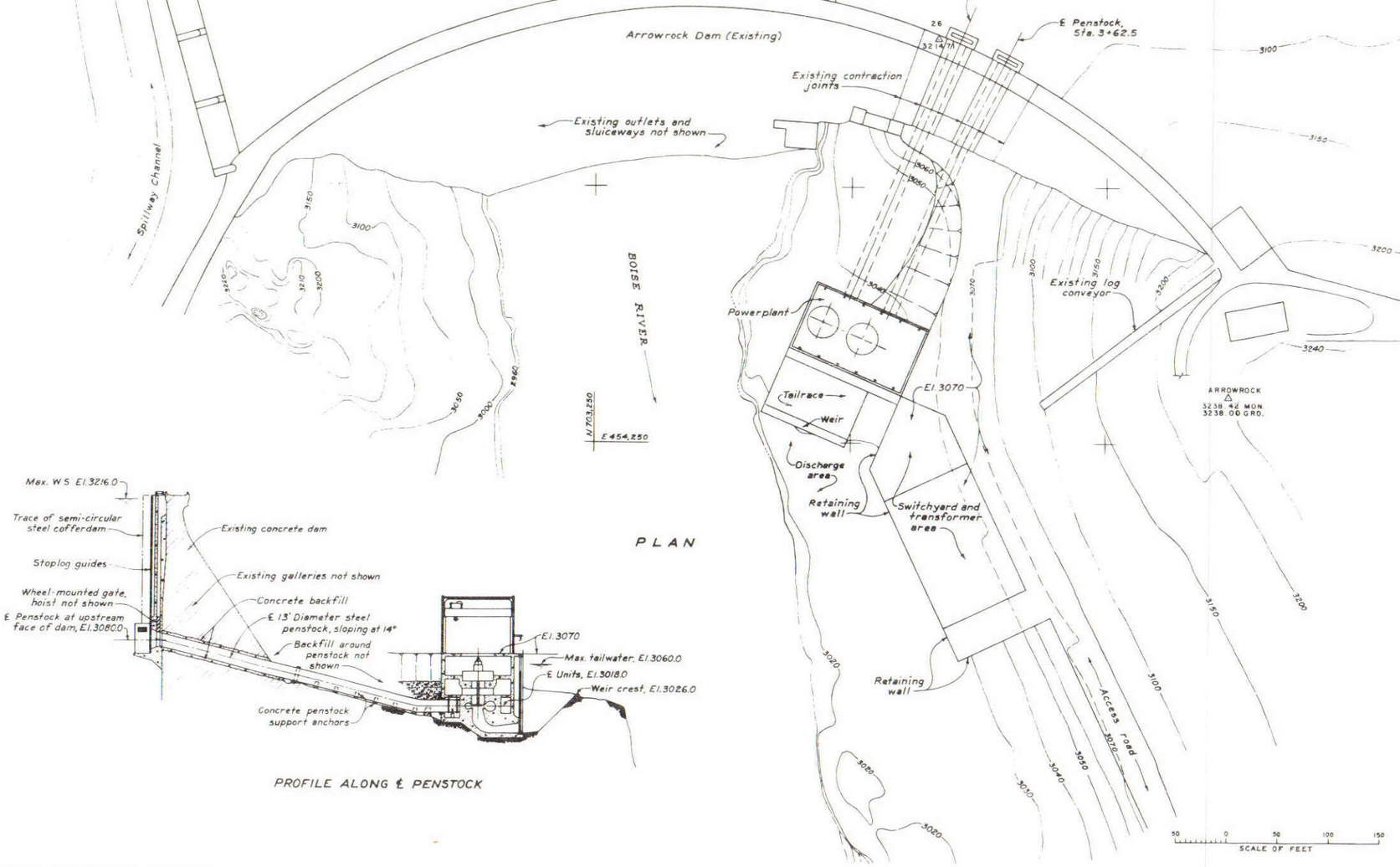


Figure E-6--Predicted dissolved oxygen levels in the Lucky Peak Lake hypolimnion near Lucky Peak Dam. Predicted dissolved oxygen levels in Arrowrock Reservoir releases below the zone of mixing with Lucky Peak Lake water would be about 0.7 mg/L higher than levels shown in this illustration.

For typical years through the stratified spring season of May and June, it appears that, for the existing situation, releases through the upper outlets in Arrowrock Dam yield supersaturated dissolved oxygen levels. These levels, however, are diluted by Arrowrock spillway releases which are likely to have dissolved oxygen levels at or near saturation. The result is reduced but still somewhat supersaturated dissolved oxgyen inflows. With power releases, most of the flow would undergo no reaeration, and thus the dissolved oxygen levels would be equal to those in Arrowrock Reservoir at the penstock elevation, which at that time of the year are near saturation. The power releases would generally be augmented by releases through the upper outlets in Arrowrock Dam, which would increase the dissolved oxygen level in the total mixed inflow to Lucky Peak. The analysis indicates that for the May-June period with typical conditions, dissolved oxygen levels in Lucky Peak Lake under existing operations are approximately 1 mg/L higher than would occur with the proposed power releases.



Figure E-7--Proposed powerplant construction area as seen from the top of Arrowrock Dam. The trucks are at the powerplant site.



PLAN

PROFILE ALONG E PENSTOCK

RECLAMATION SAFETY

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
BOISE PROJECT - ARROWROCK DIVISION - IDAHO

ARROWROCK DAM POWERPLANT

TWO 30-MW UNITS

APPRAISAL DESIGN LAYOUT

DESIGNED M.A. Conrad — TECHNICAL APPROVAL K. R. Engebretson
DRAWN R.E. Bradford — SUBMITTED James D. Higgins
CHECKED M.A. Conrad 2nd CHK. — APPROVED A. W. Walker
ASST. COMM. - ENGINEERING AND RESEARCH

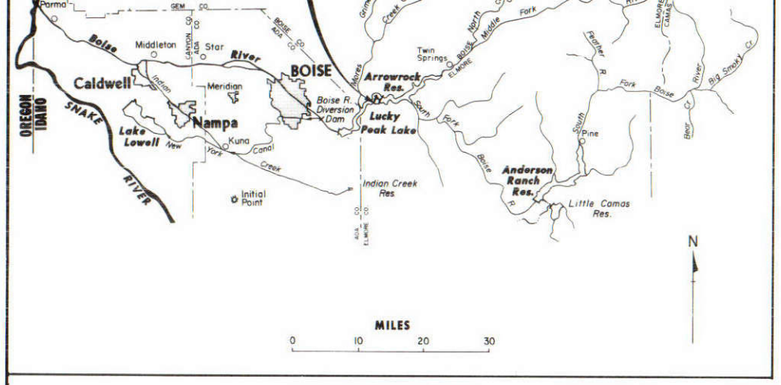
DENVER, COLORADO APR. 29, 1985

4-D-2060

EXHIBIT F — DESIGN DRAWING

ARROWROCK DAM
HYDROELECTRIC PROJECT

July 1984



BOISE RIVER BASIN





INDEX MAP

ARROWROCK DAM (EXISTING)

Proposed Road Improvement

Existing Spillway

Spillway Channel

Proposed Arrowrock Powerplant

Project Boundary

Existing Access Road

Proposed Access Road Improvement

Proposed Spillway Bridge

Existing Bridge

Lucky Peak Lake

Normal Water Surface Elevation 3055

Proposed 138 Kv Transmission Line

Existing 23 Kv Transmission Line

Project Boundary
40 feet each side of proposed 138 Kv transmission line.

Boise River

Proposed Road Improvement

Proposed Overlook and Parking Area

Existing Road

Deer Creek

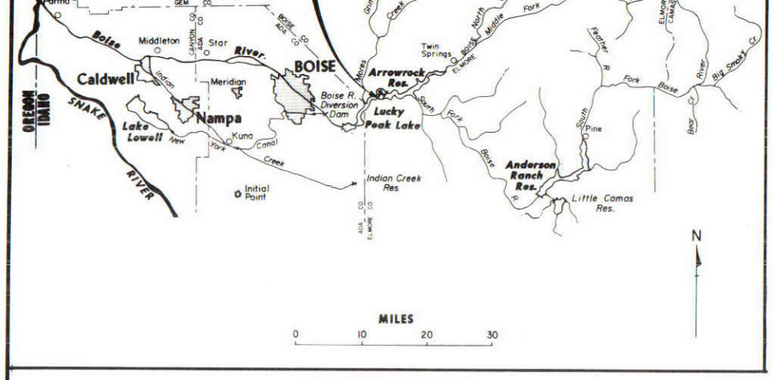
EXHIBIT G — PROJECT MAP

ARROWROCK DAM HYDROELECTRIC PROJECT

0 100 200 300
Scale in feet

July 1984

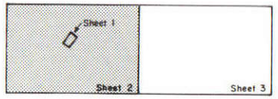
Sheet 1 of 3



BOISE RIVER BASIN



INDEX MAP



Project Boundary
40 feet each side of proposed 138 Kv transmission line -- Arrowrock Powerplant to existing substation.

Proposed 138 kv Transmission Line

Proposed Road Improvement

Spring Shores Unit

Chimney Rock

Proposed Arrowrock Powerplant

Placer Point

Deer Flat

Sandy Point

Charcoal Creek

Turner Gulch

Barclay Bay

Arrowrock Boat Launch

Macks Creek

Robie Creek

EXISTING BOISE BENCH SUBSTATION (Idaho Power Co.)

BARBER DAM

BOISE RIVER DIVERSION DAM and POWERPLANT

DISCOVERY STATE PARK (P&R)

LUCKY PEAK DAM

Normal Pool Elev. 3055

Normal Pool Elev. 3216

ARROWROCK DAM

ARROWROCK RES.

BOISE NATIONAL FOREST

Boise National Forest lands under Reclamation withdrawal
Reclamation withdrawn lands
Reclamation flowage easement

BR Bureau of Reclamation (owned in fee title)
CE Corps of Engineers
BNF Boise National Forest
BLM Bureau of Land Management
F&G Idaho Department of Fish and Game
S State lands
P Private lands

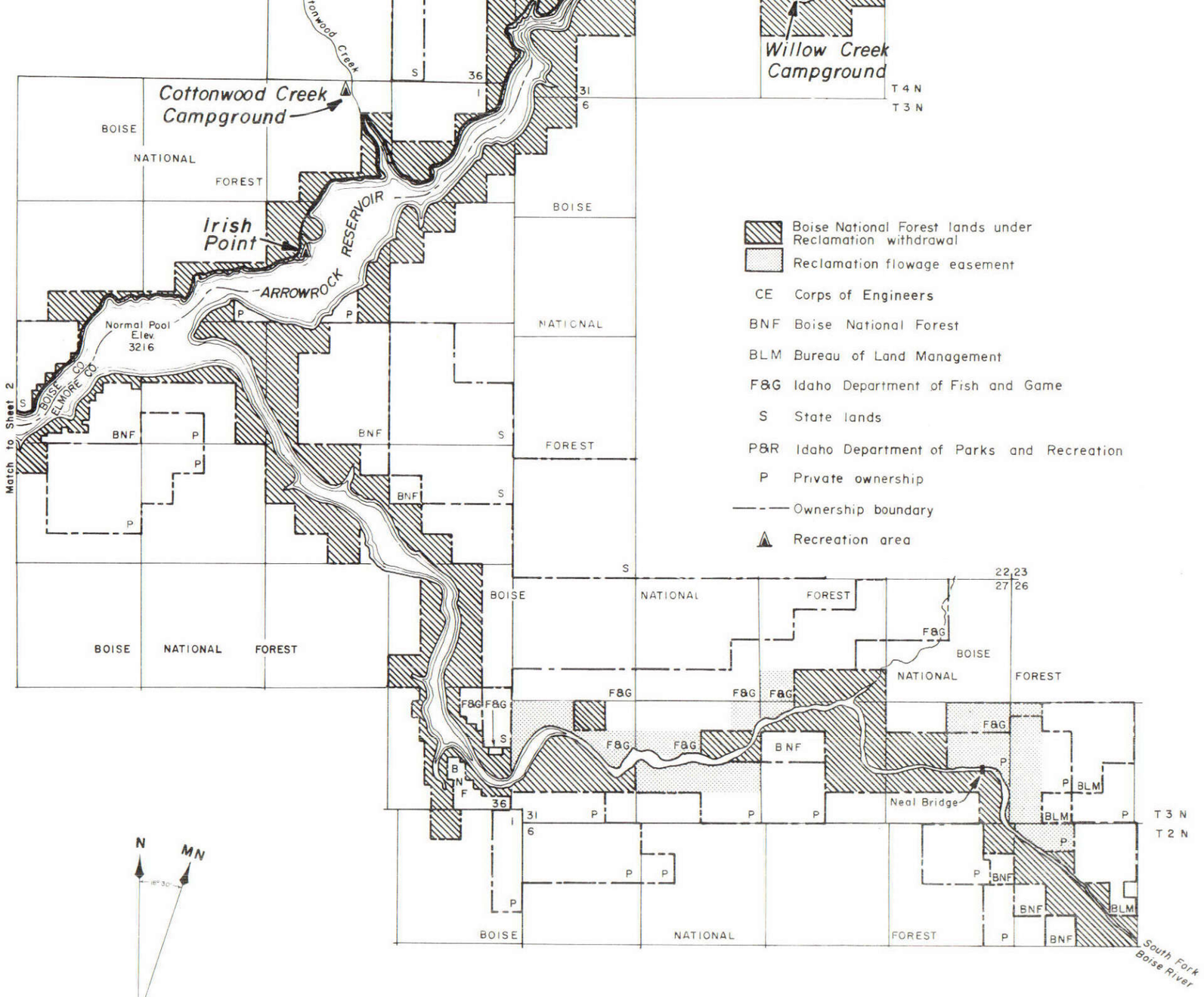
N MN 18°30'

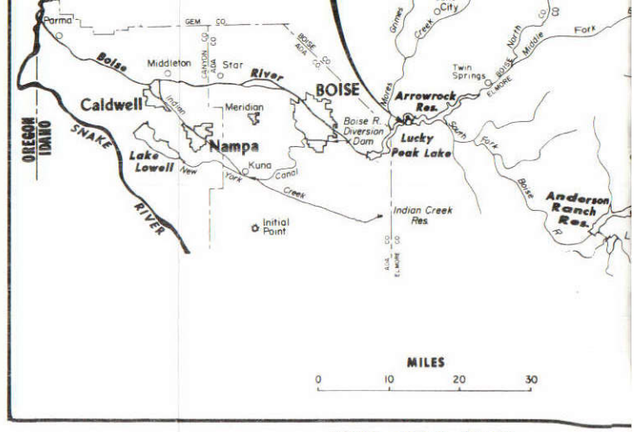
EXHIBIT G — PROJECT MAP

ARROWROCK DAM HYDROELECTRIC PROJECT

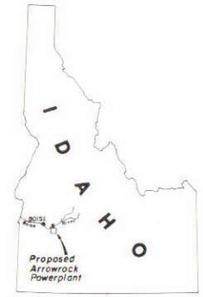
0 1 2

July 1984 Scale in miles Sheet 2 of 3





BOISE RIVER BASIN



INDEX MAP

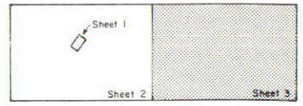
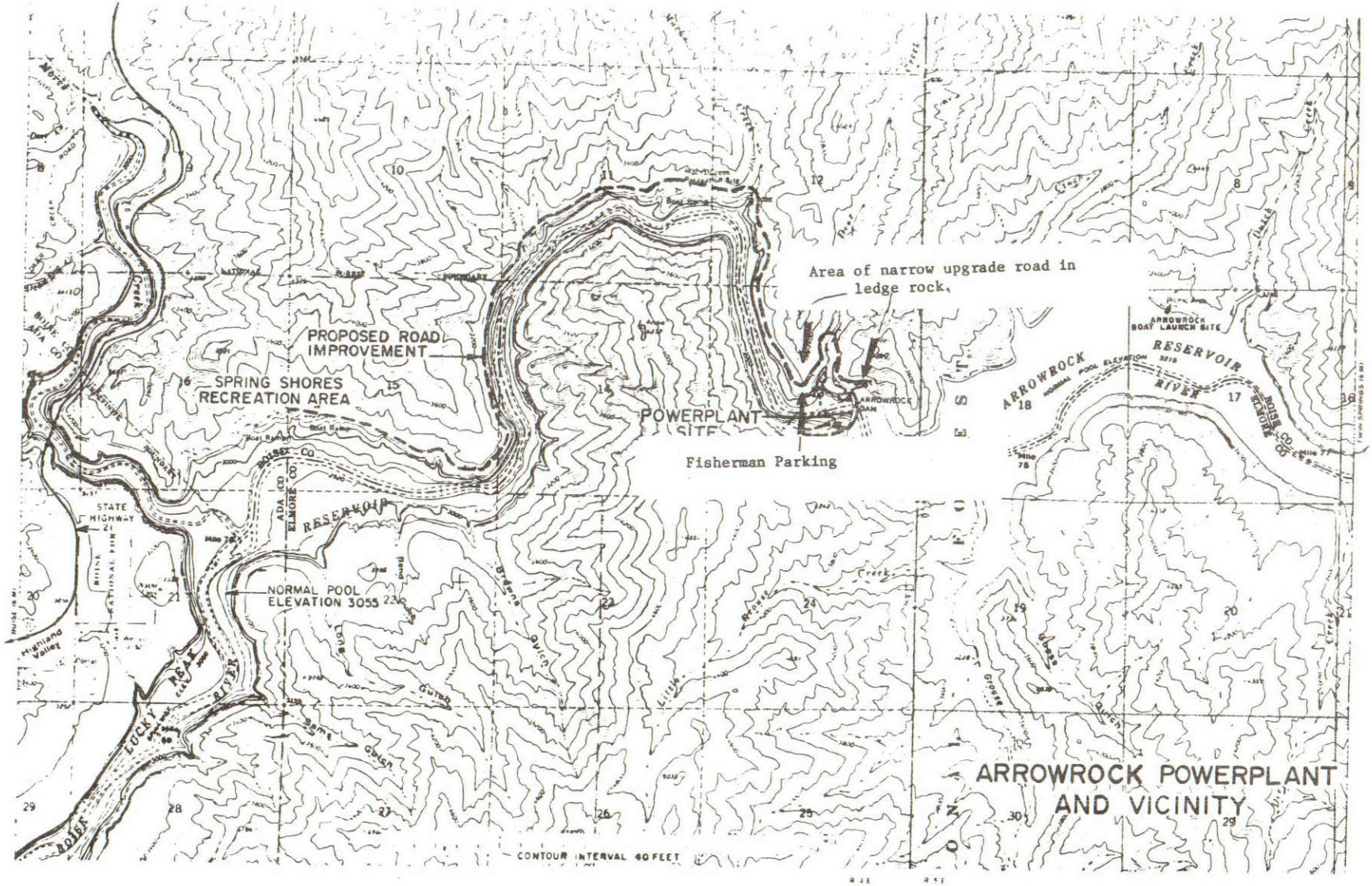


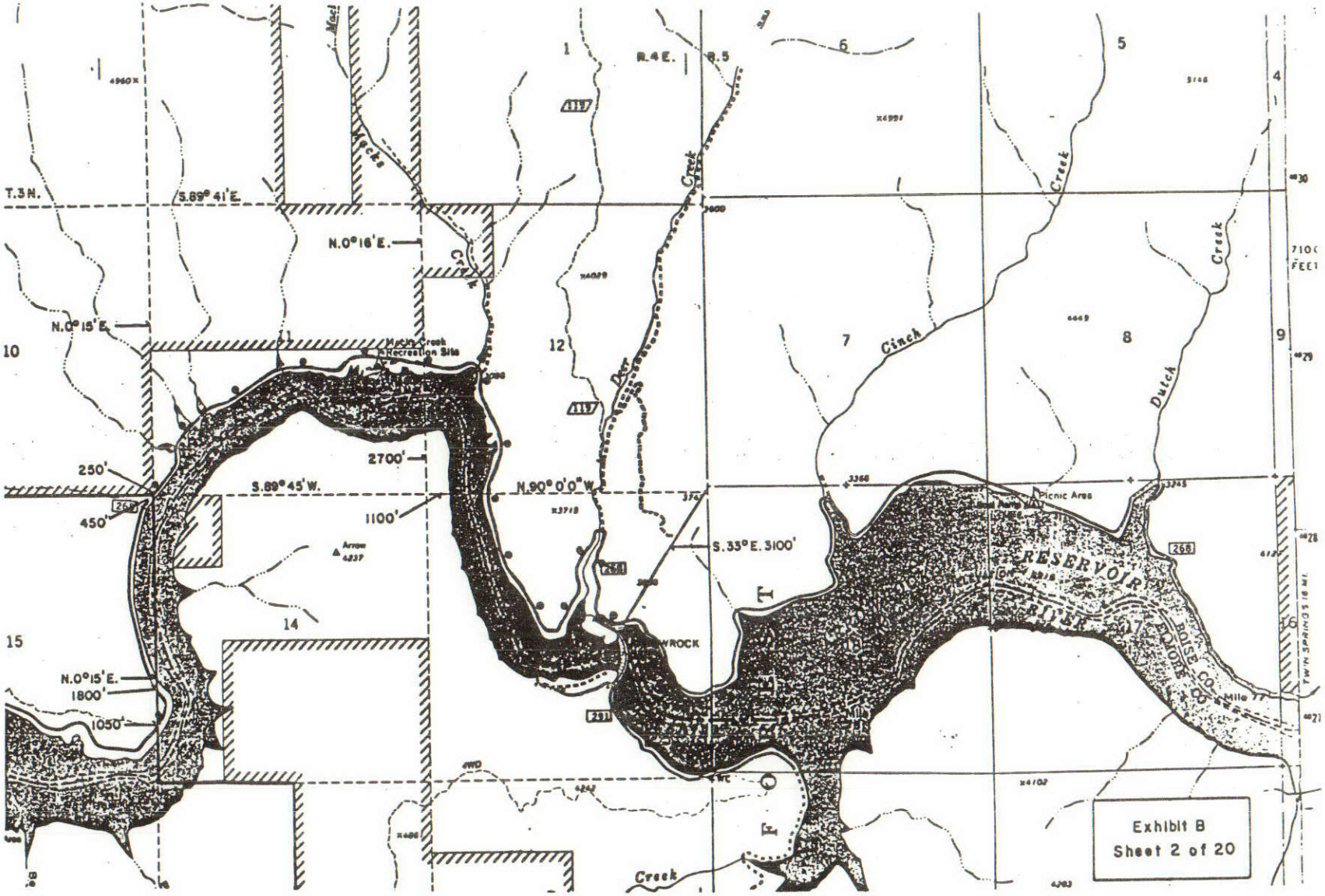
EXHIBIT G — PR

ARROWROCK
HYDROELECTRIC

0

July 1984 Scale in m

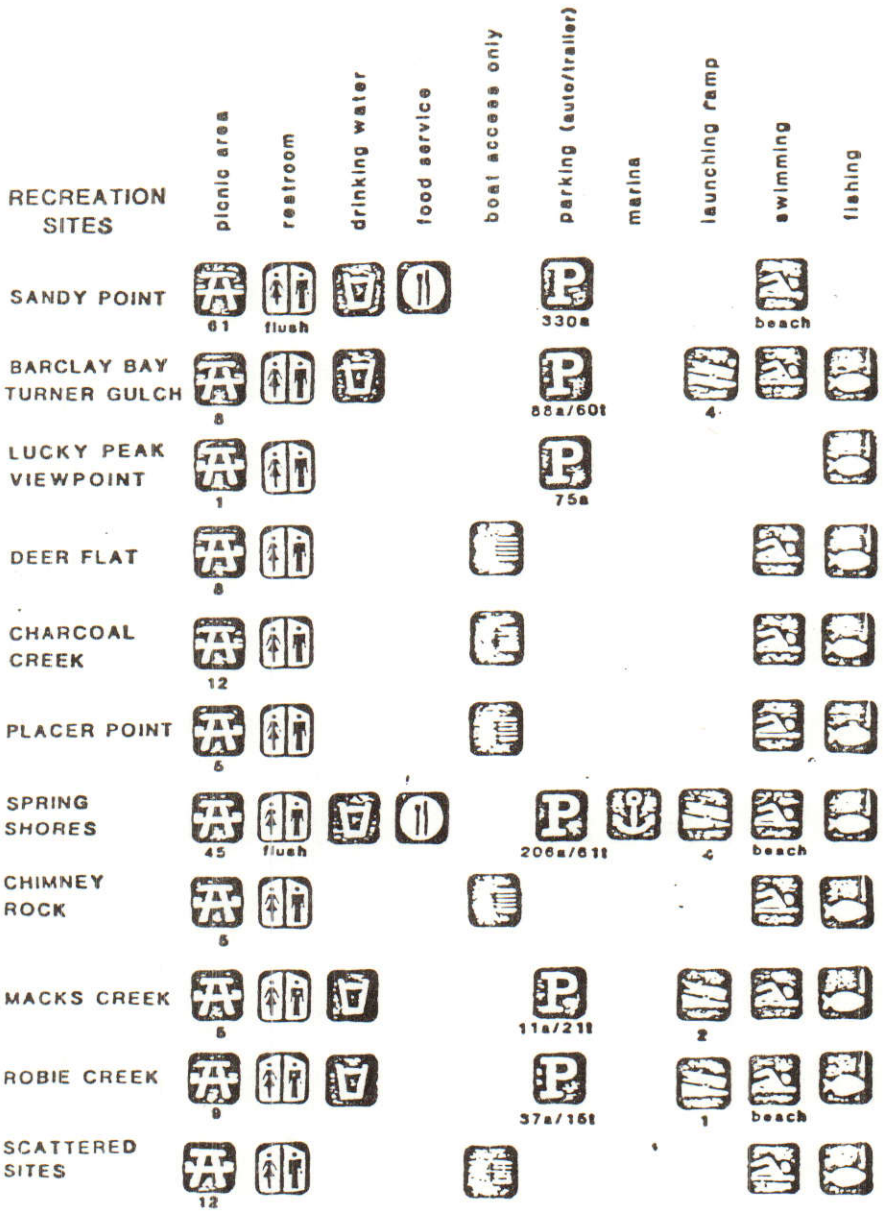

Area of narrow upgrade road in ledge rock.
PROPOSED ROAD IMPROVEMENT
SPRING SHORES RECREATION AREA
POWERPLANT SITE
Fisherman Parking
ARROWROCK BOAT LAUNCH SITE
ARROWROCK RESERVOIR
ARROWROCK DAM
BOISE RIVER
STATE HIGHWAY 21
NORMAL POOL ELEVATION 3055
ADA CO
ELMORE CO
BOISE CO
ROCKY BAR
Highland Valley
CONTOUR INTERVAL 40 FEET
ARROWROCK POWERPLANT AND VICINITY

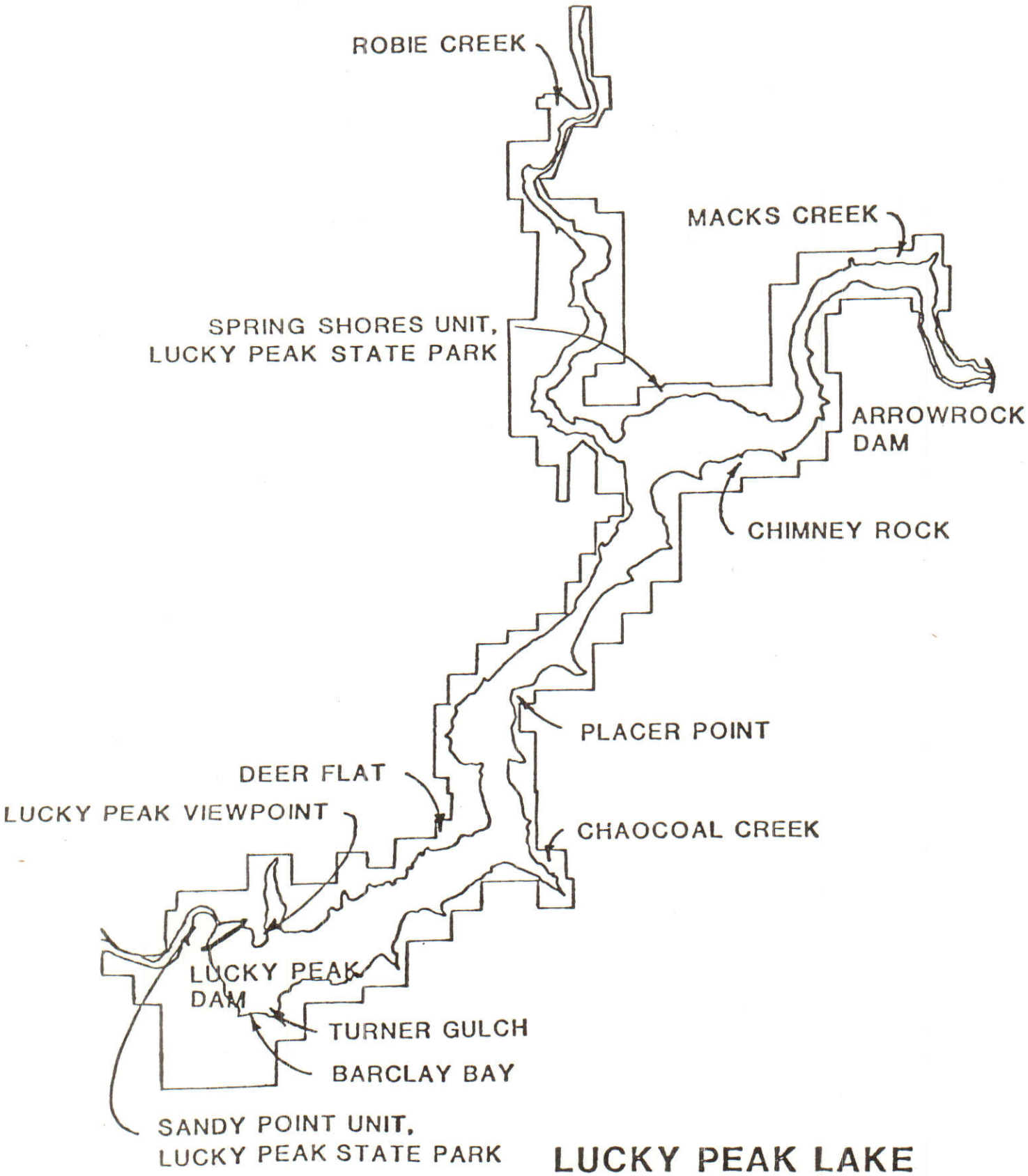

T.3N.
S.89° 41'E.
N.0° 16'E.
N.0° 15'E.
10
11
12
1
6
5
4
7
8
9
R.4E.
Creek
Dutch
Deer
Cinch
Hicks
Rocky Creek Recreation Site
Picnic Area
RESERVOIR
RIVER
BOISE CO.
ROCK
Arrow
250'
450'
2700'
1100'
S.89° 45'W.
N.90° 0'0"W.
S.33°E. 3100'
14
15
N.0° 15'E.
1800'
1050'
Exhibit B
Sheet 2 of 20

LUCKY PEAK PROJECT

RECREATION DEVELOPMENT SUMMARY

EXISTING FACILITIES





LUCKY PEAK LAKE RECREATION SITES

63-10240
File information

File #1 Application information through 1989

File #2 information after 1989
certified mailing stubs

File #3 FERC info

Dick LARSEN asked for notification of developments in this application
(-sc 8/14/01)

MICROFILMED
NOV 1 2 2002

State of Idaho

Department of Water Resources

ASSIGNMENT OF PERMIT

I, United States of America, acting through the Regional Director, Bureau of Reclamation, Pacific Northwest Region, hereby assign to Boise Project Board of Control

of 214 Broadway, Boise ID 83702
Address

CHECK ONE

☒ All my right, title, and interest in and to Permit No. 63-10240 to appropriate the public waters of the State of Idaho.

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

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

Made this 4th day of February, 19 91.

Mary E. VanDenBerg
Permit Holder
Acting Regional Director

Spouse of Permit Holder

State of Idaho)
ss.
County of Ada.)

On this 4th day of February, 19 91, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

seal

Notary Public residing at
Boise, Idaho

My commission expires:
1-12-96

MICROFILMED
NOV 1 7 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 63-10239 AND 63-10240	
UNITED STATES OF AMERICA ACTING THROUGH THE REGIONAL DIRECTOR, PACIFIC NORTHWEST REGION, BUREAU OF RECLAMATION, Applicant,	SOURCE: BOISE RIVER COUNTY: ADA COUNTY
FARMERS UNION DITCH CO., SETTLERS IRRIGATION DIST., FARMERS COOPERATIVE CANAL CO., PIONEER IRRIGATION DIST. Protestants.	PRE-HEARING CONFERENCE ORDER

A pre-hearing conference was held on May 16, 1985 to identify the issues to be considered by the Director of the Department of Water Resources in taking action on Application for Permit Nos. 63-10239 and 63-10240 for the diversion of water for the generation of electrical power at Diversion Dam and Arrowrock Dam.

Briefs were requested from all parties on the issues that should be considered by the Department in reaching its decision. Of particular interest is the question of how broad by the local public interest criteria should be applied.

The protestants desire the Department to consider as part of the local public interest: a) that electrical power to be generated is not needed since there is a surplus of power locally and in the Northwest; b) that a shortage of water due to the operation of the project would cause injury to local agriculture; c) that the contract between the protestants and the applicant will be affected; d) that all of the space holders in the storage facilities should share in the benefits of the project.

MICRO

Briefs have been submitted by all parties. Based upon the information obtained at the pre-hearing conference and the information contained in the briefs, evidence will be accepted on the following issues at the hearing on Applications for Permit Nos. 63-10239 and 63-10240:

ISSUES

1. Will the granting of these permits reduce the quantity of water under existing water rights?

2. Is the water supply itself sufficient for the purpose for which it is sought to be appropriated?

3. Is the appropriation proposed in the local public interest?

Evidence concerning the local public interest should relate to matters affecting the public interest as opposed to the private contract interests of the protestants, or the ability of the protestants to share in the monetary benefits of the project. The evidence submitted should also be limited to matters for which the department possesses authority to act. Accordingly, of the four factors requested by the protestants to be considered under the local public interest criterion, the department will consider items a) and d) to the extent the evidence submitted relates to the general economic impact of the proposed project; and items b) and c) will be considered under issue number 1, above.

This order does not preclude the introduction of evidence relating to other aspects of the local public interest.

Dated this 29th, day of October, 1985.

Bobby D. Fleenor

BOBBY D. FLEENOR
Hearing Officer

MICRO
NOV

Form 202
3/78

Ident. No. 63-10240

ASSIGNED TO:
BOISE PROJECT BOARD
OF CONTROL
214 Broadway
Boise, Idaho 83702

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

~~United States of America acting through the Regional Director~~
~~Pacific Northwest Region~~
~~Bureau of Reclamation~~

1. Name of applicant ~~Bureau of Reclamation~~ Phone 208-334-1165

   Post office address Box 043 - 550 West Fort Street, Boise, Idaho 83724

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

3. Location of point of diversion is NW ¼ of SE ¼ of Section 13 Township 3N

   Range 4E B.M. Boise County, additional points of diversion if any:

4. Water will be used for the following purposes:

   Amount 5470 cfs (cfs or acre-feet per annum) for power purposes from Jan. 1 to Dec. 31 (both dates inclusive)

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

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

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

5. Total quantity to be appropriated:

   a. 5470 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. gates, valves, and pipes in the existing Arrowrock Dam

   b. Height of existing storage dam 350 feet, active reservoir capacity 286,600 acre-feet; total reservoir capacity 286,600 acre-feet, materials used in storage dam: concrete

      Period of year when water will be diverted to storage Jan. 1 (Month/Day) to Dec. 31 (Month/Day) inclusive.

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

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

8. Description of proposed uses:
   a. If water is **not** for irrigation:
      (1) Give the place of use of water: NW ¼ of SE ¼ of Section 13 Township 3N

      Range 4E B.M.

      (2) Amount of power to be generated: 80,400 horsepower under 149 feet of head.

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

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

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

MICRO

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

NA

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

Total number of acres to be irrigated _____

c. Describe any other water rights used for the same purposes as described above. None

9. a. Who owns the property at the point of diversion USA

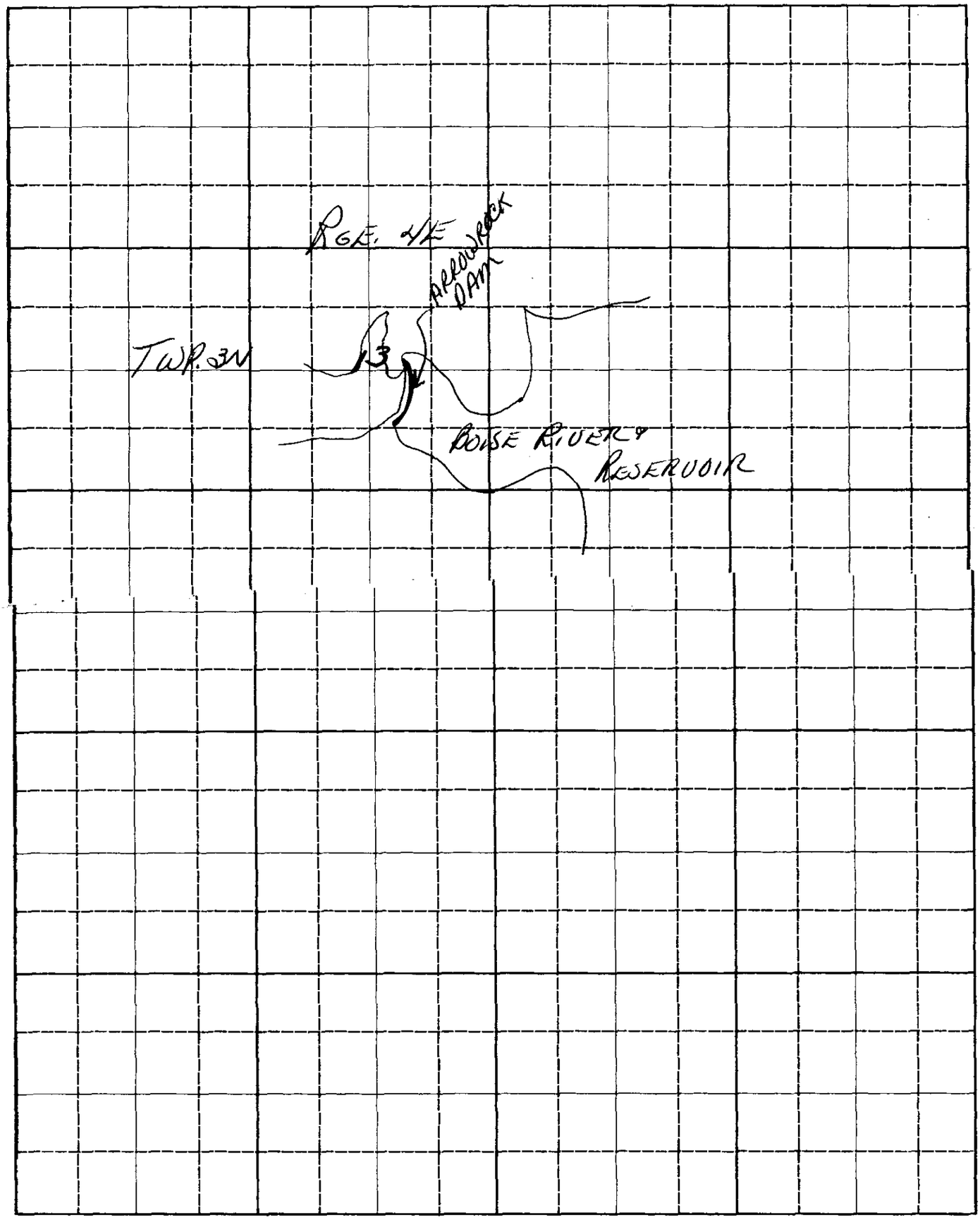
b. Who owns the land to be irrigated or place of use USA

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

10. Remarks This application is for generating capacity proposed to be installed at Arrowrock Dam.

MICRO

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.

R. W. Lloyd
REGIONAL (Applicant) DIRECTOR

MICROFILMED

Received by mm Date 5-4-84 4-19-84 Time 10:00 am 9:00 am

Preliminary check by JS Fee $ 8,195.00

Receipted by JP Date 6/11/84 #34468

Publication prepared by JP Date 5/7/84

Published in Idaho Statesman advertised Statewide

Publication dates 5/24 & 5/31/84 5/7 & 5/14/92 6-11-92

Publication approved JP Date 6/4/84

Protests filed by: Farmers Union Ditch Co., Settlers Irr. Dist., Farmers Cooperative Canal Co. & Pioneer Irr. Dist., by Peter J. Boyd, Attorney

Copies of protests forwarded by ~~JP~~

Hearing held by _____ Date _____

Recommended for approval denial by _____

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. _____ , and said application is hereby _____ .

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 _____ , 19 ____ .

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. Other:

Form 202
3/78

Ident. No. 63-10240

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

United States of America acting through the Regional Director
Pacific Northwest Region

1. Name of applicant Bureau of Reclamation Phone 208-334-1165

Post office address Box 043 - 550 West Fort Street, Boise, Idaho 83724

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

3. Location of point of diversion is NW ¼ of SE ¼ of Section 13 Township 3N

Range 4E B.M. Boise County, additional points of diversion if any: ____

4. Water will be used for the following purposes:

Amount 5470 cfs (cfs or acre-feet per annum) for power purposes from Jan. 1 to Dec. 31 (both dates inclusive)

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

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

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

5. Total quantity to be appropriated:

a. 5470 cubic feet per second and/or b. ____ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. gates, valves, and pipes in the existing Arrowrock Dam

b. Height of existing storage dam 350 feet, active reservoir capacity 286,600 acre-feet; total reservoir capacity 286,600 acre-feet, materials used in storage dam: concrete

Period of year when water will be diverted to storage Jan. 1 (Month/Day) to Dec. 31 (Month/Day) inclusive.

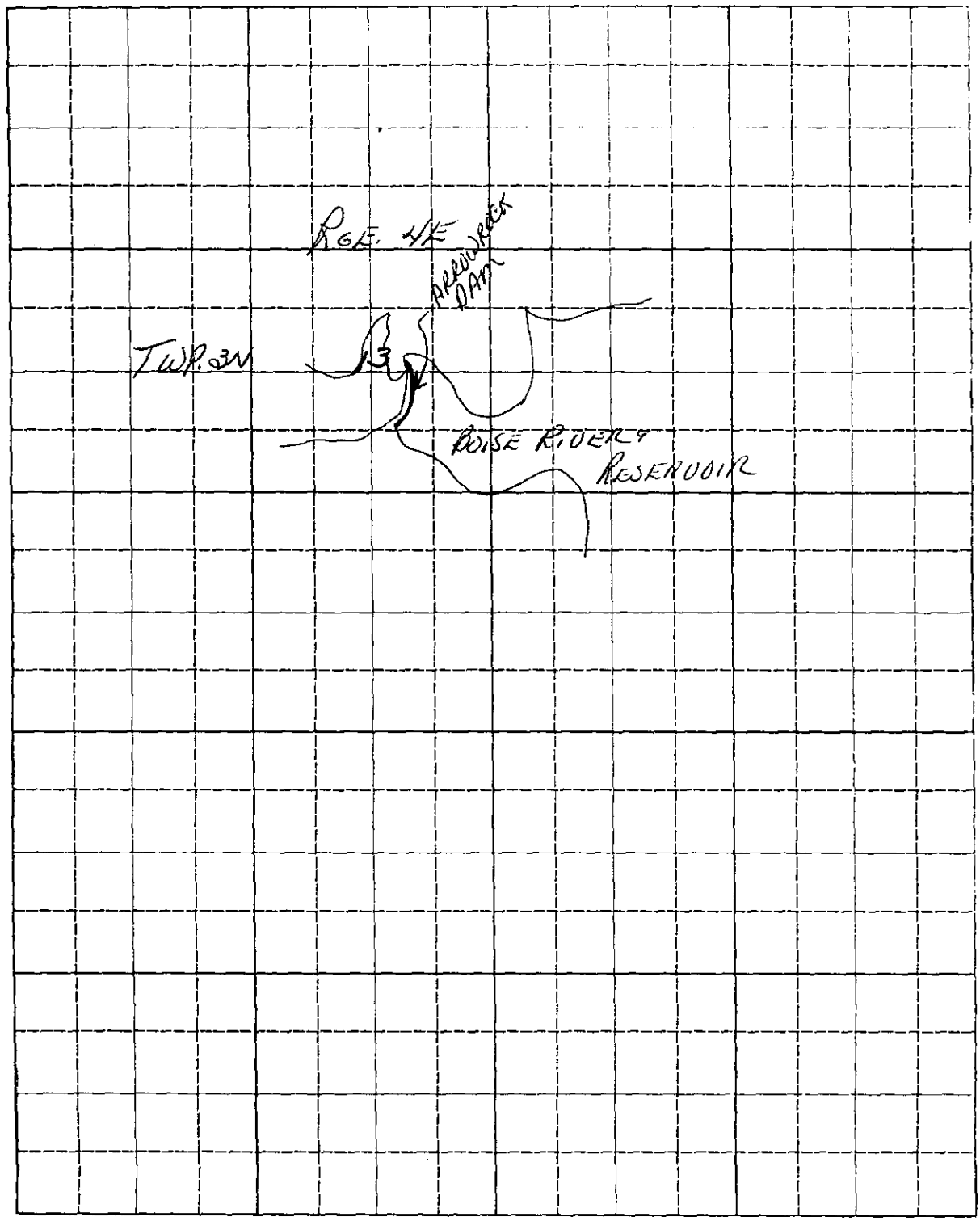
c. Proposed well diameter is ____ inches; proposed depth of well is ____ feet.

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

8. Description of proposed uses:
   a. If water is not for irrigation:
      (1) Give the place of use of water: NW ¼ of SE ¼ of Section 13 Township 3N
      Range 4E B.M.
      (2) Amount of power to be generated: 80,400 horsepower under 149 feet of head.
      (3) List number of each kind of livestock to be watered NA
      (4) Name of municipality to be served NA, or number of families to be supplied with domestic water ____.
      (5) If water is to be used for other purposes describe: NA

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OCT 1 2002

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.

MICROFILMED
NOV 1 2 2002

R. W. Lloyd
REGIONAL (Applicant) DIRECTOR

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

NA

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

Total number of acres to be irrigated _____

c. Describe any other water rights used for the same purposes as described above. None

9. a. Who owns the property at the point of diversion USA

b. Who owns the land to be irrigated or place of use USA

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

10. Remarks This application is for generating capacity proposed to be installed at Arrowrock Dam.

MICROFILMED
2002

Received by mm Date 5-4-84 4-19-84 Time 9:00 a.m.

Preliminary check by JC Fee $ 8,195.00

Receipted by _____ Date _____

Publication prepared by JF Date 5/7/84

Published in Idaho Statesman

Publication dates 5/24 & 5/31/84

Publication approved JR Date 6/4/84

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by _____

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. _____, and said application is hereby _____.

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 _____, 19___.
   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
   d. Other:

MICRO
NOV 12 2002

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boise-Kuna Irrigation District, et al. Project No. 4656-010
Idaho A. 63-10210

ORDER GRANTING EXTENSION OF TIME

(Issued March 22, 1993)

The licensee for the Arrowhead Dam Hydroelectric Project requested a six-year extension of the March 26, 1993, deadline for the commencement of project construction.[1] The licensee also requested that the deadlines for articles 101-110, 112-115, 117 and 304 be extended to 90 days before commencement of construction.[2] The licensee requested the extensions pursuant to the Energy Policy Act 1992, Title XVII, § 1701(c)(4) and Section 13 of the Federal Power Act, 16 U.S.C. § 806.

The notice of the filing of the extension of time was issued on January 12, 1993, with March 1, 1993, as the last day to file comments, motions to intervene, or protests. No comments, motions to intervene, or protests were filed.

The reasons advanced by the licensee in support of the requested extensions of time are reasonable and justify the extensions. The deadline for complying with standard article 5 and the completion of construction will be similarly extended.

The Director orders:

(A) The deadline for commencing project construction is extended to March 26, 1999.

(B) The deadline for completing project construction is extended to March 26, 2001.

[1] By an order issued on January 9, 1991, the licensee was granted an extension of time to March 26, 1993, to commence project construction.

[2] By an order issued on April 23, 1992, the licensee was granted an extension of time to December 24, 1992, to comply with articles 101-110, 112-115, 117 and 304 of its license.

(C) The deadlines for filing the items listed below are extended to December 26, 1998, or 90 days before commencement of construction, whichever is sooner:

Article	Item
101	Special-use Permit
102	Evidence of Consultation with the Forest Service
103	Fish and Wildlife Habitat Mitigation Plan
104	Recreation Plan
105	Soil Erosion Plan
106	Solid Waste Plan
107	Hazardous Substance Plan
108	Excess Construction/Tunnel Spoils Plan
109	Archeological and Cultural Resources Plan
110	Preservation and Enhancement Plan
112	Pesticide and Herbicide Plan
113	Engineering Design and Mitigation Plan of the Project Area's Resources
114	Survey and Mitigation Plan of the Endangered Species
115	Engineering Design Plan for Road Improvement

(D) The deadline for entering into an agreement with the Bureau of Reclamation according to article 117 is extended to December 26, 1998, or 90 days before commencement of construction, whichever is sooner.

(E) The deadline for entering into an agreement with the Corps of Engineers according to article 304 is extended to December 26, 1998, or 90 days before commencement of construction, whichever is sooner.

(F) The deadline for acquiring title in fee or right to use in perpetuity all lands necessary for the construction, operation, and maintenance of the project as required by standard license article 5 of Form L-6 is extended to March 26, 1999.

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

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

RECEIVED

MAR 2 6 1993

Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boise-Kuna Irrigation District, et al. Project No. 4656-010
Idaho 63-10240

ORDER GRANTING EXTENSION OF TIME

(Issued March 22, 1993)

The licensee for the Arrowhead Dam Hydroelectric Project requested a six-year extension of the March 26, 1993, deadline for the commencement of project construction.[1] The licensee also requested that the deadlines for articles 101-110, 112-115, 117 and 304 be extended to 90 days before commencement of construction.[2] The licensee requested the extensions pursuant to the Energy Policy Act 1992, Title XVII, § 1701(c)(4) and Section 13 of the Federal Power Act, 16 U.S.C. § 806.

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[1] By an order issued on January 9, 1991, the licensee was granted an extension of time to March 26, 1993, to commence project construction.

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Article	Item
101	Special-use Permit
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104	Recreation Plan
105	Soil Erosion Plan
106	Solid Waste Plan
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108	Excess Construction/Tunnel Spoils Plan
109	Archeological and Cultural Resources Plan
110	Preservation and Enhancement Plan
112	Pesticide and Herbicide Plan
113	Engineering Design and Mitigation Plan of the Project Area's Resources
114	Survey and Mitigation Plan of the Endangered Species
115	Engineering Design Plan for Road Improvement

(D) The deadline for entering into an agreement with the Bureau of Reclamation according to article 117 is extended to December 26, 1998, or 90 days before commencement of construction, whichever is sooner.

(E) The deadline for entering into an agreement with the Corps of Engineers according to article 304 is extended to December 26, 1998, or 90 days before commencement of construction, whichever is sooner.

(F) The deadline for acquiring title in fee or right to use in perpetuity all lands necessary for the construction, operation, and maintenance of the project as required by standard license article 5 of Form L-6 is extended to March 26, 1999.

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

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

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MAR 1 5 2002

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JUN 8 1984
Department of Water Resources
Western Regional Office

PETER J. BOYD, ESQ.
ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 First Interstate Building
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

Attorneys for Protesters

BEFORE THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

In the Matter of the Application of THE BUREAU OF RECLAMATION	Ident #6310239 and #6310240 PROTEST

COME NOW FARMERS UNION DITCH COMPANY, SETTLERS IRRIGATION DISTRICT, FARMERS COOPERATIVE CANAL COMPANY and PIONEER IRRIGATION DISTRICT, by and through their attorney, PETER J. BOYD, and protest the application for permit, Ident. #6310239 and #6310240 heretofore filed by the BUREAU OF RECLAMATION to appropriate the public waters of the State of Idaho.

The source of water supply to be appropriated is from the Boise River, a tributary of the Snake River under application #6310240 at a point of diversion in the Northwest Quarter of the Southeast Quarter of Section 13, Township 3 North, Range 4 East

MICROFILMED

of the Boise Meridian and under Application #6310239 said point of division being in Lot 9, Section 3, Township 2 North, Range 3 East;

That the water to be appropriated under #6310240 is 5,470 cfs and the water to be appropriated under #6310239 is 640 cfs;

That the right of Pioneer Irrigation District to the storage of water in Arrowrock Dam is recognized in that certain Contract dated February 27, 1913, between the United States of America and Pioneer Irrigation District; that a Supplemental Contract was entered into on June 15, 1915, between the United States of America and Pioneer Irrigation District, pursuant to the act of Congress of June 17, 1902, 32 Stat 388, known as the Reclamation Act, which said Supplemental Contract on page three thereof recognized the storage of water for and on behalf of Pioneer Irrigation District;

That it is alleged on information and belief that the United States of America has recognized the rights for the storage of water of Farmers Union Ditch Company, Settlers Irrigation District and Farmers Cooperative Canal Company as well;

That the right to the appropriation of water in the Boise River has been recognized, confirmed and decreed to the protesters herein in Farmers Coop v. Riverside Irrigation District, 14 Idaho 450 (1908), which said decision is commonly referred to as the Stewart Decree;

It is therefore alleged on information and belief that the appropriation of water for power purposes will interfere with the beneficial appropriation of the water by the protesters

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 First Interstate Building
P.O. Box 1559 Boise, Idaho 83701
Phone (208) 343-5454

MICROFILMED
NOV 12 2002

herein.

It is respectfully requested that the protesters herein be permitted to offer proof at a hearing to be heard and set by the Department of Water Resources.

Respectfully submitted this 8 day of June, 1984.

ELAM, BURKE, EVANS, BOYD & KOONTZ

BY Peter J. Boyd
PETER J. BOYD, of the Firm
Attorneys for Protesters

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 First Interstate Building
P.O. Box 1559 Boise, Idaho 83701
Phone (208) 343-5454

CERTIFICATE OF MAILING

I hereby certify that on this 8th day of June, 1984, I mailed a true and correct copy of the foregoing Protest in the United States mail with postage prepaid thereon to:

L. W. Lloyd, Regional Director
Bureau of Reclamation
Box 043
550 West Fort Street
Boise, ID 83724

Peter J. Boyd
PETER J. BOYD

MICROFILMED
NOV 1 2 2002

NOTICE OF APPLICATION FOR WATER RIGHT

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

63-10234
KERSTEIN, CHESTER C. &/or JOANN F.
P.O. BOX 127, SWEET, ID 83670
Source: GROUNDWATER
Date Filed: 05/14/1984
Diversion Point: NENE Sec 19 T 04N R 02E
Use: DOMESTIC (0.11 CFS)
In: NENE Sec 19 T 04N R 02E

63-10235
TOMTAN, THOMAS O. &/or BETTY L.
10235 JAY RD., BOISE, ID 83703
Source: GROUNDWATER
Date Filed: 05/10/1984
Diversion Point: NWNW Sec 02 T 04N R 01E SWSW Sec 35 T 05N R 01E
Use: IRRIGATION (0.12 CFS)
In: NWNW Sec 02 T 04N R 01E SWSW Sec 35 T 05N R 01E FOR 6 ACRES

63-10236
BIRK, STEPHEN &/or LINDA K.
903 STILLWELL DR.
EAGLE, ID 83616
Source: GROUNDWATER
Date Filed: 05/10/1984
Diversion Point: SESW Sec 29 T 05N R 01E
Use: IRRIGATION (0.15 CFS)
DOMESTIC (0.04 CFS)
In: SESW Sec 29 T 05N R 01E FOR 5 ACRES

63-10237
WATSON, ROBERT L.
871 S. FIVE MILE RD.
BOISE, ID 83709
Source: GROUNDWATER
Date Filed: 05/18/1984
Diversion Point: SENW Sec 06 T 02N R 02E
Use: IRRIGATION (0.80 CFS)
DOMESTIC (0.04 CFS)
In: SENW Sec 06 T 02N R 02E FOR 40 ACRES

63-10239
U.S. DEPT. OF INTERIOR
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
550 W. FORT ST., BOX 043
BOISE, ID 83724
Source: BOISE RIVER trib. to SNAKE RIVER
Date Filed: 04/19/1984
Diversion Point: LOT 09 Sec 03 T 02N R 03E
Use: POWER (640.00 CFS)
In: LOT 09 Sec 03 T 02N R 03E

63-10240
U.S. DEPT. OF INTERIOR
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
550 W. FORT ST. BOX 043
BOISE, ID 83724
Source: BOISE RIVER trib. to SNAKE RIVER
Date Filed: 04/19/1984
Diversion Point: NWSE Sec 13 T 03N R 04E
Use: POWER (5470.00 CFS)
In: NWSE Sec 13 T 03N R 04E

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Department of Water Resources, Western Region, Statehouse, Boise, Idaho 83720 on or before JUNE 11, 1984.

A. KENNETH DUNN
Director

Pub. May 24, 31, 1984 5074

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

Susan K. Mayer, 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 May 24, 19 84, and ending with the issue of May 31, 19 84.

Susan K. Mayer

Subscribed and sworn to before me this 31st day of May, 19 84.

Dorothy Eguren

Notary Public for Idaho, Residing at Boise, Idaho

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OCT 1 2003

RECEIVED
JUN - 3
Department of Water Resources
Western Regional Office

The Idaho World

P O Box 220
Idaho City, ID 83631
208 392-4989

P O Box 99
Garden Valley, ID 83622
208 462-3487

State of Idaho >
>
County of Boise >

Wayne Hart, being duly sworn, deposes and says: that he is the manager and principal clerk of THE IDAHO WORLD, a weekly newspaper published at Idaho City, in the County of Boise and the State of Idaho; the said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Idaho City; that the advertisement, a copy of which is hereto attached, was published in said newspaper once a week for Two (2) consecutive weeks in the entire and regular issue of every number of said paper during the period and time of publication and was published in the newspaper and not a supplement; that said paper has been established and regularly and continuously published for more than seventy eight weeks past previous to the first publication of this notice. Such notice was published with the issue beginning with May 6, 1992 and ending with the issue of May 13, 1992.

Wayne Hart

State of Idaho >
>
County of Ada >

On this 18th day of May in the year 1992, before me, a notary public, personally appeared WAYNE HART known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me ~~that~~ he executed the same.

Jan E Hart
Notary Public for Idaho

Boise ID
Residing at

My commission expires 9/10/96

MICROFILMED
NOV 1 2 2002

NOTICE OF APPLICATION FOR WATER RIGHT

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

63-10240

US DEPT OF INTERIOR
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
550 W FORT ST BOX 043
BOISE, ID 83724

Source: BOISE RIVER Tributary: SNAKE RIVER

Diversion Pt: NWSE Sec 13 T 03N R 04E In BOISE County.

Use: POWER (5470.000 CFS)
Total Diversion: (5470.000 CFS)

Date Filed: 4/19/1984

In: BOISE County
T03N R04E S13 NWSE

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before MAY 26, 1992.

R. KEITH HIGGINSON, Director

Published in The Idaho World May 6, 13, 1992.

moved to Lowman area and are employed at South Fork Lodge, are proud of their son, **Shawn Burden**, who is graduating June 1 at Capital High School and will go to Navy Boot Camp September 16.

THIS IS SOME GOOD AND BAD: With the outlook for this summer's wildfire season ranging from extreme to critical, southern Idaho residents will have one more weapon to call on when wildfire strikes. Boise High Students have rebuilt a wildland truck. Career-Education students from Boise High School spent part of the winter improving their mechanical skills by refurbishing a 1977 3/4 ton, 4x4 Dodge Firetruck which will provide 200 gallons of water or fire retardant and a lot of mobility to rural volunteer fire suppression capability near Grandjean tors Juel Mickelson and Donald Couch. The students involved in the project were also on hand.

Increased habitation in forested and wildland areas coupled with six consecutive years of drought have increased the danger of wildfire considerably. Department of Lands suppression personnel are grateful for the assistance in making the truck useable. The vehicle was acquired from the Mountain Home Airforce Base, Defense Reutilization and Marketing Office as federal excess property. The water tank is excess property from the USDA Forest Service.

NOW A BAD NEWS STATEMENT FROM BETH LUND - ASSISTANT FIRE MANAGER OFFICER OF LOWMAN FOREST SERVICE: On May 5, the Forest Service responded

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

Date [illegible] INVOICE No. [illegible]

Account No. 7e4762 [illegible]

Description 27425HOTTC

LEGAL ADVERTISING
INVOICE

Times 2 Lines 27

Tab Lines

SOLD TO:

DEPT. OF WATER RESOURCES
1301 AIRPORT WAY
BOISE
ID 83705

$ 30.38

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

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

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

NOTICE OF APPLICATION

attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication being on 050792, or once a WEEK for 2 consecutive WEEKS, the first publication thereof being on the 050792, and the last publication thereof being on the 051492, and said NOTICE OF APPLICATION was so published in the regular and entire issue of said newspaper and not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Sue Baumeister

SUBSCRIBED AND SWORN BEFORE ME THIS THE 21 day of May 1992

Sheral M Lentz

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

NOTICE OF APPLICATION FOR [illegible]

The Public Notice(s) have been [illegible] the public waters of the State of Idaho:

APPLICATION NO. 63-10998

US DEPT OF INTERIOR
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
550 W. FORT ST. BOX 043
BOISE ID 83724
Source: SNAKE RIVER
Tributary: SNAKE RIVER
Diversion: NW¼SE¼ Sec 13 T 03N R 04E in BOISE County.
Use: POWER (5670.000 CFS)
Total Diversion: (5670.000 CFS)
Date Filed: 4/19/1984
In: BOISE County
T03N R04E S13 NWSE

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before MAY 26, 1992.

R. KEITH HIGGINSON, Director

MAY 20 1992
Department of Water Resources
Western Regional Office

MICROFILMED
NOV 1 7 2002

Proof of Publication
The Post-Register

RECEIVED
MAY 26 1992
Department of Water Resources
Western Regional Office

State of Idaho,
County of Bonneville } ss

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

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post-Register for Two consecutive weeks, first publication having been made on the 7th day of May, 19 92, last publication having been made on the 14th day of May, 19 92, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

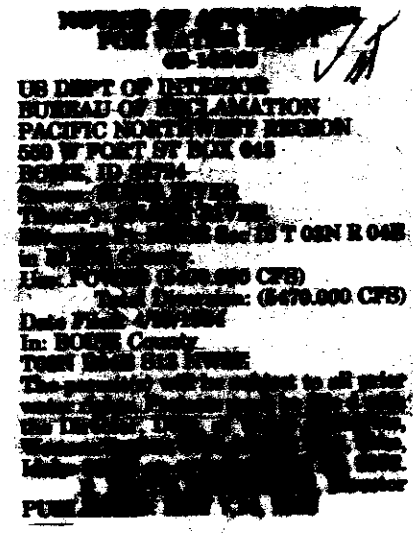
S. Bob Bright

Subscribed and sworn to before me, this 20th day of May, 19 92.

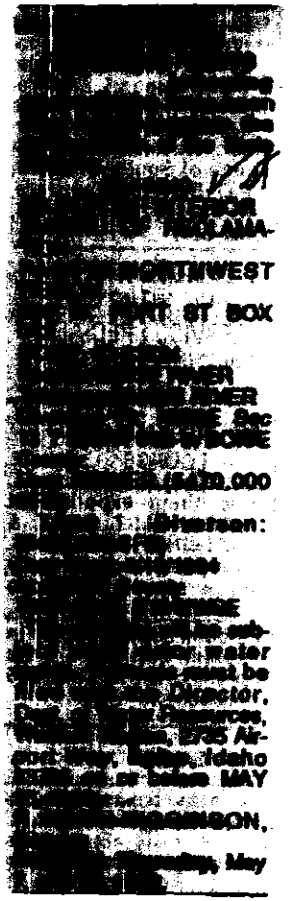
Susan Thagard
Notary Public

My commission expires July 1st, 19 97

B10



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NOV 12 2002



Affidavit of Publication

№ 23573

STATE OF IDAHO }
COUNTY OF TWIN FALLS } ss.

I, Linda Coyes McGuire being first duly sworn upon oath, depose and say that I am Legal Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive Weeks, commencing with the issue dated May 7, 1992, and ending with the issue dated May 14, 1992.

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

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

STATE OF IDAHO
COUNTY OF TWIN FALLS

On this 28 day of May in the year of 1992, before me, a Notary Public, personally appeared Linda Coyes McGuire, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

MICROFILMED

Freva R. Feltman
Notary Public for Idaho
Residing at Twin Falls County
My commission expires: 5/19/94

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

MEMORANDUM

TO: Honorable Cecil D. Andrus
Governor of Idaho

FROM: R. Keith Higginson, Director

DATE: September 11, 1989

RE: Arrowrock Dam - Hydropower Generation

Department records show that on April 19, 1984, Application for Permit No. 63-10240 was submitted in the name of the Bureau of Reclamation to allow water to be appropriated for hydrogeneration at Arrowrock Dam. Water appropriation filings are subject to all prior water rights. With the Boise River system being fully appropriated throughout most of the year, large hydropower filings can only be approved as an incidental use of water that is being diverted under a prior right. For example, the permit issued to allow water to be used in the recently constructed hydropower facility at Lucky Peak includes the following condition to prevent diversion or manipulation of water for purposes of hydrogeneration only:

> "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."

It is likely that approval of a permit at Arrowrock would involve a similar condition.

Our files also show that the Federal Energy Regulatory Commission (FERC) has issued a license in connection with project

No. 4656 to several irrigation districts which form most of the Boise Project Board of Control. The issuance of the FERC license has been contested by Pioneer and Settlers Irrigation Districts and a request for rehearing has been submitted to FERC. This matter has not yet been resolved.

Idaho Code requires that a water appropriation permit be obtained before commencing construction of the project. Either the FERC license holder must make new application or the pending filing be assigned to them. If a new filing is made, opportunity will be given for those concerned about the project to file protests.

Issues such as those raised by Ms. Patchin can and will be considered when the application is evaluated.

The pending application by the Bureau of Reclamation is protested, and a hearing will need to be held if it is used by the project sponsers. Participation at the hearing is limited to the applicant and protestants. The time for filing protests has elapsed but IDWR rules allow intervention by others having an interest in the matter, upon written petition.

If I can provide further information on this matter, I will be happy to do so.

Sincerely,

for R. KEITH HIGGINSON
Director

RKH:alw

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NOV 12 2002

ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

700 IDAHO TOWER, TENTH FLOOR
POST OFFICE BOX 1559
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SCOTT L. CAMPBELL

CANYON COUNTY OFFICE
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POST OFFICE DRAWER E
NAMPA, IDAHO 83653
TELEPHONE 208-466-9222

RECEIVED
MAY 02 1989
Department of Water Resources

May 1, 1989

R. Keith Higginson, Director
State of Idaho
Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Gene Gray, Chairman
Water Resource Board
2393 Watts Lane
Payette, Idaho 83661

Re: Arrowrock Hydroelectric Project
FERC Project No. 4656-002

Gentlemen:

I have enclosed a copy of Pioneer and Settlers Irrigation Districts' Request for Rehearing of Order Issuing License which was filed with the Federal Energy Regulatory Commission on April 26, 1989.

I believe that you will find the document to be of interest because of its discussion of the actions of the Commission and their impact upon state created water rights.

Very truly yours,

ELAM, BURKE & BOYD

Scott L. Campbell

SLC:jc
Enclosure
cc Pioneer Board
Settlers Board

MICROFILMED
NOV 1 7 2002

Protest file

HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS

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JOHN T. HAWLEY, P.A.
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RICHARD B. BURLEIGH
*NOT ADMITTED IN IDAHO

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PAUL B. ENNIS
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October 9, 1989

RECEIVED
OCT 10 1989
Department of Water Resources
Western Regional Office

Mr. David Tuthill
Director
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Arrowrock Hydroelectric Project

Dear Dave:

I have enclosed for the Department's files copies of the Districts' license, their petition for a rehearing, and the petition for rehearing filed by the Pioneer and Settlers Irrigation Districts. The Federal Energy Regulatory Commission has not yet ruled on these petitions, and it has not yet indicated when it will rule. When it does rule, I will apprise the Department.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

Don A. Olowinski

Enclosures

MICRO
NOV 1 2 1989

Bureau of Reclamation
WR # 63-10240

Certified Mail

Scott L. Campbell
ELAM, BURKE, AND BOYD
P.O. Box 1559
Boise, ID 83701

Ron Golus
U.S. Dept. of Interior
Bureau of Reclamation
Box 043-550 W. Fort St.
Boise, ID 83724

Kenneth Henley
Boise Project Board of Control
214 Broadway Ave.
Boise, ID 83702

Non-Certified Mail

John J. Hockberger, Jr.
U.S. Dept. of Interior
Box 020 550 W. Fort St.
Boise, ID 83724

Donald J. Sayre
Route 2
Caldwell, ID 83605

Lawrence V. Gray
Elm Lane
Nampa, ID 83651

Kenneth Brush
Rural Rt. 8
Caldwell, ID 83605

Carter Fritschle
4310 N. Linder Rd.
Eagle, ID 83616

Howard Fuller
Route 1
Star, ID 83669

Don Smitchger
3890 E. Ustick
Meridian, ID 83642

Jimmie James
4675 N. Ten Mile Rd.
Meridian, ID 83642

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P.O. Box 2773
Boise, ID 83701

Don A. Olowinski, Esq.
Box 1617
Boise, ID 83701

Bobby D. Fleenor, IDWR

L. Glen Saxton, IDWR

Normal C. Young, IDWR

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2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

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

December 28, 1987

Scott L. Campbell
ELAM, BURKE AND BOYD
First Interstate Building
702 West Idaho
Post Office Box 1559
Boise, ID 83701

Re: Application for Water Permit No. 63-10240, Arrowrock Dam

Dear Scott:

This office is in receipt of your letter dated December 4, 1987, in which you clarified the positions of Pioneer Irrigation District and Settlers Irrigation District with respect to the above-referenced project. You requested the Department to provide a written explanation of its understanding of the record with respect to the identification of the applicant in this matter.

Please be advised that the applicant in this matter remains unchanged, and is still the U.S. Department of Interior, Bureau of Reclamation. The Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District are intervenors, per an order approved by the Department on April 19, 1985.

With respect to recent updates concerning the status of FERC licensing at Arrowrock Dam, this office received a telephonic update from Mr. Golus of the Bureau of Reclamation on December 1, 1987, and a letter from Mr. Olowinski on December 2, 1987. Mr. Olowinski's letter is considered to have supplemented the information provided by the applicant. In response to these updates, this office sent a letter on December 3, 1987, a copy of which is enclosed for your information.

Based on your continuing interest in this matter, I will henceforth provide to you copies of acknowledgments of status updates.

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This letter will serve as acknowledgement of receipt of Mr. Ringert's letter dated December 7, 1987, in which he (1) emphasized that the above referenced water right is currently in the form of an unapproved application rather than a permit and (2) suggested that Sections 42-205 through 42-209, Idaho Code will not apply to this water right if a permit is issued, because irrigation districts have been regarded as quasi-municipal corporations and probably come within the purview of Section 42-210. The Department concurs with the first point but will not rule on the second point at this time.

Also, this letter will serve as acknowledgement of receipt of your letter dated December 17, 1987, in which you responded to Mr. Ringert's letter.

Sincerely,

David R. Tuthill Jr.

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

DRT:jp

Enclosure:

cc: Donald J. Sayre
Lawrance V. Gray
Kenneth Brush
Carter Fritschle
Howard Fuller
Don Smitchger
Jimmie James
Dwaine Wolf
John Hockberger, Jr.
Raymond D. Givens
Randall C. Fredericks
Larry Sullivan
William F. Ringert
Don A. Olowinski
Ron Golus
Bob Fleenor

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NOV 1 2 2002

4-6-92

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-10240 IN THE NAME OF BOISE PROJECT BOARD OF CONTROL	NOTICE OF HEARING

On April 19, 1984, the Bureau of Reclamation filed with the Department of Water Resources an application for permit to appropriate the public waters of the State of Idaho, for hydropower purposes at Arrowrock Reservoir. The application was protested by Farmers Union Ditch Company, Settlers Irrigation District, Farmers Cooperative Canal Company and Pioneer Irrigation District, and pre-hearing conferences were held by the Department on May 16, 1985, and March 13, 1991. The application was assigned to the Boise Project Board of Control on February 4, 1991.

The Department has now set the matter of protest for a hearing to be held on Friday, May 8, 1992, at 9:00 a.m. at the Second Floor Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706. 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, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and

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9

Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 6th day of April, 1992.

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

I hereby certify that on the 8th day of April, 1992, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Sue Taylor
Secretary, Office Coordinator

Certified Mail

Scott L. Campbell
ELAM, BURKE, AND BOYD
(Hand Delivered to
Lisa Shepard)
Boise, ID 83701

Don A. Olowinski, Esq.
Box 1617
Boise, ID 83701

Kenneth Henley
Boise Proj. Board of Control
214 Broadway Ave.
Boise, ID 83702

Non-Certified Mail

Bureau of Reclamation
Box 043 - 550 W Fort St
Boise, ID 83724

John J. Hockberger, Jr.
U.S. Dept. of Interior
Box 020 550 W. Fort St.
Boise, ID 83724

Donald J. Sayre
Route 2
Caldwell, ID 83605

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Lawrence V. Gray
Elm Lane
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Kenneth Brush
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Caldwell, ID 83605

Carter Fritschle
4310 N. Linder Rd.
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Howard Fuller
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Star, ID 83669

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Meridian, ID 83642

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Larry Sullivan, Esq.
P.O. Box 220
Vale, OR 97918

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

Ron Golus
U.S. Dept. of Interior
Bureau of Reclamation
Box 043-550 W. Fort St.
Boise, ID 83724

Bobby D. Fleenor, IDWR

L. Glen Saxton, IDWR

Normal C. Young, IDWR

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ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

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CANYON COUNTY OFFICE
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NAMPA, IDAHO 83653
TELEPHONE 208-466-9222

Department of Water Resources
Western Regional Office

BOISE OFFICE
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 FOUSER
D. ALAN KOFOED
SCOTT L. CAMPBELL
BOBBI KILLIAN DOMINICK
W. DALLAS BURKHALTER
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

December 17, 1987

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

Re: Application for Water Permit No. 63-10240, Arrowrock Dam

Dear David:

I am responding to correspondence, dated December 7, 1987, from Mr. William F. Ringert to you regarding the above-captioned matter. I have not responded to Mr. Ringert's correspondence prior to this time because he neglected to include me as a recipient of a copy of the correspondence. It was not until December 14, 1987, that I received a copy of the correspondence from the Board of Directors of Pioneer Irrigation District.

I believe it is important for me to respond to the items addressed in Mr. Ringert's correspondence.

First, I would like to address the following statements made by Mr. Ringert:

> Mr. Campbell expresses concern that, if an assignment of the permit has been made, that assignment has not been approved by your Department. It is my understanding that this proceeding is still at the application stage, and that a permit has not been issued. That being the case, Idaho Code §42-207, which requires departmental approval of any sale, assignment, mortgage or other document of transfer with respect to a permit, is not applicable because the current proceeding involves only an application.

I do not understand how Mr. Ringert concluded from reviewing my correspondence of December 4, 1987, that I was concerned "that, if

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an assignment of the permit has been made, that assignment has not been approved by your Department." On page 2 of my December 4, 1987, correspondence, I stated my position as follows:

> Additionally, I have not received any copies of documentation which reflects that the Bureau of Reclamation has applied for approval of the Department for an assignment of the Application for Water Permit No. 63-10240. Consequently, I assume that such documentation has not been submitted to the Department for consideration. If that is indeed the case, I must conclude that the Boise Project Board of Control irrigation districts are still classified as intervenors in the present proceedings and have not been accorded the status of applicant for the water permit. If the Department of Water Resources does not concur with this description of the current status of the record, I request written clarification of the Department's position at this time.

(Emphasis added.)

Obviously, I am talking about the application for the permit and not the permit itself. Moreover, I have made no reference to Idaho Code section 42-207 in my December 4, 1987, correspondence. Mr. Ringert perhaps assumed that this statute was my underlying concern, based upon his misreading of my letter. On the contrary, my concern focuses upon the requirements of Idaho Code section 42-211, which establishes the procedure to be followed if an application for a water permit is amended. It is my understanding that a substitution of the applicant listed on such an application would constitute an amendment of the application which would require compliance with the restictions found in that provision of the Idaho Code.

In the present circumstance, if the Bureau of Reclamation is no longer the true applicant for the water permit, it would appear that the application has been amended, in which case the notice of the application must be republished, and the director of the department is authorized to "grant(s) the amendment in part or on conditions or reject(s) the amendment without a hearing. . . ." I.C. § 42-211. This, in fact, is the statutory reference which I had in mind when I requested clarification from you with respect to the present status of the applicant for the water permit.

I would now like to respond to the suggestion contained in Mr. Ringert's correspondence "that Idaho Code §42-110 (sic) states that Idaho Code §§-204 through 42-209 shall not apply to any municipal corporations within the state, and I would suggest that irrigation districts have long been regarded as quasi-municipal corporations and probably come within the purview of §42-210."

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I do not believe it is either necessary or productive at this point for me to provide an extensive legal analysis of Mr. Ringert's suggestion with respect to this statutory interpretation. I would only like to point out that the cases which I have reviewed regarding the status of irrigation districts as "quasi-municipal corporations" make a clear distinction municipal corporations and irrigation districts. Inasmuch as Idaho Code section 42-210 is strictly limited to municipal corporations, Mr. Ringert's suggestion lacks credibility.

I apologize if my correspondence of December 4, 1987, was unclear in any respect. I have attempted to resolve Mr. Ringert's apparent misunderstanding of the content of that correspondence by this letter. If you have any concerns or questions with respect to the issues which I have addressed in the December 4, 1987, correspondence or this letter, please contact me, and I will attempt to provide further explanation. In closing, I still desire a written response from you or the hearing officer with respect to this matter concerning the points set forth in my December 4, 1987, correspondence.

Thank you for your cooperation with respect to these matters.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

Scott L. Campbell

SLC:ls
xc: Board of Directors,
Pioneer Irrigation District
Naida Kelleher
Carter Fritschle
Howard Fuller
Fred Byrne
Bert Johnson
Caroline Kellar
Don Smitchger
Jimmie James
Dwaine Wolf
Vicki Keen
John Hockberger, Jr.
Raymond D. Givens
Randall C. Fredericks
Larry Sullivan
William F. Ringert
Don A. Olowinski

DEC 18 1987

Department of Water Resources
Western Regional Office

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NOV 1 2 2002

DMT

Ringert, Clark, Harrington, Reid, Christenson & Kaufman
CHARTERED
LAWYERS

WILLIAM F. RINGERT
D. BLAIR CLARK
ANDREW M. HARRINGTON
JAMES G. REID
JEFFREY R. CHRISTENSON
JAMES P. KAUFMAN
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LEA C. ADAMS

SAMUEL KAUFMAN (1921-1986)

599 WEST BANNOCK STREET
P.O. BOX 2773
BOISE, IDAHO 83701

TELEPHONE (208) 342-4591

December 7, 1987

RECEIVED
DEC 3 1987
Department of Water Resources
Western Regional Office

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

Re: Application for Water Permit No. 63-10240

Dear Mr. Tuthill:

On behalf of Nampa & Meridian Irrigation District, one of the interested parties in the proceedings regarding Application No. 63-10240, I wish to make a couple of comments regarding Mr. Scott L. Campbell's letter of December 4, 1987, a copy of which I received this morning.

Mr. Campbell expresses concern that, if an assignment of the permit has been made, that assignment has not been approved by your Department. It is my understanding that this proceeding is still at the application stage, and that a permit has not been issued. That being the case, Idaho Code §42-207, which requires departmental approval of any sale, assignment, mortgage or other document of transfer with respect to a permit, is not applicable because the current proceeding involves only an application.

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DEC 17 2002

DRT

I would like to point out, also, that Idaho Code §42-~~1~~2 10 states that Idaho Code §§42-205 through 42-209 shall not apply to any municipal corporations within the state, and I would suggest that irrigation districts have long been regarded as quasi-municipal corporations and probably come within the purview of §42-210.

Yours very truly,

W. F. Ringert

WFR:am
cc: Nampa & Meridian Irrigation District
Raymond D. Givens
Randall C. Fredricks
Don A. Olowinski
Larry Sullivan
Donald J. Sayre
Lawerance V. Gray
Kenneth Brush
Carter Fritschle
Howard Fuller
Don Smitchger
Jimmie James
Dwaine Wolf
John Hockberger, Jr.

MICRO
NOV 12 2002

DEF

ELAM, BURKE AND BOYD

ATTORNEYS AND COUNSELORS AT LAW

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JAMES D. LARUE
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BRENDA G. MEIER
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WENDY E.D. SMITH
JAMES A. FORD

December 4, 1987

RECEIVED
DEC 7 1987
Department of Water Resources
Western Regional Office

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

Re: Application for Water Permit No. 63-10240, Arrowrock Dam

Dear David:

I recently received a copy of the correspondence, dated December 1, 1987, from Mr. Don Olowinski to you regarding the above-captioned matter. It is necessary for me to respond to certain statements contained in that correspondence.

Mr. Olowinski appears to suggest that the Pioneer Irrigation District is somehow responsible for the lack of action by the Federal Energy Regulatory Commission regarding the application for license under FERC Project No. 4656-002. In response to his comments that the Pioneer District "has filed voluminous and repetitive actions against the Districts," I would like to point out that those same districts have filed equally voluminous and repetitive pleadings before the agency.

The Pioneer Irrigation District desires that the FERC take immediate action on the pending motion and filings regarding the Arrowrock Hydroelectric Project No. 4656-002. Consequently, the implication, contained in Mr. Olowinski's letter, that the Pioneer District desires to delay the pending matter before the FERC is totally incorrect. In fact, the opposite is the case.

I would also like to point out that Mr. Olosinski's correspondence does not advise you of a recent FERC action regarding the motion of Settlers Irrigation District to intervene in the proceedings for Project No. 4656-002. In June of 1987, the Settlers Irrigation District filed a motion to intervene in the proceedings, and on November 6, 1987, the FERC issued a Notice Granting Late Intervention, permitting Settlers Irrigation District to intervene before the FERC with respect to that project. I have enclosed a copy of the Notice Granting Late Intervention for your information.

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Finally, I request clarification from you regarding the current status of the record in the proceedings before the Department with respect to the Boise Project Board of Control irrigation districts. As I understand the record, the United States Department of the Interior, Bureau of Reclamation is the applicant for Water Permit No. 63-10240. Accordingly, it is my assumption that the Bureau of Reclamation is the proper entity to respond to inquiries from the Department of Water Resources as they pertain to the status of any applications before the FERC which relate to the water permit application.

Additionally, I have not received any copies of documentation which reflects that the Bureau of Reclamation has applied for approval of the Department for an assignment of the Application for Water Permit No. 63-10240. Consequently, I assume that such documentation has not been submitted to the Department for consideration. If that is indeed the case, I must conclude that the Boise Project Board of Control irrigation districts are still classified as intervenors in the present proceedings and have not been accorded the status of applicant for the water permit. If the Department of Water Resources does not concur with this description of the current status of the record, I request written clarification of the Department's position at this time.

In this regard, I would like to remind you of the content of your correspondence of December 30, 1986, regarding this matter, wherein you stated:

> We request that the Bureau of Reclamation as water right applicant continue to advise this office regarding activities with respect to procurement of FERC licensing at Arrowrock Dam and at Diversion Dam. We ask that updates in this regard be provided to this office each six months, or as major milestones are achieved.

In response to that correspondence, Mr. Don Olowinski provided you with correspondence, dated January 12, 1987, which provided a summary of the status of the application before FERC for Project No. 4656-002. In response to his correspondence, I provided you with a letter, dated January 13, 1987, which expressed my concern, at that point, that the record before the Department of Water Resources demonstrates that the applicant for Water Permits Nos. 63-10239 and 63-10240 is the United States Bureau of Reclamation.

Unless, or until, the Bureau of Reclamation assigns its interest as applicant for Water Permit No. 63-10240 to the Boise Project Board of Control irrigation districts, or in the alternative, elects

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to construct the Arrowrock hydroelectric project as a federal project, I do not believe the Department of Water Resources' guidelines, as expressed in your correspondence of December 30, 1986, are being satisfied. As you will recall, therein you stated:

> The Department considers the applicant to be seeking development of the project with due diligence if the applicant is actively pursuing approval of the project through the Federal Energy Regulatory Commission (FERC).

(Emphasis added.)

In conclusion, I would like to emphasize again that the Pioneer Irrigation District, as well as the Settlers Irrigation District, desire prompt action before the FERC with respect to Project No. 4656-002, notwithstanding Mr. Olowinski's insinuations to the contary. Additionally, in view of the apparent lack of clarity regarding the identification of the applicant for Water Permit No. 63-10240, I request the Department to provide a written explanation of its understanding of the record with respect to this issue.

Thank you for your cooperation with respect to these matters.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

SLC:ls
Enclosure
xc: Donald J. Sayre
Lawerance V. Gray
Kenneth Brush
Carter Fritschle
Howard Fuller
Don Smitchger
Jimmie James
Dwaine Wolf
John Hockberger, Jr.
Raymond D. Givens
Randall C. Fredericks
Larry Sullivan
William F. Ringert
Don A. Olowinski
(all with enclosure)

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APR 12 2002

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boise-Kuna Irrigation District, et al.) Project No. 4656-002

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.

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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

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

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

December 3, 1987

U.S. Department of Interior
Bureau of Reclamation
Attn: Ron Golus
Box 043-550 W. Fort St.
Boise, ID 83724

Don A. Olowinski
HAWLEY TROXELL ENNIS & HAWLEY
One Capital Center
Suite 701
Post Office Box 1617
Boise, ID 83701

Re: Applications for Water Permit Nos. 63-10239 & 63-10240

Gentlemen:

Thank you for Mr. Olowinski's letter dated December 1, 1987, and Mr. Golus' telephone call of the same date, both regarding the above-referenced water right applications. We acknowledge that action on these applications should continue to be postponed pending a decision by FERC regarding these and other related matters.

Our files on this matter will remain in an active protested status. Please advise this office if there is a change in the FERC status.

Sincerely,

David R. Tuthill

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

DRT:jp

c.c. state office

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NOV 12 2002

DNF ✓
File —

HAWLEY TROXELL ENNIS & HAWLEY

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December 1, 1987

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DEC 2 1987
Department of Water Resources
Western Regional Office

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

Re: Application for Water Permit No. 63-10240,
Arrowrock Dam

Dear Dave:

Pursuant to your earlier request, I am providing an updated status report concerning the application of the Boise-Kuna Irrigation District, the New York Irrigation District, the Nampa & Meridian Irrigation District, the Wilder Irrigation District and the Big Bend Irrigation District for a FERC license at the Arrowrock Dam (FERC No. 4656-002).

FERC still has not acted on the Pioneer Irrigation District's "Comments and Objections of Pioneer Irrigation District to Environmental Assessment, Arrowrock Dam Hydroelectric Project FERC No. 4656-002---Idaho, and its Motion for Hearing and Consolidation which were filed on October 29, 1986.

As you are undoubedly aware, the Pioneer Irrigation District has filed voluminous and repetitive actions against the Districts. On September 10, 1987, Pioneer wrote to the FERC staff requesting a report on their voluminous filings. The Commission staff replied on November 20, 1987. I have enclosed a copy of that reply.

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OCT 17 2002

If I can provide you with any further information or elaborate on any of these matters, please do not hesitate to communicate with me.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

Don A. Olowinski

DAO/mmb

Enc.

xc: Raymond D. Givens
Randall C. Fredricks
William F. Ringert
Larry Sullivan
Scott Campbell
John C. Hockberger, Jr.

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NOV 12 2002

DAT

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WENDY E.D. SMITH*
*PENN. & D.C. BARS ONLY

January 13, 1987

RECEIVED
JAN 15 1987
Department of Water Resources
Western Regional Office

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

Re: Applications for Water Permits Nos. 63-10239 & 63-10240

Dear David:

Thank you for your correspondence, dated December 30, 1986, concerning the above-referenced water right applications.

I would like to address one statement contained in that correspondence, which caused me some concern. You indicated in the second paragraph of the correspondence as follows:

> The Department considers the applicant to be seeking development of the project with due diligence if the applicant is actively pursuing approval of the project through the Federal Energy Regulatory Commission (FERC). Thus, we will allow a delay in holding a hearing or conference to resolve a protest until FERC approval has been received.

I do not disagree with this approach by the Department with respect to these applications. However, I wish to point out, so that the record is clear, that the applicant for Water Permits Nos. 63-10239 and 63-10240 is the United States Bureau of Reclamation. The Bureau of Reclamation has not filed, nor is it actively pursuing approval of the project through the Federal Energy Regulatory Commission (FERC). Instead, the application for FERC approval is being pursued by the Nampa and Meridian, the New York, the Boise-Kuna, the Wilder, and the Big Bend Irrigation Districts, the intervenors in this proceeding.

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I have also enclosed a conformed copy of the Complaint for Declaratory Judgment and Injunctive Relief which was recently filed by Settler's Irrigation District and Pioneer Irrigation District against the United States of America and several agencies and departments. I provide this to the Department of Water Resources as a courtesy to keep the Department fully informed of the developments with respect to the legal controversies involving the hydroelectric projects on the Boise River. Inasmuch as this complaint involves substantial questions regarding the contractual rights of both Settler's and Pioneer Irrigation Districts in the context of the Arrowrock hydroelectric project, it may have some bearing upon the proceedings with respect Water Permits Nos. 63-10239 and 63-10240.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

SLC:ls
Enclosure
cc: Raymond D. Givens, Esq.
Randall C. Fredericks, Esq.
Larry Sullivan, Esq.
William F. Ringert, Esq.
Don A. Olowinski, Esq.
U.S. Corp of Engineers,
Attn: LTC Richard M. Ely
U.S. Department of the Interior,
Attn: Ron Golus
Niel Stessman
Carter Fritschle
Donald J. Sayre
Lawrence V. Gray
Howard Fuller
John Hockberger, Jr.
Fred Houston
Don Smitchger
Ken Brush

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CONVERSATION MEMORANDUM

DATE December 1, 1987

FILE 63-10239, 10240

NAME OF PARTY Ron Golus, B.O.R.

EMPLOYEE Dave Tuthill

RE: Status of Applications

Both projects are still held in FERC processing.

Requested that projects remain in the status quo for the present.

I did not see a problem with granting the request.

DRT

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NOV 12 2002

DEF

HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS

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RECEIVED
JAN 13 1987
Department of Water Resources

January 12, 1987

David R. Tuthill, Jr. P.E.
Manager, Western Regional Office
Dept. of Water Resources
State of Idaho
450 W. State Street
Boise, ID 83702

Re: Application for Water Permit No. 63-10240,
Arrowrock Dam

Dear Dave:

In response to your letter of December 30, 1986, I would submit this summary of the status of the application of the Boise-Kuna Irrigation District, the New York Irrigation District, the Nampa & Meridian Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District for a FERC license at the Arrowrock Dam (FERC No. 4656-002).

FERC's Division of Environmental Analysis issued an environmental assessment with a finding of no significant impact on August 29, 1986. The Pioneer Irrigation District filed a document entitled "Comments and Objections of Pioneer Irrigation District to Environmental Assessment, Arrowrock Dam Hydroelectric Project FERC No. 4656-002---Idaho, and Motion for Hearing and Consolidation" on October 29, 1986.

The Districts filed an answer to Pioneer's motion on December 23, 1986. Since the Department has intervened in this proceeding with FERC, I assume that it has copies of all of these documents. However, since they may not be in your file, I have enclosed additional copies.

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JAN 15 1987
Department of Water Resources
Western Regional Office

FERC has yet to act further on this matter, and I have no indication as to when it may do so.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

Don A. Olowinski

DAO/mmb

Enc.

xc: Raymond D. Givens, Esq.
Randall C. Fredricks, Esq.
Larry Sullivan, Esq.
William F. Ringert, Esq.
Scott L. Campbell, Esq.
U.S. Dept. of Interior
U.S. Corp. of Engineers

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NOV 12 2002

United States Department of the Interior

BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
FEDERAL BUILDING & U.S. COURTHOUSE
BOX 043 - 550 WEST FORT STREET
BOISE, IDAHO 83724

IN REPLY
REFER TO: PN 730

SEP 30 1986

Scott L. Campbell
Elam, Burke, and Boyd
First Interstate Building
702 West Idaho
Boise, Idaho 83701

Dear Mr. Campbell:

As requested in your telephone conversation with Ron Golus today, we are enclosing a copy of our Preliminary Planning Report/Draft Environmental Statement on the Boise Basin portion of our recent Boise Project Power and Modification Study.

We emphasize that the report is a preliminary document, and the options presented in it are under consideration within Reclamation. Technical data and conclusions are subject to change during this review period, and for this reason, a formal planning report has not yet been prepared for distribution to the public for comment.

If you would like to discuss information contained in the draft, please contact Mr. Golus, our Boise basin study coordinator, at 334-1147.

Sincerely yours,

Robert J. Riley

Acting Regional Planning Officer

Enclosure

Nampa & Meridian Irr. Dist., et al.
Projects Nos. 2832 + 4656-002
Pioneer Irr. Dist. Comments 10/29/86

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Exhibit A

JAN 1 6 1987

Department of Water Resources

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

ANSWER OF NAMPA & MERIDIAN IRRIGATION DISTRICT, BOISE-KUNA IRRIGATION DISTRICT, WILDER IRRIGATION DISTRICT, NEW YORK IRRIGATION DISTRICT AND BIG BEND IRRIGATION DISTRICT TO COMMENTS AND OBJECTIONS OF PIONEER IRRIGATION DISTRICT TO ENVIRONMENTAL ASSESSMENT, ARROWROCK DAM HYDROELECTRIC PROJECT NO. 4656-002-IDAHO AND MOTION FOR HEARING AND CONSOLIDATION

G. Philip Nowak, Esq.
Timothy J. Lindon, Esq.
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December 23, 1986

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JAN 16 2002

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JAN 16 1987
Department of Water Resources
Western Regional Office

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

ANSWER OF NAMPA & MERIDIAN IRRIGATION DISTRICT, BOISE-KUNA IRRIGATION DISTRICT, WILDER IRRIGATION DISTRICT, NEW YORK IRRIGATION DISTRICT AND BIG BEND IRRIGATION DISTRICT TO COMMENTS AND OBJECTIONS OF PIONEER IRRIGATION DISTRICT TO ENVIRONMENTAL ASSESSMENT, ARROWROCK DAM HYDROELECTRIC PROJECT NO. 4656-002-IDAHO AND MOTION FOR HEARING AND CONSOLIDATION

PRELIMINARY STATEMENT

Pursuant to Rule 213 of the Federal Energy Regulatory Commission's (the "Commission's") Rules of Practice and Procedure, the Nampa & Meridian Irrigation District, the Boise-Kuna Irrigation District, the Wilder Irrigation District, the New York Irrigation District and the Big Bend Irrigation District (the "Districts"), licensees for the Lucky Peak Power Plant Project, FERC Project No. 2832 (the "Lucky Peak Project" or the "Project"), hereby answer the Comments and Objections of Pioneer Irrigation District to Environmental Assessment, Arrowrock Dam Hydroelectric Project No. 4656-002-Idaho and Motion for Hearing and Consolidation (the "Motion")

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filed by the Pioneer Irrigation District ("Pioneer") on October 29, 1986.[1]

Pioneer's Motion is devoted almost entirely to its objections to the Commission Staff's August 29, 1986 Environmental Assessment ("EA") for the Arrowrock Dam Hydroelectric Project (the "Arrowrock Project"). Yet, Pioneer's request for relief deals almost exclusively with the Lucky Peak Project, which is over 50 percent constructed.[2] Pioneer contends that the two projects are somehow "interrelated" and that the Districts "concealed major environmental affects [sic]" of the Lucky Peak Project from the Commission.

Pioneer offers no facts in support of its allegations, yet it asks the Commission to grant the extraordinary relief of reopening the license proceeding for the Lucky Peak Project more than six years after issuance of the license, consolidating the reopened proceeding with the ongoing licensing proceeding for the Arrowrock Project, and halting construction of the Lucky Peak Project pending completion of an environmental

---

[1] On November 13, 1986, the Commission extended the Districts' time for filing an Answer to Pioneer's Motion to December 23, 1986.

[2] This Answer addresses only Pioneer's request for relief with respect to the Lucky Peak Project. The Districts have filed, simultaneously with this Answer, a response in Docket No. 4656-002 to Pioneer's comments and objections concerning the environmental assessment for the Arrowrock Project.

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impact statement ("EIS"). A brief review of the history and status of the Lucky Peak Project and the legal standards governing Pioneer's Motion reveals the absurdity of Pioneer's request.

BACKGROUND

The Commission issued the license for the Lucky Peak Project to the Districts on June 10, 1980. 11 F.E.R.C. ¶ 62,199 (1980). In its Order issuing the license, the Commission found that "operation and maintenance of the project would have minimal adverse environmental impacts." Id. at 63,375. It further found that the Project "is compatible with the water resource projects in the region . . . ." Id. Thus, the Commission concluded as follows:

> "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." Id.

The Order stated that it was final unless appealed to the Commission within 30 days of its issuance. Id. at 63,379. Neither Pioneer, nor any other party, filed such an appeal.

In reliance on the FERC license, the Districts obtained $154 million in financing for the Project

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through a bond issuance and commenced construction in May 1984. As the Commission has recognized, the Districts have constructed the Project "in good faith and with due diligence."[3] The Project is now over 50 percent complete, and all remaining construction and procurement contracts have been awarded. No significant adverse environmental impacts have resulted from construction of the Project.

Pioneer's present Motion must also be considered in the context of its voluminous other filings before the Commission during the past nine months. On February 20, 1986, six years after issuance of the license and nine years after Pioneer had actual notice of the Lucky Peak Project, Pioneer filed a Motion to Reopen License Proceedings, Motion to Intervene Out of Time and Motion for Order Halting Construction (the "Motions").[4] Pioneer has reargued the same claims made in these Motions in at least three subsequent pleadings

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[3] Order Granting Extension of Time (March 27, 1986). In an Order dated April 18, 1984, the Commission approved a change in the location of the second tunnel for the Project and further approved modification of the existing tunnel so that it could be used as both a power tunnel and as an outlet tunnel. Neither Pioneer, nor any other party, challenged that Order. See Districts' Response to Pioneer's Motion for Leave to File Supplement to Petition to Reopen and Supplement to Petition to Reopen at 19-20 (July 7, 1986).

[4] The Districts filed an Answer to Pioneer's Motions on April 21, 1986.

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before the Commission.[5] Pioneer's present Motion is simply another unconscionably late attempt to elaborate on its earlier Motions -- this time through the back door of the Arrowrock proceeding -- and should be considered, if at all, in the context of its pending Motions.

ARGUMENT

A. Pioneer Has Alleged No Basis for Reopening the Lucky Peak Proceeding To Require Preparation of an Environmental Impact Statement

Pioneer's extraordinary request that the Commission reopen the Lucky Peak proceeding to require preparation of an EIS is governed by Rule 716 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.716. Rule 716(b)(2) requires a motion to reopen to "set forth clearly the facts sought to be proven and the reasons claimed to constitute grounds for reopening." 18 C.F.R. § 385.716(b)(2). The Commission may reopen the record in a proceeding only if it finds reopening is warranted by "changes in conditions of fact or of law or by the public interest." 18 C.F.R.

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[5] See Motion for Leave to File Supplement to Petition to Reopen and Supplement to Petition to Reopen (May 20, 1986); Petition to Intervene (May 21, 1986); Motion of Pioneer Irrigation District for Immediate Ruling on Motion to Reopen License Proceeding (December 15, 1986).

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§ 385.716(c). The changes alleged must be material, i.e., the new evidence must clearly mandate a change in result. See Greene County Planning Bd. v. F.P.C., 559 F.2d 1227, 1233 (2d Cir. 1976), cert. denied, 434 U.S. 1086 (1978); Transcontinental Gas Pipe Line Corp., 23 F.E.R.C. ¶ 61,152 (1983).

The preamble to Rule 716 states that the Commission "does not contemplate reopening records after decisions are final." 47 Fed. Reg. 19,020 (May 3, 1982). Accordingly, the Commission has only utilized its authority to reopen final decisions in the case of inadvertent error or mistake. See, e.g., Lawrence J. McMurtrey, 21 F.E.R.C. ¶ 61,040 (1982) (exemption from licensing granted by operation of law vacated because Commission "inadvertently" failed to toll expiration of period set forth in Commission's rules.) Final Commission orders may be reopened "only for the strongest and most persuasive of reasons." Natural Gas Pipeline Co. of America, 27 F.E.R.C. ¶ 61,150, at 61,273 (1984).

As noted above, the Commission found in its Order issuing the Lucky Peak license that the Project "would have minimal environmental impacts" and "is compatible with the water resource projects in the region . . . ." 11 F.E.R.C. ¶ 62,199, at 63,375. Accordingly, the Commission concluded that "the preparation of an

environmental impact statement is not required." Id. Pioneer has not alleged any material changes in the Project or any other material facts which contradict the Commission's conclusions. Nor has Pioneer alleged that any significant environmental impacts have resulted from construction of the Project. Indeed, nowhere in its Motion has Pioneer identified any adverse environmental impacts associated with the Lucky Peak Project. Thus, Pioneer has failed to meet the heavy burden required to support reopening of a final Commission order.

Pioneer makes the bold assertion that the Districts "wrongfully concealed major environmental affects [sic] of the proposed Lucky Peak Project" in their license application. But again, Pioneer does not identify what facts it believes were concealed, and mere assertions and speculation are not sufficient to require a reopening. In fact, all of the plans for the Project and all of the environmental effects of the Project were known by the Commission -- and by Pioneer -- when the license was issued in 1980. As the Commission has recognized, "to permit proceedings to be reopened when parties assert that they belatedly appreciate the significance of information of which they were already aware would be contrary to the public interest." Gas Producing Enterprises, Inc., 28 F.E.R.C. ¶ 61,008, at 61,015 (1984).

B. The Lucky Peak and Arrowrock Projects Are Independent and Should Not Be Consolidated

Pioneer does not clearly articulate any reason for consolidating the Lucky Peak and Arrowrock Projects. Nor does Pioneer state the statutory or regulatory authority on which it grounds its request for consolidation or cite any precedent for consolidating a substantially complete hydroelectric project with a licensing proceeding for an unlicensed project.

Pioneer makes the unsupported claim that the two projects are somehow "interrelated." Motion at 5. But aside from their location on the same river and the Districts involvement in both projects, the projects are in fact independent and unrelated. Each project can and will operate independently of the other. Indeed, the Lucky Peak Project is scheduled to be completed and begin operation before construction of the Arrowrock Project would even begin.

Moreover, even if the Lucky Peak and Arrowrock Projects were somehow related, it would be both illogical and unnecessary to deal with the cumulative effects of the two projects in the already completed Lucky Peak licensing proceeding. See Oregon Natural Resources Council v. Marsh, 628 F. Supp. 1557 (D. Or. 1986). Instead, such impacts, if any, can and have been fully considered in the EA for the Arrowrock Project,

which took into account the pre-existing Lucky Peak Project when assessing the environmental impacts of the Arrowrock Project. See, e.g., EA at 23-29. Pioneer's objections to that assessment may be raised in the pending Arrowrock proceeding, but are not properly part of the completed Lucky Peak proceeding.

C. The Relief Sought by Pioneer Is Barred by Laches

The defense of laches is applicable in environmental litigation. Jicarilla Apache Tribe v. Andrus, 687 F.2d 1324, 1337 (10th Cir. 1982); Preservation Coalition, Inc. v. Pierce, 667 F.2d 851, 854-55 (9th Cir. 1982); Park County Resource Council v. U.S.D.A., 613 F. Supp. 1182, 1186 (D. Wyo. 1985). Laches bars an action where there is (i) unreasonable delay in acting by the party against whom the defense is asserted, and (ii) prejudice to the party asserting the defense. Andrus, 687 F.2d at 1338; Pierce, 667 F.2d at 854. Laches may be found where a party having knowledge of the relevant facts acquiesces for an unreasonable length of time in the assertion of a right adverse to his own. Andrus, 687 F.2d at 1338.

Pioneer's delay is extreme and unjustified. It is guilty of knowingly sitting on its alleged rights for six years after the issuance of the license for the Project and for nine years after it had actual knowledge

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of the Project.[6] Pioneer offers no excuse for its prolonged delay in seeking the relief it requests.

Further, granting the relief sought by Pioneer would seriously prejudice the Districts and is not in the public interest.[7] Reopening the licensing proceeding and halting construction could irreparably damage a flourishing hydroelectric project for no apparent gain. In reliance on the FERC license, the Districts have now expended more than $65 million on the Lucky Peak Project, which is on schedule, substantially under budget and has been constructed to date without any adverse environmental impacts.

In light of Pioneer's longstanding knowledge of the Project and its impacts, its unreasonable and unexplained delay in asserting its alleged rights and the substantial construction completed on the Lucky Peak Project, the doctrine of laches bars Pioneer from bringing its Motion at this late date.

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[6] See District's Answer to Pioneer's Motions at 6-9 (April 21, 1986); Districts' Response to Pioneer's Motion for Leave to File Supplement to Petition to Reopen and Supplement to Petition to Reopen at 3-4, 6 (July 7, 1986).

[7] See District's Answer to Pioneer's Motions at 31-33 and 52-56 for a detailed discussion of the substantial prejudice, severe disruption and harm to the public interest which could result from the relief sought by Pioneer.

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CONCLUSION

For the foregoing reasons, the Districts respectfully request that Pioneer's Motion be denied.

Respectfully submitted,

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December 23, 1986

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing instrument upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 23rd day of December, 1986.

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JAN 13 1987

Department of Water Resources

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

NAMPA & MERIDIAN IRRIGATION DISTRICT BOISE-KUNA IRRIGATION DISTRICT WILDER IRRIGATION DISTRICT NEW YORK IRRIGATION DISTRICT AND BIG BEND IRRIGATION DISTRICT	)	Project No. 2832 and Project No. 4656-002

COMMENTS AND OBJECTIONS OF PIONEER IRRIGATION DISTRICT TO ENVIRONMENTAL ASSESSMENT, ARROWROCK DAM HYDROELECTRIC PROJECT FERC NO. 4652-002---Idaho
And
MOTION FOR HEARING AND CONSOLIDATION

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Dated: October 29, 1986

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JAN 13 1987
Department of Water Resources
Western Regional Office

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

NAMPA & MERIDIAN IRRIGATION DISTRICT BOISE-KUNA IRRIGATION DISTRICT WILDER IRRIGATION DISTRICT NEW YORK IRRIGATION DISTRICT AND BIG BEND IRRIGATION DISTRICT	)	Project No. 2832 and Project No. 4656-002

Pioneer Irrigation District, an Intervenor in this proceeding, through its attorneys, submits hereiwth its comments in opposition to Staff's Environmental Assessment, dated August 29, 1986; and, moves for an order directing the Staff to prepare an Environmental Impact Statement in conformity with Section 2.80 of the Commission's Regulations, 18 C.F.R. Section 2.80 et seq., and the National Environmental Policy Act, 42 U.S.C. Sections 4331 et seq.

As grounds therefor, Pioneer states that the Staff errs in its conclusion that the proposed action-licensing a hydroelectric project at the existing Arrowrock Dam and Reservoir is not a major federal action within the contemplation of the National Environmental Policy Act, 42 U.S.C. sections 4331, et seq. In any event, the Environmental Assessment is patently deficient, represents the predictable defects arising from efforts to circumvent the Commission's established procedures, and can only be cured by a full public hearing on the environmental impacts of the project. Pioneer further states as follows:

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I. ARROWROCK HYDROELECTRIC DEVELOPMENT IS A MAJOR FEDERAL ACTION

At page 29 of the Staff's Assessment, the Staff concludes:

> Implementing the mitigative measures proposed by the applicant and recommended by the staff would adequately protect the resources of the project area. On the basis of the Staff's independent environmental analysis, insuance of a license for the Arrowrock Dam Hydroelectric Project would not constitute a major federal action significantly affecting the quality of the human environment.

This conclusion is without factual support, is contrary to Staff's own limited analysis, and is contrary to applicable legal precedent. The governing precedent is clear: FERC must comply with procedural requirements of NEPA in its licensing activities under the Power Act. The Steamboaters v. FERC, 777 F.2d 1384 (C.A. 9, 1985); Confederated Tribes and Bands of the Yakima Indian Nation, et al., v. FERC, 746 F.2d 466 (C.A.9, 1984). The fact that the project is constructed and was previously under license does not exempt the Commission from its responsibilities of preparing an environmental impact statement. Yakima, supra, slip pp. 22-27. An EIS must be prepared for actions that may significantly affect the quality of environment. Foundation for North American Wild Sheep v. U.S., 681 F.2d 1172, 1177 n.24 (C.A.9, 1982).

Here, as in Yakima, the need for those procedural requirements is clearly evident. The staff has uncritically relied on draft reports of other government agencies, without acknowledging the limitations and preliminary nature of those reports. For

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example, the staff cites as part of the literature upon which it relies: "Bureau of Reclamation, 1985, Boise Project Power and Modification Study, Boise River Basin Idaho-Oregon, Planning Report and Draft Environmental Statement, Preliminary Draft, Department of Interior, Boise, Idaho, May, 1985".

Pioneer sought repeatedly to obtain this study from the Bureau of Reclamation, but the Bureau initially declined to make copies available, despite Pioneer's economic interests and its contractual rights in the area. Ultimately, on September 30, 1986, a copy was provided. The FERC Staff relies on this report fo many of its conclusions in support of its determination that licensing the proposed project does not constitute a major federal action. The Bureau of Reclamation, however, cautions:

> [We emphasize that the report is a preliminary document, and the options presented in it are under consideration within Reclamation. Technical data and conclusions are subject to change during this review period, and for this reason, a formal planning report has not yet been prepared for distribution to the public for comment.]

A copy of the Bureau's letter of September 30, 1985, is attached hereto as Pioneer's Exhibit A.

The facts involved in this project alone establish that Staff errs in its conclusion that licensing the proposed project "would not constitute a major federal action significantly affecting the quality of the human environment." The proposed development proposes major changes in the operating regime of the Boise River, involving the operations of at least four (4) major fede-

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ral dams, lakes and reservoirs: Anderson Ranch, Arrowrock and Lucky Peak dams and reservoirs, and Lake Lowell. The development potentially adversely affects more than two hundred fifty thousand (250,000) acres of irrigated cropland.

The proposed development is in breach of the literally hundreds of wateruse and storage contracts which the U.S. Government has negotiated with the water users of the Boise River Basin in Southwestern Idaho and Northeastern Oregon over a period of more than 75 years. And, the proposed changes will potentially adversely affect the critically important flood control protections which these dams, lakes and reservoirs have been designed to provide to the residents in the Boise River drainage basin.

One wonders why Staff seeks to address the major impacts which the changes proposed by this project... and its interrelated project at Lucky Peak, in an Environmental Assessment, rather than in an Environmental Impact statement. On information and belief, Staff seeks to conceal the critical errors and ommissions which fatally flow, not only from its environmental assessment at Arrowrock, but also its environmental impact analysis of the Lucky Peak Project, Project No. 2832. The horrendous ex parte pressures which the applicants have exerted upon Staff through key members of the Senate Energy Committee Staff are already documented in the Lucky Peak proceeding. The instant, superficial, patently deficient environmental analysis of the Arrowrock Project makes it evident that those same unlawful

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pressures are disrupting Staff's judgments in this Arrowrock proceeding.

The Arrowrock development is a major federal action significantly affecting the human environment. As such, under 42 U.S.C. Section 1331 et seq, this Commission must conduct a full scale environmental impact analysis before taking action on the application. Further, the application underscores that the applicant wrongfully concealed major environemntal affects of the proposed Lucky Peak Project in its application in that proceeding. Accordingly, that proceeding must be reopened for a full and complete analysis of its true environmental impact; and construction activity on that project must be suspended pending completion of a proper environmental analysis of the impacts of that project, as well.

II. ENVIRONMENTAL ASSESSMENT PATENTLY DEFICIENT

A. FAILS TO MEET LEGAL STANDARD

The purpose of the environmental analysis requirement of the National Environmental Policy Act is to provide decisionmakers with environmental disclosures sufficiently in detail to aid in substantive decisions in light of their environmental consequences, and to provide the public with information on the environmental impact of the proposed project, as well as to encourage public participation in the development of that information. Trout Unlimited v. Morton 509 F.2d 1276 (CA9, 1974). Staff's environmental assessment fails to satisfy that standard. Rather, Staff

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has allowed itself to be drawn into the applicant's shell game of concealing the true impacts of its proposed project, and its interrelated project at Lucky Peak, Project No. 2832. The assessment is replete with legal and factual error, and omits identifying and analyzing major impacts which these projects will have upon the human environment of the Boise River Basin.

B. LEGAL ERRORS

At page 2, the assessment concludes that the project schedule can be adjusted to "accomodate uncertain market conditions... by delaying the beginning of construction as much as four (4) years after the license is issued". This simply is not legally correct. This Commission must determine that the project meets the licensing standards, including market needs, as of the time of the license issuance. There is no authority for the Commission to grant a license today, and delay its contruction for four years because there is no present market for that energy. Empire District Electric Company, 1 F.P.C. 212, 214 - 217.

C. CRITICAL OMMISSONS

The analysis is riddled with critical ommissions, failure to provide the factual basis for conclusions that are addressed, and failure to address major impacts of the project.

(i) Economic Analysis

At page 3, Staff concludes that:

> Based on the Cost of generating an equvalent amount of power from a generic, coal-fueled steam - electric plant constructed in the Pacific Northwest, the project would be

> economically feasible. The net annual benefit is estimated at about 5.5 nulls per kilowatt-hour, or $866,000.

There simply is no data to allow critical review and analysis of this conclusion. The analysis is silent as to the power sales rate used to establish the value of project energy; silent as to the costs assumed for the coal-fired plant; silent as to whether the analysis included any offsetting economic costs; silent as to whether any portion of the costs of these dams and reservoirs has been allocated to power; and, the analysis is silent as to what, if any, provisions have been made to reimburse the parties who have paid for these dams and reservoirs for the past 75 years. There is no analysis as to what, if any, impact this project will have on the region's need for balancing fossil fueled generation sources to balance the region's power grid, and to insure reliable capacity in low water years. Further, we are left to speculate as to what energy output was used for the project analysis. For example, was the analysis based on operation of the facility in a peaking mode, with the five foot drawdown at Lucky Peak, or was some other capacity used?

(ii) Alternative Projects

The Environmental Assessment, at page 6, purports to analyze alternative projects. The analysis is silent as to the cost analysis of alternatives; does not in fact identify any real alternative; and, does not in fact analyze any alternative. The report is silent as to the comparative need for any such alternative.

(iii) Alternative Project Operations:

There is no discussion of the impact on project economics of operation of the proposed project at the 156.7 Gwh output level. Further, there is no analysis of the impact on project operations of measures (changes in project operations) necessary to mitigate adverse project impacts upon irrigation users rights, and upon flood control responsibilities.

(iv) Need For Project Power

Politely stated, the analysis is ambiguous as to the need for the project power. The report does not provide any meaningful analysis of what current forecasts establish as to the need for the project output. It is evident that the purchaser, City of Seattle, in fact has no need for the power; particularly at the rates involved. The report totally fails to address the hidden economic subsidies that are involved; fails to identify who actually bears the costs of those subsidies; and, fails to identify the consequences of those hidden subsidies upon the economics of the region.

(v) Impact on River Basin Flood Control

Inherent in the operational plans of the applicant is a major revision of the historic operational plan of the Boise River Basin. Staff and the applicant are playing a shell game on the public in failing to acknowledge and analyze this fact. Staff relies on the Bureau of Reclamation Preliminary Draft Study, which the public has been denied access to.

Further, it is only in the Arrowrock proceeding that the

applicant has finally revealed its true operational plans for the Lucky Peak Project, Project No. 2832. This lack of candor vitiates the environmental impact statement prepared for that project.

Neither this analysis, nor the Impact Statement in Project 2832, in fact analyze the impact on the safety, dam integrity, flood control capacity, recreational use or other potential impacts which these critically significant changes will have. For example, what will be the impact on the flood control protection of the valley which will result from the draw down at Lucky Peak? These are issues which the Commission must address in a public forum, with informed public participation.

(vi) Impact on Irrigation Users

The analysis totally ignores the impacts which the project will have on the irrigation users in the Boise River basin. There is no discussion as to the impact on such users which the construction and start-up of the project will have. There is no discussion of the peaking mode impact on downstream irrigation and other water users. For example, will this "shaping" operation result in reduction of waterflow to irrigation users at times of its optimal use; will it result in increased flows exceeding the capacity of existing facilities to effectively capture these flows; or, will reduced flows increase the pumping needs - and costs - of irrigation users?

Further, while the analysis identifies the fact that project operations will reduce the oxygen content of the water below

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acceptable levels, the report does not address what the impact of that reduction in oxygen content will be on downstream users. Similarly, there is no analysis of the impact, if any, of the increased use of fish poisons on downstream water users.

(vii) Impact Upon Existing Contract Rights

The Assessment states:

> The applicant's proposed project operation would be incidental to BR's reservoir operations; however, the applicant proposes two changes in the operation of the reservoir to increase project efficiency. First, the applicant would modify releases from Arrowrock Dam to produce power in a pattern more closely matching the hourly changes in need for power. Instead of making steady releases of water from Arrowrock Reservoir into Lucky Peak Lake, releases through the power plant would be varied daily, as needed, over a 24-hour-long period, to coincide with daily peaks in electrical demand. The applicant refers to this operating regime as "shaping" the releases, but it could also be characterized as peaking. Second, the applicant would hold some water in Arrowrock Reservoir rather than in Lucky Peak Lake. Under this proposal Lucky Peak Lake would be filled to the normal full-pool level surface elevation of 3,055 feet, as under current operation. Lucky Peak Lake would then be drawn down 5 feet (to elevation 3,050 feet) and maintained at that elevation for recreational use as long as the available water supply or other conditons permit. In most years, a 5-foot reduction in the full-pool level of Lucky Peak Lake (from 3,055 to 3050 [sic] feet) would occur from mid-july to early-September.

Environmental Assessment, August 29, 1986, pp. 3-4.

Contrary to the statement that "project operation would be incidental to BR's reservoir operations," the operation of the proposed project would conflict with the present operations of Arrowrock Reservoir as established by the Bureau of Reclamation.

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Arrowrock Dam was originally constructed for irrigation purposes only. Its operation was modified for combined flood control and irrigation purposes after the construction of Anderson Ranch and Lucky Peak dams and reservoirs. In 1954, Pioneer Irrigation District, and other contract water-users possessing storage space in Arrowrock Reservoir, executed supplemental contracts (Exhibit B, hereto) with the U.S. Department of the Interior, Bureau of Reclamation, wherein they consented, under certain specific conditions, to the joint operation of Lucky Peak, Arrowrock, and Anderson Ranch dams, for the combined purposes of irrigation, flood control, and power generation. The proposed project would result in an alteration of the operating plan specified in the 1954 contracts. Therefore, the proposed operation would not be incidental to the Bureau of Reclamation's present reservoir operations.

This objection is also relevant with respect to the applicant's proposed changes in the operation of the reservoir to increase project efficiency. The modification of releases from Arrowrock Dam to maximize power generation in a "shaping" pattern would not comport with the requirements of the 1954 contracts regarding Arrowrock Dam and Reservoir between the Pioneer Irrigation District and the U.S. Department of the Interior.

Additionally, the proposed reduction in the surface elevation of the Lucky Peak Reservoir from 3,055 feet to 3,050 feet would conflict with the 1954 contracts.

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The retention of 28,700 acre-feet of water in Arrowrock Reservoir would also violate the 1954 contracts, as well as the 1913 and 1915 contracts with Pioneer Irrigation District. Moreover, the Environmental Assessment does not even mention, much less analyze, the impact which the retention of the 28,700 acre-feet of water will have upon the contract rights of the irrigation entities possessing contract storage in Arrorock Reservoir. If the 28,700 acre-feet of water is retained as a minimum pool level in Arrowrock Reservoir, this amount of water, which presently is discharged for irrigation purposes, will not be used. There is no discussion in the Environmental Assessment of the replacement of this amount of water or the possible negative impacts upon the irrigation entities which presently utilize Arrowrock Reservoir water.

The Assessment states:

> FS and the Department of the Interior (Interior) provided 4(e) conditions in letters dated November 6, 1985, and November 14, 1985, respectively (attachments 1 and 2).
>
> . . . .
>
> Interior's conditions, in summary, require the license to coordinate construction activities with BR and to enter into an agreement with BR on operaton and maintenance, at least 60 days before operating the project. Interior conditons also requires [sic] the licensee to revegate all newly disturbed areas within 6 months of completing project construction.

Environmental Assessment, August 29, 1986, pp. 5-6.

This analysis of the conditions suggested by the Department

of the Interior is accurate, but woefully inadequate. Interior's requirements, as reflected in the November 14, 1985, correspon dence from Mr. Bruce Blanchard, Director of Environmental Project Review (attachment 2), completely ignore the contractual requirements agreed to by the Department of the Interior, Bureau of Reclamation, in the 1953 memorandum of agreement which was incorporated in the 1954 contract with Pioneer and other water-users (Exhibit B, hereto). This contract and the incorporated memorandum of agreement specifically require the consent of the local irrigation water-users if the operation of the reservoirs is substantially changed in a manner which would impact the storage rights of the irrigation water-users. The consultation and negotiation process described by the Department of the Interior, and commented upon in the Environmental Assessment, completely ignores the requirements of these contractual documents. Additionally, it does not contemplate the involvement of the other irrigation entities who are not participants in the proposed project, and whose rights will be affected by the anticipated operation and maintenance agreement.

Additionally, the reference contained in paragraph 3 of attachment 2 omits a necessary element with respect to the proposed project. Paragraph 3 presently reads as follows:

> The licensee's construction, operation, and maintenance of the project works, and project investigations related to hydropower development, must not weaken, damage, or affect the structural integrity or operation of the Federal reservation or reduce or impair the capability to provide for the

> purposes and services of the Federal reservation and shall be subject to periodic or continuous inspections by BR as appropriate. Any construction, operation, or maintenance deficiencies or difficulties detected by BR will be immediately reported to the Licensee and to the FERC Regional Engineer. BR shall report to the FERC Regional Engineer the need to stop construction, operation, or maintenance while awaiting resolutions of any deficiency or difficulty that would affect the structural integrity of the Federal reservation. In those cases when a construction, operation, or maintenance practice or deficiency or difficulty that would affect the structural integrity of the Federal reservation. In those cases when a construction, operation, or maintenance practice or deficiency may result in a situation that would or could endanger the structural integrity, safety or operational commitment of the Federal reservation, BR shall have the authority to stop construction, operation, or maintenance activities until the problem or situation is resolved to the satisfaction of BR. Operation of the powerplant shall be secondary to the operation and maintenance of the Federal reservation.

Environmental Assessment, August 29, 1986, attachment 2, p.2.

The second full sentence of this paragraph should be amended to read as follows:

> BR shall report to the FERC Regional Engineer the need to stop construction, operation, or maintenance while awaiting resolutions of any deficiency or difficulty that would affect the structural integrity (or operation) of the Federal reservation. (Parenthetical language added.)

This addition ensures that the construction, operation, or maintenance of the porposed project would not interfere with either the structural integrity or the operation of the Federal

reservation.

The additional condition is of significant importance in the context of the construction phase of the porposed project. In order to complete the necessary modificatons of Arrowrock Dam, the reservoir level behind the dam will have to be reduced and held at unusually low levels. This modification of the normal operations of the reservoir would conflict directly with the 1913, 1915 and 1954 contracts dealing with the regulation of the Arrowrock Reservoir. No evaluation of this aspect of the proposed project has been considered in the Environmental Assessment. Such a dramatic change in the traditional operation of the reservoir would have significant adverse effects upon the irrigation storage rights of Pioneer and other contract storage users of Arrowrock, Anderson Ranch and Lucky Peak Reservoirs.

Additionally, paragraph 4 of attachment 2 states:

> The Licensee shall enter into an operation and maintenance (O&M) agreement with BR at least 60 days prior to commencement of operation of the project. The FERC Regional Engineer shall be invited to attend discussion or negotiation meetings related to the O&M agreement. The O&M agreement shall be subject to revision by the mutual consent of the Licensee and BR as experience is gained by actual project operation.

Environmental Assessment, August 29, 1986, attachemnt 2, p.2.

The last sentence of this provision permits the revision of the anticipated operation and maintenance agreement upon the mutual consent of the project licensee and the Bureau of Reclama-

tion. This provision would grant the licensee and the Bureau of Reclamation a "carte blanche" authority to interfere with or modify the existing operational system for the reservoirs on the Boise River. This authority would conflict with the operating procedures set forth in the 1953 memorandum of agreement and the 1954 contract with Pioneer and the other contract storage users in the system. The Environmental Assessment has made absolutely no evaluation for consideration of these impacts. Given the special rights of the storage users, public notice and hearings are needed to protect the rights of that class.

(viii) Lack Of Adequate Public Consultation

The Assessment discusses the consultation and compliance aspect of the pending application in IV(A), on pages 7 and 8 of the Assessment. This discussion recites that the public notice of the application was issued on July 25, 1985, and also describes the entities which commented on the application or filed a pleading to intervene. This discussion does not contain a reference to the motion to intervene filed by Pioneer Irrigation District, dated July 31, 1985 and filed with the Commission in August, 1985. In this respect, the Environmental Assessment is totally deficient.

In this regard, on October 6, 1986, Pioneer's counsel received a notice granting intervention, dated September 25, 1986, which permitted Pioneer Irrigation District to intervene in Project No. 4656-002. The issuance of this notice granting intervention, 13 months after the motion to intervene was filed

by Pioneer with the Commission and approximately 30 days following the publication of the environmental assessment, denies Pioneer its due process rights to fair consideration by the Commission of the rights which will be impacted by the proposed project. This is true in the context of the Environmental Assessment and also with respect to all prior communications concerning the proposed application which have been conducted since the motion to intervene was initially filed by Pioneer in August, 1985.

This unseemly delay in acting on our motion to intervene underscores the problems created by the Commission's failure to respect the statutory rights of Pioneer, and other irrigation districts as a "municipality" under the Power Act, 16 U.S.C. Section 796(7), to personal notice of such applications (16 U.S.C. Section 797(e) and (f). It further underscores the Staff's total failure to recognize, let alone address, the fact that the proposed project, and its interrelated project, Lucky Peak, Project No. 2832, directly and significantly affect the rights of those irrigation districts, and they are clearly "likely to be interested in or affected by" the project.

(ix) Failure to Address Storage Rights In Affected Reservoirs

The Assessment states:

> Much of the Boise River system is regulated by reservoirs. The operation of Anderson Ranch Dam, a BR facility approximately 48 miles upstream from Arrowrock Dam, has modified the flow regime of the South Fork Boise River

> upstream of Arrowrock Reservoir. Anderson Ranch Reservoir is operated for power production, irrigaton, and flood control. Water withdrawn from Arrowrock Reservoir is released into the upper end of Lucky Peak Lake, which the Corps regulates for flood control and irrigation. The active storage capacity of Arrowrock Reservoir is entirely allocated to irrigation, and the reservoir is drawn down before Anderson Ranch Reservoir and Lucky Peak Lake are lowered to meet irrigation demands. During dry years, Arrowrock Reservoir has been almost completely emptied.

Environmental Assessment, August 29, 1986, p. 10.

This description of the storage facilties and their uses totally ignores the sophisticated, interconnected contractual relationships between and among the numerous irrigation entities possessing storage rights in the three reservoirs on the Boise River and the Bureau Reclamation and the Corps of Engineers.

As stated above, the various contracts, most particularly the individual storage contracts for Anderson Ranch, Arrowrock, and Lucky Peak reservoirs, and the 1954 contracts, consenting to the joint operation of the three reservoirs as a system, create substantial rights in Pioneer and various other irrigation entities, all nonparticipants in this proposed project, which will be dramatically impacted by the project.

A thorough analysis of the impact upon these contractual rights of the parties is necessary in order to fully analyze the economic effects of the proposed project. The negative impacts upon the contract storage rights of Pioneer Irrigation District and other intersted water users, both from the standpoint of the changes in the operations of the reservoirs for the construction

of the project, and modifications which will result from the operation of the completed project, must be thoroughly analyzed. These negative impacts could amount to crop losses or diminished yields, caused by the interruption or interference with irrigation water deliveries, amounting to millions of dollars. A detailed analysis of these issues must be conducted in order to properly assess the economic consequences of the project.

Additionally, with respect to the water resources component of the Environmental Assessment, no consideration has been made of the authority for the Bureau of Reclamation to permit the retention of 28,700 acre-feet of water in Arrowrock Reservoir to maintain the minimum head which is suggested by the applicant. The applicant possesses no water permits issued by the Idaho Department of Water Resources for this storage right, and no pending applications for permit contemplates such usage. Accordingly, under Idaho state law, neither the applicant nor the Bureau of Reclamation would be entitled to utilize this stored water for the maintenance of the minimum pool level.

In this regard, the Assessment states:

> A minimum pool of 28,700 acre-feet would be provided in Arrowrock Reservoir; the minimum pool could be maintained in 43 out of 50 years (Bureau of Reclamation, 1985). To increase the head of the proposed Arrowrock power-plant, the applicant proposes to reduce the water surface elevation in Lucky Peak 5 feet below the normal summer elevation.

Environmental Assessment, August 29, 1986, p. 11.

This statement does not take into consideration the adverse

impacts that retention of this minimum pool in Arrowrock Reservoir would have upon the contract storage rights of Pioneer Irrigation Disrtrict and other contract storage users of the reservoir. Without a detailed analysis of these impacts, this statement is deficient.

The Assessment states:

> Environmental Impact and Recommendations: During the planned 5-year constructon period, project-related vehicles and onsite machinery would produce noise, dust, and exhaust emissions, and would cause minor delays to motorists in the vicinity. The proposed project, however, would not displace any residence or business establishment [sic], and would not adversely affect agricultural lands.

Environmental Assessment, August 29, 1986, p. 23.

The above discussion does not indicate that any evaluation has been conducted with regard to the modification of the operations of the reservoirs on the Boise River to accomodate the construction needs of the proposed project. The adverse impacts of these modifications could "adversely affect agricultural lands" by virtue of the reduction of irrigation storage water and interference with the delivery of that water to the agricultural lands of the Pioneer Irrigation District and other interested irrigation entitites which have storage rights in the three dams on the Boise River. Unless and until a thorough analysis of this potential impact is conducted, with full input from the potentially affected irrigation users, this conclusion of the Environmental Assessment is totally unfounded and insupportable.

III. CONCLUSION

The staff has failed to comply with its responsibilities under the National Environmental Protection Act, 42 U.S.C. Sections 4331, et seq. in that it has not conducted the requisite in depth analysis of the impact of this project, and the interrelated Lucky Peak project, Project No. 2832, on the human environment. The staff is in error in its conclusion that the project does not constitute a major federal action significantly affecting the quality of the human environment. (Environmental Assessment, p.29)

Accordingly, Pioneer respectfully moves for an order:

(1) Directing Staff to reopen the project No. 2832 proceeding and to prepare a new environmental impact statement for that project;

(2) Suspending all construction Activities on Project No. 2832 pending completion of a revised Environmental Impact Statement for that project, and completion of all ancilliary proceedings in that proceeding resulting from said revised Environmental Impact Statement;

(3) Directing Staff to prepare an Environmental Impact Statement and to conduct appropriate public hearings on said EIS in this Project No. 4656 proceeding; and

(4) Reopening the Lucky Peak, Project No. 2832 proceeding and consolidating that reopened proceeding with this Project No.

4656 proceeding in recognition of the essential interrelationship between these proposals.

Respectfully submitted,

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By William J. Kenney
William J. Kenney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document upon each person designated on the official service list compiled by the secretary in this proceeding.

DATED This 30th day of October, 1986.

William J. Kenney

William J. Kenney, Esquire

8. The Licensee shall provide the FERC Regional Engineer two copies of all correspondence between the Licensee and the Bureau of Reclamation. The FERC Regional Engineer shall not authorize construction of any project work until BR's written approval of construction plans and specifications has been received by the FERC Regional Engineer.

9. The Licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the Licensee shall file with the FERC Regional Engineer and Director, Division of Inspections, and the Regional Director, BR, one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

10. The Licensee, within 60 days from the issuance of license, shall contact the Regional Director, Bureau of Reclamation, Pacific Northwest Region, Boise, Idaho 83724, for the coordination of conditions.

Recreation Resources

The Pacific Northwest Regional Office of the National Park Service provided technical assistance comments on this project. The concerns expressed in those earlier comments have been addressed. However, mitigation and enhancement measures proposed are not entirely satisfactory.

Concerns remain in two general areas:

1. The road from Spring Shores to Arrowrock Dam will be used by construction vehicles as well as by recreationists. In addition to the congestion and damage that will result, the level of noise and dust at Spring Shores will detract from the quality of the recreation experience. The Army Corps of Engineers, in its letter included on page A17, also expressed concern regarding this road. Relocating the road would serve both mitigation and enhancement purposes. The congestion, danger, noise, and dust production at Spring Shores would be mitigated by road relocation, and recreation could be enhanced by abandoning this road segment and providing more parking space adjacent to the marina.

2. The marina at Spring Shores is operated by a concessionaire and owned by the Idaho Department of Parks and Recreation (IDPR). The mitigation proposed at this site appears satisfactory on paper, but how does it impact the operator or the owner? A 5-foot vertical drop in water elevation will result in over 30 feet of horizontal shoreline movement. (It is stated on page E-42 that "a 3/4-foot drop in the water level translates to the shoreline moving horizontally by about 5 1/4 feet at Spring Shores.") The proposed mitigation should be coordinated with the concessionaire and IDPR.

Cultural Resources

The license application indicates considerable initiative and commitment by the applicant in ensuring the protection and preservation of the 1914 steel truss bridge on Arrowrock Dam (a National Register property) and any other cultural resources that may

be present and affected by the project. It does not, however, reflect the full consultation that should take place under Title 36, Code of Federal Regulations, Part 800. While the State Historic Preservation Officer has commented on this project, there is no evidence that the Advisory Council on Historic Preservation has been consulted on the project's effect on the resource or on the mitigation plan. Such consultation was recommended to the Boise Project Board of Control in letters from the State Historic Preservation Office (SHPO) (February 18, 1983) and the Western Regional Office of the National Park Service (March 9, 1983) in an earlier phase of this project.

We agree with the statement made in the SHPO's letter dated June 18, 1984, that every effort should be made to retain the bridge. Whether the applicant chooses to retain the bridge, record it under HABS/HAER standards as proposed, or both, it will be necessary to secure the comments of the Council on the mitigation plan..

We believe the most expeditious route for the applicant to take is as follows: The license application should incorporate the basic mitigation plan, be transmitted to FERC, and then forwarded to the Council for comment prior to license approval by FERC. The comments of the Council should serve as a basis for this approval.

To the best of our knowledge, the applicant is not legally empowered to enter into a Section 106 memorandum of agreement with the SHPO and the Council, as is being proposed. In lieu of this, we can only suggest that the documentation reveal clearly what mitigation will be performed in connection with (1) the steel truss bridge across the dam and (2) the entire project. The applicant should consult with the SHPO about the need to survey the 15 miles of transmission line and the 5 miles of road improvements planned for construction. Any necessary archeological surveys should be conducted before the license application is submitted to FERC and the Council.

We think that any attempt to conclude either a memorandum of agreement or other type of formal agreement after the granting of a license, as proposed on page E-36, will be unsuccessful and a waste of time. Identification and evaluation of all cultural resources should be completed and any necessary mitigation agreed upon before license approval.

Sincerely,

Bruce Blanchard, Director
Environmental Project Review

cc: Mr. Fred E. Springer
Mr. Gerald Guentz

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WASHINGTON, D.C. 20426

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Department of Water Resources
Western Regional Office

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Boise, Idaho 83702

P-1656-000

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ENVIRONMENTAL ASSESSMENT
ARROWROCK DAM HYDROELECTRIC PROJECT

FERC NO. 4656-002

Idaho

Division of Environmental Analysis
Office of Hydropower Licensing
Federal Energy Regulatory Commission
825 N. Capitol Street, NE
Washington, D.C. 20426

August 29, 1986

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ATTACHMENTS

1. Letter from the Forest Service containing 4(e) conditions.
2. Letter from the Department of the Interior containing 4(e) conditions.

ENVIRONMENTAL ASSESSMENT
DIVISION OF ENVIRONMENTAL ANALYSIS, OFFICE OF HYDROPOWER LICENSING
FEDERAL ENERGY REGULATORY COMMISSION

Arrowrock Dam Hydroelectric Project
FERC No. 4656-002--Idaho

August 29, 1986

I. APPLICATION

On July 27, 1984, Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District (applicant) filed an application for a major license for the Arrowrock Dam Hydroelectric Project. The application was supplemented on March 14; and September 12, 1985, and on May 27, 1986.

The proposed project would be developed at Arrowrock Dam, an existing Bureau of Reclamation (BR) dam on the Boise River. The proposed project would be located in Elmore, Boise, and Ada Counties, Idaho, approximately 12 miles east of Boise, Idaho (figure 1). The project would occupy about 150 acres. This area would include: about 23 acres within the Boise National Forest, administered by the Forest Service (FS); about 24 acres, administered by the Department of the Army, Walla Walla District Corps of Engineers (Corps); and about 14 acres, administered by the Bureau of Land Management (BLM). Arrowrock Dam is 48 miles downstream of BR's Anderson Ranch Reservoir, on the South Fork of the Boise River, and is immediately upstream of Lucky Peak Lake, a reservoir impounded by the Corps' Lucky Peak Dam.

II. RESOURCE DEVELOPMENT

A. Purpose

The proposed project would generate an estimated annual average of 167.6 gigawatthours (GWh) of electrical energy. The applicant proposes to sell the power to one of the public utilities in the Northwest region.

B. Need for Power

Available data show that growth in the demand for electric power and energy will continue. Given load growth and an existing generating resource base, a need for additional generating resources can be projected to exist in the future for any power system. Additional resources would have to be obtained for any system at some time in order to meet projected additional load requirements with the same degree of reliability required by an existing criterion for the system. The timing of the need would vary in different systems, depending upon such factors as the rates of load growth, the load

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characteristics, the available existing power resources, and the reliability criteria established for each system. A power-generating facility may be added to a system before a generating resource deficit exists, if, over its operating life, the additional generation provides benefits that would not be available through operation of the system without the addition.

The proposed project is located in the Northwest Power Planning Council (NPPC) area, within the Northwest Power Pool (NWPP) of the Western Systems Coordination Council (WSCC) region. The NPPC, in its 1986 Northwest Conservation and Electric Power Plan, projects a northwest regional need for additional power resources by 1992, based on a medium-high load growth rate forecast (2.0 percent per year), and by 1996 based on a medium-low load growth rate forecast (1.3 percent per year). The 1986 forecasts of the Bonneville Power Administration (BPA) and the Pacific Northwest Utilities Conference Committee (PNUCC) show northwest regional energy deficits for mid-range load forecasts beginning in 1994 and 1993, respectively. Individual systems within the northwest region also indicate resource deficits will exist on their systems before northwest regional deficits occur.

Because of the small size of the proposed project in relation to the existing and projected generating capabability in the NPPC area, the traditional approach of linking project development with a forecasted need for a specific project is inapplicable to assessing a need for the proposed project.

The small size of the project in relation to existing and projected generating capability ensures that the power from the project would be integrated into the existing generating resource base without the temporary overbuilding commonly associated with bringing large power projects on-line (becoming commercially operational). Moreover, in accordance with the Federal Power Act, the schedule for the project can be made to accommodate uncertain market conditions to some extent by the licensee's delaying the beginning of construction as much as 4 years after the license is issued.

The power from the project would be useful in meeting a small part of the need for power projected by the NPPC for the northwest region. From the time the project goes on-line, it will be available to displace fossil-fueled power generation in the WSCC region, thereby conserving nonrenewable fossil fuels and reducing the emission of noxious byproducts caused by the combustion of fossil fuels.

C. Economic Analysis

The applicant proposes to sell the power generated to a public utility in the Pacific northwest region. Based on the cost of generating an equivalent amount of power from a generic, coal-fueled stream-electric plant constructed in the Pacific northwest, the project would be economically feasible. The net annual benefit is estimated at about 5.5 mills per kilowatthour, or $866,000.

D. Comprehensive Development

The project's two 30-megawatt (MW) units would have a hydraulic capacity of 2,735 cubic feet per second (cfs) each. The project would develop a head ranging from 97 feet to 186 feet. The discharge at Arrowrock dam would exceed the hydraulic capacity of the proposed units about 10 percent of the time.

The applicant estimates that the project would generate about 167.6 GWh annually, if the 5-foot drawdown of Lucky Peak Lake is allowed. The staff finds this estimate of annual generation reasonable.

The Commission's 1967 planning status report for the Upper Snake River Basin, addresses the existing water resource developments and possible future development within the basin (Federal Power Commission, 1967). The project does not conflict with any existing or planned development or with any pending applications for exemption, license, or preliminary permit.

In summary, the staff's analysis shows that the proposed project would properly develop the hydropower potential of Arrowrock Dam.

III. PROPOSED PROJECT AND ALTERNATIVES

A. Proposed Project

1. Project Description

The proposed project would consist of (1) two 13-foot-diameter, 180-foot-long penstocks with steel trashracks; (2) a 70-foot-wide, 120-foot-long, 130-foot-high powerhouse, located on the south side of the Boise River channel, immediately downstream of Arrowrock Dam; (3) two 30-MW generating units operating under a head of 149 feet; (4) a 90-foot-wide, 50-foot-long tailrace, discharging over a concrete-capped weir into the Corps' Lucky Peak Lake; (5) a switchyard and transformer located next to the powerhouse; and (6) a 15.2 mile-long, 138-kilovolt (kV) transmission line connecting to Idaho Power Company's existing Boise Bench substation (figure 2).

The applicant's proposed project operation would be incidental to BR's reservoir operations; however, the applicant proposes two changes in the operation of the reservoir to increase project efficiency. First, the applicant would modify releases from Arrowrock Dam to produce power in a pattern more closely matching the hourly changes in need for power. Instead of making steady releases of water from Arrowrock Reservoir into Lucky Peak Lake, releases through the power plant would be varied daily, as needed, over a 24-hour-long period, to coincide with daily peaks in electrical demand. The applicant refers to this operating regime as "shaping" the releases, but it could also be characterized as peaking.

Second, the applicant would hold some water in Arrowrock Reservoir rather than in Lucky Peak Lake. Under this proposal, Lucky Peak

Lake would be filled to the normal full-pool level surface elevation of 3,055 feet, as under current operation. Lucky Peak Lake would then be drawn down 5 feet (to elevation 3,050 feet) and maintained at that elevation for recreational use as long as the available water supply or other conditions permit. In most years, a 5-foot reduction in the full-pool level of Lucky Peak Lake (from 3,055 to 3050 feet) would occur from mid-July to early-September.

2. Proposed Mitigative Measures

The applicant proposes several measures to minimize project-induced erosion and sedimentation and to stabilize slopes. Open excavations, trenches and similar areas would be protected with barriers, berms (dikes), waterproof coverings, or other measures to prevent excessive erosion of disturbed areas and excavated materials. Stockpiles would be covered with polyethylene sheets or other waterproof coverings and berms or drainage trenches would be constructed around the stockpiles to prevent erosion at the base. Drainage ways at construction sites would be temporarily diverted around the sites. Erosion and sediment-control structures would be moved from the construction area, the site restored to its original condition, and the area revegetated. Some permanent slopes cut in basalt and unweathered granite would be protected with rock bolts and screening.

The applicant's proposal to minimize erosion and sedimentation would protect water quality in Arrowrock Reservoir and Lucky Peak Lake. The applicant also would monitor dissolved oxygen (DO) levels in the releases from Arrowrock Reservoir and in Lucky Peak Lake.

To compensate for the increased fish mortality that would be caused by operation of the proposed project, the applicant would provide $12,000 dollars annually to the Idaho Department of Fish and Game (IDFG) to produce rainbow trout and kokanee for planting in the two reservoirs. The applicant would minimize long-term effects on vegetative communities and wildlife by revegetating disturbed areas with grasses, forbs, and shrubs. The proposed transmission line would be designed and constructed to minimize electrocution and collision hazards to raptors.

The applicant proposes to mitigate impacts to recreation caused by the seasonal drawdown and daily fluctuations of Lucky Peak Lake. The proposed mitigation at Lucky Peak Lake would include: (1) adding 18 new dock segments at the Spring Shores Marina; (2) adding 280 dock segments elsewhere on Lucky Peak Lake, chiefly at the dispersed shelter sites; (3) modifying the Robie Creek Picnic Area to maintain existing swimming and wading opportunities; (4) extending the Robie Creek boat ramp; (5) excavating the boating channels at Chimney Rock Recreation Area to maintain boating access; and (6) installing permanent irrigation facilities to maintain trees, shrubs,

and grass areas around the lake. As an enhancement measure, the applicant proposes to enlarge the existing Barclay Bay boat ramp and to provide addition parking, consisting of 28 pull-through car-trailer spaces.

To mitigate adverse physical and visual effects of the project on the historical integrity of Arrowrock Dam, a site listed on the National Register of Historic Places, the applicant proposes to (1) document the historical significance of the dam with photographs, drawings, and a narrative, in accorance with the standards of the Historic American Engineering Record (HAER) of the Department of the Interior; (2) construct an interperative exhibit overlooking the dam, to describe the historical significance of this structure to the public; and (3) construct project features so as to be compatible with the historical appearance of the dam (letter from Gerald Guentz, Chairman, Bosie Project Board of Control, Bosie, Idaho, January 9, 1985).

B. Federal Land Management Conditions

FS and the Department of the Interior (Interior) provided 4(e) conditions in letters dated November 6, 1985, and November 14, 1985, respectively (attachments 1 and 2).

In summary the FS conditions require the licensee to:

(1) file with the Director of the Office of Hydropower Licensing (Director) a special-use authorization, approved and enforceable by FS;

(2) annually file with the Director a report containing any recommendation for needed measures to protect and to develop the natural resource values of the project area, after consultation with FS;

(3) file with the Director a fish and wildlife habitat mitigative plan, approved by FS, before any land-disturbing activities;

(4) file with the Director a plan, approved by FS, for accommodating project-induced recreation;

(5) file with the Director a plan, approved by FS, for the operation and maintenance of Arrowrock Reservoir.

(6) file with the Director a plan, approved by FS, for the control of erosion, sedimentation, dust, and soil mass movement;

(7) file with the Director a plan, approved by FS, for the treatment and disposal of solid waste and wastewater resulting from project construction and operation;

(8) file with the Director a plan, approved by FS, for the storage, spill prevention, and clean-up of oil and hazardous substances;

(9) file with the Director a plan, approved by FS, for the storage and disposal of excess construction spoil and slide material;

(10) file with the Director a plan, approved by FS, for the protection of archeological and cultural resources;

(11) file with the Director a plan, approved by FS, for the design and construction of project facilities that would preserve or enhance the visual character of the area;

(12) consult and cooperate with FS before making any changes in the location of project features, any changes in the uses of project lands and waters, or any divergence from any approved exhibits, about measures needed to protect and to develop the natural resource values of the area that could be affected by such changes or divergence;

(13) refrain from the use of pesticides or herbicides on National Forest System lands without prior written approval of FS;

(14) file with the Director a plan, approved by the FS, for the design and construction of the project transmission line, including measures to mitigate environmental impacts;

(15) file with the Director a plan, approved by FS, for a survey and a mitigative plan for sensitive, threatened, and endangered species within the project area; and

(16) file with the Director an engineering design plan approved by FS for road improvements that occur on FS lands.

Interior's conditions, in summary, require the licensee to coordinate construction activities with BR and to enter into an agreement with BR on operation and maintenance, at least 60 days before operating the project. Interior conditions also requires the licensee to revegetate all newly disturbed areas with plant species native to the project area within 6 months of completing project construction.

C. Alternatives to the Proposed Project

1. Alternative Projects

The applicant is not an electric utility, so the alternative is not to construct the project. If the proposed project is not constructed, the power that would have been developed eventually would be provided by nonrenewable fuels. It is presumed that projects that would use nonpassive renewable resources other than hydropower, such as wind, biomass, or solar photovoltaic power generation, will be installed when they become commercially and economically feasible. Whether the proposed project is built or not, the installation of projects that would use passive renuwable resources, such as solar water or space heating will continue, and conservation efforts will continue, until the market is saturated or until these installations become uneconomical.

2. Atlternative Project Operation

An alternative operating plan for the Arrowrock Dam Project would restrict power generation to those releases incidential to the existing Arrowrock Reservoir operations, with no special provisions for power production. Under this alternative plan, the daily "shaping" of releases from Arrowrock Reservoir and the 5-foot drawdown of Lucky Peak Lake would not be allowed. Annual generation would be reduced from 167.6 GWh to 156.7 GWh.

D. Alternative of No Action

No action would prohibit the applicant from constructing the project. Under this alternative there would be no construction, no alteration of the existing environment, and no use of the potential hydropower that could be derived from the project.

IV. CONSULTATION AND COMPLIANCE

A. Agency Consultation

Commission regulations require prospective applicants to consult with the appropriate resource agencies before filing an application for license. This consultation constitutes an initial step in compliance with the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, and other federal statutes. Prefiling consultation must be complete and documented in accordance with the Commission's regulations.

After the Commission accepts the application, formal comments may be submitted by concerned entities during the public notice period. In addition, organizations and individuals may petition to intervene and to become a party to any subsequent proceedings. The comments provided by concerned entities are made part of the record and are considered during the review of the proposed project. After a public notice of the application was issued on July 25, 1985, the following entities commented on the application.

Commenting entity	Date of letter
Department of the Army, Walla Walla District Corps of Engineers	September 6, 1985
Idaho Department of Parks and Recreation (IDPR)	September 13, 1985
FS	November 6, 1985
Interior	November 14, 1985

Department of the Army, North Pacific Division Corps of Engineers — November 15, 1985

The applicant responded to the agency comments in a letter dated January 15, 1986.

Intervenors	Date of motion to intervene
Idaho Department of Water Resources (IDWR)	September 23, 1985
IDPR	September 23, 1985
IDFG	October 1, 1985

B. Water Quality Certification

On December 11, 1984, the Idaho Department of Health and Welfare granted the applicant a water quality certificate, as authorized under Section 401 of the Clean Water Act.

C. Pacific Northwest Power Planning and Conservation Act

Under Section 4(h) of the Pacific Northwest Power Planning and Conservation Act (Act), the Council developed the Columbia River Basin Fish and Wildlife Program (Program) to protect, mitigate, and enhance fish and wildlife resources associated with development and operation of hydroelectric projects within the Columbia River Basin (Basin). Section 4(h) states that responsible federal agencies should provide equitable treatment for fish and wildlife resources in addition to the other purposes for which hydropower is developed. Section 4(h) further states that these agencies shall take into account, to the fullest extent practicable, the Program adopted under the Act.

The Program directs agencies to consult with federal and state fish and wildlife agencies, appropriate Indian tribes, and the Council during the study, design, construction, and operation of any hydroelectric development in the Basin. At the time the application was filed, the Commission's regulations required applicants to initiate prefiling consultation with the appropriate federal and state fish and wildlife agencies and tribes and to provided postfiling opportunities to review and to comment on the application. This consultation process has occurred.

The Program states that authorization for new hydroelectric projects should include conditions of development that would mitigate the impacts of the project on fish and wildlife resources. The relevant federal and state fish and wildlife agencies have reviewed and commented on the application. In addition, any license issued could provide for mitigative measures to protect fish and wildlife resources and would therefore be consistent with Section 1200 of the Program. Further, any condition of a license could reserve to the Commission the authority to require future alterations in project structures and operation in order to take into account, to the fullest extent practicable, the applicable provisions of the Program.

V. ENVIRONMENTAL ANALYSIS

A. Proposed Project

1. General Description of the Locale

Arrowrock Reservoir and Lucky Peak Lake are located on the Boise River, at the southern edge of the Sawtooth Mountain Range. The surrounding mountains range in elevation from 5,000 to 6,000 feet. The Boise River Canyon is relatively steep-walled, with nearly vertical cliffs bordering the reservoirs in some areas. Numerous deep, V-shaped draws have been cut into the mountains bordering the reservoirs. The climate is generally semi-arid, with warm summers, moderately cold winters, and average annual precipitation that varys between 11 to 15 inches at Boise and up to 20 inches at Arrowrock Dam. July, August, and September are the driest months, and November, December, and January usually are the wettest. The area surrounding Arrowrock Dam is sparsely populated, although, the lower Boise River Valley, which includes the City of Boise, contains the largest concentration of people in the state.

2. Geology and Soils

Affected Environment: Arrowrock Dam is constructed on granite bedrock that underlies the project area. The proposed powerhouse would be built on a basalt bench that extends along the south side of the Boise River Canyon. The basalt rises from 50 to 80 feet above the underlying granite. Most of the basalt formation is hard to very hard and varies from dense to vesicular (containing cavities) to locally very vesicular. The basalt has columnar jointing, and typically erodes in large block fragments.

Much of the area below Arrowrock Dam is covered by a variable layer of overburden material, consisting of alluvium, spoil from construction of the dam, and slope wash from the weathering of the underlying granite bedrock. The proposed powerplant access road and proposed road improvements would be on slope wash characterized as silty or silty sand. The slope wash material in fresh cuts would be subject to moderate erosion and ravelling (loosening) by rainfall.

Environmental Impacts and Recommendations: Construction of the proposed project would increases erosion, turbidity, sedimentation, and slope instability during land-clearing and ground-disturbing activities, such as access road improvements, powerhouse and powerline construction and other excavation and spoil-producing activities.

FS provided conditions that would adequately protect geologic and soil resources from any land-clearing and ground-disturbing activities on FS lands.

To protect the soil and geologic resources on state lands, other federally administered lands, and private land affected by the

proposed development of the access roads and transmission line, the licensee, before starting any land-clearing or ground-disturbing activities, should file with the Commission a plan to control the erosion, turbidity, sedimentation, and slope instability that would result from project construction.

Unavoidable Adverse Impacts: Short-term increases in erosion, sedimentation, and turbidity would be unavoidable during project construction.

Water Resources

Affected Environment: Flows of the Boise River at Arrowrock Dam for the period from 1928 to 1971 averaged approximately 1.75 million acre-feet annually, ranging from less than 1 million acre-feet to more than 3 million acre-feet per year. Average monthly discharge over the 50-year period was 2,400 cubic feet per second (cfs), with a range between 0 cfs during the winter and about 11,700 cfs in May. Natural high flows from snowmelt runoff in the drainage basin occur in May and June, and low flows occur from August through February. At full pool, the surface area of Arrowrock Reservoir is 3,100 acres.

Much of the Boise River system is regulated by reservoirs. The operation of Anderson Ranch Dam, a BR facility approximately 48 miles upstream from Arrowrock Dam, has modified the flow regime of the South Fork Boise River upstream of Arrowrock Reservoir. Anderson Ranch Reservoir is operated for power production, irrigation, and flood control. Water withdrawn from Arrowrock Reservoir is released into the upper end of Lucky Peak Lake, which the Corps regulates for flood control and irrigation. The active storage capacity of Arrowrock Reservoir is entirely allocated to irrigation, and the reservoir is drawn down before Anderson Ranch Reservoir and Lucky Peak Lake are lowered to meet irrigation demands. During dry years, Arrowrock Reservoir has been almost completely emptied.

The water quality in Arrowrock Reservoir and Lucky Peak Lake is generally good. In Arrowrock Reservoir, the following ranges for water quality variables have been recorded: conductivity from 31 to 75 micromhos per centimeter; pH from 6.0 to 8.1; nitrate nitrogen from 0.03 to 0.15 milligrams per liter (mg/l); and dissolved orthophosphate from 0.002 to 0.023 mg/l as phosphorous. In Lucky Peak Lake, conductivity measurements have ranged from 45 to 67 micromhos per centimeter; pH has ranged from 7.2 to 7.6; dissolved nitrite plus nitrate has been measured at 0.1 mg/l; and dissolved orthophosphate has ranged from 0.001 to 0.007 mg/l as phosphorus.

There is weak temperature stratification in Arrowrock Reservoir during the summer. A water temperature profile taken in Arrowrock Reservoir on July 26, 1982, showed a surface water temperature of 22 degrees celsius (^{o}C) and a 9 ^{o}C temperature at 210 feet, with the majority of the profile less than 12 ^{o}C.

There is some oxygen depletion in Arrowrock Reservoir, especially during low-flow years. In July 1981, concentrations of DO were 4.5 mg/l at 26 feet and 4.2 mg/l (approximately 53 percent of saturation) at 224 feet. In July 1983, the lowest DO concentration measured was 7.6 mg/l at a depth of 213 feet. The applicant would withdraw water for use in the proposed powerplant from higher than 100 feet above the reservoir bottom, where DO concentrations are generally higher than near the substrate.

Environmental Impacts and Recommendations: The proposed installation and removal of a coffer dam would disturb the sediments on the reservoir bottom and along the shoreline of Lucky Peak Lake, and this would cause short-term increases in turbidity and sedimentation in Lucky Peak Lake.

The applicant propose to minimize the construction-induced degradation of water quality by using appropriate erosion and sediment control measures during project construction.

The licensee, after consultation with the IDWR, the Idaho Department of Lands, the Corps, and the BR, should prepare a sediment and erosion control plan that includes site-specific measures to prohibit contamination of water by dredge spoils and to minimize erosion and the deposition of sediment into Arrowrock Reservoir and Lucky Peak Lake.

The applicant would operate the proposed project using the release schedule of Arrowrock Dam. The potential exists for power peaking, and much of the power production would take place during the summer period of peak power demand. The proposed "shaping" of releases from Arrowrock Reservoir to produce power in a pattern more closely matching the hourly changes in the need for power would cause more frequent fluctuations in discharge, but these fluctuations would produce a maximum change in the pool elevation of Lucky Peak Lake of only three-fourths of a foot during the spring and summer and a maximum daily fluctuation of 1 foot during fall and winter.

A minimum pool of 28,700 acre-feet would be provided in Arrowrock Reservoir; the minimum pool could be maintained in 43 out of 50 years (Bureau of Reclamation, 1985). To increase the head for the proposed Arrowrock powerplant, the applicant proposes to reduce the water surface elevation in Lucky Peak Lake 5 feet below the normal summer elevation.

At present, releases from Arrowrock Reservoir are reaerated as they fall into Lucky Peak Lake. Project operation would eliminate the aeration afforded by the 50-foot plunge of water. After the addition of a powerplant, releases would enter below the surface of Lucky Peak Lake. This change could result in the release of water containing less than the state standard of 5 mg/l of DO (based on

DO profiles in Arrowrock Reservoir). With the proposed powerplant in operation, there would also be less mixing of releases from Arrowrock Reservoir with water in Lucky Peak Lake.

Under the applicant's proposed operating schedule, more water would be retained in Arrowrock Reservoir until later in the summer, and the minimum pool elevation would be substantially higher than under the present operation; the longer water retention time would permit the formation of a more stable water column and more permanent and marked stratification. There would be lower DO concentrations within the hypolimnion than under present operating conditions.

The addition of the proposed powerplant and the proposed changes in operation of Arrowrock Dam could lower DO concentrations in water released from Arrowrock Reservoir and downstream in Lucky Peak Lake. BR used a model (Johnson, 1975) for predicting gas transfer in hydraulic structures to predict DO concentrations in releases from owrock Dam with the proposed powerplant in operation and also to dict DO levels in Lucky Peak Lake (Bureau of Reclamation, 1985). Their analysis was based on a very limited number of DO profiles. BR predicted that DO concentrations in Lucky Peak Lake would be 1 mg/l lower with the proposed power releases than under existing operations. BR concluded that simulated DO concentrations downstream of the zone, where mixing of powerplant releases with Lucky Peak Lake water occurs, would remain above 6.0 mg/l during the critical summer period.

IDWR (letter from A. Kenneth Dunn, Director, Idaho Department of Water Resources, Boise, Idaho, March 9, 1983), states that discharges from the proposed powerplant should contain at least 6.0 mg/l of DO in order to maintain the existing fishery in Lucky Peak Lake. The applicant has agreed to monitor DO concentrations in the proposed penstocks and downstream from the zone where mixing with water in Lucky Peak Lake occurs.

The licensee should develop a plan for use if DO concentrations in the reservoir releases fall below concentrations required to maintain the existing fishery in Lucky Peak Lake. Davis (1975) recommended that DO levels be maintained at 6.0 mg/l, because prolonged exposure to concentrations less than this level presents a degree of risk to freshwater salmonids. Should DO concentrations drop below levels needed to maintain the salmonid fishery, the licensee uld immediately institute appropriate procedures, including lling water from the present outlet structures or shutting down the project.

Unavoidable Adverse Impacts: Construction of the powerhouse and roads would cause short-term increases in suspended and dissolved solids and turbidity and would have a temporary adverse effect on water quality in Lucky Peak Lake. As a result of increased flow fluctuations for power peaking, shoreline erosion and turbidity

would increase in both reservoirs. Operation of the project would eliminate the aeration at the present outlet structures and would reduce the DO concentrations in Lucky Peak Lake.

4. Fish Resources

Affected Environment: Under current operating procedures, both Arrowrock Reservoir and Lucky Peak Lake provide fair to good habitat for coldwater fish. When the reservoirs are full, the physical habitat is varied and provides adequate shelter, but space becomes a limiting factor for fish populations as the reservoirs are drawn down. Annual drawdowns limit fish food production, and productivity of phytoplankton and aquatic insects is low. Both reservoirs have abundant rough fish populations; the sport fishery has depended primarily on hatchery stocking on a put-and-take basis (Casey et al., 1968).

No recent population surveys have been conducted in either reservoir, but in in the mid-1960's, it was found that large-scale sucker (Catostomus macrocheilus), bridgelip sucker (C. columbianus), and northern squawfish (Ptychocheilus oregonensis) comprised the largest percentage of the biomass (Casey et al., 1968); redside shiners (Richardsonius balteatus) are considered to be the most abundant species (Bureau of Reclamation, 1985). Squawfish are much less prevalent in Arrowrock Reservoir than in Lucky Peak Lake (Heiser, 1966), probably because rapid drawdowns have occurred frequently in Arrowrock Reservoir during the squawfish spawning period from late May to July (Scott and Crossman, 1973).

Game fish in Arrowrock Reservoir and Lucky Peak Lake include rainbow trout (Salmo gairdneri), bull trout (Salvelinus confluentus), cut-throat trout (Salmo clarki), kokanee (Oncorhynchus nerka), mountain whitefish (Prosopium williamsoni), and yellow perch (Perca flavescens). IDFG annually stocks from 10,000 to 20,000 catchable-size rainbow trout in Arrowrock Reservoir. Rainbow trout reproduce naturally in the tributaries of Arrowrock Reservoir, and it is estimated that about half the population in Arrowrock Reservoir consists of wild fish. Some kokanee spawning also occurs, but most kokanee in Arrowrock Reservoir are introduced from Anderson Ranch reservoir through the South Fork of the Boise River. In Lucky Peak Lake, 50,000 catchable rainbow trout are stocked annually; kokanee and smallmouth bass (Micropterus dolomieui) have also been introduced by IDFG. There is little natural reproduction of trout in Lucky Peak Lake because of generally unfavorable spawning conditions in the tributary streams.

Environmental Impacts and Recommendations: Raising summer surface elevations in Arrowrock Reservoir and establishing a minimum surface elevation would have a positive effect on the production of phytoplankton, macroinvertebrates, and fish. The higher pool elevation in Arrowrock Reservoir would increase the survivability of fish through increased space and increased food production. Higher water

levels in Arrowrock Reservoir would increase the areas for fish spawning in tributary streams (Bureau of Reclamation, 1985). An increase in the area suitable for shoreline spawning might allow the introduction into Arrowrock Reservoir of game fish species such as smallmouth bass, which have been successfully introduced into Lucky Peak Lake.

The proposed project operation may change the population levels of squawfish. Under the proposed mode of operation, higher water levels in Arrowrock Reservoir during early summer would allow the spawning of more squawfish, while lower summer water elevations in Lucky Peak Lake might reduce the spawning habitat for squawfish in that reservoir. Squawfish recruitment in Lucky Peak Lake has been high as a result of relatively stable water levels during the summer months (Webb, 1964); the rapid drawdown in Arrowrock Reservoir has frequently occurred during the squawfish spawning period, stranding eggs and fry (Casey et al., 1968). The reduction of lake levels has been used as a control for squawfish (Scott and Crossman, 1973). Juvenile northern squawfish compete with salmon and trout for the same food supply, and larger squawfish eat the young of salmon and trout (Scott and Crossman, 1973). Studies on fish food habits in Lucky Peak Lake have indicated that food may be limiting and that squawfish compete with trout for limited supplies of zooplankton (Casey et al., 1968).

Rotenone treatments (fish poison) have been used along 25 miles of shoreline in Anderson Ranch Reservoir to kill emergent squawfish fry (Idaho Fish and Game Department, 1966). Smallmouth bass, recently introduced into Idaho reservoirs, are an effective biological control against squawfish (personal communication, Al Van Vooren, Fisheries Biologist, Idaho Department of Fish and Game, Boise, Idaho, July 9, 1986). If squawfish population levels increase as a result of the increased surface elevation, chemical or biological control treatment programs may be necessary in Arrowrock Reservoir.

The licensee should monitor the squawfish population in Arrowrock Reservoir, and if the squawfish population increases to levels detrimental to the trout population, develop a plan to control squawfish.

Arrowrock Reservoir would continue to be drawn down annually for irrigation and flood control, and some fish would pass from Arrowrock Reservoir to Lucky Peak Lake. The proposed maintenance of Arrowrock Reservoir elevations at higher levels than at present (a minimum pool of 28,700 acre-feet is proposed) would reduce the numbers of fish that are flushed from Arrowrock Reservoir into Lucky Peak Lake. Tagging studies done in 1967 showed that most tagged fish that had been planted in Arrowrock Reservoir were recovered in Lucky Peak Lake from September through March, after Arrowrock Reservoir had been drawn down to approximately 500 acre-feet; from May through August, when the reservoir elevation was higher, few

tagged fish from Arrowrock Reservoir were collected in Lucky Peak Lake (Casey, et al. 1968).

The proposed operation of the powerplant without fish screens on the intakes would allow fish to pass through the turbines. It is likely that a substantial percentage of the fish that would pass through the turbines would be killed or injured (Bureau of Reclamation, 1985). The amount of turbine mortality would be higher when the reservoir elevation is lower. At minimum power head, the surface of Arrowrock Reservoir would be about 40 feet above the top of the penstock intakes. A simulation study based on water levels over a 50-year-long period from 1928 through 1977 showed that the powerplant would be operating at the lower water levels, from 40 to 70 feet above the penstock intakes, at some time during 31 years of the 50-year license period, most commonly during September and December (Bureau of Reclamation, 1975).

The U. S. Fish and Wildlife Service (FWS) expresses concern that the extent of the loss of fish through the project turbines has been underestimated (Boise-Kuna Irrigation District et al., 1984). FWS makes the point that with the proposed Arrowrock Reservoir at higher minimum pool levels, the fish population could be increased and losses through the turbines could be significant.

To compensate for the fish mortality that would be caused by operation of the proposed power facilities, the applicant has agreed to provide IDFG with $12,000 annually. This compensation fee would be used to produce rainbow trout and kokanee for planting in Arrowrock Reservoir and Lucky Peak Lake.

Turbine injury and mortality during project operation could have a substantial adverse impact on the fish resource of Lucky Peak Lake and Arrowrock Reservoir. Schooling fish such as kokanee, which would occur at the depth of the intakes, would be more susceptible to being entrained in large numbers than trout. The number of fish that would be entrained at the intakes and subsequently pass through the turbines is difficult to accurately predict on a site specific basis prior to project operation. The licensee should, therefore, conduct, in cooperation with the appropriate resource agencies, a monitoring program to evaluate turbine injury and mortality to fish during project operation. Results of this monitoring program would provide the basis for implementing measures (e.g. screening the intakes and monetary compensation to IDFG) to minimize or offset losses.

Unavoidable Adverse Impacts: Increased sedimentation and turbidity would affect fish resources during construction of the project facilities. Reducing the water surface elevations in Lucky Peak Lake would reduce the fish habitat. Project operation would cause potentially high levels of entrainment and turbine mortality for several months during low water years.

5. Vegetation and Wildlife Resources

Affected Environment: A shrub-steppe community generally dominates the semi-arid slopes surrounding Arrowrock Reservoir and Lucky Peak Lake. Amoung the most common shrubs of this widespread vegetative community are big sagebrush (Artemsia tridentata), three-tip sagebrush (A. tripartita), antelope bitterbrush (Purshia tridentata), and rabbit brush (Chrysothamnus spp.). Common understory species include bluebunch wheatgrass (Apropyron spicatum), sandberg bluegrass (Poa sandbergii), Idaho fescue (Festuca idahoensis), arrowleaf balsamroot (Balsamorhiza sagittata), and phlox (Phlox spp.). Cheatgrass (Bromus tectorum) and annual forbs dominate areas where fires, heavy grazing, and other activities have disturbed native vegetation. At high elevations around Arrowrock Reservoir, the shrub-steppe makes a transition to coniferous forest.

Riparian communities in the project area are generally restricted to moist draws and to tributaries of Arrowrock Reservoir and Lucky Peak Lake. These areas support a shrubby growth of willows (Salix spp.), white alder (Alnus rhombifolia), elderberry (Sambucus spp.), and quaking aspen (Populus tremuloides), as well as sagebrush, antelope bitterbrush, and various grasses.

The generally undeveloped shrub-steppe and riparian communities in the project area support a variety of wildlife. Increasing commercial and residential development threatens wildlife populations near Lucky Peak Lake, but little such development occurs near Arrowrock Reservoir. The riparian zone downstream of Lucky Peak dam is especially important to wildlife (Boise Kuna Irrigation District et al., 1985).

Mule deer (Odocoileus hemionus) and elk (Cervus elaphus) are the big game species common to the project area. Black bear (Ursus americanus) and mountain lion (Felis concolor) also occur, but usually frequent higher elevations that those of the project area. Mule deer are part of the Boise River herd, which numbers between 13,000 and 18,000 animals and is probably the most important mule deer herd in Idaho. The mule deer are widely distributed over the area and concentrate at the lower elevations along the river in winter. The IDFG manages about 25,300 acres of winter habitat in the vicinity of Arrowrock Reservoir and Lucky Peak Lake. Elk in the area usually remain at higher elevations north of Arrowrock Reservoir during summer and move into the project area only during severe winters.

Popular upland game species of the Boise River Basin are chukar (Alectoris chukar), gray (Hungarian) partridge (Perdix perdix), California quail (Callipepla californica), mountain quail (Oreortyx pictus), and mourning dove (Zenaida macroura). Important waterfowl habitat exist further downriver near Boise, but few waterfowl use Arrowrock Reservoir or Lucky Peak Lake. A variety of raptors

occur in the project area. Species breeding in the area include the prairie falcon (Falco mexicanus), red-tailed hawk (Buteo jamaicensis), and American kestrel (F. sparverius) The bald eagle (Haliaeetus leucocephalus) is the only federally listed endangered species that occurs in the vicinity of the proposed project. The eagle's use of the project area is limited to occasional hunting flights over Arrowrock Reservoir and Lucky Peak Lake.

Environmental Impacts and Recommendations: Constructing the powerhouse and switchyard would have little impact on vegetation, because the site is almost devoid of vegetation. Constructing the proposed 15.2-mile-long transmission line, however, could disturb up to 147 acres of shrub-steppe, if all the 80-foot-wide right-of-way is affected. Additional small areas of shrub-steppe would be disturbed along the 5-mile-long road from Spring Shores Marina to Arrowrock Dam that the applicant proposes to improve. Of the nearly 150 acres that would be disturbed during construction, less than 5 acres of shrub-steppe would be needed for permanent project facilities.

FS requires that the licensee develop a wildlife mitigative plan for FS lands. Interior requires that all newly disturbed areas be revegetated with plant species native to the area. The applicant proposes to revegetate all temporarily disturbed areas with a mixture of grasses, forbs, and shrubs that occurs naturally in the project area. Revegetation of disturbed areas would mitigate long-term impacts to vegetative communities and wildlife. The licensee should develop a plan to revegetate distrubed areas with a mixture of plant species beneficial to wildlife.

Increased noise and human presence at Arrowrock dam and along the access road during construction may cause wildlife sensitive to human intrusion to avoid the construction area. This interference with wildlife's use of the area would be temporary and minor.

FWS states that no listed or proposed threatened or endangered species would be affected by the proposed project (letter from James F. Gore, Acting Field Supervisor, U.S. Fish and Wildlife Service, Boise, Idaho, April 6, 1983.

Unavoidable Adverse Impacts: About 150 acres of shrub-steppe would be disturbed during project construction. Less than 5 acres would be required for permanent project facilities. Increased noise and human presence would disturb wildlife during construction.

6. Visual Resources

Affected Environment: The proposed project area has a natural character and a high visual quality, which result from a variety of land, water, and vegetative features, including canyons, deep gorges, high hills, small forested areas, brushy draws, large, open areas of sagebrush grassland, cascading rapids, and slow

moving water. Partly because of its high visual quality, the area has a high volume of recreational use.

Environmental Impacts and Recommendations: The Corps states that a 5-foot drawdown in Lucky Peak Lake during project operation would have a significant adverse visual impact, and that this impact should be evaluated and mitigated. IDPR states that the overall affect of the proposed project would decrease the area's attractiveness and would cause a negative aesthetic impact.

The applicant proposed landscaping and revegetation wherever possible. The applicant states, however, that the 5-foot drawdown and the associated open space between the waters edge and the mean high water line would cause a minor, adverse effect that could not be mitigated. According to the applicant, the adverse effect would not reduce the overall recreational experience of area users.

The proposed project facilities would add to the development in the area and would have a minor, adverse impact on the visual resource. The 5-foot drawdown in Lucky Peak reservoir would diminish the visual quality of the present shoreline by exposing a 30-foot-wide shoreline of light colored sandy soil, vegetation, and in some areas, forest debris and tree stumps. Mitigation may be possible in some areas that are often seen by recreational users in the area.

The licensee should provide a plan to maintain visual quality at an acceptable level in the area affected by the proposed project facilities, including the transmission line, access road, and powerhouse, by using appropriate building material, alignments, colors, and designs. The plan should also address the adverse impacts caused by the 5-foot drawdown, including the need for mitigation, and the kind of mitigation proposed, if any. The licensee should use a professional landscape architect to prepare the plan.

Unavoidable Adverse Impacts: The presence of men and machinery during construction would cause temporary, minor, adverse effects on the visual resource. During project operation, the presence of man-made structures and the exposed lake bottom caused by the 5-foot drawdown would have a minor, adverse impact on the visual resource of the area.

7. Cultural Resources

Affected Environment: The project has been surveyed for archeological and historic sites (Harrison, 1986). Four historic sites and one archeological site were inventoried that might be affected by the project. One historic site is Arrowrock Dam, a property listed on the National Register of Historic Places. The other sites are located near the proposed transmission line corridor, and include:

a wagon road that may be an alternate route of the Oregon Trail; the Mary Hallock Foote house; the Lytle Gulch prehistoric site; and an extensive area of historic placer mining activity. These sites are eligible or potentially eligible for inclusion in the National Register.

Environmental Impacts and Recommendations: Construction of project facilities at Arrowrock Dam would have an unavoidable adverse effect on the historical integrity of this structure. The facilities would physically alter historic features of the dam and would change the appearance of the structure (letter from Gerald Guentz, Chairman, Bosie Project Board of Control, Boise, Idaho, January 9, 1985). Impacts to the sites in the vicinity of the transmission line corridor could be avoided by constructing the transmission line along the proposed route with minor adjustments in the location of the line (Harrison, 1986).

The measures proposed by the applicant to record the significant features of Arrowrock Dam and to minimize visual impacts to this structure should be implemented in a manner satisfactory to the Idaho State Historic Preservation Officer (SHPO), BR, and HAER. The licensee should file with the Commission a report documenting these features, together with letters accepting the report from the SHPO, BR, and HAER, prior to any construction that would affect these features.

The licensee should prepare a cultural resources managment plan to avoid or mitigate any impacts to the archeological or historic sites identified in the vicinity of the transmission line corridor. The plan should be prepared in a manner satifactory to the SHPO, BR, and FS. As recommended by FS, the plan should be filed with the Commission and approved by the FS within 6 months after the date of issuance of any license for the project and at least 60 days before construction work begins (letter from J. S. Tixier, Regional Forester, Forest Service, Department of Agriculture, Ogden, Utah, November 6, 1985).

The staff is requesting comments from the Advisory Council on Historic Preservation concerning the project's impact on Arrowrock Dam.

Unavoidable Adverse Impacts: The project's effect on the historical integrity of Arrowrock Dam cannot be avoided.

8. Recreation and Other Land and Water Uses

Affected Environment: Arrowrock Reservoir provides a variety of recreational activities, including boating, fishing, camping, picnicking, hiking, hunting, and nature study. In 1981, approximately 25,000 people visited the reservoir. FS administers recreational facilities around the reservoir. Existing facilities include the Arrowrock boat launch, consisting of a 2-lane boat launch ramp, a 3-section dock, and toilet facilities; Irish

Point, a boating area and potential campground with existing toilet facilities; Cottonwood Creek campground, a 3-unit campground with a pit toilet; and Willow Creek campground, a 10-unit campground with toilet facilities and drinking water.

A narrow county road traverses the north side of Arrowrock Reservoir and the upper end of Lucky Peak Lake. This road provides access to Arrowrock Reservoir, but is presently in poor condition. Arrowrock Reservoir receives low levels of recreational use, compared with nearby reservoirs, because of steep terrain, reservoir drawdown, and the poor condition of the access road to the area. In addition, fish and wildlife agencies have not encouraged the building of boating access facilities, because the agencies are concerned that increased use of power boats would adversely affect fish and wildlife (Bureau of Reclamation, 1985).

Lucky Peak Lake, administered by the Corps, FS, and IDPR (under a lease agreement with the Corps), receives heavy recreational use. The lake, is 10 miles from Boise, Idaho, and offers opportunities for waterskiing, boating, fishing, swimming, and picnicking (ABT Associates, Inc., 1978). In 1981, the Corps reported a total use of 895,000 recreation-days (one visit per person during a reasonable portion of a 24-hour period). There are nine developed recreational areas at Lucky Peak Lake. The Spring Shores Marina provides mooring facilities for 280 boats and facilities for swimming, picnicking, and parking. The Robie Creek picnic area is a small day-use facility with a swimming and wading area and a boat launch ramp. Other recreational areas along the Lucky Peak shoreline are Chimney Rock, Mock's Creek, Barclay Bay, Tumer Point, Deer Flat, Placer Point, and Charcoal Creek. These areas have facilities for picnicking, boating access, swimming and fishing (Boise-Kuna Irrigation District, et al., 1984).

In addition to recreation, the land near Arrowrock Reservoir and Lucky Peak Lake is used for grazing, wildlife habitat management, flood control, irrigation, and hydropower. There is timber management around the reservoir and residential development on some of the private lands surrounding Lucky Peak Lake.

Environmental Impacts and Recommendations: Maintaining the proposed minimum pool at Arrowrock reservoir would enhance the resident fishery and improve fishing success. The improved visual quality of the reservoir that would result from maintaining the proposed minimum pool would also improve the quality of recreation in Arrowrock Reservoir (Bureau of Reclamation, 1985).

The 5-foot reduction in the pool level of Lucky Peak Lake during the summer would create uneven bottom surface conditions at the swimming area at the Robie Creek Picnic area, substantially limit boat access to the Chimney Rock area, reduce the efficiency of

existing irrigation systems around the lake, and interfere with the use of the Robie Creek boat ramp. Daily lake level fluctuations of up to 9 vertical inches would move the shoreline horizontally by 5 feet, reducing the dock space at Spring Shores Marina and other areas around Lucky Peak Lake.

To mitigate these impacts, the applicant proposes to: grade the beach at Robie Creek; widen and deepen channels in the boating zone at Chimney Rock; provide irrigation pumps to water vegetation around the lake; extend the Robie Creek boat ramp and parking area; enlarge the Barclay Bay boat launch ramp, and provide additional parking at the Barclay Bay boat ramp to accommodate 28 cars and trailers. IDPR, BR, and Corp generally concur with the applicant's proposed mitigative measures. The licensee, after further consultation with the Corps, IDPR, and BR, should carry out its proposed mitigative and enhancement measures.

The applicant also proposes to extend the docks at Spring Shores Marina and other docks around Lucky Peak Lake to mitigate impacts of the 5-foot drawdown and the daily fluctuation on the operation of the marina and other docks. The applicant, however, says that the Spring Shores Marina has been leased by a new concessionaire who proposes new development at the marina, but that plans for the development have not been completed. IDPR states that the impacts of the project on the new marina cannot be assessed until a final design is determined. IDPR, the Corps and Interior recommend that the applicant mitigate any effects of reservoir drawdown and fluctuations on the marina; the applicant agrees. The licensee, after consultation with IDPR, the Corps, BR, and the concessionaire, should provide the necessary measures to mitigate the impacts of project operation on the Spring Shores Marina and other boat docks at Luck Peak Lake.

IDPR, the Corps, and Interior recommend that the existing access road along the north side of Lucky Peak Lake and Arrowrock Reservoir be rerouted away from the Spring Shores Marina to reduce impacts from construction-related traffic. The applicant considered relocating the road in an area that IDFG considers to be critical winter range for mule deer. IDFG states that putting the road in that area would remove 6 acres of habitat, and that moving the road closer to the marina would remove only 2 acres of habitat. IDPR recommends that the applicant choose the site of the relocated road after the new development at the Spring Shore Marina is completed. The licensee, after consultation with IDPR, IDFG, Corps and BR, should file with the Commission a plan to relocate the existing access road in a place that will protect marina users from construction traffic without interfering with the design of the new

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marina, and that will avoid long-term impacts to the winter habitat of mule deer.

The Corps administers and is ultimately responsible for the recreational development at Lucky Peak Lake. The licensee, therefore, should have Corps approval before implementing any changes to recreational facilities at Lucky Peak Lake.

IDPR and the Corps say that the 5-foot drawdown of Lucky Peak Lake during the summer would have an adverse visual effect on recreationists. Although reservoir drawdowns of less than 10 ft may not necessarily affect the amount of water-based recreational use of a reservoir (ABT Associates, Inc., 1978; Morgan and King, 1971; Carson, 1972), the quality of the recreational experience could be reduced for those sensitive to the aesthetic resources of the area. Approximately 30 feet of horizontal shore would be exposed when the lake level is drawn down 5 feet. This visual impact would not be substantial and mitigation of impacts may be possible in some areas that receive high recreational use.

Improving the existing access road and raising the operating level of the reservoir would improve acces to Arrowrock Reservoir and could result in increased use of the reservoir. To accommodate project-induced recreation at the reservoir, FS requires that the licensee file with the Commission a FS-approved plan to enhance recreational facilities at Arrowrock Reservoir. In addition, FS would require the licensee to provide funds annually to the Boise National Forest to cover the increased cost of recreational management and facility maintenance that would be caused by the increase in recreational use resulting from the proposed project. Recreational use at Lucky Peak Lake is expected to increase in the future (Bureau of Reclamation, 1985). BR (1985) estimates that if recreational use continues at predicted rates in the project area, "some popular recreation areas will experience overuse" and that such overuse "could lead to reduced enjoyment" and to increasingly complex management problems. To ensure that recreational use is adequately accommodated in the project area, the licensee should monitor recreational use in the project area during the first two recreational seasons.

Unavoidable Adverse Impacts: Relocating the existing access road would temporarily limit vehicular access to Arrowrock Reservoir. Increased traffic, noise, and dust levels during construction would disturb recreational users in the project area. The proposed 5-foot drawdown of Lucky Peak Lake would have a minor visual effect on recreationists visiting the area.

9. Socioeconomic Considerations

Affected Environment: Project construction would produce socioeconomic impacts affecting businesses and residents in Ada County, the Boise metropolitan area. The area's economy is based on:

federal and state government employment; Boise's position as a banking, insurance, transportation, printing, publishing, and trade center, and as a major provider of health, educational, legal, and business services; the manufacture of electronic computing equipment, semi conductors, and mobile homes; meat packing; and irrigated farming (personal communication, Joe Tintera, Survey Statistician, and Doug Miller, Statistician, Bureau of the Census, Department of Commerce, Suitland, Maryland, June 26, 1986).

The total population of Ada County increased from 93,460 persons in 1960 to 189,300 persons as of July 1, 1984 (personal communication, K. O'Brion, Statistical Information Assistant, Bureau of the Census, Department of Commerce, Suitland, Maryland, June 26, 1986).

Environmental Impacts and Recommendations: During the planned 5-year construction period, project-related vehicles and onsite machinery would produce noise, dust, and exhaust emissions, and would cause minor delays to motorists in the vicinity. The proposed project, however, would not displace any residence or business estalishment, and would not adversely affect agricultural lands.

Based on comparable projects, an average of 125 construction personnel would be employed at the project site. Virtually all of these workers would commute daily from residences in the Boise area. The earnings of these workers and their subsequent spending at area retail and service establishments would benefit the metropolitan area economy. In addition, the project contractor undoubtedly would purchase some construction equipment and material from local suppliers, thus providing additional economic benefits.

Once the proposed facilities are operational, the project would not produce any discernable socioeconomic impacts. Because the applicant is a municipality, the completed project facilities would be exempt from payment of real property taxes.

Since the project's socioeconomic impacts would be primarily beneficial, mitigation would not be required.

Unavoidable Adverse Impacts: Proposed construction activities and project-related truck traffic would produce noise, dust, exhaust emissions, and minor delays to motorists in the project vicinity.

B. Cumulative Environmental Impact Analysis

1. Boise River Basin

The Boise River drains an area of 4,100 square miles in southwestern Idaho (figure 4). The headwaters of the Boise River originate in the Sawtooth Mountains at elevations in excess of 10,000 feet.

The river flows in a westerly direction for about 200 miles before emptying into the Snake River near Parma, Idaho, at an elevation of 2,100 feet. The topography of the Boise River Basin varies from the rugged, mountainous terrain near the headwaters of the Boise River and its major tributaries to the relatively flat lands of the Boise Valley. Major tributaries of the Boise River include the North Fork Boise River, Middle Fork Boise River, South Fork Boise River, and Mores Creek.

The basin contains three major storage impoundments, Anderson Ranch Reservoir, Arrowrock Reservoir, and Lucky Peak Lake; and one large offstream storage impoundment, Lake Lowell. These reservoirs supply water storage for flood control, irrigation, recreation, hydropower, and instream flows. During the irrigation season (April to the middle of October), releases are made from the storage reservoirs to satisfy irrigation demands at the New York Canal and other downstream irrigation diversions. The general rule in operating the reservoir system in the basin during the nonirrigation period is to fill the upstream reservoirs first in order to improve the probability of total system refill. (Bureau of Reclamation, 1985).

The environmental resources of the Boise River and its tributaries are distinct from the environmental resources of the Upper Snake River Basin. The Boise River drainage includes the major population center (Boise) in the state; the lower Boise River Basin contains the largest concentration of people in the state. In all, about 27 percent of Idaho's 1980 population of 944,000 people live in Ada and Canyon Counties which encompasses the lower Boise River Basin (Boise-Kuna Irrigation District, et al., 1984). Consequently, because of the proximity of the rivers and reservoirs in the basin to the Boise metropolitan area, recreational use of these waters is very high. This concentration of recreational use along the Boise River is therefore different from the dispersed recreation that generally characterizes the mainstem Upper Snake River (Federal Energy Regulatory Commission, 1982).

The Boise River Basin has over 250,000 acres of irrigated cropland and some of Idaho's earliest mining, logging and hydroelectric development. Man-caused impacts have severely degraded some fish habitats in the basin over a long period of time (Idaho Department of Fish and Game, 1985). Because of these factors and the intensive recreational fishing in the basin, IDFG heavily stocks the river and reservoirs with hatchery fish. The dependence on trout stocking for the management of trout populations in the Boise River Basin is therefore different from the predominantly self-sustaining resident trout populations (i.e. value class I fishery) that are important resources for the mainstem Upper Snake River Basin.

2. Proposed and Existing Hydroelectric Development

As of August 1986, there were two pending applications for license, two licensed projects, and seven projects exempted from licensing in the Boise River Basin (figure 4). The two pending applications for license include the Arrowrock Dam Project, FERC No. 4656, located on the mainstem of the Boise River, and the North Fork Boise River Project, FERC No. 9819, located on the North Fork Boise River. The two licensed projects include the Lucky Peak Project, FERC No. 2832, and the Barber Dam Project, FERC No. 4881; both of these projects are located on the mainstem of the Boise River downstream from the Arrowrock Dam Project. The seven exempted projects (FERC Nos. 5038, 5039, 5040, 5041, 5042, 5043, and 5056) are scattered among many sites on numerous diversion canals located in the area around Lake Lowell (figure 4).

3. Target Resources

In the Boise River Basin, the staff identified water-oriented recreation, trout, mule deer and elk, riparian habitat, and bald eagles as target resources because they could be adversely affected by two or more proposed hydropower projects. The staff selected these target resources by reviewing applications for proposed and existing hydropower projects, and comments from federal and state natural resource agencies and the public.

The Boise River Basin includes the major population center in the state. Consequently, water-oriented recreational use (i.e., fishing, boating, swimming) is very high in the basin. For example, Arrowrock, Lucky Peak, Lake Lowell, and Anderson Ranch Reservoirs provide more than 30 square miles of lake surface and attract more than 1 million recreation-days of public use each year, most of which takes place at Lucky Peak Lake (Bureau of Reclamation, 1985). Public access and recreation sites are provided at all the reservoirs, and boating and other water sports are becoming increasingly popular. Since much of the water-oriented recreation occurs at the reservoirs in the basin, multiple hydropower development could significantly impact the recreational uses enjoyed by the public at these reservoirs by eliminating or degrading the recreational experience.

The trout populations in the Boise River Basin consists of wild populations and hatchery plants. Wild trout populations in the basin vary from fair to excellent. Excellent populations of naturally produced rainbow trout and Dolly Varden are found in the rivers and streams located upstream from Arrowrock Reservoir. Brook trout and cutthroat also occur in some tributary streams in these upstream areas (Idaho Department of Fish and Game, 1985). Due to the heavy angling pressure in the basin, catchable-size, hatchery-reared rainbow trout supplement wild populations in all accessible streams. There is, however, no trout stocking in the South Fork Boise River between Arrowrock Reservoir and Anderson Ranch as this tributary provides the only designated quality

trout stream in southwestern Idaho. Finally, the popular rainbow trout fishery that occurs in Lucky Peak Lake and Anderson Ranch Reservoir also depends heavily on stocked catchable size fish. Multiple hydropower projects proposed for the basin could eliminate habitat for this quality recreational trout fishery and could jeopardize the continued quality and survival of natural and hatchery-reared trout populations in the basin.

Mule deer and elk are important big game species in the Boise River Basin; the Boise River mule deer herd is probably the state's most important mule deer population. Multiple hydropower development in the basin could affect these recreationally important big game populations as a result of significant permanent habitat loss, loss of cover (where limiting), loss of special areas (calving and fawning areas, winter range, heavy-use summer range, meadows, or other important use areas), migration blockage, and disturbance due to increased human access (Federal Energy Regulatory Commission, 1985).

Riparian vegetation found along the streams in the Boise River Basin provide important habitat for animal and fish resources. The scarcity of the riparian habitat in the basin makes the remaining pockets of riparian vegetation important for fish and wildlife, such as trout, mule deer, and bald eagles. The development of multiple hydropower projects in the basin could eliminate these important riparian habitats.

The bald eagle is a federally listed endangered species in the Boise River Basin. The Boise River from Lucky Peak Lake downstream to the city of Boise supports a wintering bald eagle population ranging from 5 to 30 birds annually (letter from Charles S. Polityka, Regional Environmental Office, Department of the Interior, Portland, Oregon, April 20, 1983). Multiple hydropower project development in the basin could adversely affect bald eagles by significantly increasing human disturbance, removing certain types of vegetation, and reducing fish populations.

4. Environmental Impacts to Target Resources

The water-oriented recreational uses in the Boise River Basin would be maintained and enhanced as a result of the implementation of mitigative measures for the proposed project. For example, the maintenance of the proposed minimum pool at Arrowrock Reservoir would benefit recreation by enhancing the resident fishery and improving fisherman access. The recreational uses (i.e. fishing, boating, and swimming) in Lucky Peak Lake would be maintained and protected by the applicant's proposals (see section 8-Recreation and Other Land and Water Uses). In addition, the applicant would be required to monitor recreational use in the project area in order to ensure that this resource is adequately accommodated. Based on these facts, it is concluded that the proposed construction and operation of the Arrowrock Dam Project would not contribute to cumulative adverse impacts to water-oriented recreation in the Boise River Basin.

The naturally producing trout resources in the basin are managed by IDFG primarily by supplementing the resource with hatchery plants. Nevertheless, the trout resource as presently managed has important recreational value because of the high angler-demand in the populated basin. The applicant's proposal to maintain a minimum pool at Arrowrock Reservoir would potentially enhance the natural reproduction of rainbow trout in Arrowrock Reservoir and its tributaries, such as in the South Fork Boise River. The applicant would also be required to monitor turbine-mortality of fish, including trout, and to implement measures to protect or compensate the resource. Since the proposed project, including the planned fish mitigative measures, would result in a potential enhancement of the naturally producing trout populations upstream of Arrowrock Reservoir, it is concluded that the project construction and operation would result in an overall benefit to the trout populations in the area. For these reasons, the proposed Arrowrock Dam Project would have no potential for causing cumulative adverse impacts to trout populations in the basin.

The proposed project would not impact elk populations in the basin since elk in the area usually remain at higher elevations north of Arrowrock Reservoir during summer and move into the project area only during severe winters. The IDFG manages about 25,300 acres of mule deer winter habitat in the vicinity of Arrowrock Reservoir and Lucky Peak Lake. The proposed project could affect from two to six acres of mule deer winter habitat depending on the eventual decision to re-route the existing access road. Staff has recommended that the applicant relocate the road, after consultation with the appropriate agencies, so as to mitigate impact to the mule deer winter habitat. The eventual relocation of the road, therefore, would result in no impact to the mule deer populations in the basin. Consequently, construction and operation of the Arrowrock Dam Project would have no potential for contributing to cumulative adverse impacts to mule deer or elk populations in the Boise River Basin.

Riparian habitat in the project area is generally restricted to moist draws and tributaries to Arrowrock Reservoir and Lucky Peak Lake. Project construction and operation would cause no modification of riparian habitat adjacent to these reservoirs. The proposed transmission line would cross the Boise River downstream near the Boise River Diversion Dam. The riparian habitat at the proposed crossing site, however, has already been significantly disturbed due to the construction of the diversion dam (Boise-Kuna Irrigation District et al., 1984). The applicant would be required to revegetate any disturbed areas with a mixture of plant species beneficial to wildlife. Construction and operation of the proposed project, therefore, would not contribute to cumulative adverse impacts to riparian habitat in the basin.

The Boise River from Lucky Peak Lake to the city of Boise supports a wintering eagle population. The eagles use the large cottonwood, maple, and black locust trees in the riparian zone for roosting. The construction and operation of the proposed project would not affect this bald eagle population (letter from James P. Gore, Acting Field Supervisor, U.S. fish and Wildlife Service, Boise, Idaho, April 6, 1983); therefore, there would be no potential for the proposed project to contribute to cumulative adverse impacts to bald eagle populations in the Boise River Basin.

In summary, the staff concludes that the construction and operation of the Arrowrock Dam Project would have no potential for cumulative adverse impacts to the target resources identified in the Boise River Basin.

C. Alternatives to the Proposed Project

The alternative operating regime for the Arrowrock Dam Project would eliminate the daily "shaping" of releases from Arrowrock Reservoir and the 5-foot drawdown of Lucky Peak Lake. Operating according to this alternative would change the projects' impact on fish resources, recreation, and visual quality. To maintain Lucky Peak Lake at 3,055 feet would require discharging more water from Arrowrock reservoir earlier in the summer. The earlier discharge would make it more difficult to maintain the proposed minimum pool of 28,700 acre-feet in Arrowrock Reservoir. Without the higher pool level, there would be less spawning along the shoreline and in tributaries, and fish survivability would be decreased. Further, since the powerplant would be operated at lower water levels, fish would be more likely to be entrained in the penstock intakes.

The impacts to Lucky Peak Lake's recreational facilities from the proposed drawdown and fluctuations would be avoided under the alterative plan. Likewise, adverse visual impacts at Lucky Peak Lake would be eliminated.

D. Alternative of No Action.

Under the no-action alternative, there would be no construction of project facilities or changes to the existing physical, biological, or cultural components of the area. Electrical power that would be generated by the proposed hydroelectric project would have to be obtained from other available sources or offset by conservation measures.

E. Recommended Alternative.

The proposed project is the preferred alternative because the generation of electricity from a renewable resource would reduce the use of fossil-fueled plants and because the applicant could

adequately mitigate the environmental effects of building and operating the project. Further, fish resources in Arrowrock Reservoir would probably be enhanced because pool elevations would be maintained at a higher minimum elevation for a longer period during the summer.

VI. FINDING OF NO SIGNIFICANT IMPACT

Construction-related activities would cause a minor, short-term increase in soil mass movement, erosion, dust, noise, sedimentation, and turbidity. Increased traffic, noise and dust levels during construction would disturb recreational users in the project area. The noise and the increased human activity would also disturb wildlife in the project area. Approximately 150 acres of shrub-steppe vegetation would be disturbed during construction of the transmission line and other facilities. Increased flow fluctuations would slightly increase erosion and turbidity in both reservoirs. Project operation would reduce DO concentrations in Lucky Peak Lake, because releases through the present outlet structures would be eliminated. The drawdown of Lucky Peak Lake would decrease fish habitat and would have a minor adverse impact on the visual quality of the project area. Project construction would adversely affect the historical integrity of Arrowrock Dam; the applicant would mitigate these effects by documenting the historical features of the dam, in accordance with HAER's standards, by building project facilities so as to blend with the historical apperance of the dam, and by providing and interpretive display for visitors to the dam.

Implementing the mitigative measures proposed by the applicant and recommended by the staff would adequately protect the resources of the project area. On the basis of the staff's independent environmental analysis, issuance of a license for the Arrowrock Dam Hydroelectric Project would not constitute a major federal action significantly affecting the quality of the human environment.

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VIII. List of Preparers

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Martin J. Thorpe--Need for Power and Alternatives (Engineer; B.S.E.E.).

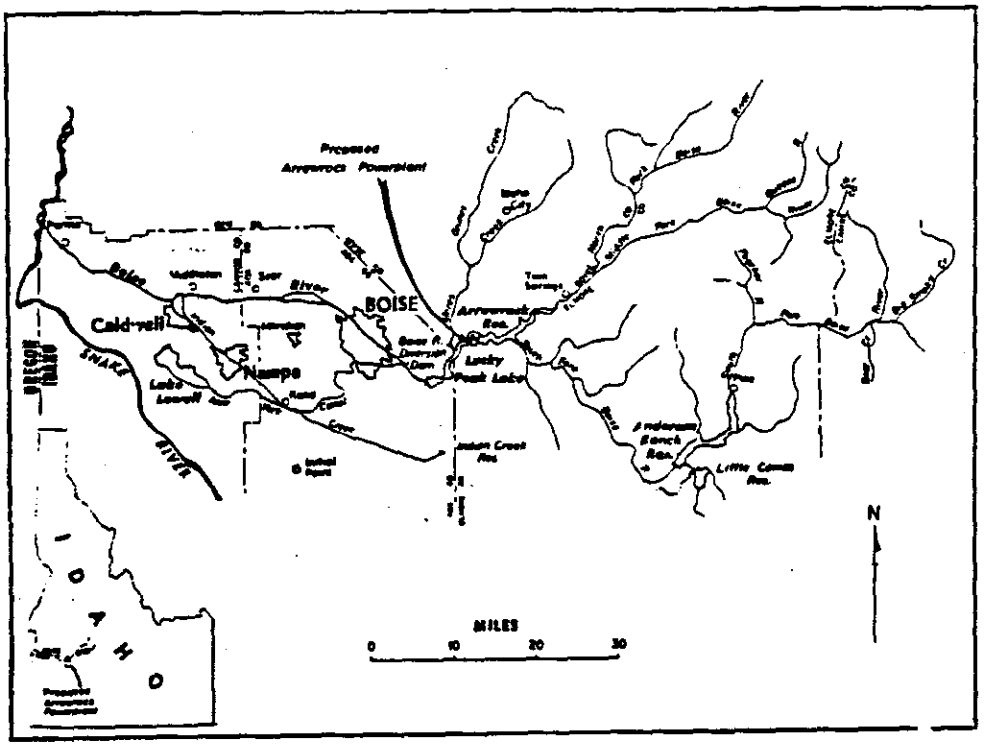


Figure 1. Location of the proposed Arrowrock Dam Hydroelectric Project, FERC No. 4656, Idaho (Source: Boise-Kuna Irrigation District et al., 1984, application, exhibit E).

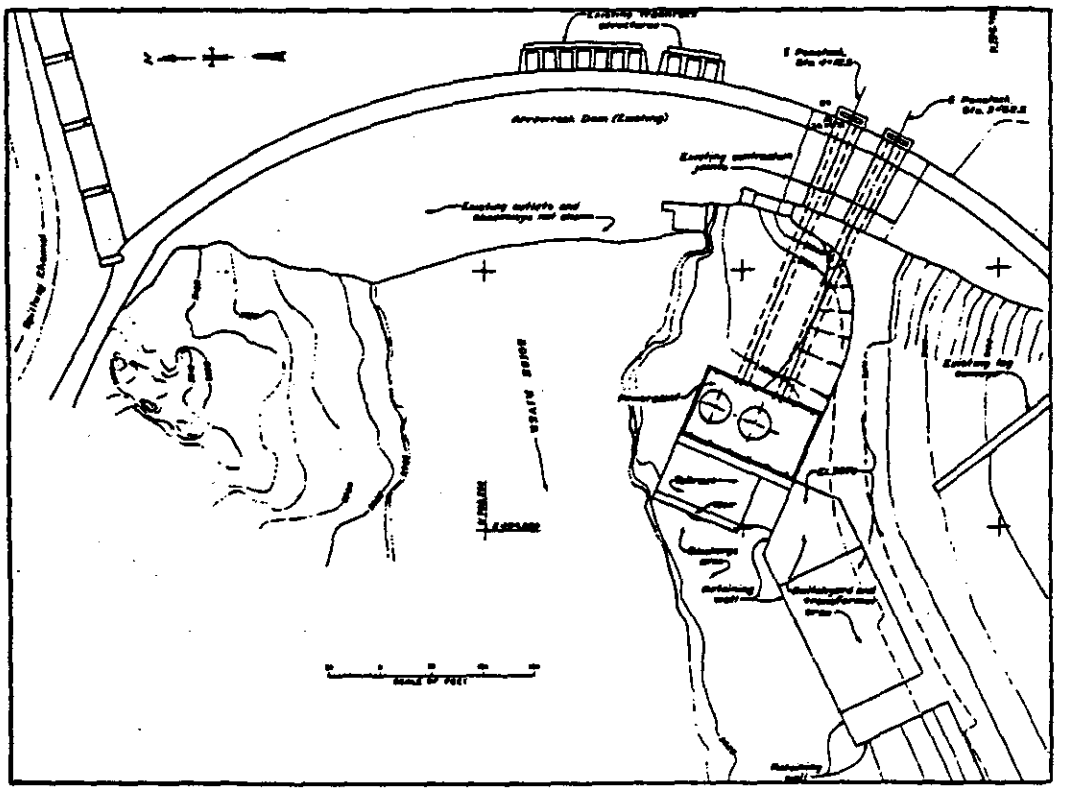


Figure 2. Project features of the proposed Arrowrock Dam Hydroelectric Project, FERC No. 4656, Idaho (Source: the staff, as modified from Boise-Kuna Irrigation District et al., 1984, application, exhibit F).

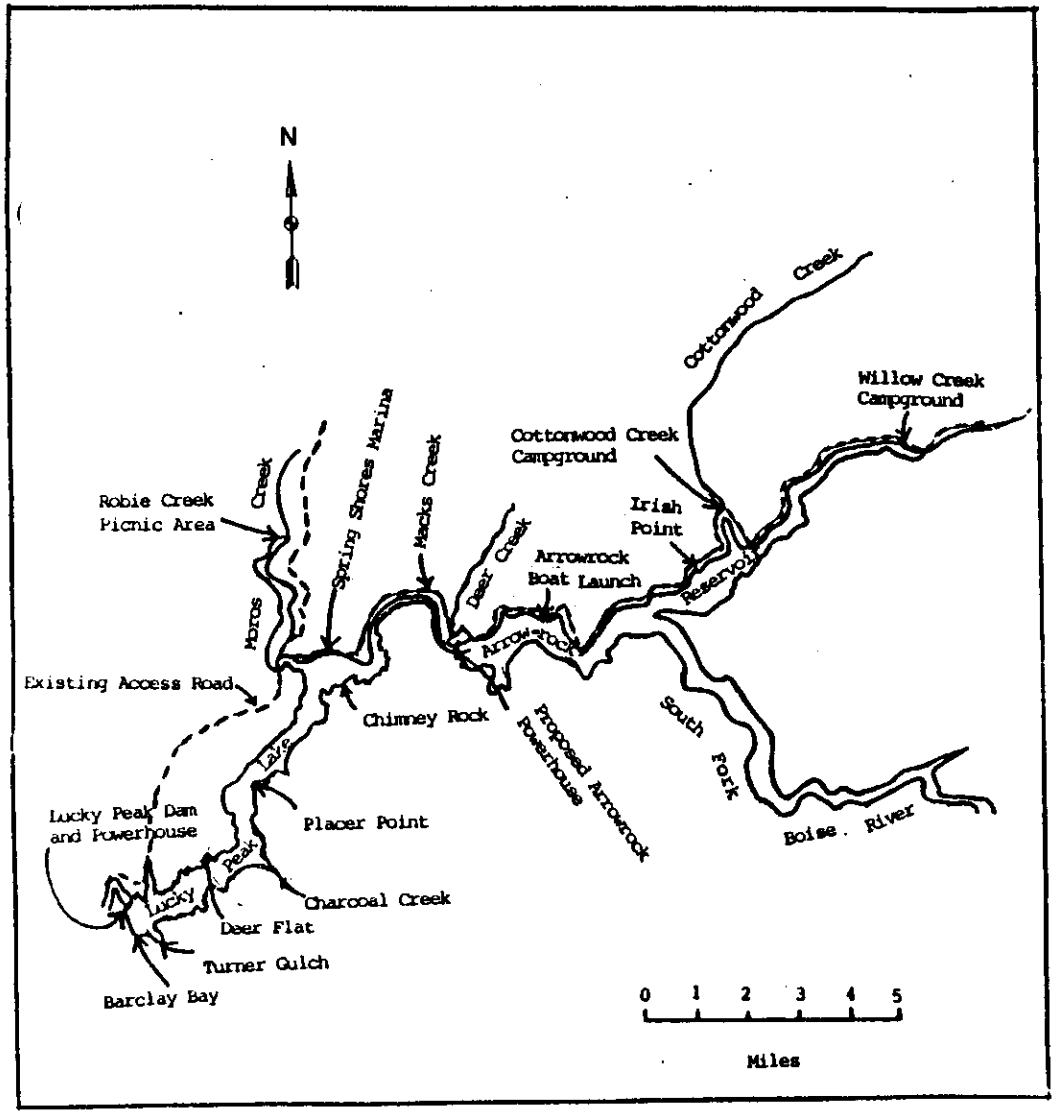


Figure 3. Existing recreational facilities at Arrowrock Reservoir and Lucky Peak (Source: the staff, as modified from Bureau of Reclamation, 1985).

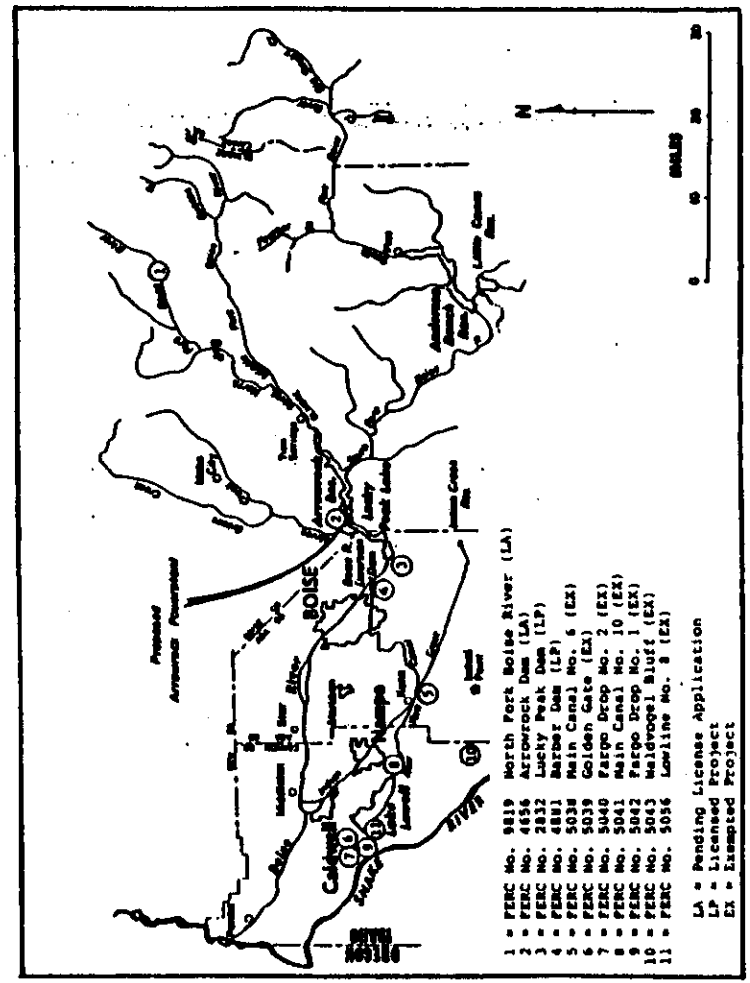


Figure 4. Existing and proposed hydroelectric projects in the Boise River Basin (Source: the staff).

ATTACHMENT 1

Intermountain Region
324 25th Street
Ogden, UT 84401

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NOV

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

Dear Mr. Plumb:

This is in response to the Notice of Application for Major License for the proposed Arrowrock Dam Hydroelectric Project No. 4656-002 located on the Boise River within the Boise National Forest in Elmore, Boise, and Ada Counties, Idaho. This letter is the report of the Secretary of Agriculture pursuant to Section 4(e) of the Federal Power Act.

Conditions necessary for the protection and utilization of affected National Forest System lands are contained in Enclosure A in the form of articles to be included in the license. The conditions are based upon the Forest Service review of the application for license, coordination with other agencies, and consultation with the applicant.

The Secretary of Agriculture considers these conditions necessary to avoid or mitigate environmental impacts caused by project operations.

Sincerely,

/s/
J. S. TI/ITN
Regional Forester

Enclosure

cc:
Boise NF

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FEDERAL ENERGY REGULATORY COMMISSION

Griswold ... Kerling ...
Blake ... Martin ...
Price ... Robertson ...
Campbell ... Lehman ...
Bailey ... Miller ...
Estes ... Phillips ...
Dionn ... Scott ...
Hagen ... Wylie ...

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Enclosure A

LICENSE CONDITIONS NECESSARY FOR PROTECTION AND UTILIZATION OF THE BOISE NATIONAL FOREST IN CONNECTION WITH THE APPLICATION FOR NEW LICENSE FOR PROJECT NO. 4656

I. GENERAL

License articles contained in the Commission's Standard Form L-1 (revised October 1975) issued by Order No. 540, dated October 31, 1975, cover general requirements that the Secretary of Agriculture considers necessary for adequate protection and utilization of the land and resources of the Boise National Forest. The following conditions, covering specific requirements for protection and utilization of National Forest System lands, shall also be included in any license issued.

II. CONSULTATION ON PROTECTION AND DEVELOPMENT OF NATURAL RESOURCES

Condition No. 1

Within 6 months following the date of issuance of this license and before starting any activities of a land-disturbing nature, the Licensee shall file with the Director, Office of Hydropower Licensing, a special use authorization approved and enforceable by the Forest Service.

The Licensee may not commence activities authorized in the license and Forest Service special use authorization until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

Condition No. 2

Each year, on or about the anniversary date of the license, the Licensee shall consult with the Forest Service with regard to measures needed to ensure protection and development of the natural resource values of the project area. Within 2 months following said meeting, the Licensee shall file a report with the Commission of any recommendations made by these agencies. The Commission reserves the right, after notice and opportunity for hearing, to require changes in the project and its operation which may be necessary to accomplish natural resource protection and development.

III. FISH AND WILDLIFE RESOURCE MANAGEMENT

Condition No. 3

Within 1 year from the issuance of this license and before starting any activities of a land-disturbing nature, the Licensee, in consultation with the Forest Service, shall file a fish and wildlife habitat mitigation plan approved by the Forest Service with the Director, Office of Hydropower Licensing. This plan shall identify requirements for construction and mitigation measures to meet Forest Service fish and wildlife habitat objectives and standards. The plan also shall include a schedule for accomplishing these objectives and standards and shall identify any needs for additional studies.

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The Licensee may not commence activities affected by the interim plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

The Licensee may not commence activities affected by the final plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

IV. RECREATION RESOURCE MANAGEMENT

Condition No. 4

Within 1 year following the date of issuance of this license, and before starting any activities of a land-disturbing nature, the Licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service for accommodation of project-induced recreation.

The Licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

The applicant will enhance recreation facilities on the Arrowrock Reservoir to accommodate increased recreation use resulting from road improvement to the dam and the increased reservoir operating level. A significant increase in use will occur at the Arrowrock boat ramp. The applicant will annually provide funds to the Boise National Forest to cover the increased cost of recreation management and facility maintenance caused by the anticipated increase in recreation use resulting from the applicant's activities.

Originally, no recreation improvements were desired due to potential safety hazards associated with the road. Now that the road will be improved to Arrowrock Dam, the safety issue associated with driving to the Arrowrock boat facilities is no longer valid. With the yearly increase of recreational use, decreased reservoir pool level in Lucky Peak, increased reservoir pool level in Arrowrock, and safer and easier access to Arrowrock boat ramp, the above-mentioned recreation enhancement measures are appropriate.

V. RESERVOIR OPERATION

Condition No. 5

Within 1 year following the date of issuance of this license and before starting any activities of a land-disturbing nature, the Licensee shall, after consultation with the Forest Service, file with the Director, Office of Hydropower Licensing, a plan for the operation and maintenance of the reservoir approved by the Forest Service. The plan shall address at least the following: Water storage and releases, including storage limitations (if any), dates and/or criteria for filling and release; procedures for flood conditions; erosion prevention in the reservoir area and spillway channel; and trash and debris removal. The plan shall include an implementation schedule, maintenance program, and evidence of agency consultation.

VI. SOIL CONSERVATION AND PROTECTION OF WATER QUALITY

Condition No. 6

Within 1 year following the date of issuance of this license, and before starting any activities of a land-disturbing nature, the Licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service for the control of erosion, stream sedimentation, dust, and soil mass movement.

The Licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

Condition No. 7

Within 1 year following the date of issuance of this license and before starting any activities of a land-disturbing nature, the Licensee, after consultation with the Forest Service, shall file a plan approved by the Forest Service for the treatment and disposal of solid waste and waste water generated during construction and operation of the project with the Director, Office of Hydropower Licensing, and the Commission's Regional Engineer in San Francisco, California, or their authorized representative. The plan shall address, at a minimum, the estimated quantity of solid waste and waste water generated each day; the location of disposal sites and methods of treatment; implementation schedule; areas available for disposal of wastes; design of facilities; comparisons between on-and off-site disposal; and maintenance programs.

The Licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

Condition No. 8

Within 1 year following the date of issuance of this license and at least 60 days before starting any activities of a land-disturbing nature, the Licensee shall file a plan approved by the Forest Service with the Director, Office of Hydropower Licensing, for oil and hazardous substances storage and spill prevention and cleanup.

The plan shall require, at a minimum, the Licensee to maintain in the project area a cache of spill cleanup equipment suitable to contain any spill from the project; periodically inform the Forest Service of the location of the spill cleanup equipment on National Forest System lands and of the location, type, and quantity of oil and hazardous substances stored in the project area; and to inform the Forest Service immediately of the nature, time, date, location, and action taken for any spill.

The Licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

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Condition No. 9

Within 1 year following the date of issuance of this license and before starting any activities of a land-disturbing nature, the Licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service for the storage and/or disposal of excess construction/tunnel spoils and slide material. At a minimum, the plan shall address contouring of any storage piles to conform to adjacent land forms and slopes; stabilization and rehabilitation of all spoil sites and borrow pits; and also prevention of water contamination by leachate and runoff. The plan also shall include an implementation schedule and maintenance program.

The Licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

VII. ARCHEOLOGICAL AND CULTURAL RESOURCES

Condition No. 10

Within 6 months following the date of issuance of this license and at least 60 days before starting any activities of a land-disturbing nature, the Licensee shall file a report and plan approved by the Forest Service with the Director, Office of Hydropower Licensing, for archeological and cultural resources protection and mitigation.

VIII. AESTHETICS

Condition No. 11

Within 1 year following the date of issuance of this license and before starting any activities of a land-disturbing nature relative to the construction of the proposed project features or facilities, the Licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service for the design and construction of the project facilities in order to preserve or enhance its visual character. The plan shall consider facility configurations and alignments, building materials, color, conservation of vegetation, landscaping, and screening. Project facilities include, among other things, the diversion structure, penstock, powerhouse, transmission lines and corridor, and all access roads.

The Licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

IX. PROJECT CHANGES OR MODIFICATIONS

Condition No. 12

Licensee shall, prior to any changes in the location of any existing proposed project features or facilities, or any changes in the proposed uses of project lands and waters, or divergence from any approved exhibits filed with the Commission, consult and cooperate with the Forest Service in regard to measures needed to ensure the protection and development of the natural resource values of the project area that could be affected by such changes or divergence. Within 60 days following any consultations and prior to any such changes or divergence, the Licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the Forest Service. This article does not relieve the Licensee from the requirements of Article 3 of this License. In the event that Forest Service approval of the changes cannot be secured, the proposed changes or modifications shall be considered to be a substantial alteration and must be submitted to the Commission for approval in accordance with Article 2.

X. PESTICIDE AND HERBICIDE USE

Condition No. 13

Licensee shall not use pesticides or herbicides on National Forest System (NFS) lands for any purpose without the prior written approval of the Forest Service. Each year, on or about the anniversary date of the license, the Licensee shall file a pesticide and herbicide use plan approved by the Forest Service with the Director, Office of Hydropower Licensing. Exceptions to this schedule may be allowed only when unexpected outbreaks of pests require control measures that were not anticipated at the time the annual report was submitted. At that time the Forest Service may grant an emergency approval. The Licensee shall, within 1 month, file a copy of this approval with the Director, Office of Hydropower Licensing. Only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned will be considered for use on National Forest System lands. Label instructions will be strictly followed in the preparation and application of pesticides and disposal of excess materials and containers.

XI. TRANSMISSION LINE

Condition No. 14

Within 1 year from the issuance of this license and before starting any activities of a land-disturbing nature, the Licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service of the engineering design, construction process, and mitigation of soil, watershed, wildlife, aesthetics and cultural resource values.

XII. ENDANGERED SPECIES

Condition No. 15

Within 1 year from the issuance of this license and before starting any activities of a land-disturbing nature, the Licensee shall file with the Director, Office of Hydropower Licensing, a survey and mitigation plan approved by the Forest Service of the sensitive, threatened, and endangered species located within the area to be disturbed.

XIII. ROAD IMPROVEMENT

Condition No. 16

Within 1 year from the issuance of this license and before starting any activities of a land-disturbing nature, the Licensee shall file with the Director, Office of Hydropower Licensing, an engineering design plan approved by the Forest Service for the road improvement measures occurring on land administered by the Boise National Forest.

United States Department of the Interior

ATTACHMENT 2

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

ER 85/1293

NOV 14 1985

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

Dear Mr. Plumb:

Thank you for the letter of July 9, 1985, requesting our views and comments on the application for License, Arrowrock Dam Hydroelectric Project, FERC No. 4656, Elmore, Boise, and Ada Counties, Idaho.

Authorization for construction of the Arrowrock Dam was made on January 6, 1911, by the Secretary of the Interior under provisions of the Reclamation Act of June 17, 1902 (32 Stat. 388). Our investigation has concluded that it would be feasible for a non-Federal entity to construct a powerhouse at the Bureau of Reclamation (BR) Arrowrock Dam without affecting authorized project purposes. However, pursuant to Section 4(e) of the Federal Power Act, we recommend the following conditions be included in any license issued by the Federal Energy Regulatory Commission for the Arrowrock Dam.

1. No later than 1 year after issuance of this license, and at least 60 days prior to initiating any project activities, the Licensee shall enter into an agreement with BR to coordinate its plans for access to and site activities on lands and property administered by BR so that the authorized purposes, including operation of the Federal reservation, are protected. In general, the agreement shall identify the facility, the applicable study and construction activities, and terms and conditions under which the studies and construction shall be conducted. The agreement shall include, but not be limited to, the following items: (1) reasonable arrangements for access to the Federal reservation to conduct studies and construction activities, such access to be conditioned by BR as may be necessary to protect the federally authorized project purposes and operations; (2) charges to be paid by the Licensee to BR for (a) technical studies conducted by BR that relate to the structural integrity or operation of the Federal reservation associated with hydropower development; (b) review of designs including plans and specifications; (c) construction inspections based on personnel costs, where such reviews and inspections are directly related to the structural integrity or operation of the Federal reservation; (d) copies of reports, drawings, and similar data based on printing and mailing costs; and (e) the value of the right of use of land under easements and all associated administrative costs incurred by BR; provided, that charges shall not be assessed for information or services that would normally be provided to the public.

2. The design and construction of those facilities that would be an integral part of, or could affect the structural integrity or operation of the Federal reservation shall be done in consultation with and subject to the review and approval of BR based on the following schedules. The design drawings shall be approved by BR at 30 percent; 60 percent; and 100 percent completion stages. Two sets of design drawings shall be forwarded at each completion stage to the Regional Director, Bureau of Reclamation. The inspection of construction and its conformity to the approved design drawings shall be conducted by BR at 30 percent; 60 percent; and 100 percent completion stages. Any subsequent changes in the design and construction of the project must be approved by BR prior to implementation.

3. The Licensee's construction, operation, and maintenance of the project works, and project investigations related to hydropower development, must not weaken, damage, or affect the structural integrity or operation of the Federal reservation or reduce or impair the capability to provide for the purposes and services of the Federal reservation and shall be subject to periodic or continuous inspections by BR as appropriate. Any construction, operation, or maintenance deficiencies or difficulties detected by BR will be immediately reported to the Licensee and to the FERC Regional Engineer. BR shall report to the FERC Regional Engineer the need to stop construction, operation, or maintenance while awaiting resolutions of any deficiency or difficulty that would affect the structural integrity of the Federal reservation. In those cases when a construction, operation, or maintenance practice or deficiency may result in a situation that would or could endanger the structural integrity, safety, or operational commitment of the Federal reservation, BR shall have the authority to stop construction, operation, or maintenance activities until the problem or situation is resolved to the satisfaction of BR. Operation of the powerplant shall be secondary to the operation and maintenance of the Federal reservation.

4. The Licensee shall enter into an operation and maintenance (O&M) agreement with BR at least 60 days prior to commencement of operation of the project. The FERC Regional Engineer shall be invited to attend discussion or negotiation meetings related to the O&M agreement. The O&M agreement shall be subject to revision by the mutual consent of the Licensee and BR as experience is gained by actual project operation.

5. All newly disturbed land areas shall be revegetated by the Licensee with plant species indigenous to the area within 6 months of completion of project construction.

6. The Licensee shall have no claim against the United States arising from any future changes made to meet authorized Federal purposes, from the effect of any changes made in releases from or operation of the Federal reservation, from modifications resulting from dam safety requirements, or from any changes in reservoir level of the BR project.

7. The Licensee shall recognize the primary right of any Federal work, either by force account or by contractors or both, associated with the Federal reservation, associated facilities, access roads, and the operation and maintenance thereto, whether ongoing at the time of commencement of work by the Licensee or initiated subsequent to start of the work by the Licensee, and to coordinate Licensee's work with the Federal work.

State of Idaho
DEPARTMENT OF WATER RESOURCES
WESTERN REGION, ~~450 W. State Street~~ Boise, Idaho
2735 Airport Way

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
~~State House~~
~~Boise, Idaho 83720~~
(208) 334-2190
2735 Airport Way
Boise, ID 83705

December 30, 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: Applications for Water Permits Nos. 63-10239 & 63-10240

Dear Interested Party:

We are in receipt of a letter dated November 19, 1986, in which Robert A. Bardo, Acting Assistant Regional Director, responded to questions related to the above-referenced water right applications. Based on the responses in the letter, the Department understands that the Bureau of Reclamation is not requesting immediate action on the applications.

The Department considers the applicant to be seeking development of the project with due diligence if the applicant is actively pursuing approval of the project through the Federal Energy Regulatory Commission (FERC). Thus, we will allow a delay in holding a hearing or conference to resolve a protest until FERC approval has been received.

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We have also received a letter from Scott L. Campbell, attorney for Pioneer Irrigation District, dated November 20, 1986 regarding these two applications. In his letter Mr. Campbell describes that Pioneer Irrigation District is actively opposing FERC licensing at the Arrowrock Dam hydroelectric project in the names of Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District. This letter will serve as acknowledgment of the information provided by Mr. Campbell. Although this information has been added to the files, it does not change our interpretation regarding a delay in proceeding with the two above-referenced applications for permit.

We request that the Bureau of Reclamation as water right applicant continue to advise this office regarding activities with respect to procurement of FERC licensing at Arrowrock Dam and at Diversion Dam. We ask that updates in this regard be provided to this office each six months, or as major milestones are achieved.

We request that any of the above-referenced parties that has further information regarding these applications provide such information to this Department.

Sincerely,

David R. Tuthill Jr.

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

DRT:jp

c.c. Niel Stessman
Carter Fritschle
Donald J. Sayre
Lawrence V. Gray
Howard Fuller
John Hockberger, Jr.
Fred Houston
Don Smitchger

c.c. State Office

MICROFILMED
NOV 12 2002

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:
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Boise, Idaho 83720
(208) 334-2190

October 9, 1986

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Scott L. Campbell, Esq.
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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:

No.	Name	Location
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.

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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., P. E.
Manager, Western Regional Office

DRT:jp

c.c Niel Stessman
Carter Fritschle
Donald J. Sayre
Lawrence V. Gray
Howard Fuller
John Hockberger, Jr.
Fred Houston
Don Smitchger

NOV 12 2002
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NOV 12 2002

INTER-DEPARTMENT MEMO — 1

FROM Dave Tuthill

DATE 9/29/86

TO 63-10240

SUBJECT

See also file no. 63-10239 for letters and memos that are pertinent to this file as well.

MICROFILMED

SIGNATURE

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 19, 1986

Fred Houston
Rt. 3
Caldwell, ID 83605

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

Dear Interested Party:

Information in the file of the above-referenced water rights indicates that you may be interested in learning that the water rights have tentatively been scheduled for a hearing to review the protest. The initial scheduling information is as follows: Wednesday, October 22, 9:00 am, in Boise.

The purpose of this letter is to advise you of this schedule for personal planning. The applicant and protestant are being given an opportunity to request that the schedule be changed. Although you will not have the opportunity to request scheduling changes, we will advise you by mail of the final scheduling arrangements that are made.

Sincerely,

David R. Tuthill Jr.

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

MICROFILMED
NOV 12 2002

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 19, 1986

Lawrence V. Gray
Elm Lane
Nampa, ID 83651

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

Dear Interested Party:

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Sincerely,

David R. Tuthill

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Manager, Western Regional Office

MICROFILMED
NOV 12 2002

State of Idaho
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WESTERN REGION, 450 W. State Street, Boise, Idaho

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Governor

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Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-2190

September 19, 1986

Donald J. Sayre
Rt. 2
Caldwell, ID 83605

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

Dear Interested Party:

Information in the file of the above-referenced water rights indicates that you may be interested in learning that the water rights have tentatively been scheduled for a hearing to review the protest. The initial scheduling information is as follows: Wednesday, October 22, 9:00 am, in Boise.

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Sincerely,

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

MICRO
NOV 1 2 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
WESTERN REGION, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
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Mailing address:
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September 19, 1986

Lawrence V. Gray
Elm Lane
Nampa, ID 83651

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

Dear Interested Party:

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Sincerely,

David R. Tuthill Jr.

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

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NOV 12 2002

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 19, 1986

Carter Fritschle
4310 N. Linder Rd.
Eagle, ID 83616

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

Dear Interested Party:

Information in the file of the above-referenced water rights indicates that you may be interested in learning that the water rights have tentatively been scheduled for a hearing to review the protest. The initial scheduling information is as follows: Wednesday, October 22, 9:00 am, in Boise.

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Sincerely,

David R. Tuthill Jr.

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

MICROFILMED
NOV 12 2002

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 19, 1986

Neil Stessman
214 Broadway
Boise, ID 83702

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

Dear Interested Party:

Information in the file of the above-referenced water rights indicates that you may be interested in learning that the water rights have tentatively been scheduled for a hearing to review the protest. The initial scheduling information is as follows: Wednesday, October 22, 9:00 am, in Boise.

The purpose of this letter is to advise you of this schedule for personal planning. The applicant and protestant are being given an opportunity to request that the schedule be changed. Although you will not have the opportunity to request scheduling changes, we will advise you by mail of the final scheduling arrangements that are made.

Sincerely,

David R. Tuthill Jr.

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

MICRO
NOV 12 2002

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 19, 1986

Ronald J. Golus
Ed Thomas
Bureau of Reclamation
Box 043 550 W. Fort St.
Boise, ID 83724

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

Dear Interested Party:

Information in the file of the above-referenced water rights indicates that you may be interested in learning that the water rights have tentatively been scheduled for a hearing to review the protest. The initial scheduling information is as follows: Wednesday, October 22, 9:00 am, in Boise.

The purpose of this letter is to advise you of this schedule for personal planning. The applicant and protestant are being given an opportunity to request that the schedule be changed. Although you will not have the opportunity to request scheduling changes, we will advise you by mail of the final scheduling arrangements that are made.

Sincerely,

David R. Tuthill Jr.

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

MICRO
NOV 1 7 2002

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

September 19, 1986

Regional Director
Bureau of Reclamation
Pacific Northwest Region
Box 043 550 W. Fort St.
Boise, ID 83724

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

Dear Applicant:

As you have previously been notified, the above-referenced water right applications have been protested. A hearing for this matter has been tentatively scheduled for: Wednesday, October 22, 9:00 am, in Boise.

The purpose of this letter is to advise you of this schedule and to provide you with an opportunity to notify this office if the scheduled time is not acceptable or if there is another reason the hearing should not be held at this time. Similar letters are being sent to other parties interested in these water rights.

Please telephone this office no later than Wednesday, October 1, 1986 at (208) 334-2190 if you desire to make a change to the schedule. If the hearing is to proceed as scheduled, we will prepare final arrangements the following week, and you will be notified accordingly.

Sincerely,

David R. Tuthill Jr.

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

MICRO
NOV 17 2002

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:
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Boise, Idaho 83720
(208) 334-4440

September 19, 1986

Peter J. Boyd, Attorney for
Farmers Union Ditch Co.
Settlers Irrigation District
Farmers Cooperative Canal Co.
Pioneer Irrigation Dist.
1010 First Interstate Bldg.
P.O. Box 1559
Boise, ID 83701

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

Dear Mr. Boyd:

Because the protests filed on the above-referenced water right applications have not yet been resolved, a hearing for this matter has tentatively been scheduled for: Wednesday, October 22, 1986, 9:00 am, in Boise.

The purpose of this letter is to advise you of this schedule and to provide you an opportunity to notify this office if the scheduled time is not acceptable or if there is another reason the hearing should not be held at this time. Similar letters are being sent to other parties interested in these water rights.

Please telephone this office no later than Wednesday, October 1, 1986 at (208) 334-2190 if you desire to make a change to the schedule. If the hearing is to proceed as scheduled, we will prepare final arrangements the following week, and you will be notified accordingly.

Sincerely,

David R. Tuthill Jr.

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

MICHAEL
NOV 1 2 2002

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 19, 1986

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

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

Dear Interested Party:

Information in the file of the above-referenced water rights indicates that you may be interested in learning that the water rights have tentatively been scheduled for a hearing to review the protest. The initial scheduling information is as follows: Wednesday, October 22, 9:00 am, in Boise.

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Sincerely,

David R. Tuthill Jr.

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

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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

September 19, 1986

Randall C. Fredricks
Clemons, Cosho & Humphrey
110 First Interstate Bldg.
Boise, ID 83702

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

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Manager, Western Regional Office

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AUG 17 2002

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Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-2190

September 19, 1986

Raymond D. Givens
Givens, McDevitt, Pursley, Webb & Buser
Box 2720
Boise, ID 83701

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

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Manager, Western Regional Office

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Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-2190

September 19, 1986

William F. Ringert
Anderson, Kaufman, Ringert & Clark
599 Bannock St.
Boise, ID 83701

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

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

M.C.H.C.
NOV 1 2 2002

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 19, 1986

Don Olowinski
Hawley, Troxell, Ennis and Hawley
Box 1617
Boise, ID 83701

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

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

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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

September 19, 1986

William F. Schroeder
Schroeder and Hutchins
P.O. Box 220
Vale, OR 07018

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

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

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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

September 19, 1986

U.S. Dept. of Interior
Office of the Solicitor
Attn: John J. Hochberger,Jr.
Box 020 550 W. Fort St.
Boise, ID 83724

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

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

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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

September 19, 1986

Howard Fuller
Rt. 1
Star, ID 83669

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

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Manager, Western Regional Office

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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

September 19, 1986

Don Smitchger
3890 E. Ustick
Meridian, ID 83642

Re: Application for Permit Nos. 63-10239 and 63-10240, Source of Boise River, in the name of USA through Regional Director, Bureau of Reclamation, Pacific Northwest Region

Dear Interested Party:

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

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SEP 12 2002

United States Department of the Interior

OFFICE OF THE SOLICITOR
PACIFIC NORTHWEST REGION
BOISE FIELD OFFICE
FEDERAL BUILDING & U.S. COURTHOUSE
BOX 020-550 WEST FORT STREET
BOISE, IDAHO 83724

NOV 19 1985

David R. Tuthill, Jr., P.E.
Western Region Manager
State of Idaho
Department of Water Resources
Statehouse
Boise, ID 83720

Bobby D. Fleenor
Hearing Officer
Department of Water Resources
Statehouse
Boise, ID 83720

Peter J. Boyd
ELAM, BURKE and BOYD
P.O. Box 1559
Boise, ID 83701

Randall C. Fredricks
CLEMONS, COSHO & HUMPHREY
1110 First Interstate Bldg.
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GIVENS, McDEVITT,
PURSLEY, WEBB &
BUSER
Box 2720
Boise, ID 83701

William F. Ringert
ANDERSON, KAUFMAN,
RINGERT & CLARK
P.O. Box 2773
Boise, ID 83701

Don Olowinski
HAMLEY, TROXELL,
ENNIS & HAWLEY
Box 1617
Boise, ID 83701

William F. Schroeder
SCHROEDER & HUTCHENS
P.O. Box 220
Vale, OR 07018

Re: In the Matter of Application for Permit Nos. 63-10239 and 63-10240 (Diversion Dam and Arrowrock Dam hydroelectric diversions, Boise River) Substitution of Counsel

Dear Sirs:

The Field Solicitor has reassigned Bureau of Reclamation legal representation in this matter from Robert S. Burr to me.

Accordingly, I would appreciate all future correspondence on the case being sent to me, rather than to Mr. Burr, at the above address.

Sincerely yours,

John J. Hockberger, Jr.
Attorney

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Department of Water Resources
Western Regional Office

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Thank you for your consideration in this regard.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

By: Scott L. Campbell
Attorneys for Protestant

SLC:gb

cc: The Board of Directors
Pioneer Irrigation District
Hazel Robinson

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 FOUSER
D. ALAN KOFOED
BRIAN D. HARPER
SCOTT L. CAMPBELL
BOBBI KILLIAN DOMINICK
W. DALLAS BURKHALTER
ALAN P. CONILOGUE
JOHN K. DAVIS
ELAINE D. HANSON
STEPHEN H. TELFORD
JEFFERY J. VENTRELLA

November 18, 1985

Mr. David R. Tuthill, Jr., P.E.
Western Regional Manager
Department of Water Resources
State of Idaho
Statehouse
Boise, Idaho 83720

Re: U. S. Bureau of Reclamation Applications for Permit, No. 63-10239 and 63-10240

Dear Mr. Tuthill:

Thank you for your correspondence dated November 5, 1985, and the enclosed Order, which pertained to the above-captioned matter. I appreciate being advised that the hearing of this matter will be scheduled after the conclusion of the 1986 Idaho State Legislative Session. In this regard, prior to scheduling of the hearing, in view of the busy schedules of all of the attorneys involved, and the likelihood that a hearing on this matter may take several days, I hereby request that you contact the attorneys for each interested party prior to the scheduling of the proposed hearing, in order to obtain available dates which will not result in a conflict with other matters already scheduled on their calendars. I believe this process will avoid rescheduling of the hearing at a later date.

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 5, 1985

Regional Director
United States Department of the Interior
Bureau of Reclamation
Pacific Northwest Region
Box 043 - 550 West Fort St.
Boise, ID 83724

Robert S. Burr, Attorney
Representing the
Bureau of Reclamation
Pacific Northwest Region
Box 020-550 West Fort St.
Boise, ID 83724

Peter J. Boyd
ELAM, BURKE and BOYD
P. O. Box 1559
Boise, ID 83701

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CLEMONS, COSHO & HUMPHREY
1110 First Interstate Bldg.
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Box 1617
Boise, ID 83701

William F. Schroeder
SCHROEDER & HUTCHENS
P. O. Box 220
Vale, OR 07018

Re: U.S. Bureau of Reclamation Applications for Permit, Nos. 63-10239 and 63-10240

Dear Interested Party:

Enclosed please find an Order which describes the issues to be considered by the Director of the Department of Water Resources in taking action on the above referenced Application for Permit.

Please be advised that at this time this office is planning to schedule a hearing on the matter after the conclusion of the 1986 Idaho State Legislative Session, because one of the attorneys of record, Mr. William F. Ringert, is a State Senator. You will be advised regarding the time and location of the hearing next spring.

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL, JR., P. E.
Western Region Manager

DRT:jp

Enclosure

Beginning of Separate Bound Publications/ Request for Rehearings from Ferc & Exhibits.

JIM JONES
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 334-2400

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

PHILLIP J. RASSIER
Deputy Attorney General
Idaho Department of Water Resources
450 West State Street
Boise, Idaho 83720
Telephone: (208) 334-4448

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of Application for Major License (Existing Dam) by Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District and Big Bend Irrigation District	)	Project No. 4656-002 MOTION TO INTERVENE OF IDAHO DEPARTMENT OF WATER RESOURCES

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

The Idaho Department of Water Resources, by and through its undersigned counsel, Phillip J. Rassier, Deputy Attorney General, respectfully moves the Federal Energy Regulatory Commission for an order permitting the Department to intervene as a party for all purposes in the above referenced project proceeding pursuant to Rule 214, 18

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C.F.R. § 385.214.

Statement of Department's Interest and Grounds for Intervention

I.

The Idaho Department of Water Resources (Department) is a duly established executive department of the State of Idaho. Idaho Code §42-1701 (1977); Idaho Code §67-2402 (1980). The names and addresses of persons designated for service of documents in connection with this motion and all further proceedings are as follows:

Phillip J. Rassier
Deputy Attorney General
Idaho Department of Water Resources
450 West State Street
Boise, Idaho 83720

II.

The Department is that agency in state government designated to supervise the appropriation of the waters of the state and allotment of waters to those persons diverting the same for beneficial purposes. Idaho Code §§42-101, 42-1701, 42-1805 (1977 and Supp. 1985). The director of the department is authorized to represent the state in all matters pertaining to the appropriation of water in the State of Idaho. Idaho Code §42-1701, 42-1805 (1977 and Supp. 1985).

III.

Boise-Kuna Irrigation District, New York Irrigation

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District, Nampa and Meridian Irrigation District, Wilder Irrigation District and Big Bend Irrigation District (hereinafter Applicants), filed an application for Major License (Existing Dam) with the Commission for the Arrowrock Dam Hydroelectric Project No. 4656-002 at the Bureau of Reclamation's existing Arrowrock Dam on the Boise River in Elmore, Boise, and Ada Counties, Idaho, near the town of Boise, within the Boise National Forest on lands under Reclamation withdrawal, Corp's of Engineer Land and land administered by the Bureau of Land Management.

IV.

The Department's participation in the Commission proceeding on the project is in the public interest because the Applicants and the Commission need to know the policies of the State of Idaho regarding the proposed hydroelectric development at the Arrowrock Dam Hydroelectric project site.

Position of Department

V.

The Department's position is that any license issued by the Commission for the Arrowrock Dam Hydroelectric project should be consistent with state water law and with the provisions of the Idaho state water plan which provides a comprehensive plan for the development of the water resources of the State of Idaho.

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VI.

Any license issued by the Commission for the Arrowrock Dam Hydroelectric Project should be subordinated to upstream depletionary uses. Specifically, the Department requests the Commission to include the following provision in any license issued for the proposed project:

> The Project shall be operated in such manner as will not conflict with the future depletion and flow of the waters of the Boise River and its tributaries, or prevent or interfere with the future upstream diversion and use of such water above the back water created by the project, as needed for upstream development in the public interest, or give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority for any rights to the use of water acquired for the project.

Basis For Department's Position

VII.

The Constitution of the State of Idaho provides that the waters of the state are subject to the regulation and control of the state. Idaho Const. art. 15, §§ 1, 3.

VIII.

The Constitution of the State of Idaho provides that the Idaho Water Resource Board shall have the power to formulate and implement a state water plan. Idaho Const. art. 15, § 7.

IX.

The State of Idaho has a long standing policy of

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subordinating hydropower water rights to upstream consumptive uses, which has recently been enacted in statutory form. Idaho Code § 42-203B(Supp. 1985).

X.

The Snake River hydrologic system to which the Boise River is tributary is the major water system in Idaho and proper allocation of its water is essential to the overall development of the state.

Prayer For Relief

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

1. The Idaho Department of Water Resources' Motion for Intervention be granted for all purposes.
2. A copy of all pleadings filed with the Commission in this matter and a copy of all progress reports or other documents that the Applicants file with the Commission regarding this project be sent to the Idaho Department of Water Resources.
3. Any license issued by the Commission for the Arrowrock Dam Hydroelectric Project include provisions making the license consistent with the comprehensive plan for the development of the water resources of the State of Idaho con-

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tained in the Idaho state water plan.

4. Any license issued by the Commission for the project include a provision subordinating the operation of the project to upstream depletionary uses.

5. For such other and further relief as the Commission may deem just and proper.

DATED this 18th day of September, 1985.

JIM JONES
Attorney General
State of Idaho

PHILLIP J. RASSIER
Deputy Attorney General
Idaho Department of
Water Resources

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NOV 12 2002

CERTIFICATE OF MAILING

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary for this proceeding which includes the following:

Fred E. Springer, Director
Division of Project Management Branch
Office of Hydropower Licensing
Federal Energy Regulatory Commission
Room 208 RB
825 N. Capitol Street, N.E.
Washington, D.C. 20426

Mr. John Gale
Chairman
Boise Project Board of Control
214 Broadway
Boise, ID 83702

DATED at Boise, Idaho, this 18th day of September, 1985.

PHILLIP J. RASSIER
Deputy Attorney General
Idaho Department of Water Resources
Statehouse
Boise, ID 83720
(208) 334-4448

MICRO

INTER-DEPARTMENT MEMO — 1

FROM Dave Tuthill

DATE 9/5/85

TO 63-10240

SUBJECT

See File 63-10239 for information related to the protest of Apps for Permit Nos. 63-10239 & 63-10240.

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DRT

SIGNATURE

P-4656-002

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission

(July 25, 1985)

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

~~63-10290~~ ~~63-10290~~ 63-10290

a. Type of Application: Major License (Existing Dam)

b. Project No.: 4656-002

c. Date Filed: July 27, 1984

d. Applicants: Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District and Big Bend Irrigation District

e. Name of Project: Arrowrock Dam Hydroelectric

f. Location: At the Bureau of Reclamation's existing Arrowrock Dam on the Boise River in Elmore, Boise, and Ada Counties, Idaho near the town of Boise, within the Boise National Forest on lands under Reclamation withdrawal, Corp's of Engineer Land and land administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §791(a) - 825(r)

h. Contact Person: Mr. Gerald Guentz
Chairman
Boise Project Board of Control
214 Broadway
Boise, ID 83702

i. Comment Date: SEP 23 1985

j. Description of Project: The proposed project would consist of: (1) two 13-foot-diameter, 180-foot-long penstocks having steel trashracks at the entrance of each penstock, to be located through the existing Arrowrock Dam; (2) a 70-foot-wide, 120-foot-long, 130-foot-high powerhouse located on the left side of the Boise River Channel at elevation 3,070 feet containing two 30-MW generating units with a total average annual energy output of 167.6 million kWh, operating under a head of 149 feet; (3) a 90-foot-wide, 50-foot-long tailrace discharging into the existing Corps of Engineer's Lucky Peak Lake reservoir, over a concrete-capped weir at elevation 3,026 feet; (4) a switchyard and transformer located adjacent to the powerhouse; (5) a 15.2-mile-long, 138-kV transmission line connecting to the existing Boise Bench Substation of Idaho Power Company; (6) 18 new dock segments at Spring Shores Marina; (7) 280 new dock segments placed at Lucky Peak Lake; (8) modification of beach at Robie Creek and the boating zone at Chimney Rock; (9) an enlargement of the existing Barclay Bay boat launch ramp, widened from 40-feet to 50-feet and lengthened from 70-feet to 320 feet; and (10) a paved parking lot with 28 pull-through car-trailer spaces. The estimated cost of the project is $78,977,195, in 1983 dollars.

DC-A-1

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Department of Water Resources

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k. Purpose of Project: The production of hydropower at Arrowrock Dam will be a byproduct of the present multipurpose Boise River System reservoir operations. Project power would be sold to either Seattle City Light, Idaho Power Company or Bonneville Power Administration.

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

A3. Development Application -- Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A9. Notice of intent -- A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

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

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

Kenneth F. Plumb
Secretary

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JUL 13 1985
Department of Water Resources
Western Regional Office

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JUL 17 1985
Department of Water Resources

William F. Ringert
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ATTORNEYS FOR INTERVENORS

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

In the Matter of the Application For Permit to Appropriate the Public Waters of the State of Idaho, No. 63-10240, by the United States of America, acting through the Regional Director, Bureau of Reclamation	BRIEF OF INTERVENORS ON SCOPE OF ISSUES

This Brief is submitted by the five irrigation districts who are Intervenors in this matter, in response to the Brief filed by the Protesters on June 17, 1985. The purpose of the Brief is to narrow, insofar as possible, the issues to be addressed at the conference or hearing to be held at a later date in this proceeding.

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I

THE PROPOSED USE WILL NOT REDUCE THE QUANTITY OF WATER UNDER EXISTING WATER RIGHTS

The Protesters assert that the use proposed by the application will reduce the quantity of water under existing water rights by (1) depleting some of the storage capacity of Arrowrock Reservoir, (2) causing the release of water during the storage season, (3) interfering with the storage of water for irrigation purposes, and (4) exacerbating water use conflicts caused by short water years and inaccurate runoff forecasts.

These assertions by the Protesters overlook the protection afforded them by basic principles of water law and by their respective contracts with the United States.

The proposition that as between appropriators, the first in time is first in right is firmly imbedded in both the constitutional and the statutory lawof the State of Idaho (Idaho Constitution, Article 15, Section 3; I.C. 42-106) and the Federal Reclamation Law (43 U.S.C. §§372 and 383). The principal storage rights in Arrowrock Reservoir are those under Water License No. 7180 for diversion to storage at the rate of 8,000 c.f.s., with priority of January 13, 1911, and Water License No. R-652, for storage of 15,000 acre feet with priority of June 25, 1938. The application involved in this matter was filed early in 1984. It is obvious that Licenses Nos. 7180 and R-652 are prior in time to any water right that will be perfected under the pending application.

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Two well-established points of federal law must be recognized in this proceeding. First, state law is controlling, and the Bureau of Reclamation must comply with state law, in the control, appropriation, use or distribution of water. One of the more recent cases recognizing this principle is Nevada v. United States, ___ U.S. ____, 77 L.Ed.2d 509 (1983). Other cases recognizing and confirming the same point include California v. United States, 438 U.S. 645, 57 L.Ed.2d 1018 (1978) and Jicarilla Apache Tribe v. United States (CA-10), 657 F.2d 1126, 1144. Second, appropriations by the United States under the Reclamation Act are made for the benefit of the landowners who ultimately apply the water to beneficial use, and not for the benefit of the United States as holder of title to the system constructed for storage and delivery of the water. See, e.g., Nevada v. United States, supra, U.S. at ___, L.Ed. at 521, quoting from Nebraska v. Wyoming, 325 U.S. 589, at 613-614, 89 L.Ed.2d 815 (1945). These principles were applied to water rights of contractors under the Warren Act, 43 U.S.C.A. §523, in Hudspeth County Conservation and Recreation District No. 1 v. Robbins, 5th Cir., 212 F.2d 425, (1954).

Both state law (see, e.g., I.C. §42-104), and federal law (43 U.S.C. §372) recognize that beneficial use is the basis, the measure, and the limit of a water right under the appropriation doctrine. The water rights which the Protesters seek to protect were established by storage, release and application to beneficial

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use on lands lying under their respective delivery systems. The appurtenancy of those rights is recognized in Water Licenses Nos. 7180 and R-652. In addition to the protection afforded those water rights by virtue of their earlier priority and their vested nature, the rights to receive the stored water are protected by the respective contracts between the Protesters and the United States. See, e.g., Agreement between the United States and Pioneer Irrigation District dated February 27, 1913, at pages 4-5, of which copies are attached hereto as Appendix 1.

Prior to the passage of the McCarran Act, 43 U.S.C. §666, the Protesters might have had some difficulty in enforcing their contract rights against the United States. See, e.g., Hudspeth County Conservation and Reclamation District No. 1, supra. However, by virtue of the McCarran Act the United States has expressly consented to be joined as a defendant in any suit for the adjudication of rights to the use of water of a river system or other source, or for the administration of such water rights.

It is a well-established proposition of water law in Idaho that the Director of the Department of Water Resources has no power or authority to interfere with vested rights under a permit granted by him for the appropriation of water by thereafter granting a permit which would interfere with vested rights; the Director has no authority to deprive a prior appropriator of water and give it to any other person. See, e.g., Lockwood v. Freeman, 15 Idaho 395, 98 P.295 (1908); Gand v. Thompson, 21 Idaho 485, 123

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Pac. 497 (1912). As applied to this proceeding, those holdings mean that the Director, by issuing a permit under the pending application, has no authority to authorize release of stored water in derogation of the prior rights under Water Licenses Nos. 7180 and R-652. However, this does not by any stretch of the imagination mean that the Director cannot issue a permit to use the water for power generation as it is released from the reservoir to satisfy the needs of the holders of the prior rights for irrigation use.

This principle is recognized by the Director's current policy of inserting in all new water permits a condition to the effect that the permit is issued subject to all valid existing water rights.[1]

The Protesters do not assert that there is no water available in the Boise River for appropriation for power purposes at the proposed point of diversion. They merely suggest that, in order to obtain a constant flow for power generation, the United States

1. The initial delivery of stored water to the Protesters created a vested right under Idaho Code §42-914, and constituted an exclusive dedication of the water to the use (irrigation) for which it was delivered. By reason of that dedication, the Protesters cannot be deprived of the water to which they are entitled except when the supply is short and all holders of equal priority are reduced proportionately under the provisions of the Bryan Decree. See Pioneer Irrigation District v. American Ditch Association, 50 Idaho 732, 750-751; 1 P.2d 196 (1931).

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either will fail to store water when it should be stored or will release stored water at times when that water is not needed for irrigation, thus reducing the supply available to meet irrigation needs later in the season. The only basis for those assertions appears to be the period of use and the quantity sought to be appropriated as stated in the application, which are January 1 to December 31 and 5,470 c.f.s., respectively.

It is common practice for applicants to apply for the maximum amount that can be put to beneficial use under the proposed project, and use of proposed plant capacity as the amount sought to be appropriated should not be assumed to indicate an intention to release water stored for irrigation for the sole purpose of generating power, without regard to irrigation needs under the prior water rights. Such an assumption would be illogical in view of the history of the Boise Project. More often than not, the supply of stored water is substantially consumed by the end of the irrigation season, and there would be no reason to release water solely for power generation before the irrigation season commences, when essentially the same aggregate amount of power would be generated through normal releases during the irrigation season.

The United States has not applied for any additional storage rights as part of the pending application. The existing storage is dedicated to irrigation as the beneficial use under which the existing rights were established. Releases from storage are,

therefore, dictated by the requirements of beneficial use for irrigation. The Protesters' theory requires that the United States be able to reallocate water rights and elevate the priority of the proposed power generation rights above the priority of the existing irrigation rights. A similar theory was advocated by the United States in Nevada v. United States, supra, and the proposition that the United States had any authority to reallocate vested rights in such a manner was flatly rejected by the Supreme Court. Nevada v. United States, ____ U.S. ____, at ____; 77 L.Ed.2d 509, 519.

Under subdivision IV the Protesters in part seek to inject into this proceeding whether the proposed use of the water for the production of electric energy would conflict with the local public interest. It appears to the Intervenors that this necessarily raises the issue of federal supremacy in the matter of licensing water power projects. It is our contention that federal supersedure of the public interest feature of the water power project does exist and the Department may not appropriately consider that matter for the reason that exclusive jurisdiction has been conferred upon the Federal Energy Regulatory Commission by the Congress. The basic power is conferred upon the Federal Energy Regulatory Commission, hereinafter referred to as FERC by Title 16, section 797 (e) USCA:

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To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided; Provided, that Licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservations; Provided, further, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting the navigation have been approved by the Chief of Engineers and the Secretary of the Army. Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the Commission and shall become a part of the records of the Commission: Provided further, That in case the Commission shall find that any Government dam may be advantageously used

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by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to June 10, 1920; And provided further, That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by the proviso of said subsection.

Section 796 :

Reservations

Congress could depart from the common under standing of term "reservations" as applied to Indian lands and was free and competent artifically to define the term for the purposes it prescribed in this section and the courts are bound to give effect to such definition. Federal Power Commission v Tusarora Indian Nation. App.,D. C. 1960, 80 SCt 543, 3162 U. S. 99a, 4 L Ed.2d 584, rehearing denied 80 S. Ct.1858,362 U. S. (56, 4 L. Ed 2d 873 (2 mems)

The plain words of definition of "reservations" as tribal lands embraced within Indian reservations and other lands and interests in lands owned by United States, and the legislative history of the definition, and the fact that Congress acted under U.S.C.A. Const. Art. 4, S. 3, cl. 2, when it authorized Commission to license federal power projects on public lands and reservations of United States and the plan of compensation disclosed by this chapter when a licensed project is on public lands and reservations, disclosed congressional intention to confine term "reservations", including tribal lands within Indian reservations, to those located on lands owned by United States or in which United States owned

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a proprietary interest. Id.

> Lands within Indian reservation, reserved by United States for power purposes, and lands which United States had withdrawn from entry under public land laws and reserved for power purposes were "reservations" as distinguished from "public lands" within this chapter. Federal Power Commission v. State of Or., Orl955, 75 S.Ct. 832, 349 U. S. 435, 99 L.Ed. 1215.
>
> Acts relating to appropriation of waters on public lands and rights of way for canals and ditches were intended to be a governmental recognition and sanction of possessory rights on public lands asserted under local laws and customs, and did not limit Commission's right to license a water power project on land which was within this section's definition of "reservation" as distinguished from definition of "public lands". Id.

and in Title 1161, Section 803 (a) FERC is given specific auhority to determine as a condition precedent to issuance of a license that the project licensed would be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses.

In First Iowa vs Federal Power Commission, 328 US 152, 66 Supreme Court 906, the Court held that by enacting the Federal Power Act, congress had prempted the appeal of licensing electric water-power projects, stating in part on page 919:

> The purpose of this section as thus explained

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 17th day of July, 1985, a true and correct copy of the above and foregoing instrument was hand delivered:

Bureau of Reclamation
Pacific Northwest Region
Federal Building and
United States Courthouse
Box 043-550
West Fort Street
Boise, ID 83724

Peter J. Boyd
Elam, Burke & Boyd
1010 First Interstate Building
Box 1559
Boise, Idaho 83701

Department of Water Resources
State of Idaho
450 West State Street
Boise, ID 83720

Raymond D. Givens

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> is consistent with the contention of the Commission in this case. It provides for presentation of information to the federal commission and protects the constitutional rights of the States. This explanation does not support the contention of the State of Iowa that § 9(b) amounts to the subjection of the federal license to requirements of the state law on the same subject. The inappropriateness of such an interpretation is apparent in the light of the circumstances which culminated in the passage of the Federal Water Power Act in 1920. The purposes of the Act were then so generally known as to have made such a restrictive interpretation impossible and a denial of it unnecessary. It was the outgrowth of a widely supported effort of the conservationists to secure enactment of a complete scheme of national regulation which would promote the comprehensive development of the water resources of the Nation, in so far as it was within the reach of the federal power to do so, instead of the piecemeal, restrictive, negative approach of the River and Harbor Acts and other federal laws previously enacted.
>
> It was a major undertaking involving a major change of national policy. That it was the intention of Congress to secure a comprehensive development of national resources and not merely to prevent obstructions to navigation is apparent from the provisions of the Act, the statutory scheme of which has been several times reviewed and approved by the courts.
>
> The detailed provisions of the Act providing for the federal plan of regulation leave no room or need for conflicting state controls.

In Town of Springfield, VT v McCarren, 549 F. Supp. 1134 the court thoroughly reviewed the existing authorities on the matter, as follows:

II. THE MERITS

As the Public Service Board majority recognized in Petition of the City of Winooski, P.S.B.

Docket No. 4606 (Jan. 14, 1982), a long line of cases has held that federal jurisdiction over the licensing of hydroelectric projects on navigable waters of the United States preempts state licensing authority. Id., slip op. at 2-3, citing inter alia, First Iowa Hydro-Electric Cooperative v. Federal Power Commission, 328 U.S. 152, 66 S.Ct. 906, 90 L.Ed. 1143(1946); Federal Power Commission v. Oregon, 349 U.S. 435, 75 S.Ct. 832, 99 L.Ed. 1215 (1955); Tacoma v. Taxpayers of Tacoma, 357 U.S. 320, 78 S.Ct. 1209, 2 L.Ed.2nd 1345 (1958); Washington Dept. of Fish and Game v. Federal Power Commission, 207 F.2d 391 (9th Cir. 1953), cert. denied, 347 U.S. 936, 74 S.Ct. 626, 98 L.Ed. 1087 (1954); Town of Springfield v. State of Vermont Environmental Board, supra; Citizens Utilities Co. v. Prouty, 122 Vt. 433, 176 A.2nd 751 (1961), cert. denied, 369 U.S. 838, 82 S.Ct. 867, 7 L.Ed.2d 82 (1962); In re Bellows Falls Hydro-Electric Corp., 114 Vt. 443, 47 A.2d 409 (1946). "All of this precedent not withstanding," the majority wrote, "it appears to us that the United States Supreme Court, which is the ultimate authority on matters of federal preemption, has, by a recent decision, signaled its rejection of First Iowa and all of its progeny." Petition of Winooski, supra, slip op. at 3, citing California v. United States, 438 U.S. 645, 98 S.Ct. 2985, 57 L.Ed.2d 1018 (1978). In the declaratory ruling challenged in this case, Petition of the Town of Cavendish, supra, the Public Service Board found the issue "identical" to that in Petition of Winooski, and "adhere[d] to the views expressed in the majority opinion therein." Petition of Cavendish, supra, slip op. at 4.

(18 The question for decision is thus whether the Supreme Court has in California v United States, supra, implicitly overruled First Iowa. The short answer to the question is that it has not. Six weeks after the Public Service Board issued its ruling in Petition of Winooski, supra, and six weeks before it ruled in Petition of Cavendish,

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supra, a unanimous Supreme Court cited First Iowa with approval for the proposition that "New Hampshire's purported 'ownership' of the Connecticut River ... provides no justification for restricting or conditioning the use of these federally-liocensed (hydroelectric) units." New England Power Co. v Hew Hampshire, 455 U. S. 331, ---n.6, L02 S. Ct. 1096, 1100 n. 6, 71 L Ed 2d 188 (1982).

In California v United States, the Supreme Court dealt with a statute distinct in both purpose and history from that at issue in First Iowa. First Iowa had examined federal preemption of the licensing of hydroelectric projects and construed § 27 of the Federal Power Act, now codified at 16 U.S.C. § 821. California v United States explored state and federal authority over federal reclamation projects, and interpreseted § 8 of the Reclamation Act of 1902, codified at 43 U.S.C.§§ 372,383. Notwithstanding some similarity in the wording of the statutes, they serve different objectives, and relate to federal actions fundamentally dissimilar in nature.

Section 27 of the Federal Power Act provides:

> Nothing contained in this chapter shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein.

16 U.S.C. §821

In First Iowa, the Supreme Court construed this statute as being "limited to laws as to the control, appropriation, use or distribution of water irrigation or for municipal or other uses of the same nature." Id, 328 U. S. at 175-76,66 S. Ct. at 917. The Court rejected an interpretation of § 27 that would have preserved concurrent

state jurisdiction over the licensing of hydroelectric plants on navigable waters. Id. at 178-81, 66 S. Ct. at 918. It stressed that the Federal Power Act created an integration" rather than a "duplication" of federal and state jurisdictions. Certain matters, such as irrigation were left to the States to regulate, provided such regulation was not inconsistent, with federal law. ID. at 174-75 and n. 19, 66 S. Ct. at 916 and n. 19. Other matters, such as hydroelectric plant licensing, were left exclusively to the Federal Government. Thus "without setting up a divided authority over any one subject" both the States and the Federal Government were given a voice in the regulatory plan. ID. at 174, 66 S. Ct. at 916 (footnote omitted).

Concurrent jurisdiction over licensing was impermissible, the Court held:

> A dual final authority, with a duplicate system of state permits and federal licenses required for each project, would be unworkable. "Compliance with the requirements" of such a duplicated system would be impossible in some cases and probably difficult in most of them.

Id. at 1168, 66 S. Ct. at 913 (footnote omitted). Because "the detailed provisions of the Act providing for the federal plan of regulation leave no room or need for conflicting state controls," concurrent state licensing up to the point of veto was condemned along with the clearly improper veto power over the federal project" that the power to withhold a state permit implies. Id at 181, 66 S. Ct. at 919 (footnote omitted), 164, 66 S. Ct. at 911. In the licensing state federal law covers the field.

(19) Section 9 (b) of the Federal Power Act, 16 U.S.C. § 802(b), requires the applicant for a Federal Energy Regulatory

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Commission (FERC) license to submit "satisfactory evidence of compliance with state lalws relating to the use of water for power purposes. But this subsection "does not itself require compliance with any state laws." First Iowa, supra, 328 U. S. at 177, 66 S. Ct. at 918. It is merely a "suggestion to (FERC) of subjects as to which (it) may wish to have some proof submitted to it of the applicant's progress." Id at 177-78, 66 S. Ct. at 918. FERC may wish to see proof of "the sufficiency of the legal title of the applicant to its ripariana rights, or as to the validity of its local franchises, if any, relating to proposed intrastate public utility service." Id at 178, 66 S. Ct. at 918. As Judge Coffrin noted in the Enviornmental Board case, "the import of (§ 9(b) and regulations implementing it) leaves no doubt that it is the function of FERC, to the exclusion of the (Environmental) Board and any other state agencies, to act on behalf of the people of Vermont, as well as all others, to insure that the interest of all concerned are adequately protected." Town of Springfield v State of Vermont Environmental Board, supra , 521 F. Supp. at 250.

(20) In California v United States, supra, The Supreme Court held that § 8 of the Reclamation Act of 1902, 43 U. S. C. §U. S. C. §383, requires the Secretary of the Interior to comply with state water law, including any law requiring the obtaining of a state permit, in carrying out federal reclamation projects, unless the state law is clearly inconsistent with a Congressional directive. The statute at issue in the case provides:

> Nothing in sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 432, 434, 439, 461, 491 and 498 of this title shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use or distribution of water used in irrigation or any vested right acquired thereunder, and the Secretary of the Interior in

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> carrying out the provisions of such section, shall proceed in conformity with such laws, and nothing in such sections shall in any way affect any right of any State or of the Federal Government or of any landowner, apropriator , or user of water, in to or from any interstate stream or the waters thereof.

43 U. S. C. § 383.

Justice Rehnquist's opinion for the court begins with a detailed opinion for the Court begins with a detailed history of federal and state involvement in the reclamation of the arid lands of the Western States. The lessons of history were important to the Court because

> The situations invoking the application of (principles of comity and federalism) have contributed importantly to their formation. Just as it has been truly said that the life of the law is not logic but experience, see O. Holmes, The Common Law 1 (1981,), so may it be said that life of the law is not political philosophy but experience.

California v. United States, supra, 438 U.S. at 648, 98 S.Ct. at 2987. The federal experience in reclaiming the arid lands of the West has been that there is a need for uniformity in the regulation of water rights. Rather than create a uniform federal water law from scratch, or create a system of dual rights that would inevitably result in "legal confusion . . . if federal water law and state water law reigned side by side in the same locality," id. at 669, 98 S.Ct. 2998. Congress elected to pursue uniformity by deferring to state regulation. See id. at 665-70, 98 S.Ct. at 2996-98.

The Supreme Court concluded from amply chronicled legislative history that, in impounding water to be used in a federal reclamation project, the Secretary of the Interior must comply with state water law, including the requirement of obtaining a state permit for appropriation of water, if needed, and satisfying any conditions attached to the permit which are not inconsistent with federal law. Id. at 647, 98 S.Ct. at 2987.

If there is one theme that runs through both First Iowa and California v. Unted States, it is that duplicative regulation is to be avoided. Both the States and the Federal Government have roles to play in regulating the use of our Nation's waters, but their roles are different. The States have been given primary jurisdiction over proprietary rights in water. Local regulation is appropriate because of the legal and geographical differences between the arid Western States, where the doctrine of prior appropriation generally prevails and water rights are subject to strict state regulation, and the Eastern States, where water rights are governed by the doctrine of riparian rights and an abundance of water obviates the need for complex state water distribution plans. On the other hand, the Federal Government has taken exclusive jurisdiction over the licensing of hydroelectric projects on navigable waters. It has established a specialized federal agency, the Federal Energy Regulatory Commission, which has the expertise to evaluate such projects in light of "comprehensive" criteria. Cf. 16 U.S.C. § 803(a); Town of Springfield v. State of Vermont Environmental Board, supra, 521 F.Supp. at 249-50. That agency's control over the licensing of hydroelectric projects on navigable waters of the United States is plenary. The proper means by which the Public Service Board and the Town of Cavendish may make sure that their concerns are taken into account in the construction of the hydroelectric plant the plaintiffs propose to build is to appear before the FERC as parties, as they have a right to

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do, see 18 C.F.R. § 1.8, rather than to subject the plaintiffs to duplicative, and possibly conflicting, regulation.

In sum, California v. United States does not implicitly overrule First Iowa. The two cases are consistent. Both recognize the need for a uniform system of regulation in which the States perform certain functions and the Federal Government performs other functions. While the Vermont Public Service Board may eventually have jurisdiction over certain aspects of the Black River hydroelectric project, such as rate-setting, it is without jurisdiction over the licensing and approval of the project.

It is DECLARED and ADJUDGED that, under the Federal Power Act and the Supremacy Clause, the jurisdication of the Federal Energy Regulatory Commission to act on the plaintiffs' application for a license to develop the proposed Black River hydroelectric project is exclusive of the jurisdiction assumed by the majority of the members of the Vermont Public Service Board over the improvements, works, facilities, features and elements of the Black River Project within the plaintiffs' application to FERC for a license for the project. Accordingly, for order entered by the Public Service Board on April 7, 1982, and filed on April 8, 1982, in Petition of the Town of Cavendish P. S. B. Docket No. 4444, exceeds its jurisdiction, and is without legal force and effect. Since no disputed issue of fact is presented, the plaintiffs' motion for summary judgment is GRANTED.

In Board of Electric v McCarren, 725 F. Supp. 2nd , 176 at 178, a similar view of preemption was reached.

> In First Iowa Hydro-Electric Coop, v. FPC, 328 U.S. 152, 181, 66 S.Ct. 906, 919, 90 L.Ed. 1143 (1946), and again in FPC v.

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> Oregon, 349 U.S. 435, 445, 75 S.Ct. 832, 838, 99 L.Ed. 1215 (1955), the Supreme Court held that the detailed provisions of the Federal Power Act left no room for conflicting or duplicative state regulations. Despite these holdings, the Vermont Public Service Board has declared appellees' need to secure from it a certificate of public good before they can proceed with the project now being reviewed by the FERC. Appellees assert the right to proceed in accordance with the federal statutes and regulations, and they sought an injunction to nullify the Board's interference with that right. The district court's decision that the Board's order was without legal force and effect was simply a response to appellees' demand for the affirmative relief which was their right under the federal law. The granting of such relief was a proper exercise of the district court's subject matter jurisdiction. See Franchise Tax Bd., supra, _____ U.S. at _____, 103 S.Ct. at 2852 n. 20; Stone & Webster Eng'g Corp. v. Ilsley, 690 F.2d 323, 327 (2d Cir.1982), aff'd mem., _____ U.S. _____, 103 S.Ct. 3564, 77 L.Ed.2d 1405 (1983).
>
> Because we already have affirmed a ruling which rejected the claims appellants are reasserting here, and because we continue to believe that such rejection is proper, we affirm.

See also Town of Springfield vs State, etc. 521 F. Supp. 233.

The function of the Department here under these decisions is limited by Section 27 of the Federal Power Act to questions relating to the control, appropriation, use and distribution of water used in irrigation or for municipal or other allied uses, to the total exclusion of any consideration

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of whether the use of the water for the production of electric energy is in the public interest. That has been totally reserved for determination by FERC.

The present application does not seek to create any right to the exclusion of the water rights held by Protesters or held for their benefit, and those rights are adequately protected if the use of the waters under present application is limited to utilization of waters released from Arrowrock reservoir to satisy any prior vested water right. In the event that releases during any year are less than the maximum allowed under any right granted under this application, the applicant stands in the same position as any other water user. If the water is not there, they can't use it. On the other hand, if the water is to be released in order to satisfy demands of vested rights, additional use of such release for production of electric energy in no way harms the Protesters.

The question of whether the proponents of the project would be able to use the power is relative to the issue of public interest and the determination of the public interest feature is commited to FERC.

Udall vs FERC, 387 US 428, 87 Supreme Court, 1712, 1724.

> The question whether the proponents of a project "will be able to use" the power supplied is relevant to the issue of the public interest. So too is the regional

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> need for the additional power. But the inquiry should not stop there. A license under the Act empowers the license to construct, for its own use and benefit, hydroelectric projects utilizing the flow of navigable waters and thus, in effect, to appropriate water resources from the public domain. The grant of authority to the Commission to alienate federal water resources does not, of course, turn simply on whether the project will be beneficial to the licensee. Nor is the test solely whether the region will be able to use the additional power. The test is whether the project will be in the public interest. And that determination can be made only after an exploration of all issues relevant to the "public interest," including future power demand and supply, alternate sources of power, the public interest in preserving reaches of wild rivers and wilderness areas. the preservation of anadromous fish for commercial and recreational purposes, and the protection of wildlife.

In Section IV of their brief, the Protesters define their concerns about whether the proposed appropriation would harm "the local public interest." An analysis of the concerns raised shows that none of them are really relevant to the local public interest. The Department should therefore preclude the Protesters from raising this issue at a hearing.

> Idaho Code §42-203A(5) provides in pertinent part that: In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) 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 (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use; 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 smaller quantity of water than applied for, or may grant a permit upon conditions.

In Section lV of their brief, the Protesters raised four areas in which they feel that the proposed appropriation will conflict with the local public interest: (1) that "currently there is an electrical power surplus locally and throughout the Northwest:" (2) that a shortage of irrigation water could result from proposed appropriations and thus harm local agriculture; (3) That the proposed appropriation will affect the Protesters' storage rights in the Arrowrock Reservoir under their contract with the Bureau of Reclamation; and (4) it is unfair to have the five irrigation districts whose name is on the FERC License Application to benefit from the production of power at Arrowrock Dam. None of these reasons are sufficient to qualify within the statutory meaning of local public interest.

As to whether or not a power surplus is relevant to the public interest, it should initially be emphasized that this is an area where the federal government has preempted the states in

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deciding the desirability of a particular project. See, supra. Even were it not an area preempted by the federal government, the legislature could not have meant that under this criteria the Department would be entitled to make a decision concerning the desirability of a particular beneficial use. To carry the concern of the Protesters to its ~~local~~ logical conclusion, the Department would be required to decide on each application whether or not there is a surplus of agricultural production, surplus of livestock, a surplus of mining, etc. In other words, the Protesters would read the public interest criteria to say that no longer are there categories of beneficial uses but that there is now a subcategory as to whether or not a proposed beneficial use is a good idea in the grand scheme of our economy. Clearly the legislature could not have intended such a sweeping change to Idaho law without clear direction.

The Department's involvement in this marketplace decision has been limited to determining that the applicant has the financial resources to complete the project (which the Protesters begrudgingly concede the federal government does have). Obviously the marketplace will ultimately determine whether or not this project will be built.

As to whether or not the proposed use will affect local agriculture, the Protesters are really arguing that the proposed application would reduce the quantity of water under existing water rights which is a particular requirement previously addressed. Obviously, hydroelectric generation is a nonconsumptive use of water.

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If the operation of the project is such as to affect existing rights, the Protesters have an adequate remedy available to them under Idaho water law. This concern should thus be addressed under Idaho Code § 42-203A(5)(a) rather than under the local public interest criteria.

Nor is the Protesters' contention that the proposed use would affect their storage rights under a contract with the United States Government relevent to the local public interest. This is a matter purely of private concern between the Protesters and the United States Government. What the Protesters are asking the Department to do is to resolve a private contractual dispute. This also is clearly not relevant to the local public interest and would mire the Department in a complex factual and legal determination which should be left to the Courts, because the Department lacks jurisdiction to resolve such a dispsute.

Finally, the Protesters have stated that it is not in the local public interest to allow the five intervening Districts to hold the FERC license to produce power at Arrowrock Dam. Once again, this is a determination that has been preempted by the Federal Government in its licensing procedures. Moreover, this argument taken to its logical conclusion would mean that no private entity could produce power. That clearly is not the law. And this concern is obviously inconsistent with the ones raised earlier by the Protesters. They are in effect saying that the proposed appropriation for power production would not be in the local public interest unless they were a part of the group producing the power. They are once

again attempting to make the Department decide what entities should be partners in a particular venture. Clearly the legislature would not want to go to such an extreme without clearly expressing its intention.

For all of these reasons, the Department should not allow the Protesters to present evidence on the local public interest issue.

None of the issues raised by the Protesters, if proven are valid reasons for denying the application.

BOISE KUNA IRRIGATION DISTRICT
NAMPA & MERIDIAN IRRIGATION DISTRICT
NEW YORK IRRIGATION DISTRICT
WILDER IRRIGATION DISTRICT
BIG BEND IRRIGATION DISTRICT

By _____
Randall C. Fredricks

_____
William B. Ringert

_____
Raymond D. Givens

_____
Don Olowinski

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Thirty-five ousand Dollars ($35,000) e. h, the first installment to be due and payable on the same day of the year following that in which announcement is made by the Secretary of the Interior that the said sum has been expended for such work, and one (1) instalment on the same day of each year thereafter until all instalments are paid, and will use the taxing power of the District and all the powers and resources of the District to collect said sums of moneyand pay the same to the Government when due.

3. That after the construction thereof, the District will maintain said drainage system in good serviceable condition at its own expense, but if it shall fail or neglect to do so, the United States may maintain or repair the same and charge the cost thereof to the District, which cost the District will promptly pay.

4. That the District will pay to the Government the sum of five Hundred Sixty Thousand Dollars ($560,000) for storage capacity in Arrowrock Reservoir, a reservoir to be constructed by the Government on Boise River in Boise and Elmore Counties, Idaho, and to have a capacity of between 200,000 and 250,000 acre-feet, and the Government will provide for the District that portion of the total storage capacity of Arrowrock Reservoir, which Five Hundrod Sixty Thousand Dollars ($560,000) is of the total cost of said reservoir, and will deliver at the downstream end of the outlets of the Arrowrock Reservoir for the District each year after the completion of said reservoir, the same proportion of the stored water available from said reservoir at such times after three (3) days notice from the

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District to the overnment officer in charg., and in such quantities as the District may direct, not in excess of the District's proportionate part of the available outlet capacity. The total cost of said reservoir to be determined and stated by the Secretary of the Interior in his public notice of the charges to be made for the Boise project, and to include all costs and expenses of whatsoever nature or kind for the purpose of, growing out of, in connection with, or resulting from the construction of said reservoir including engineering expenses and overhead charges, and such interest, if any, as may be payable on account of advances under the provisions of the Act of Congress of June 25, 1910, (36 Stat. L. 835), or other legislation by Congress.

5. The said sum of Five Hundred Sixty Thousand Dollars ($560,000), shall be paid by the District to the Government in ten (10) installments of Fifty-Six Thousand Dollars ($56,000) each, the first of which shall be due and payable one (1) year after the date upon which public notice or announcement is made by the Secretary of the Interior of the charges to be made upon the Boise Project, on account of the cost of construction of said project, and one (1) installment on the same day of each year thereafter; and the District will use the taxing power of the District, and all the powers and resources of the District to collect said sums of money, and pay the same to the Government when due, and will also pay each year its proportionate share of the cost of operation and maintenance of said reservoir and delivery of water therefrom, as announced by the Secretary of the Interior.

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Re: 63-10239 & 63-10240 - Bureau of Reclamation

Place: Third Floor Conference Room, Dept. of Water Resources, State Towers Boise, ID

Date: 9:30 a.m., Thursday, May 16, 1985

Hearing conducted by: Bob Flemmer

ROSTER OF ATTENDANCE

Name	Address	Representing
Ed Thomas	Boise	USBR
Neil Stessman	214 Broadway Boise	Central Snake Projects
Robert BURR	Boise -	USBR
RONALD J. GOLUS	BOISE -	USBR
RAY GIVENS	BOISE	N.Y. IRR. DIST
PETER J. Boyd	Boise	Pioneers Irrig Dist.
Scott L. Campbell	Boise	Pioneer Irrig Dist.
Randall C. Fredricks	Boise	Boise-Kuna Irr. Dist
Don Olowinski	BOISE	WILDER IRRIG. DIST
Bill Ringert	BOISE	NAMPA & MERIDIAN I.D.
Howard L Fuller	Rt 1 Star	Farmers Union
Caroline Kuhlc	Rt 1 Star	Farmers Union
Don Spatcher	Meridian	Settlers Irr. D.
Fred Hostetler	Caldwell R 3	Pioneer Irr. Dist.
Lawrence V Gray	Nampa Idaho	Pioneer Irrig Dist
Donald F. Soyer	Caldwell	Pioneer Irrigation Dist
Carter Fitchett	Eagle	Farmers Union Ditch

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CONFERENCE AND HEARING INFORMATION
IN THE MATTER OF APPROVAL OF AN APPLICATION FOR PERMIT

In accordance with Idaho Code, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

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

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties may be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral agruments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 42-1701A.

The parties by written stipulation may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the Director's review of a party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the district court.

Under the provisions of Idaho Code, Sections 42-1701A and 67-5215, any court review of the Department's decision on appeal shall be confined to the record created before the Department.

Failure to appear at the time and place set for hearing by the applicant or protestant(s) may allow the Department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

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

IN THE MATTER OF APPLICATIONS FOR PERMIT) NOTICE OF HEARING
NUMBERS 63-10239 AND 63-10240 IN THE NAME) AND/OR CONFERENCE
OF THE BUREAU OF RECLAMATION)

On April 19, 1984, the Bureau of Reclamation filed with the Department of Water Resources applications to appropriate the public waters of the State of Idaho. On June 8, 1984, the Department received protest(s) against approval of said applications from Peter J. Boyd, attorney for Farmers Union Ditch Company, Settlers Irrigation District, Farmers Cooperative Canal Company and Pioneer Irrigation District.

The Department has set the matter of protest for hearing for Thursday, May 16, 1985, at 9:30 a.m., in the State Tower Building, Idaho Department of Water Resources, Third Floor Conference Room, 450 W. State Street, Boise, ID. 83720. 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. A pre-hearing conference may be held beginning at the above set time and prior to the hearing.

Dated this 19 day of April, 1985

DAVID B. SHAW
Western Regional Supervisor

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

IN THE MATTER OF REQUEST FOR LEAVE TO INTERVENE IN THE MATTER OF APPLICATION PERMIT 63-10240 IN THE NAME OF THE BUREAU OF RECLAMATION FILED FOR BOISE-KUNA IRRIGATION DISTRICT, NEW YORK IRRIGATION DISTRICT, NAMPA AND MERIDIAN IRRIGATION DISTRICT, WILDER IRRIGATION DISTRICT AND BIG BEND IRRIGATION DISTRICT	ORDER GRANTING INTERVERVENTION

WHEREAS, a petition to intervene in the matter of Application for Permit number 63-10240 was filed by the above-named parties with the Department of Water Resources on July 26, 1984; and,

WHEREAS, the protestants have not responded to the petition within the time alloted for response; and,

WHEREAS, the Director of the Department of Water Resources finds that the petition to intervene alleges that the petitioners could be affected by the lack of approval of Application for Permit 63-10240 which could prevent their production of power at Arrowrock Dam; and,

WHEREAS, it is the determination of the Director that the petitioners have satisfied the requirements for intervention in accordance with Rule 6 of the Department of Water Resources Rules of Practice and Procedure;

NOW, THEREFORE, IT IS HEREBY ORDERED that the above-named petitioners shall be allowed to intervene in the matter of Application for Permit number 63-10240. The granting of leave to intervene shall not be construed to be a finding by the Director that the intervenors will or may be parties aggrieved by any ruling, order or decision of the Director for purposes of court review or appeal.

Dated this 19 day of April, 1985.

DAVID B. SHAW
Western Regional Supervisor

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CONFERENCE AND HEARING INFORMATION
IN THE MATTER OF APPROVAL OF AN APPLICATION FOR PERMIT

In accordance with Idaho Code, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

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

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties may be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral agruments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 42-1701A.

The parties by written stipulation may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the Director's review of a party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the district court.

Under the provisions of Idaho Code, Sections 42-1701A and 67-5215, any court review of the Department's decision on appeal shall be confined to the record created before the Department.

Failure to appear at the time and place set for hearing by the applicant or protestant(s) may allow the Department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

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DBS

LAW OFFICES
GIVENS, McDEVITT, PURSLEY, WEBB & BUSER
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

RAYMOND D. GIVENS
CHAS. F. McDEVITT
KENNETH L. PURSLEY
JAY L. WEBB
PAUL J. BUSER, P.A.
LEO EDWARD MILLER
KENNETH L. MALLEA
CHRISTOPHER J. BEESON
CELESTE KIM VERNETTI
MARK A. INGRAM

SUITE 501, HOFF BUILDING
802 WEST BANNOCK STREET
POST OFFICE BOX 2720
BOISE, IDAHO 83701

TELEPHONE
(208) 342-6571

TELECOPIER
(208) 343-9492

October 19, 1984

RECEIVED
OCT 23 1984
Department of Water Resources
Western Regional Office

Mr. Dave Shaw
Idaho Department of
Water Resources
450 West State
Boise, Idaho 83720

Re: IDENT No. 63-10240

Dear Mr. Shaw:

In connection with the difficulties you related in securing an appropriate hearing date in the above matter, we write on behalf of counsel for the Inteventors to suggest that some of the diffulties so far encountered might be avoided by a conference as provided in Rule 8.1 of the Rules and Regulations, Practices and Procedure of the Idaho Department of Water Resources.

It would appear that at such a conference the orderly conduct and disposition of the proceedings could be expedited by identifying specifically the claims of the parties, particularly those advanced on behalf of the Protestors by Mr. Peter J. Boyd, so that the issues could be narrowed and perhaps the preparation time of all concerned could be minimized.

As we read the rules, the Director must issue the order to hold such conference on his own motion, which is the reason we now suggest that such a conference be held.

Yours very truly,

GIVENS, McDEVITT, PURSLEY & WEBB

Raymond D. Givens

Raymond D. Givens

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RDG:ph

October, 1984

Mr. Dave Shaw
Boise, Idaho

cc: Mr. Peter J. Boyd
Mr. William F. Ringert
Mr. Randall C. Fredricks
Mr. Don Olowinski

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JUL 26 1984
Department of Water Resources

Randall C. Fredricks
CLEMONS, COSHO & HUMPHREY
1110 First Interstate Building
Boise, Idaho 83702
Telephone: 344-2811

Raymond D. Givens
GIVENS, McDEVITT, PURSLEY WEBB & BUSER
Box 2720
Boise, Idaho 83701

Mr. William F. Ringert
ANDERSON, KAUFMAN, RINGERT & CLARK
599 Bannock Street
Boise, Idaho 83702

Don Olowinski
HAWLEY, TROXELL, ENNIS & HAWLEY
Box 1617
Boise, Idaho 83701

William F. Schroeder
SCHROEDER & HUTCHENS
Post Office Box 220
Vale, Oregon 07018

BEFORE THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

In the Matter of the Application of THE BUREAU OF RECLAMATION	PETITION TO INTERVENE IDENT # 63-10240

COME NOW, BOISE-KUNA IRRIGATION DISTRICT, whose address is 311 South School Avenue, Kuna, Idaho, 83634, NEW YORK IRRIGATION DISTRICT, 214 Broadway Avenue, Boise, Idaho 83702, NAMPA AND MERIDIAN IRRIGATION DISTRICT, whose address is 1503 1 St S, Nampa, Idaho, 83651, WILDER IRRIGATION DISTRICT, 709 Cleveland Boulevard, Caldwell, Idaho , 83605 and BIG BEND IRRIGATION DISTRICT, Route 3, Box 3193, Adrian, Oregon 97901, by and through their attorneys, respectively, CLEMONS, COSHO & HUMPHREY, GIVENS, McDEVITT, PURSLEY, WEBB & BUSER, ANDERSON, RINGERT, KAUFMAN & CLARK, HAWLEY, TROXELL, ENNIS & HAWLEY, and SCHROEDER & HUTCHENS and petition for leave to intervene in the above numbered application, and in support of such petition to

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intervene, allege:

I

That petitioners are the holders of a permit issued by the Federal Energy Regulatory Commission of the United States, number 4656-001, a copy of which is attached hereto, marked Exhibit A.

II

That said Permit was amended on the 15th day of August, 1983, a copy of which is attached hereto marked Exhibit B.

III

That in connection with such permit, petitioners and the United States Department of Interior, Bureau of Reclamation have entered into a Memorandum of Understanding, copy of which is attached hereto, marked Exhibit C.

IV

That petitioners pursuant to said Memorandum of Understanding have a further understanding with the United States Department of Interior, Bureau of Reclamation for the orderly transfer of any license or permit which may be issued by the Idaho State Department of Water Resources under this proceeding from the Bureau of Reclamation to petitioners in the event petitioners proceed to seek a license from the Federal Energy Regulatory Commission of the United States; that the petitioners are proceeding to file such application for license with the Federal Energy Regulatory Commission and will at the appropriate time request either a transfer of any license or permit issued by the Idaho Department of Water Resources from the Bureau of Reclamation to petitioners, or request the substitution of petitioners as applicants under proceeding number Ident #63-10240.

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V

That the immediate interest of the petitioners in the above entitled proceedings is to resist any of the claims asserted by the FARMERS UNION DITCH COMPANY, SETTLERS IRRIGATION DISTRICT, FARMERS COOPERATIVE CANAL COMPANY and PIONEER IRRIGATION DISTRICT under the protest filed by those parties therein styled as Protestors.

VI

That none of the petitioners herein named were served with notice of the above entitled proceedings and that no date has been set for hearing upon Application Ident #63-10240.

WHEREFORE, Petitioners pray that they be permitted to intervene for all purposes.

Dated this 20th day of July, 1984.

CLEMONS, COSHO & HUMPHREY

By _____
Randall C. Fredricks, Attorney
for BOISE-KUNA IRRIGATION DISTRICT

GIVENS, McDEVITT, PURSLEY, WEBB & BUSER

By _____
Raymond D. Givens, Attorney
for NEW YORK IRRIGATION DISTRICT

ANDERSON, KAUFMAN, RINGERT & CLARK

By _____
William F. Ringert, Attorney
for NAMPA AND MERIDIAN IRRIGATION DISTRICT

HAWLEY, TROXELL, ENNIS & HAWLEY

By _____
Don Olowinski, Attorney for
WILDER IRRIGATION DISTRICT

SCHROEDER & HUTCHENS

By _____
Larry A. Sullivan, Attorney
for BIG BEND IRRIGATION DISTRICT

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of July, 1984, I served a true and correct copy of the within and foreging PETITION TO INTERVENE upon the following:

Peter J. Boyd
ELAM, BURKE, EVANS, BOYD & KOONTZ
Post Office Box 1559
Boise, Idaho 83701

by depositing a copy thereof in the United States Mail, at Boise, Idaho, in a sealed envelope, addressed to the last know post office address as set forth above, with postage prepaid.

RAYMOND D. GIVENS

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 30th day of July, 1984, I served a true and correct copy of the within and foregoing PETITION TO INTERVENE upon the following:

L.W. Lloyd, Regional Director
Pacific Northwest Region
Bureau of Reclamation
United States Department of the Interior
Box 043
550 West Fort Street
Boise, Idaho 83724

by depositing a copy thereof in the United States Mail, at Boise, Idaho, in a sealed envelope, return receipt requested, addressed to the last known post office address at set forth above, with postage prepaid.

RAYMOND D. GIVENS

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16 FERC ¶62,235

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mitchell Energy Company, Inc.	)	Project No. 3692-000
Boise-Kuna Irrigation District	)	Project No. 4656-000
New York Irrigation District	)	
Nampa & Meridian Irrigation District	)	
Wilder Irrigation District	)	
Big Bend Irrigation District	)	

ORDER ISSUING PRELIMINARY PERMIT
AND DENYING COMPETING APPLICATION

(Issued August 14, 1981)

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

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

COMPETING APPLICATIONS

Staff has reviewed the proposals for development of the site by the Applicants. None of the Applicants has presented a plan based on detailed studies. At this early stage of planning, there are no significant substantiated differences in the Applicants' plans and none of the plans are sufficiently developed

1/ Mitchell Energy Company, Inc., Project No. 3692, filed on November 7, 1980. Boise-Kuna Irrigation District, New York Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District & Big Bend Irrigation District, Project No. 4656, filed on May 13, 1981.

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).

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to enable a conclusion to be reached as to which is the best proposal. The purpose of a permit is to study the feasibility of a project and to determine the optimum development of the site. Inasmuch as each Applicant's plan is based on an estimate of capacity and energy and does not include other relevant factors more appropriate for consideration at the license stage, there is no basis at this preliminary stage to conclude that any one of these plans is superior to another. Information and analyses would be developed by the applicant during the term of the permit to ensure that a license, if granted, is for the plan that is best adapted to develop, conserve, and utilize in the public interest the water resources of the region. Therefore, consistent with Section 7(a) of the Federal Power Act, which requires the Commission to give preference to municipalities or States whose plans are at least as well adapted as other applicants, and pursuant to Section 4.33(g)(3) of the Commission's regulations, this permit is issued to the Permittee described in Ordering Paragraph (A).

EFFECTS OF THIS PRELIMINARY PERMIT

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

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

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

TERM OF PERMIT

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

It is ordered that:

(A) A preliminary permit is issued for the proposed project to Boise-Kuna Irrigation District, New York Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District & Big Bend Irrigation District as described in the attached notice, for a period effective the first day of the month in which this permit is issued, and ending either 24 months from the effective date or on the date that an application for license submitted by the Permittee has been accepted for filing, whichever occurs first. This permit is subject to the terms and conditions of the Federal Power Act (Act), which is incorporated by reference as part of this permit, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The application for a preliminary permit for Project No. 3692 filed on November 7, 1980, is denied.

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

Article 7. In the interest of protecting and developing the natural resources and other environmental values of the project area, the Permittee shall consult with the appropriate Federal, State, and local agencies in their fields of responsibility and expertise, shall conduct its project investigations in a manner which protects the environmental integrity of the area, and shall fully explore all feasible alternatives to the project and alternative project designs, taking into account impacts on natural resources and other environmental values. These resources and values include, but are not limited to: forests, land management and treatment, fish, wildlife, recreation and public use, flood regulation, water and air quality

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(including water supply, groundwater studies, waste treatment and disposal), public health and safety, archeological, historic and cultural sites, threatened or endangered species of flora and fauna, and scenic and aesthetic values. The Permittee shall initiate and conduct, or have conducted, any studies that may be necessary to determine the impact of the construction and operation of the proposed project on these natural resources and values and measures needed to protect and develop them or to provide for their mitigation or replacement, including alternative designs and operational measures, and shall utilize the results of these studies in the preparation of the relevant exhibits required to accompany any application for a license to construct and operate the project. In connection with studies pertaining to archeological and historic and cultural sites, the Permittee shall consult with the State Historic Preservation Officer for each state in which any part of the project would be located, and the Heritage Conservation and Recreation Service of the U.S. Department of the Interior.

Article 8. The Permittee shall submit in triplicate at the close of each six-month period, from the effective date of this permit, to the Director, Office of Electric Power Regulation, with a copy to the FERC Regional Engineer, for the Region in which the proposed project would be located (the Commission's authorized representative for the purposes of this permit), or to any other officer the Commission may designate, and a copy, if requested, to any agency consulted, accurate statements of the progress of all investigations, consultations, and studies accomplished during the period and of work contemplated under this permit for the ensuing period.

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

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

Competing Applications - This application was filed as a competing application to the Arrowrock Dam Project No. 3692 filed on November 7, 1980, by Mitchell Energy Company, Inc., under 18 C.F.R. §4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

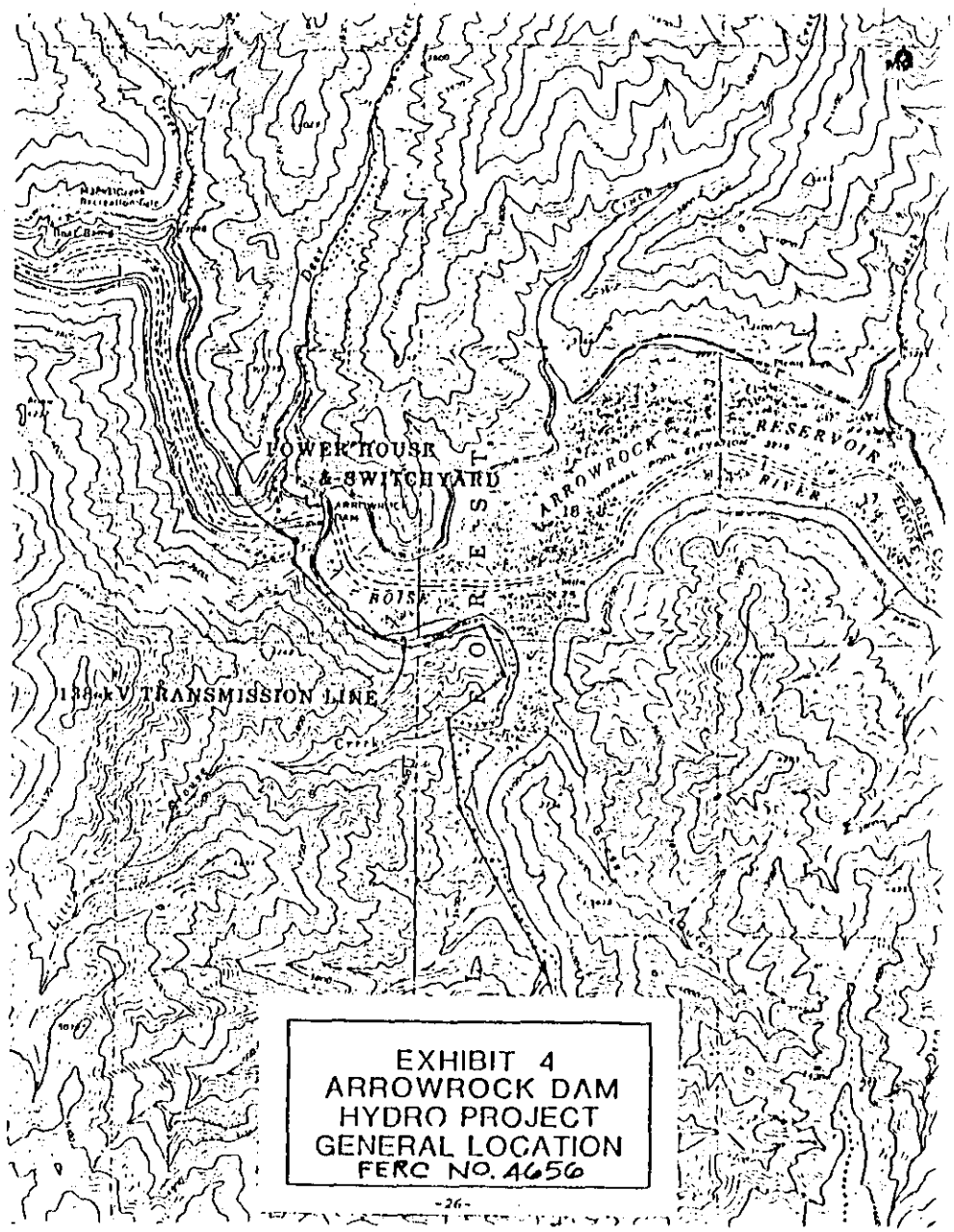
Agency Comments - Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene - Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §1.8 or §1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before July 24, 1981.

Filing and Service of Responsive Documents - Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 4656. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB Building, Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb
Secretary

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Article 11. The Permittee shall coordinate the studies for the proposed project authorized by this permit with the Regional Director, U. S. Bureau of Reclamation, Sacramento, California.

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

William W. Lindsay
Director, Office of Electric
Power Regulation

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boise-Kuna Irrigation District New York Irrigation District Nampa & Meridian Irrigation District Wilder Irrigation District Big Bend Irrigation District	)	Project No. 4656-000

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT

(June 29, 1981)

Take notice that Boise-Kuna Irrigation District, New York Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District, collectively known as the Boise Project Board of Control (Applicant) filed on May 13, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§791(a) - 825(r)] for Project No. 4656 to be known as the Arrowrock Dam Hydroelectric Project located on the Boise River in Elmore County, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. William Bienapfl, Chairman, Boise Project Board of Control 214 Broadway, Boise, Idaho 83702.

Project Description - The proposed project, to be located at the base of the U.S. Bureau of Reclamation's existing Arrowrock Dam, would consist of: (1) a powerhouse to contain two turbine-generating units with a total rated capacity of 60 MW; (2) a switchyard; and (3) a 10-mile long, 138-kV transmission line to interconnect with an existing Idaho Power Company transmission line.

Proposed Scope of Studies under Permit - A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to study the feasibility of contructing and operating the proposed project.

Form P-1
(Revised October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION
TERMS AND CONDITIONS OF
PRELIMINARY PERMIT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

24 FERC ¶62,191

Boise-Kuna Irrigation District	)	
New York Irrigation District	)	
Nampa & Meridan Irrigation District	)	Project No. 4656-001
Wilder Irrigation District	)	
Big Bend Irrigation District	)	

ORDER AMENDING ORDER ISSUING PRELIMINARY PERMIT

(Issued August 15, 1983)

On August 14, 1981, Boise-Kuna, New York, Nampa & Meridian, Wilder, and Big Bend Irrigation Districts, collectively known as the Boise Project Board of Control (Board) was issued a preliminary permit for a term of 24 months for the proposed Arrowrock Dam Hydroelectric Project No. 4656, to be located at the base of the U. S. Bureau of Reclamation's (USBR) existing Arrowrock Dam on the Boise River in Elmore County, Idaho.

By an application filed on June 20, 1983, the Board requested a 12-month extension of the permit. 1/ In support of its request, the Board states that USBR's on-going studies of the operation of the Boise River system to evaluate potential modifications in system operations to better meet the area's multiple water needs, will have a direct effect on the feasibility of the proposed project. The USBR's studies are expected to continue until next year. The Board also states that during the consultation period, the National Park Service recommended that a broader area (the entire Arrowrock Reservoir-Lucky Peak Lake area) should receive consideration for possible recreational developments in spite of the plans of the managing agencies at those reservoirs and in spite of the lack of economic justification of additional developments in the broader area. Considerable additional time will be required to adequately address the recreation development item. Further, the Board states that the additional 12 months will enable the Board to study the impacts of the regional energy plan being prepared by Northwest Power Planning Council for the pacific northwest on the proposed project. The Northwest Power Planning Council has already released the regional energy plan. The U. S. Department of the Interior by letter dated June 17, 1983, reiterated the above points and supported the Board's request for a 12-month extension of its preliminary permit.

1/ Authority to act on this matter is delegated to the Deputy Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 18 C.F.R. §375.308 (1981) 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. §375.1902, 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 specified in this order, except as specifically directed by the Commission.

DC-A-14

Review of the information submitted by the Board and the information available to the Staff shows that agency consultations and data collection were initiated on time. The results of the USBR's operation studies of the Boise River, addressing the recommendation of the National Park Service to study the recreational development potential of a broader area than previously planned, and addressing the recommendations of the Northwest Power Planning Council for a regional energy plan for the pacific northwest are necessary for filing an acceptable license application. Since the Board began its studies and consultations on time and that the required studies have not been completed, by no fault of the Board, the request for extension of the preliminary permit will be granted.

It is ordered that:

Ordering paragraph (A) of the order issuing preliminary permit for Project No. 4656, issued August 14, 1981, is amended as follows:

(A) A preliminary permit is issued for the proposed project to Boise-Kuna Irrigation District, New York Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District and Big Bend Irrigation District as described in the attached notice, for a period effective the first day of the month in which this permit is issued, and ending either 36 months from the effective date or on the date that an application for license submitted by the Permittee has been accepted for filing, whichever occurs first. This permit is subject ot the terms and conditions of the Federal Power Act (Act), which is incorporated by reference as part of this permit, and subject to the regulations the Commission issues under the provisions of the Act.

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

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EXHIBIT B

Arrowrock

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF THE INTERIOR
AND
BOISE-KUNA IRRIGATION DISTRICT,
NEW YORK IRRIGATION DISTRICT,
NAMPA AND MERIDIAN IRRIGATION DISTRICT,
BIG BEND IRRIGATION DISTRICT,
AND
WILDER IRRIGATION DISTRICT
FOR
DEVELOPMENT OF PROPOSED ARROWROCK POWERPLANT

THIS MEMORANDUM OF UNDERSTANDING is entered into this 9th day of February, 1984, by and between the United States of America, acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, referred to herein as "Reclamation," and the Boise-Kuna Irrigation District, the New York Irrigation District, the Nampa and Meridian Irrigation District, the Big Bend Irrigation District, and the Wilder Irrigation District, referred to herein as the "Districts."

WITNESSETH, THAT:

2. WHEREAS, Reclamation has constructed and operates and maintains Arrowrock Dam and Reservoir on the Boise River in southwest Idaho for irrigation and flood control, and Arrowrock Reservoir is an integral part of Reclamation's coordinated Boise Project operations; and

3. WHEREAS, the Secretary of the Interior has been authorized by Congress in Public Law 96-375, October 3, 1980, to conduct investigations to determine the feasibility of constructing, operating, and maintaining the proposed Arrowrock Powerplant, hereafter called the "Powerplant," at Arrowrock Dam; and

4. WHEREAS, the Districts have sought and obtained a preliminary permit, issued August 14, 1981, for the proposed Powerplant from the Federal Energy Regulatory Commission ("FERC") and desire to undertake the preparation of a feasibility study as a preliminary to filing an application for a FERC license; and

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EXHIBIT C

5. WHEREAS, the Districts and Reclamation have engaged in cooperative efforts to determine the feasibility of constructing the Powerplant, largely conducted by Reclamation, and now wish to set forth in writing the respective responsibilities thereunder; and

6. WHEREAS, it is desirable that Reclamation and the Districts enter into this Memorandum of Understanding as an interim agreement setting forth the activities to be accomplished and the responsibilities of the parties with regard to those activities, preparatory to the possible filing of an application for a FERC license and the negotiation and execution of a contract to accomplish the financing, construction, operation, and maintenance of the Powerplant.

NOW THEREFORE, it is agreed by and between the parties as follows:

Term

7. This Memorandum of Understanding shall become effective upon its execution by the parties and shall continue while the initial determination of the engineering, enviromental, and financial feasibility of developing the Powerplant is being made by the Districts and Reclamation. The Memorandum of Understanding will continue in effect during the following activities unless one or both of the parties wishes to terminate it. (1) After the initial determination of feasibility has been made, the Districts and Reclamation will state in writing whether they remain interested in a cooperative endeavor and whether they intend to pursue the detailed evaluations required prior to entering into a cooperative endeavor. Such decisions will be made by March 1, 1984, or within 90 days of the initial determination of feasibility, whichever occurs last; provided that the period may be extended if both parties agree to the extension. (2) After the remaining feasibility studies are completed, the Districts and

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Reclamation will decide whether they wish to proceed with a cooperative endeavor to develop the Powerplant. These decisions will be made within 180 days after the completion of the feasibility studies or by January 1, 1985, whichever occurs first. (3) If the Districts and Reclamation wish to proceed, this Memorandum of Understanding will continue in effect for a period of 1 year following such decision or until a contract for development of the Powerplant is executed by the parties, whichever occurs first. If such contract for development of the Powerplant is not executed within 1 year as aforesaid, this Memorandum of Understanding shall terminate.

Responsibilities of Reclamation

8. Reclamation will accomplish activities usually required to determine whether the development of the Powerplant project is engineeringly, economically, and environmentally feasible. Those activities include, among other things, geologic explorations, hydrologic studies, detailed designs and cost estimates, economic evaluations, and an environmental assessment. Also, Reclamation will perform additional activities needed by the Districts to provide information to assist the Districts in their analysis of the potential Powerplant project and in their evaluation of a possible cooperative endeavor with Reclamation to develop the Powerplant.

Responsibilities of the Districts

9. During the time Reclamation is accomplishing the activities described in Article 8 above, the Districts will, in cooperation with Reclamation and to the extent possible, (1) investigate possible arrangements for marketing the power produced by the Powerplant and for providing the transmission lines needed to transmit that power and (2) make preliminary investigations of

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potential sources of project financing in amounts sufficient to construct all or part of the Powerplant.

Joint Responsibilities

10. If the Districts determine that they wish to proceed with a cooperative endeavor in accordance with Article 7, the Districts and Reclamation will mutually (1) prepare reports and provide project development data as necessary to facilitate the sale of bonds by the Districts to finance all or part of the Powerplant, (2) seek congressional authorization of the project, and (3) secure all licenses and permits necessary to accomplish the financing, construction, operation, and maintenance of the Powerplant.

Costs

11.(a) The Districts shall establish and maintain a separate accounting of costs they incur in accomplishing their sole and joint responsibilities as set forth in Articles 9 and 10. Such costs shall be reimbursable from bond proceeds upon the decision by the Districts to proceed with the Powerplant as subsequently provided in the contract to be entered into by the parties following that decision.

11.(b) Reclamation shall establish and maintain a separate accounting of costs it incurs in accomplishing its sole and joint responsibilities as set forth in Articles 8 and 10. Such costs shall be reimbursable upon the decision by the Districts to proceed with the Powerplant as subsequently provided for in the contract to be entered into by the parties following that decision. If the Districts decide not to proceed with the Powerplant under a cooperative endeavor with Reclamation, they shall reimburse Reclamation only for the costs associated with the additional activities which Reclamation performed in providing the information required in Article 8 hereof and in an amount not to exceed $50,000.

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General

12. Each party shall be liable for its own acts and shall not be liable for the acts of the other in carrying out its responsibilities and activities pursuant to this Memorandum of Understanding.

13. In order to facilitate the prompt and orderly accomplishment of the activities outlined herein, each party shall designate a contact person who will have the authority to act on its behalf in matters dealing with its precontract responsibilities. The contact persons shall meet as necessary to assess and facilitate the timely accomplishment of the activities to be accomplished pursuant to this Memorandum of Understanding.

14. The expenditure or advance of money or the performance of some of the work by the United States under this Memorandum of Understanding may require the appropriation of funds by the Congress. The commitment of the United States to perform such activities shall be contingent upon the necessary action being taken by Congress. No liability shall accrue to the United States if such action is not taken.

IN WITNESS WHEREOF, the Memorandum of Understanding has been executed as of the date first above stated.

THE UNITED STATES OF AMERICA

By L.W. Lloyd

Regional Director, PN Region
Bureau of Reclamation
Box 043, 550 West Fort Street
Boise, Idaho 83724

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BOISE-KUNA IRRIGATION DISTRICT

By _____
President
Boise-Kuna Irrigation District
311 South School Street
Kuna, Idaho 83634

NEW YORK IRRIGATION DISTRICT

By _____
Chairman
New York Irrigation District
214 Broadway
Boise, Idaho 83702

NAMPA AND MERIDIAN IRRIGATION DISTRICT

By _____
President
Nampa and Meridian Irrigation District
1503 First Street South
Nampa, Idaho 83651

BIG BEND IRRIGATION DISTRICT

By _____
President
Big Bend Irrigation District
P.O. Box 3193
Adrian, Oregon 97901

WILDER IRRIGATION DISTRICT

By _____
Chairman
Wilder Irrigation District
P.O. Box 416
Caldwell, Idaho 83605

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RECEIVED
JUN 8 1984
Department of Water Resources
Western Regional Office

PETER J. BOYD, ESQ.
ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 First Interstate Building
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

Attorneys for Protesters

BEFORE THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

In the Matter of the Application of	
THE BUREAU OF RECLAMATION	Ident #6310239 and #6310240
	PROTEST

COME NOW FARMERS UNION DITCH COMPANY, SETTLERS IRRIGATION DISTRICT, FARMERS COOPERATIVE CANAL COMPANY and PIONEER IRRIGATION DISTRICT, by and through their attorney, PETER J. BOYD, and protest the application for permit, Ident. #6310239 and #6310240 heretofore filed by the BUREAU OF RECLAMATION to appropriate the public waters of the State of Idaho.

The source of water supply to be appropriated is from the Boise River, a tributary of the Snake River under application #6310240 at a point of diversion in the Northwest Quarter of the Southeast Quarter of Section 13, Township 3 North, Range 4 East

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of the Boise Meridian and under Application #6310239 said point of division being in Lot 9, Section 3, Township 2 North, Range 3 East;

That the water to be appropriated under #6310240 is 5,470 cfs and the water to be appropriated under #6310239 is 640 cfs;

That the right of Pioneer Irrigation District to the storage of water in Arrowrock Dam is recognized in that certain Contract dated February 27, 1913, between the United States of America and Pioneer Irrigation District; that a Supplemental Contract was entered into on June 15, 1915, between the United States of America and Pioneer Irrigation District, pursuant to the act of Congress of June 17, 1902, 32 Stat 388, known as the Reclamation Act, which said Supplemental Contract on page three thereof recognized the storage of water for and on behalf of Pioneer Irrigation District;

That it is alleged on information and belief that the United States of America has recognized the rights for the storage of water of Farmers Union Ditch Company, Settlers Irrigation District and Farmers Cooperative Canal Company as well;

That the right to the appropriation of water in the Boise River has been recognized, confirmed and decreed to the protesters herein in Farmers Coop v. Riverside Irrigation District, 14 Idaho 450 (1908), which said decision is commonly referred to as the Stewart Decree;

It is therefore alleged on information and belief that the appropriation of water for power purposes will interfere with the beneficial appropriation of the water by the protesters

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 First Interstate Building
P.O. Box 1539 Boise, Idaho 83701
Phone (208) 343-5454

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herein.

It is respectfully requested that the protesters herein be permitted to offer proof at a hearing to be heard and set by the Department of Water Resources.

Respectfully submitted this 8 day of June, 1984.

ELAM, BURKE, EVANS, BOYD & KOONTZ

BY Peter J. Boyd
PETER J. BOYD, of the Firm
Attorneys for Protesters

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 First Interstate Building
P.O. Box 1559 Boise, Idaho 83701
Phone (208) 343-5454

CERTIFICATE OF MAILING

I hereby certify that on this 8th day of June, 1984, I mailed a true and correct copy of the foregoing Protest in the United States mail with postage prepaid thereon to:

L. W. Lloyd, Regional Director
Bureau of Reclamation
Box 043
550 West Fort Street
Boise, ID 83724

Peter J. Boyd
PETER J. BOYD

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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

June 11, 1984

Regional Director
Bureau of Reclamation
Pacific Northwest Region
Box 043 550 West Fort St.
Boise, ID 83724

Re: 63-10239 & 63-10240

Gentlemen:

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

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

1. Will the proposed use reduce the quanity of water under existing water rights?

2. Is the proposed water supply insufficient for the purposes intended?

3. Is the application made in good faith or for delay or speculative purposes?

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the proposed use under this permit conflict with the local public interest?

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

Yours truly,

DAVID B. SHAW
Western Regional Supervisor

Enc:

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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

Peter J. Boyd, Esq.
[illegible]
1010 First Interstate Building
P. O. Box 1553
Boise, ID 83701

Re: [illegible]

Dear Mr. Boyd:

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

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

1. Will the proposed use reduce the quanity of water under existing water rights?

2. Is the proposed water supply insufficient for the purposes intended?

3. Is the application made in good faith or for delay or speculative purposes?

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the propsed use under this permit conflict with the local public interest?

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

Yours truly,

DAVID B. SHAW
Western Regional Supervisor

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[illegible]

Proposed Priority 8/31/77

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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, 1989.

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 29th day of May, 1984.

Director

63-10240
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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Jerry J. Langdon and Branko Terzic.

Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District	)	Project No. 4656-004

ORDER ON REHEARING

(Issued December 6, 1990)

On March 27, 1989, the Commission issued a license to the Boise-Kuna Irrigation District, the New York Irrigation District, the Nampa and Meridian Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District (licensees) for the Arrowrock Dam Project No. 4656. 1/ The project is located at the U.S. Bureau of Reclamation's (Reclamation) Arrowrock Dam and Reservoir on the South Fork of the Boise River, in Elmore and Ada Counties, Idaho. Pioneer Irrigation District and Settlers Irrigation District (jointly, Intervenors) and the licensees have each filed a request for rehearing of the order issuing license. As described below, we grant in part and deny in part their requests for rehearing.

BACKGROUND

Reclamation's Arrowrock Dam and Reservoir, which are part of Reclamation's Boise Project, are located on the South Boise River immediately upstream from the U.S. Army Corps of Engineers' (Corps) Lucky Peak Dam and Reservoir, which is the site of the licensees' Project No. 2832. The U.S. Forest Service administers that part of Project No. 4656 surrounding Arrowrock Reservoir which is located within the Boise National Forest. Reclamation administers the dam and the site of the licensee's proposed powerhouse.

Water withdrawn from Arrowrock Reservoir is released into the upper end of Lucky Peak Lake, which the Corps regulates for flood control and irrigation. The storage capacity of Arrowrock

1/ 46 FERC ¶ 61,385.

Reservoir is entirely allocated to irrigation and is drawn down before Lucky Peak Reservoir and Reclamation's Anderson Ranch Reservoir, 48 miles upstream, are lowered to meet irrigation demands.

DISCUSSION

A. Jurisdiction

Intervenors contend that the license for Project No. 4656 is invalid because Congress withdrew the Commission's licensing jurisdiction over Arrowrock Dam and Reservoir, by authorizing federal hydropower development at the site in the Flood Control Act of 1946 (Act). 2/

Under Sections 4(e) and 4(f) of the Federal Power Act, 16 U.S.C. §§ 797(e), 797(f)(1976), the Commission has authority to issue preliminary permits and licenses for hydroelectric projects located at federal dams and facilities. This jurisdiction is withdrawn if the hydroelectric project at the federal site is authorized by Congress for construction or if Congress otherwise unambiguously indicates that the Commission's jurisdiction over the project is withdrawn. 3/

The initial phase of the Boise Project was authorized by the Secretary of the Interior (Secretary) under the original Reclamation Act of 1902 4/ on March 27, 1905. 5/ The Secretary authorized construction of the Arrowrock Dam as part of the Boise Project on January 6, 1911. 6/ The authorization for Arrowrock Dam did not provide for hydroelectric development at the site. 7/

Section 10 of the Act authorized the Corps to construct the "project for the Lucky Peak Reservoir ... substantially in accordance with the recommendations of the Chief of Engineers in

2/ Pub. L. No. 526, 79th Cong., 2d Sess., 60 Stat. 650 (1946).

3/ City of Gillette, Wyoming, 25 FERC ¶ 61,366 (1983). See also Chapman v. F.P.C., 345 U.S. 153 (1953).

4/ 32 Stat. 388 (1902).

5/ See Bureau of Reclamation, U.S. Dept. of the Interior, Bureau of Reclamation Project Feasibilities and Authorizations, 121-145 (1957 Ed.).

6/ Id. at 127-130.

7/ Id.

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his report dated May 13, 1946, at an estimated cost of $10,684,000 ... ." 8/ The Chief of Engineers' Report 9/ consists of two May 13, 1946 letters from the Office of the Chief of Engineers, one to the U.S. House of Representatives and one to the U.S. Senate, which adopt the recommendations of the War Department's Board of Engineers for Rivers and Harbors (Board). The Board's recommendations, which are contained in a report dated April 30, 1946, and found next in the Corps Report, are in turn based on reports from the Corps' district and division engineers. The final section of the Corps Report is a January 2, 1946 report of the District Engineer, Portland, Oregon, entitled "Review of Survey Report, Boise River, Idaho."

Intervenors assert that paragraphs 9 and 10 of the Board's report authorize the construction of a 13,000 kilowatt hydroelectric plant at Arrowrock Dam, thereby withdrawing the Commission's jurisdiction. 10/ Paragraphs 9 through 13 of the

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8/ Section 10 of the Act states in pertinent part:

> [T]he following works of improvement for the benefit of navigation and the control of destructive flood-waters and other purposes are hereby adopted and authorized to be prosecuted under the direction of the Secretary of War and the supervision of the Chief of Engineers in accordance with the plans in the respective reports hereinafter designated and subject to the conditions set forth therein: ...
>
> The Boise River Basin
>
> The project for the Lucky Peak Reservoir on Boise River, Idaho, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated May 13, 1946, at an estimated cost of $10,684,000: Provided, That said dam and reservoir shall be so constructed as not substantially to damage the structure of the Arrow Rock Dam and shall be operated in such manner as not materially to interfere with the operation of said Arrow Rock Reservoir.

9/ Review of Survey Report, Boise River, Idaho, May 13, 1946.

10/ Paragraph 9 reads, in part:

(continued...)

Board's Report describe various aspects of the January 2, 1946 District Engineer's report. 11/ They are not however the recommendations of the Board, as Intervenors apparently assume. The Board's recommendations are contained in Paragraphs 15 through 18 of the report. Paragraph 18 recommends construction of the Lucky Peak Reservoir project primarily for flood control, at an estimated construction cost of $10,684,000. 12/ None of the other paragraphs adopts the District Engineer's recommendation that hydropower be developed at Arrowrock Dam. Consequently, a hydropower project at Arrowrock dam was not authorized by the Flood Control Act of 1946, and the Commission has unimpaired authority to issue a license for the Arrowrock Project. 13/

10/(...continued)

> The district engineer ... presents a plan ... which provides for construction of Lucky Peak Reservoir ... . The plan also provides for construction of a hydroelectric power plant with 13,000 kilowatt capacity at Arrowrock Dam ... .

Paragraph 10 describes the District Engineer's projections of generation capacity at Arrowrock Dam.

11/ The cost estimate for the hydroelectric facilities is in the Review of Survey Report on the Boise River, Idaho, U.S. Engineer Office, Portland, Oregon, January 2, 1946, at paragraphs 101 and 130. It is unclear why the Intervenors believe that the $10,634,000 figure includes a power plant at Arrowrock Dam. Information in the report shows clearly that the Arrowrock power plant would cost an additional $885,000.

12/ Intervenors also rely on Paragraph 11, which contains a description of the District Engineer's cost estimates. Intervenors contend that the $10,634,000 figure in that paragraph includes the cost of the Arrowrock power plant. To the contrary, Paragraph 11 provides that the "first cost of the plan is estimated ... at $10,634,000, for Lucky Peak Reservoir ...; $885,000 for the ... powerplant ... at Arrowrock Dam; and $25,000 for the hydrometeorological network; a total of $11,544,000." See, e.g., Paragraphs 101 and 130 of the District Engineer's Report.

13/ We note that the U.S. Department of the Interior, the agency Intervenors claim has jurisdiction over hydropower development at Arrowrock Dam, has not contested our jurisdiction to issue a license in this proceeding.

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B. Water Rights

Intervenors argue that the license for Project No. 4656 is flawed because it does not expressly protect Intervenors' rights under state law to use the natural flows of the South Boise River. According to Intervenors, Article 121 of the license protects only water rights related to the purposes of the Arrowrock federal reservation, i.e., rights to use water stored in Arrowrock Reservoir derived from contracts between irrigation districts (among them Pioneer and Settlers) and the United States. 14/ Intervenors therefore request that the Commission either amend the license or add a new special article which would expressly bar any project impairment of natural flow water rights.

Current agreements governing the operation of the Arrowrock dam and reservoir, however, adequately protect Intervenors' natural flow water rights. The Boise River reservoirs (Anderson Ranch, Arrowrock, and Lucky Peak) are regulated jointly pursuant to the terms of 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 November 20, 1953. Article 7 of the Agreement allows changes in reservoir operating plans and procedures if operating experience indicates that revisions are needed. In 1985 the Bureau, the Corps, and the State of Idaho jointly agreed to a revision of operating criteria and procedures at the three reservoirs through a Memorandum of Understanding (MOU). The MOU requires that the Arrowrock, Anderson Ranch, and Lucky Peak reservoirs be regulated according to criteria and procedures contained in a Water Control Manual issued by the Corps in 1985 after consultation with state and federal agencies. Under the terms of the Manual, the Boise River Watermaster must credit the natural unregulated flow of the river to appropriate users with water rights based on a list provided by the Idaho State Department of Water Resources. When the rate of diversion at the reservoirs is greater than the credited natural flow, the remainder is charged by the Watermaster to the user's stored water supply, or, lacking storage, the rate of

14/ Article 121 states in pertinent part:

> The licensee's construction, operation, and maintenance of the project works, and project investigations related to hydropower development, must not weaken, damage, or affect the structural integrity or operation of the federal reservation or reduce or impair the capability to provide for the purposes and services of the federal reservation ... .

diversion must be reduced. 15/ Thus, under the required procedures of the Water Manual, natural flow water rights are accorded an operational priority.

Nevertheless, in the interest of providing clearer assurance that existing water rights will be protected, we will add a new Article 414 which explicitly states that construction, operation, or maintenance of the Arrowrock Dam Project may not reduce or impair the delivery of water for irrigation purposes pursuant to any state grant of a right to use natural river flows. Should any perceived violation of Article 414 occur, Intervenors may file with the Commission an appropriate request for relief.

C. Mode of Project Operation

Intervenors and the licensees each contend, for differing reasons, that Articles 402 and 403 should be deleted from the license. Article 402 requires that Project No. 4656 be operated in a run-of-river mode for a one-month period every year for the protection of smallmouth bass spawning in Arrowrock and Lucky Peak Reservoirs. Article 403 requires the licensee to develop, after agency consultation, a plan to determine annually the smallmouth bass spawning and incubation periods in Lucky Peak Lake and Arrowrock Reservoir, and to establish a one-month long period between May 1 and June 30 for operating the project in a run-of-river mode as required by Article 402. The licensees and Intervenors all contend that Articles 402 and 403 would interfere with Reclamation's flood control and irrigation objectives. Intervenors contend, in addition, that Articles 402 and 403 should be deleted because they improperly conflict with Intervenors' natural flow water rights and contractual rights to water stored in Arrowrock Reservoir. The licensees argue further that the two articles should be deleted because the licensees have no authority to control the volume or timing of water released from Arrowrock Reservoir and because Articles 402 and 403 could adversely affect project economics and recreation. Deletion of Articles 402 and 403 is unwarranted. As mentioned above, Article 121 and the new Article 414 added by this order preclude the licensees' project from weakening or impairing the

15/ See Water Control Manual at pp. 7-26. The importance of water rights is also recognized in Subsection G of Article 6 of the November 20, 1950 Memorandum of Agreement governing operation of Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs, which provides that the Corps' Chief of Engineers and the Commissioner of Reclamation may establish rules for protecting the dams and reservoirs from damage but adds that such rules and regulations "shall, to the greatest extent practicable, avoid interference with the delivery of water accruing to rights established under law."

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ability of the Arrowrock federal reservation to carry out its irrigation and flood control functions with respect to both contractual and natural flow water rights. Further, the agreement with Reclamation governing project operations, which Article 122 requires the licensees to enter into, will give the licensees sufficient authority to make Reclamation-approved releases. However, to make clear that Reclamation retains the operational authority necessary to meet flood control and irrigation demands, we will amend Articles 402 and 403 to eliminate the requirement for run-of-river operation when flood control and irrigation needs demand otherwise. In contrast to the original Article 402, which explicitly required run-of-river operation during a one-month period, Article 402 as amended by this order provides that the licensees shall have the opportunity for power-shaping releases from Arrowrock Reservoir that follow the hourly change in the need for power, except during a one-month period between May 1 and June 30 determined in accordance with Article 403. The revised Article 402 adds, however, that unless otherwise permitted by Reclamation and the Corps, such power-shaping releases shall not at the end of any 24-hour period change the elevations of Arrowrock Reservoir and Lucky Peak Lake which would have occurred under existing reservoir operations. Article 403 will be conformed to the revised Article 402. 16/

C. Environmental Concerns

1. Adequacy of the record

The Commission determined that issuance of the license is not a major federal action significantly affecting the quality of the human environment. Therefore, the National Environmental Policy Act (NEPA) 17/ does not require the preparation of an environmental impact statement (EIS) for the project.

Intervenors contend that the Commission violated NEPA by failing to include in the record prior to licensing adequate information on project impacts on the environment, including flood control, irrigation and the historic operation of the

16/ In a letter to the Commission filed on April 26, 1989, Interior also expressed concern that the run-of-river operation requirements of Articles 402 and 403 could impair the ability of the Arrowrock federal reservation to meet flood control and irrigation demands. Interior therefore requested that Articles 402 and 403 either be deleted from the license or appropriately amended. We believe that the amended Articles 402 and 403 contained in this order adequately address Interior's concerns.

17/ 42 U.S.C. § 4321 et seq.

existing Arrowrock Dam and Reservoir. They contend that the record failed to provide adequate information on how the licensees' proposed method of dam releases would affect existing irrigation operations, and how the project would limit reservoir level fluctuations and adverse impacts caused by fluctuations and drawdowns. They request that the Commission rescind the license for Project No. 4656 and direct the Commission staff to prepare and issue a new EA for public comment.

Contrary to Intervenors' assertions, the order issuing license and the EA adequately explained how the licensees' proposed peaking and run-of-river operation of the project would affect the environment, flood control, and irrigation. As the EA for the project points out, the terms "shaping" and "peaking" as used by the licensees are synonymous. By shaping, the licensees will vary releases through the project power plant as needed over a 24-hour period, for 11 months each year, to coincide with daily peaks in electrical demand. With regard to project impacts on irrigation and flood control, the order issuing license pointed out that Article 122 requires the licensees to enter into an agreement with Reclamation that prescribes in detail project operating procedures that ensure that the project does not interfere with irrigation and flood control. Article 402 provides that the licensees' annual one-month run-of-river operation may be temporarily modified by Reclamation to ensure protection of the authorized purposes of Arrowrock Reservoir.

The EA assessed the project's impacts on geology and soils, water resources, fish resources, vegetation and wildlife, cultural resources, visual resources, recreational resources, and socioeconomic. The EA determined that peaking-induced reservoir fluctuations and increased flows would cause a number of unavoidable adverse impacts, including an increase in shoreline erosion and turbidity at both Lucky Peak Lake and Arrowrock Reservoir; elimination of aeration at present outlet structures and reduction of dissolved oxygen (DO) concentrations in Lucky Peak Lake; and potentially high levels of fish entrainment and turbine mortality for several months during low water years. The EA concluded that other unavoidable adverse impacts to the eight examined environmental resources would be of temporary duration or relatively minor.

The order issuing license and the EA also adequately described how the project would limit reservoir fluctuations and the adverse impacts caused by fluctuations and drawdowns. The EA indicated that daily peaking or shaping operations would result in an increase in fluctuation discharges into Lucky Peak Lake over current levels. Water levels at Lucky Peak Lake could fluctuate each day during project operations as much as nine percent. The order issuing license required that limitations on fluctuations and drawdowns be implemented in accordance with the

restrictions contained in the operating agreement with Reclamation governing project operations required by Article 122. In addition, Article 121 requires that all licensed project operations be secondary to irrigation purposes and must not in any way reduce or impair the capability of the Arrowrock Dam and Reservoir to supply water for irrigation and flood control.

Equally importantly, Article 121 provides that Reclamation may stop operation of the project in the event that the irrigation functions of the project are threatened by fluctuations or other project-induced occurrences. Article 402 further restricts fluctuations by barring shaping or peaking during a one-month period each year. Finally, as the order issuing license points out, operation of the project without the originally proposed five-foot drawdown of Lucky Peak Lake will eliminate most of the project's impacts on recreational facilities at Lucky Peak Lake by eliminating undesirable lower water levels at marinas, boat docks, and beaches. 18/ The EA also indicated that elimination of the five-foot drawdown of Lucky Peak Lake would also avoid reduction of fish habitat in Lucky Peak Lake 19/ and would avoid the adverse impact of exposing an estimated 30 horizontal feet of visually undesirable shoreline. 20/

18/ See EA at 22.

19/ Id. at 17.

20/ Id. at 21. The Commission, in the order issuing license, rejected Pioneer's request for an EIS because Pioneer had failed to adduce sufficient evidence to contradict the Commission staff's finding of no significant impact. Citing Winnebago Tribe of Nebraska v. Ray, 621 F.2d 269 (8th Cir. 1980), the Commission stated that parties seeking to reverse a decision not to prepare an EIS "have the burden of presenting facts and evidence contradicting the EA's findings." Intervenors contend on rehearing that federal courts are divided as to what is the appropriate standard of review of a decision to not prepare an EIS and that it is therefore questionable whether there is any burden of coming forward with evidence on a party challenging an EA. We believe that regardless of what standard of review is applied, the proceeding record, as outlined above, conclusively indicates that the Commission and its staff adequately examined project impacts on all critical environmental resources, including flood control and irrigation.

In light of the EA's findings and the clear operational restrictions imposed by the license as amended, we conclude that preparation of a new EA for the Project No. 4656 is unwarranted.

2. Dissolved oxygen levels

Article 404 requires the licensees to maintain through appropriate spillage a 6 milligram per liter (mg/l) level of dissolved oxygen (DO) in the powerhouse discharge at all times, and requires the licensees to develop and implement a plan to rapidly modify project operation if DO levels fall below 6 mg/l. Intervenors point out that the DO standard set by Idaho state water quality regulations is only 5 mg/l. The licensees contend that Article 404 improperly expands the requirements of state law and requires the licensees to operate the project in a manner beyond their authority. They therefore request that Article 404 be either deleted or amended to conform with state DO standards.

Although water quality certification pursuant to Section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1), is a mandatory condition of a license, the Commission has the independent authority and responsibility pursuant to Section 10(a)(1) of the FPA to condition a license as necessary (so long as any condition does not conflict with the terms of the water qualify certification) to secure the project best adapted to a waterway for beneficial public purposes, including improvement and maintenance of water quality. 21/ Here, as the EA points out, there is significant evidence that prolonged exposure to DO concentrations of less than 6 mg/l presents a degree of risk to freshwater salmonids such as those found in Lucky Peak Lake. 22/ Consistent with this view, the Director of the Idaho Department of Water Resources, in a letter to the Commission dated March 9, 1983, stated that discharges from the proposed Arrowrock Project powerplant should contain at least 6 mg/l of DO in order to maintain the existing fishery in Lucky Peak Lake. 23/ Pursuant to Section 10(a)(1), the Commission included this requirement in the license. Appellants have presented no valid reason for altering it.

E. Reclamation and Forest Service Conditions

The licensees contend that Articles 111 and 117 should either be deleted or modified because they improperly extend

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21/ See, e.g., South Carolina Electric & Gas Co., 7 FERC ¶ 61,180 (1979) at pp. 61,339-40.

22/ See EA at 13.

23/ Id. at 13.

Forest Service and Reclamation authority over project operations and administration. Article 111 requires the licensees to obtain Forest Service approval prior to making changes in any project works, features, or uses of project lands or waters. The licensees contend that Article 111 is inappropriate because it allows the Forest Service to approve changes in project features at the site of the project powerhouse, which is not located on lands under Forest Service supervision. Article 117 requires the licensees to enter into an agreement with Reclamation to coordinate project activities on Reclamation lands, and to pay Reclamation for use of Reclamation lands. The licensees contend that Article 117 is inappropriate because Article 201, which requires licensee payment of annual charges for the use of federal lands, is under the FPA the exclusive vehicle for reimbursing the United States for use of federal lands and dams.

Section 4(e) of the FPA mandates that Commission licenses for projects located within United States reservations must include all conditions which the Secretary of the department under whose supervision a reservation falls shall deem necessary for the adequate protection and utilization of such reservation. Articles 111 and 117 were included in the license for Project No. 4656 at the respective requests of the Secretaries of Agriculture and the Interior as conditions necessary for the protection of the Arrowrock federal reservation, which their departments jointly supervise. Although we agree, as we stated in our order issuing license, that Articles 111 and 117 are inappropriate, 24/ Section 4(e) of the FPA constrains us from deleting or amending them, 25/ and the licensees' only recourse is judicial appeal. 26/

The licensees contend that Article 104, which requires the licensees to file a Forest Service-approved plan to enhance project-induced recreation, is inconsistent with Article 412,

24/ See 46 FERC at p. 62,201 n. 3.

25/ In support of their request for deletion or amendment of Article 111, the licensees cite Escondido Mutual Water Company v. La Jolla Band, 466 U.S. 765 (1984), as standing for the proposition that the Commission does not have to incorporate into licenses Section (4)(e) conditions that might affect federal reservations outside of a project's boundaries. Here, however, Article 111 would only affect reservation lands within the boundaries of the project. As noted, pursuant to an interagency agreement the Forest Service and Reclamation supervise separate portions of the project's lands, which are entirely within the reservation.

26/ See id. at 778-79.

which requires the licensee to file, after consultation with the Corps, Reclamation, and the Idaho Departments of Parks and Fish and Game, a plan to monitor recreational use at Arrowrock Reservoir to ensure that such use is adequately accommodated. The licensees therefore request that Articles 104 and 412 be modified to ensure that the licensees are not faced with inconsistent recreational obligations.

Article 104 may not be changed, as it is a mandatory license condition pursuant to Section 4(e) of the FPA. In any event, we find no inconsistency between Article 104's required enhancement of recreation facilities and Article 412's requirement of a plan to monitor recreational use. However, since the Forest Service administers much of the area surrounding Arrowrock Reservoir, we will amend Article 412 to include the Forest Service among the agencies which must approve the monitoring plan which Article 412 requires.

The Commission orders:

(A) The request for rehearing filed jointly by Pioneer Irrigation District and Settlers Irrigation and the request for rehearing filed jointly by the Boise-Kuna, New York, Nampa and Meridian, Wilder, and Big Bend Irrigation Districts, are granted to the extent provided in this order and are denied in all other respects.

(B) License Articles 402 and 403 are amended to read as follows:

Article 402. Subject to and within the parameters and requirements of daily reservoir operations for other existing purposes, the licensee shall have the opportunity for power shaping releases from Arrowrock Reservoir which follow the hourly change in need for power. Unless otherwise permitted by the Bureau of Reclamation and the Corps of Engineers, such power shaping releases shall not, at the end of a 24-hour period, change the elevations of Arrowrock Reservoir and Lucky Peak Lake that would have occurred under existing reservoir operations. Further, such power shaping releases shall not be permitted during the 30-day period between May 1 and June 30 provided for in Article 403.

Article 403. The licensee, after consultation with the Idaho Department of Fish and Game (IDFG), U.S. Fish and Wildlife Service, Department of the Army, Walla Walla District Corps of Engineers, and the Bureau of Reclamation, shall develop a plan to determine, on an annual basis in cooperation with the IDFG, the smallmouth bass spawning and incubation period in Lucky Peak Lake and Arrowrock Reservoir.

and to establish a 30-day period between May 1 and June 30 for operation of the project without power shaping releases. The licensee shall file the plan with the Commission for approval at least 90 days before beginning commercial operation. The filing shall include a schedule for implementing the plan and documentation of agency consultation and any agency comments on the plan. The Commission reserves the right to require modifications to the plan. The licensee shall not commence commercial operation until the Commission approves the plan. The 30-day period may be shortened to a lesser period as required by the IDFG after consultation with the licensee on an annual basis.

(C) A new Article 414 is added to the license:

Article 414. The licensee's construction, operation, and maintenance of the project works and features shall not reduce or impair the delivery of water in the exercise of any vested right granted under state law to use the natural flows of the South Boise River for irrigation purposes.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

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Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boise-Kuna Irrigation District, et al.

Project No. 4656-006
Idaho

ORDER GRANTING EXTENSION OF TIME

(Issued October 19, 1989)

The licensees for the Arrowrock Dam Project have requested an extension of time to comply with articles 101 and 109 of the license. The reasons advanced by the licensees in support of the requested extension of time are reasonable and justify the extension.

The Director orders:

(A) The deadline for filing the special-use authorization from the Forest Service according to article 101 is extended to January 26, 1991.

(B) The deadline for filing the archeological and cultural resources report according to article 109 is extended to January 26, 1991.

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

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

Boise Project

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

24 FERC ¶62,191

Boise-Kuna Irrigation District	)	
New York Irrigation District	)	
Nampa & Meridian Irrigation District	)	Project No. 4656-001
Wilder Irrigation District	)	
Big Bend Irrigation District	)	

ORDER AMENDING ORDER ISSUING PRELIMINARY PERMIT

(Issued August 15, 1983)

On August 14, 1981, Boise-Kuna, New York, Nampa & Meridian, Wilder, and Big Bend Irrigation Districts, collectively known as the Boise Project Board of Control (Board) was issued a preliminary permit for a term of 24 months for the proposed Arrowrock Dam Hydroelectric Project No. 4656, to be located at the base of the U. S. Bureau of Reclamation's (USBR) existing Arrowrock Dam on the Boise River in Elmore County, Idaho.

In an application filed on June 20, 1983, the Board requested a 12-month extension of the permit. 1/ In support of its request, the Board states that USBR's on-going studies of the operation of the Boise River system to evaluate potential modifications in system operations to better meet the area's multiple water needs, will have a direct effect on the feasibility of the proposed project. The USBR's studies are expected to continue until next year. The Board also states that during the consultation period, the National Park Service recommended that a broader area (the entire Arrowrock Reservoir-Lucky Peak Lake area) should receive consideration for possible recreational developments in spite of the plans of the managing agencies at those reservoirs and in spite of the lack of economic justification of additional developments in the broader area. Considerable additional time will be required to adequately address the recreation development item. Further, the Board states that the additional 12 months will enable the Board to study the impacts of the regional energy plan being prepared by Northwest Power Planning Council for the pacific northwest on the proposed project. The Northwest Power Planning Council has already released the regional energy plan. The U. S. Department of the Interior by letter dated June 17, 1983, reiterated the above points and supported the Board's request for a 12-month extension of its preliminary permit.

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1/ Authority to act on this matter is delegated to the Deputy Director, Office of Electric Power Regulation, under §375.308 of the Commission's Regulations, 18 C.F.R. §375.308 (1981) 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. §375.1902, 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 specified in this order, except as specifically directed by the Commission.

DC-A-14

Review of the information submitted by the Board and the information available to the Staff shows that agency consultations and data collection were initiated on time. The results of the USBR's operation studies of the Boise River, addressing the recommendation of the National Park Service to study the recreational development potential of a broader area than previously planned, and addressing the recommendations of the Northwest Power Planning Council for a regional energy plan for the pacific northwest are necessary for filing an acceptable license application. Since the Board began its studies and consultations on time and that the required studies have not been completed, by no fault of the Board, the request for extension of the preliminary permit will be granted.

It is ordered that:

Ordering paragraph (A) of the order issuing preliminary permit for Project No. 4656, issued August 14, 1981, is amended as follows:

(A) A preliminary permit is issued for the proposed project to Boise-Kuna Irrigation District, New York Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District and Big Bend Irrigation District as described in the attached notice, for a period effective the first day of the month in which this permit is issued, and ending either 36 months from the effective date or on the date that an application for license submitted by the Permittee has been accepted for filing, whichever occurs first. This permit is subject ot the terms and conditions of the Federal Power Act (Act), which is incorporated by reference as part of this permit, and subject to the regulations the Commission issues under the provisions of the Act.

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

EXHIBIT B

Arrowrock C

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF THE INTERIOR
AND
BOISE-KUNA IRRIGATION DISTRICT,
NEW YORK IRRIGATION DISTRICT,
NAMPA AND MERIDIAN IRRIGATION DISTRICT,
BIG BEND IRRIGATION DISTRICT,
AND
WILDER IRRIGATION DISTRICT
FOR
DEVELOPMENT OF PROPOSED ARROWROCK POWERPLANT

THIS MEMORANDUM OF UNDERSTANDING is entered into this 9th day of February, 1984, by and between the United States of America, acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, referred to herein as "Reclamation," and the Boise-Kuna Irrigation District, the New York Irrigation District, the Nampa and Meridian Irrigation District, the Big Bend Irrigation District, and the Wilder Irrigation District, referred to herein as the "Districts."

WITNESSETH, THAT:

2. WHEREAS, Reclamation has constructed and operates and maintains Arrowrock Dam and Reservoir on the Boise River in southwest Idaho for irrigation and flood control, and Arrowrock Reservoir is an integral part of Reclamation's coordinated Boise Project operations; and

3. WHEREAS, the Secretary of the Interior has been authorized by Congress in Public Law 96-375, October 3, 1980, to conduct investigations to determine the feasibility of constructing, operating, and maintaining the proposed Arrowrock Powerplant, hereafter called the "Powerplant," at Arrowrock Dam; and

4. WHEREAS, the Districts have sought and obtained a preliminary permit, issued August 14, 1981, for the proposed Powerplant from the Federal Energy Regulatory Commission ("FERC") and desire to undertake the preparation of a feasibility study as a preliminary to filing an application for a FERC license; and

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EXHIBIT C

5. WHEREAS, the Districts and Reclamation have engaged in cooperative efforts to determine the feasibility of constructing the Powerplant, largely conducted by Reclamation, and now wish to set forth in writing the respective responsibilities thereunder; and

6. WHEREAS, it is desirable that Reclamation and the Districts enter into this Memorandum of Understanding as an interim agreement setting forth the activities to be accomplished and the responsibilities of the parties with regard to those activities, preparatory to the possible filing of an application for a FERC license and the negotiation and execution of a contract to accomplish the financing, construction, operation, and maintenance of the Powerplant.

NOW THEREFORE, it is agreed by and between the parties as follows:

Term

7. This Memorandum of Understanding shall become effective upon its execution by the parties and shall continue while the initial determination of the engineering, enviromental, and financial feasibility of developing the Powerplant is being made by the Districts and Reclamation. The Memorandum of Understanding will continue in effect during the following activities unless one or both of the parties wishes to terminate it. (1) After the initial determination of feasibility has been made, the Districts and Reclamation will state in writing whether they remain interested in a cooperative endeavor and whether they intend to pursue the detailed evaluations required prior to entering into a cooperative endeavor. Such decisions will be made by March 1, 1984, or within 90 days of the initial determination of feasibility, whichever occurs last; provided that the period may be extended if both parties agree to the extension. (2) After the remaining feasibility studies are completed, the Districts and

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Reclamation will decide whether they wish to proceed with a cooperative endeavor to develop the Powerplant. These decisions will be made within 180 days after the completion of the feasibility studies or by January 1, 1985, whichever occurs first. (3) If the Districts and Reclamation wish to proceed, this Memorandum of Understanding will continue in effect for a period of 1 year following such decision or until a contract for development of the Powerplant is executed by the parties, whichever occurs first. If such contract for development of the Powerplant is not executed within 1 year as aforesaid, this Memorandum of Understanding shall terminate.

Responsibilities of Reclamation

8. Reclamation will accomplish activities usually required to determine whether the development of the Powerplant project is engineeringly, economically, and environmentally feasible. Those activities include, among other things, geologic explorations, hydrologic studies, detailed designs and cost estimates, economic evaluations, and an environmental assessment. Also, Reclamation will perform additional activities needed by the Districts to provide information to assist the Districts in their analysis of the potential Powerplant project and in their evaluation of a possible cooperative endeavor with Reclamation to develop the Powerplant.

Responsibilities of the Districts

9. During the time Reclamation is accomplishing the activities described in Article 8 above, the Districts will, in cooperation with Reclamation and to the extent possible, (1) investigate possible arrangements for marketing the power produced by the Powerplant and for providing the transmission lines needed to transmit that power and (2) make preliminary investigations of

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potential sources of project financing in amounts sufficient to construct all or part of the Powerplant.

Joint Responsibilities

10. If the Districts determine that they wish to proceed with a cooperative endeavor in accordance with Article 7, the Districts and Reclamation will mutually (1) prepare reports and provide project development data as necessary to facilitate the sale of bonds by the Districts to finance all or part of the Powerplant, (2) seek congressional authorization of the project, and (3) secure all licenses and permits necessary to accomplish the financing, construction, operation, and maintenance of the Powerplant.

Costs

11.(a) The Districts shall establish and maintain a separate accounting of costs they incur in accomplishing their sole and joint responsibilities as set forth in Articles 9 and 10. Such costs shall be reimbursable from bond proceeds upon the decision by the Districts to proceed with the Powerplant as subsequently provided in the contract to be entered into by the parties following that decision.

11.(b) Reclamation shall establish and maintain a separate accounting of costs it incurs in accomplishing its sole and joint responsibilities as set forth in Articles 8 and 10. Such costs shall be reimbursable upon the decision by the Districts to proceed with the Powerplant as subsequently provided for in the contract to be entered into by the parties following that decision. If the Districts decide not to proceed with the Powerplant under a cooperative endeavor with Reclamation, they shall reimburse Reclamation only for the costs associated with the additional activities which Reclamation performed in providing the information required in Article 8 hereof and in an amount not to exceed $50,000.

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General

12. Each party shall be liable for its own acts and shall not be liable for the acts of the other in carrying out its responsibilities and activities pursuant to this Memorandum of Understanding.

13. In order to facilitate the prompt and orderly accomplishment of the activities outlined herein, each party shall designate a contact person who will have the authority to act on its behalf in matters dealing with its precontract responsibilities. The contact persons shall meet as necessary to assess and facilitate the timely accomplishment of the activities to be accomplished pursuant to this Memorandum of Understanding.

14. The expenditure or advance of money or the performance of some of the work by the United States under this Memorandum of Understanding may require the appropriation of funds by the Congress. The commitment of the United States to perform such activities shall be contingent upon the necessary action being taken by Congress. No liability shall accrue to the United States if such action is not taken.

IN WITNESS WHEREOF, the Memorandum of Understanding has been executed as of the date first above stated.

THE UNITED STATES OF AMERICA

By L.W. Lloyd

Regional Director, PN Region
Bureau of Reclamation
Box 043, 550 West Fort Street
Boise, Idaho 83724

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BOISE-KUNA IRRIGATION DISTRICT

By _____
President
Boise-Kuna Irrigation District
311 South School Street
Kuna, Idaho 83634

NEW YORK IRRIGATION DISTRICT

By _____
Chairman
New York Irrigation District
214 Broadway
Boise, Idaho 83702

NAMPA AND MERIDIAN IRRIGATION DISTRICT

By _____
President
Nampa and Meridian Irrigation District
1503 First Street South
Nampa, Idaho 83651

BIG BEND IRRIGATION DISTRICT

By _____
President
Big Bend Irrigation District
P.O. Box 3193
Adrian, Oregon 97901

WILDER IRRIGATION DISTRICT

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NOV 12 2002

By _____
Chairman
Wilder Irrigation District
P.O. Box 416
Caldwell, Idaho 83605

Form P-1
(Revised October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION
TERMS AND CONDITIONS OF
PRELIMINARY PERMIT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mitchell Energy Company, Inc.	)	Project No. 3692-000
Boise-Kuna Irrigation District	)	Project No. 4656-000
New York Irrigation District	)	
Nampa & Meridian Irrigation District	)	
Wilder Irrigation District	)	
Big Bend Irrigation District	)	

ORDER ISSUING PRELIMINARY PERMIT
AND DENYING COMPETING APPLICATION

(Issued August 14, 1981)

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

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

COMPETING APPLICATIONS

Staff has reviewed the proposals for development of the site by the Applicants. None of the Applicants has presented a plan based on detailed studies. At this early stage of planning, there are no significant substantiated differences in the Applicants' plans and none of the plans are sufficiently developed

1/ Mitchell Energy Company, Inc., Project No. 3692, filed on November 7, 1980. Boise-Kuna Irrigation District, New York Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District & Big Bend Irrigation District, Project No. 4656, filed on May 13, 1981.

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).

to enable a conclusion to be reached as to which is the best proposal. The purpose of a permit is to study the feasibility of a project and to determine the optimum development of the site. Inasmuch as each Applicant's plan is based on an estimate of capacity and energy and does not include other relevant factors more appropriate for consideration at the license stage, there is no basis at this preliminary stage to conclude that any one of these plans is superior to another. Information and analyses would be developed by the applicant during the term of the permit to ensure that a license, if granted, is for the plan that is best adapted to develop, conserve, and utilize in the public interest the water resources of the region. Therefore, consistent with Section 7(a) of the Federal Power Act, which requires the Commission to give preference to municipalities or States whose plans are at least as well adapted as other applicants, and pursuant to Section 4.33(g)(3) of the Commission's regulations, this permit is issued to the Permittee described in Ordering Paragraph (A).

EFFECTS OF THIS PRELIMINARY PERMIT

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

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

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

TERM OF PERMIT

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

It is ordered that:

(A) A preliminary permit is issued for the proposed project to Boise-Kuna Irrigation District, New York Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District & Big Bend Irrigation District as described in the attached notice, for a period effective the first day of the month in which this permit is issued, and ending either 24 months from the effective date or on the date that an application for license submitted by the Permittee has been accepted for filing, whichever occurs first. This permit is subject to the terms and conditions of the Federal Power Act (Act), which is incorporated by reference as part of this permit, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The application for a preliminary permit for Project No. 3692 filed on November 7, 1980, is denied.

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

Article 7. In the interest of protecting and developing the natural resources and other environmental values of the project area, the Permittee shall consult with the appropriate Federal, State, and local agencies in their fields of responsibility and expertise, shall conduct its project investigations in a manner which protects the environmental integrity of the area, and shall fully explore all feasible alternatives to the project and alternative project designs, taking into account impacts on natural resources and other environmental values. These resources and values include, but are not limited to: forests, land management and treatment, fish, wildlife, recreation and public use, flood regulation, water and air quality

(including water supply, groundwater studies, waste treatment and disposal), public health and safety, archeological, historic and cultural sites, threatened or endangered species of flora and fauna, and scenic and aesthetic values. The Permittee shall initiate and conduct, or have conducted, any studies that may be necessary to determine the impact of the construction and operation of the proposed project on these natural resources and values and measures needed to protect and develop them or to provide for their mitigation or replacement, including alternative designs and operational measures, and shall utilize the results of these studies in the preparation of the relevant exhibits required to accompany any application for a licer to construct and operate the project. In connection with studies pertaining to archeological and historic and cultural sites, the Permittee shall consult with the State Historic Preservation Officer for each state in which any part of the project would be located, and the Heritage Conservation and Recreation Service of the U.S. Department of the Interior.

Article 8. The Permittee shall submit in triplicate at the close of each six-month period, from the effective date of this permit, to the Director, Office of Electric Power Regulation with a copy to the FERC Regional Engineer, for the Region in which the proposed project would be located (the Commission's authorized representative for the purposes of this permit), or to any other officer the Commission may designate, and a copy, if requested, to any agency consulted, accurate statements of the progress of all investigations, consultations, and studies accomplished during the period and of work contemplated under this permit for the ensuing period.

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

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

Article II. The Permittee shall coordinate the studies for the proposed project authorized by this permit with the Regional Director, U. S. Bureau of Reclamation, Sacramento, California.

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

William W. Lindsay
Director, Office of Electric
Power Regulation

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boise-Kuna Irrigation District	)	Project No. 4656-000
New York Irrigation District	)	
Nampa & Meridian Irrigation District	)	
Wilder Irrigation District	)	
Big Bend Irrigation District	)	

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT

(June 29, 1981)

Take notice that Boise-Kuna Irrigation District, New York Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District, collectively known as the Boise Project Board of Control (Applicant) filed on May 13, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§791(a)-825(r)] for Project No. 4656 to be known as the Arrowrock Dam Hydroelectric Project located on the Boise River in Elmore County, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. William Bienapfl, Chairman, Boise Project Board of Control 214 Broadway, Boise, Idaho 83702.

Project Description - The proposed project, to be located at the base of the U.S. Bureau of Reclamation's existing Arrowrock Dam, would consist of: (1) a powerhouse to contain two turbine-generating units with a total rated capacity of 60 MW; (2) a switchyard; and (3) a 10-mile long, 138-kV transmission line to interconnect with an existing Idaho Power Company transmission line.

Proposed Scope of Studies under Permit - A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to study the feasibility of contructing and operating the proposed project.

Competing Applications - This application was filed as a competing application to the Arrowrock Dam Project No. 3692 filed on November 7, 1980, by Mitchell Energy Company, Inc., under 18 C.F.R. §4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments - Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene - Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §1.8 or §1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before July 24, 1981.

Filing and Service of Responsive Documents - Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 4656. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB Building, Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb
Secretary

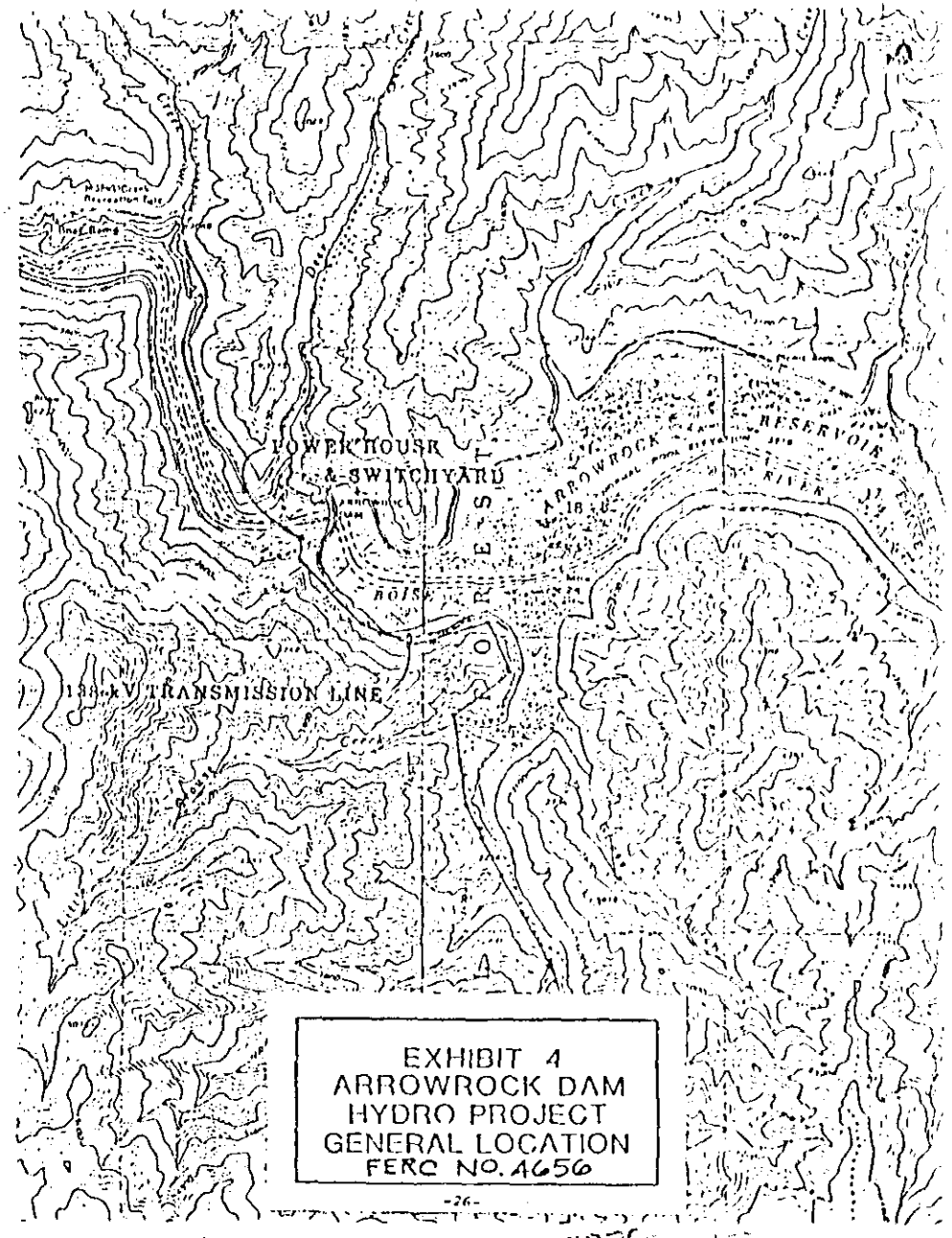


EXHIBIT 4
ARROWROCK DAM
HYDRO PROJECT
GENERAL LOCATION
FERC NO. 4656

-26-

MICR

September 4, 1984

Peter J. Boyd, Esquire
ELAM, BURKE, EVANS, BOYD & KOONTZ
P.O. Box 1559
Boise, ID 83701

RE: Application for Permit NO. 63-10240

Dear Mr. Boyd:

Enclosed is a copy of a petition to intervene in the matter of protested application for water right permit No. 63-10240 in the name of the Bureau of Reclamation. This petition was filed on behalf of Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District and the Big Bend Irrigation District.

If you have any information the Director should consider in determining whether or not to grant the intervention of these parties, that information should be provided to the Director within ten days of the receipt of this letter.

The Director is proposing to schedule a hearing on this application and on Application for Permit No. 63-10239 during the week of Novembert 5, 1984. If that time poses a conflict for yourself or any other parties, please notify me as soon as possible so another time can be selected.

Yours truly,

DAVID B. SHAW
Western Regional Supervisor

DBS:jp

Enclosures

cc: no/encl:
Randall C. Fredricks
Raymond D. Givens
William F. Ringert
Don Olowinski
William F. Schroeder
Ed Thomas
L. W. Lloyd

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

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

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

1. Will the proposed use reduce the quanity of water under existing water rights?

2. Is the proposed water supply insufficient for the purposes intended?

3. Is the application made in good faith or for delay or speculative purposes?

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the propsed use under this permit conflict with the local public interest?

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

Yours truly,

DAVID B. SHAW
Western Regional Supervisor

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NOV 12 2002

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

June 11, 1984

Regional Director
Bureau of Reclamation
Pacific Northwest Region
Box 043 550 West Fort St.
Boise, ID 83724

Re: 63-10239 & 63-10240

Gentlemen:

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

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

1. Will the proposed use reduce the quanity of water under existing water rights?

2. Is the proposed water supply insufficient for the purposes intended?

3. Is the application made in good faith or for delay or speculative purposes?

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the proposed use under this permit conflict with the local public interest?

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

Yours truly,

DAVID B. SHAW
Western Regional Supervisor

Enc:

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United States Department of the Interior

BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
FEDERAL BUILDING & U.S. COURTHOUSE
BOX 043-550 WEST FORT STREET
BOISE, IDAHO 83724

BUREAU OF RECLAMATION
OFFICIAL FILE COPY
MAY 3 1984
ACTION MAIL BY
DATE
400

IN REPLY REFER TO: PN 420
870.

APR 18 1984

Idaho Department of Water Resources
Statehouse
Boise, Idaho 83720

Ladies and Gentlemen:

Water Right Applications for proposed hydropower facilities at Arrowrock Dam and Boise Diversion Dam are attached.

According to the current schedule we calculate the fee requirements as follows:

Arrowrock - 5,470 cfs	$ 8,195.00
Boise Diversion Dam - 640 cfs	$ 3,365.00
Total Cost	$11,560.00 *

Please sign the enclosed voucher in the place provided and return it for payment.

Sincerely yours,

L.W. Lloyd

Regional Director

Enclosure

RECEIVED
MAY
Department of Water Resources
Western Regional Office

RECEIVED
APR 19 1984
Department of Water Resources
Western Regional Office

MICRO
NOV 12 2002

* - Agent, Jan Grover, sent voucher in 5/16/84

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Western Region

Statehouse
Boise, Idaho 83720
(208) 334-2190

MAY 17, 1984

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. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before JUNE 11, 1984.

Yours truly,

JUDY PENSE
Secretary

Encl.

MICRO
NOV 1 2 2002

NOTICE OF APPLICATION FOR WATER RIGHT

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

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Western Region, Statehouse, Boise, Idaho 83720 on or before JUNE 11, 1984.

KEN DUNN, Dir.

Published 05/24 & 05/31/84.

MICRO
NOV 1 2 2002

63-10240

U.S. DEPT. OF INTERIOR

BUREAU OF RECLAMATION, PACIFIC NORTHWEST REGION, 550 W. FORT ST. BOX 043, BOISE, ID 83724

Source: BOISE RIVER trib. to SNAKE RIVER

Date Filed: 04/19/1984

Diversion Pt: NWSE Sec 13 T 03N R 04E

Use: POWER (5470.00 CFS)

In: NWSE Sec 13 T 03N R 04E

MICRO
NOV 2002

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 63-10240

Priority: 06/11/1984 Maximum Diversion Rate: 5,470.00 CFS

This is to certify, that BOISE PROJECT BOARD OF CONTROL
214 BROADWAY
BOISE ID 83702

has applied for a permit to appropriate water from:

Source: BOISE RIVER **Tributary:** SNAKE RIVER

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
POWER	1/01 to 12/31	5,470.00 CFS

LOCATION OF POINT(S) OF DIVERSION:
BOISE RIVER NW¼SE¼ Sec. 13, Twp 3N, Rge 4E, B.M. BOISE County

PLACE OF USE: POWER

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N 04E 13														X			

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **August 1, 2007**.
2. Subject to all prior water rights.
3. Use of water under this water right will be regulated by the watermaster of State Water District No. 63 or a successor district.
4. The right holder shall install a measuring device that can be used to determine the instantaneous rate of flow of water through the system, or the right holder shall provide to the department a flow rate measurement or computation made by a certified water right examiner in accordance with actual system design and operation.
5. The issuance of this right does not grant any right-of-way or easement across the land of another.
6. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
7. Use of water under this right shall be non-consumptive.
8. This right is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.

MICROFILMED

NOV 1 2 2002

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 63-10240

9. Use of water under this approval shall comply with applicable water quality standards of the Department of Environmental Quality.
10. The diversion and use of water under this right and any license subsequently issued is subject to review by the Director on or after the date(s) of expiration of any license issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
11. The rights for the use of water acquired under this right shall be junior and subordinate to all other rights for the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
12. This permit or any subsequently issued license 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 water rights and operating procedures for irrigation, flood control or other authorized purposes.
13. Construction, operation, maintenance, repair, replacement or modification of the project works and features under this permit or subsequently issued license shall not injure, reduce, or impair existing water rights established under state law or water rights entitlements under federal contracts relating to the Boise River, its reservoirs, or its tributaries.
14. If the department or the permit holder proposes to eliminate or alter condition 12 and/or 13, the elimination or alteration shall be deemed to be a substantial change in the method or proposed use of the water as to Protestant Pioneer Irrigation District, Protestant Farmers Cooperative Ditch Co., Ltd, and Protestant Farmers Union Ditch Co., requiring an amended application or permit to be filed by the permit holder under the provisions of Idaho Code, §42-211. Notice of any such amended application or permit shall be given to the above listed protestants by the Director of the Department by certified mail. Protestants are entitled to raise any objections to any amendment proposing changes to the conditions referred to above which they could have raised in opposition to issuance of the original permit.
15. The right holder shall submit plans, drawings, and specifications to the department as required in Section 42-1712, Idaho Code, and IDAPA 37.03.06010.23.b (Safety of Dams Rule 10.23.b).

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 6th day of August, 2002.

for KARL J DREHER, Director

MICROFILMED

NOV 12 2002

63-10240 Certified mailing info

SENDER *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FARMERS UNION DITCH CO
4520 N LINDER
EAGLE ID 83616

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* | B. Date of Delivery

C. Signature

X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
956 63 10240

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M 1789

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FARMERS COOP DITCH CO
PO BOX 430
PARMA ID 83660

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)*: SHEILA SEEMAN
B. Date of Delivery: 2/6/02

C. Signature
X Sheila Seeman
☒ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

MICRO
NOV

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
763 63-10240

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

RECEIVED
FEB 0 7 2002
WATER RESOURCES
WESTERN REGION

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

06

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JOHN HOCKBERGER
US BOR
BOX 020 550 W FORT ST
BOISE ID 83724

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)*

B. Date of Delivery 2-8-02

C. Signature

X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
2264 0947

63-1024D

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

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FEB 12 2002
WATER RESOURCES
WESTERN REGION

06

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WILLIAM F RINGERT ESQ
RINGERT & CLARK
PO BOX 2773
BOISE ID 83701-2773

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* | B. Date of Delivery

Kathie Nielsen 11/20/02

C. Signature

X Kathie Nielsen ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

MICHC

NOV 12 2002

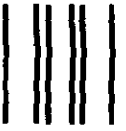
3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
970 63-10240

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

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FEB 0 6 2002
WATER RESOURCES
WESTERN REGION

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ALBERT BARKER
ATTORNEY AT LAW
PO BOX 2139
BOISE ID 83701-2139

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)*: B Hinnenkamp
B. Date of Delivery: 11/6

C. Signature
X B Hinnenkamp
☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

NOV 12 2002

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
2264 0987 63-10240

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

RECEIVED

FEB 0 6 2002

WATER RESOURCES
WESTERN REGION

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JOHN HOCKBERGER
US BOR
BOX 020 550 W FORT ST
BOISE ID 83724

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)*

B. Date of Delivery 2-4-02

C. Signature

X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

MICRO

NOV 12 2002

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
1007 63-1024d

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

RECEIVED
FEB 0 6 2002
WATER RESOURCES
WESTERN REGION

DEPARTMENT OF WATER RESOU[illegible]S
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

06



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SCOTT CAMPBELL
MOFFATT THOMAS
101 S CAPITAL BLVD+
BOISE ID 83701

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* J. Hill

B. Date of Delivery 2-4-02

C. Signature
X J Hill
☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
101 S. Capitol Blvd
FILMED
MAY 12 2002

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)* 7014 6730 0002 1024 0240

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

UNITED STATES POSTAL SERVICE



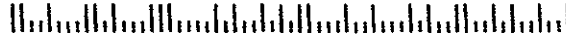
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

RECEIVED
FEB 0 6 2002
WATER RESOURCES
WESTERN REGION

06



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GENE BAILEY
10200 W SCENIC VIEW
STAR ID 83669

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* Gene Bailey B. Date of Delivery 2-7-02

C. Signature
X Gene Bailey ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
994 63-10240

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

RECEIVED
FEB 0 6 2002
WATER RESOURCES
WESTERN REGION

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

06

Certified Mail Provides:

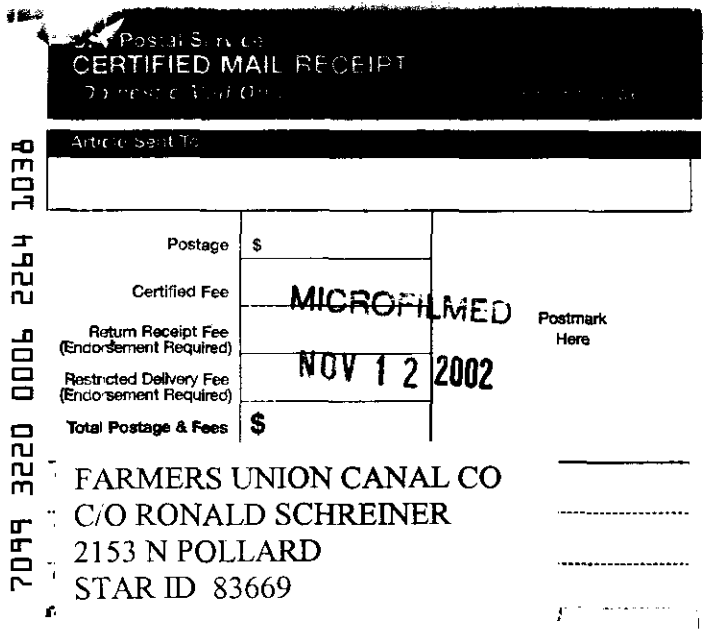
- A mailing receipt
- A unique identifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

Important Reminders:

- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
- Certified Mail is not available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, July 1999 (Reverse) 102595-99-M-1938


U.S. Postal Service
CERTIFIED MAIL RECEIPT
Domestic Mail Only

Article Sent To:

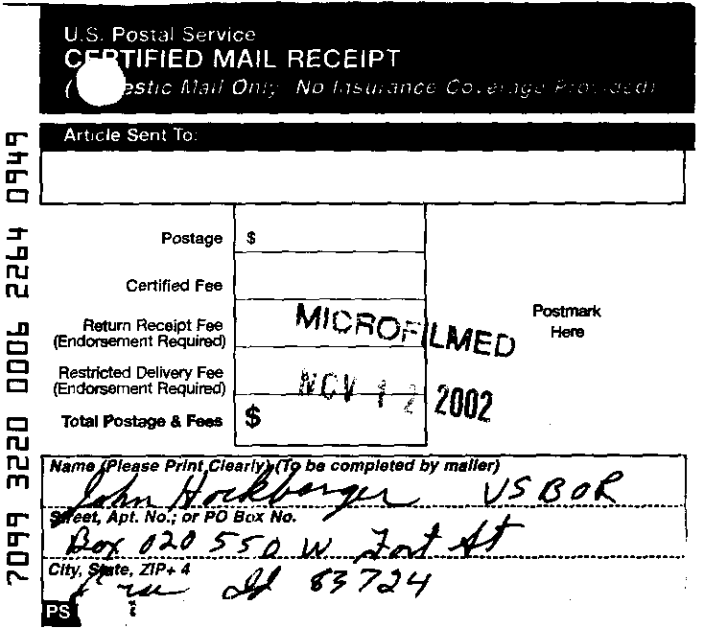
7099 3220 0006 2264 1038

Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

MICROFILMED
NOV 12 2002

Postmark Here

FARMERS UNION CANAL CO
C/O RONALD SCHREINER
2153 N POLLARD
STAR ID 83669


U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
Article Sent To:
Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $
MICROFILMED
NOV 12 2002
Postmark Here
Name (Please Print Clearly) (To be completed by mailer)
John Hoekenga USBOR
Street, Apt. No.; or PO Box No.
Box 020550 W. Fort St
City, State, ZIP+4
Boise ID 83724
PS
7099 3220 0006 2264 0949

Certified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

Important Reminders:

- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
- Certified Mail is not available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
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IMPORTANT: Save this receipt and present it when making an inquiry.

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.

RECEIVED

APR 10 1992

Department of Water Resources
Western Regional Office

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

63-18240

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Scott L. Campbell
ELAM, BURKE, AND BOYD
P.O. Box 1559
Boise, ID 83701

4. Article Number
P 864 311 258

Type of Service:
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X

7. Date of Delivery
4/9/02

8. Addressee's Address *(ONLY if requested and fee paid)*
MICRO... MED
NOV 12 2002

PS Form **3811**, Apr. 1989 ★U.S.G.P.O. 1989-238-815 **DOMESTIC RETURN RECEIPT**

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.

RECEIVED

APR 10 1992

Department of Water Resources
Western Regional Office

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

NOV 13 2002
MICROFILM

631040

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Kenneth Henley
Boise Proj. Board of Control
214 Broadway Ave.
Boise, ID 83702

4. Article Number
P 860 399 254

Type of Service:
☐ Registered ☐ Insured
☐ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X Edna Fischer

6. Signature — Agent
X

7. Date of Delivery
4-9-92

8. Addressee's Address *(ONLY if requested and fee paid)*
MAILED
NOV 12 2002

PS Form 3811, Apr. 1989 * U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

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.

RECEIVED

APR 10 1992

Department of Water Resources
Western Regional Office

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

NOV 13 2002
MICROFILMED

63-10240

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Don A. Olowinski, Esq.
Box 1617
Boise, ID 83701

4. Article Number
P 860 398 936

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X Alma Lubadeer

7. Date of Delivery
11-9-92

8. Addressee's Address *(ONLY if requested and fee paid)*
MICH...
NOV 12 2092

PS Form 3811, Apr. 1989 ★U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

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.**

MAY 05 [illegible]

Department of Water Resources
Western Regional Office



PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

NOV 12 2008

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

63-10240

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3 Article Addressed to:

Don M. Olowinski, Esq.
Box [redacted]617
Boise, ID 83701

4. Article Number

[redacted]

Type of Service:
☐ Express Mail ☐ Return Receipt
☐ Registered ☐ COD
☐ Insured
or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X [signature]

7. Date of Delivery
5-4-92

8. Addressee's Address *(ONLY if requested and fee paid)*

RECEIVED
NOV 12 2002

PS Form 3811, Apr. 1989 ★U.S.G.P.O. 1989-238-815 DOMESTIC RETURN RECEIPT

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.**

RECEIVED
MAY 07 1992
Department of Water Resources
Western Regional Office

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

MICROFILMED NOV 13 1992

63-10240

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

SCOTT L CAMPBELL
DAVIS WRIGHT TREMAINE
702 W IDAHO ST SUITE 700
BOISE ID 83702

4. Article Number
P 860 398 903

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature -- Addressee
X

6. Signature -- Agent
X

7. Date of Delivery
5/6/92

8. Addressee's Address *(ONLY if requested and fee paid)*

NOV 12 2002

PS Form 3811, Apr. 1989 ★U.S.G.P.O. 1989-236-815 DOMESTIC RETURN RECEIPT

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.

MAY 05 1992

Department of Water Resources
Western Regional Office

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

NOV 12 2002

MICROFILMED

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

63-10240

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Kenneth Henley
Boise Proj. Board of Control
214 Broadway Ave.
Boise, ID 83702

4. Article Number
P 360 398 902

Type of Service:
☐ Registered ☐ Insured
☐ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X

7. Date of Delivery
5/4/92

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form **3811**, Apr. 1989 ★U.S.G.P.O. 1989-238-815 **DOMESTIC RETURN RECEIPT**

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.

NOV 2 2002
MICROFILMED

JUN - 5 1992

Department of Water Resources
Western Regional Office

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

● **SENDER**: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Kenneth Henley
Boise Proj. Board of Control
214 Broadway Ave.
Boise, ID 83702

MICROFILMED
NOV 12 2002

4. Article Number

[redacted]

☐ Express Mail ☐ Return Receipt

[redacted]

or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X

7. Date of Delivery
6/4/92

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form **3811**, Apr. 1989 ★U.S.G.P.O. 1989-238-815 **DOMESTIC RETURN RECEIPT**

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.

BOISE, ID
PM
4 JUN
1992

NOV 12 2002

MICROFILMED

ALWAYS USE ZIP CODE

U.S.MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

63-18240

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:

Scott L. Campbell
ELAM, BURKE, AND BOYD
P.O. Box 1559
Boise ID 83701

4. Article Number
P 560 398 937

Type of Service:
- ☐ Registered
- ☐ Insured
- ☑ Certified
- ☐ COD
- ☐ Express Mail
- ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X

7. Date of Delivery

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form **3811**, Apr. 1989 ★U.S.G.P.O. 1989-238-815 **DOMESTIC RETURN RECEIPT**

P 860 398 903

Certified Mail Receipt

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to Scott Campbell	
Street & No. PWT	
P.O., State & ZIP Code 702 W ID St. Suite 700 Boise	
Postage 1	$ 29
Certified Fee MICROFILMED	1 —
Special Delivery Fee JUN 12 2002	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1 —
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	$2 29
Postmark or Date	

PS Form 3800, June 1990

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to the back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

☆U.S.G.P.O. 1990-270-153

PS Form **3800**, June 1990 (Reverse)

P 860 398 932

Certified Mail Receipt
No Insurance Coverage Provided
Do not use for International Mail

Don A. Olowinski, Esq.
Box 1617
Boise, ID 83701

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form 3800, June 1990

MICROFILMED
NOV 12 2002

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to the back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

☆U.S.G.P.O. 1990-270-153

PS Form **3800**, June 1990 *(Reverse)*

P 860 399 260

Certified Mail Receipt
No Insurance Coverage Provided
Do not use for International Mail

Kenneth Henley
Boise Proj. Board of Control
214 Broadway Ave.
Boise, ID 83702

Postage	$
Certified Fee MICROFILMED	
Special Delivery Fee	
Restricted Delivery Fee NOV 1 2 2002	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form **3800**, June 1990

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to the back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

☆U.S.G.P.O. 1990-270-153

PS Form **3800**, June 1990 *(Reverse)*

P 660 398 531

Certified Mail Receipt
No Insurance Coverage Provided
Do not use for International Mail

Scott L. Campbell
ELAM, BURKE, AND BOYD
P.O. Box 1559
Boise, ID 83701

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form **3800**, June 1990

NOV 12 2002

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to the back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

☆U.S.G.P.O. 1990-270-153

PS Form **3800**, June 1990 *(Reverse)*

P 860 398 448

Certified Mail Receipt
No Insurance Coverage Provided
Do not use for International Mail

Scott L. Campbell
ELAM, BURKE, AND BOYD
P.O. Box 1559
Boise, ID 83701

Postage	$.29
Certified Fee	1—
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1—
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	$3 27
Postmark or Date	

PS Form 3800, June 1990

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to the back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

☆U.S.G.P.O. 1990-270-153

PS Form **3800**, June 1990 *(Reverse)*

P 860 398 902

Certified Mail Receipt
No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Kenneth Henley
Boise Proj. Board of Control
214 Broadway Ave.
Boise, ID 83702

Postage	$ 29
Certified Fee	1—
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1—
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	$ 2 39
Postmark or Date	

PS Form 3800, June 1990

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to the back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

☆U.S.G.P.O. 1990-270-153

PS Form **3800**, June 1990 *(Reverse)*

P 860 398 449

Certified Mail Receipt
No Insurance Coverage Provided
Do not use for International Mail

Don A. Olowinski, Esq.
Box 1617
Boise, ID 83701

Postage	$ 29
Certified Fee	1—
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1—
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	$2 29
Postmark or Date	

PS Form **3800**, June 1990

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to the back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

☆U.S.G.P.O. 1990-270-153

PS Form **3800**, June 1990 (Reverse)

P 860 398 536

Certified Mail Receipt
No Insurance Coverage Provided
Do not use for International Mail

Don A. Olowinski, Esq.
Box 1617
Boise, ID 83701

NOV 2007
MICROFILMED

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form 3800, June 1990

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to the back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

☆U.S.G.P.O. 1990-270-153

PS Form **3800**, June 1990 *(Reverse)*

P 860 399 258

Certified Mail Receipt

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Scott L. Campbell
ELAM, BURKE, AND BOYD
P.O. Box 1559
Boise, ID 83701

NOV 12 2002

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form 3800, June 1990

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to the back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

☆U.S.G.P.O. 1990-270-153

PS Form **3800**, June 1990 *(Reverse)*

P 860 399 259



Certified Mail Receipt
No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Kenneth Henley
Boise Proj. Board of Control
214 Broadway Ave
Boise, ID 83702

NOV 1 2 1991

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form **3800**, June 1990

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier (no extra charge).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to the back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make inquiry.

☆U.S.G.P.O. 1990-270-153

PS Form **3800**, June 1990 *(Reverse)*

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

RETURN SERVICE REQUESTED

FOLD AT DOTTED LINE

CERTIFIED MAIL

7099 3220 0006 2264 0956

BOISE FEB 01'02 ID

PB METER 7117736 U.S. POSTAGE 4.1

Resent 2-7-02

MICROFILMED FEB 12 2002

RETURN TO SENDER

FARMERS UNION DITCH CO
4520 N LINDER
EAGLE ID 83616

NOT DELIVERABLE AS ADDRESSED
UNDELIVERABLE
NO FORWARDING ORDER ON FILE
ATTN
THIS
ADDN

[redacted]

RECEIVED
AUG 20 2002
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CHANGE IN ADDRESS

This form can be used to notify the Department of a change in address of the owners of record for the listed water rights.
(Please print or type)

[ ] Water Right Number(s): 63-10240

[ ] Name(s): BOISE PROJECT BOARD OF CONTROL

[ ] Old Mailing Address: 214 BROADWAY
BOISE ID 83702

[ ] New Mailing Address: 2465 OVERLAND RD
BOISE ID 83705

Telephone Number: (208) 344 - 1141

[ ] Signature(s) of Owner(s) Ken Henley, Project Manager
Ken Henley (Project Manager)
(Include your title if on behalf of company or organization)

Date: 8/19/2002

MICROFILMED
NOV 1 2002

Database updated 8.20.02 – Kari Lyon

Permit 63-10240
Mail resent w/address
Change form to:

2465 Overland Rd
Boise 83705

Per Attorney office.
Kari Lyons
8.12.02

IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard St.
P.O. Box 83720
Boise, ID 83720-0098
(208) 327-7900

TO BOISE PROJECT BOARD OF CONTROL
214 BROADWAY
BOISE ID 83702

UNABLE TO FORWARD

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 7, 2002

BOISE PROJECT BOARD OF CONTROL
214 BROADWAY
BOISE ID 83702

RE: Permit No. 63-10240

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed a least sixty days prior to the commencement of work in the stream.

MICROFILMED
DEC 12 2002

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a $100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SWK:klt

Enclosure(s)

MICROFILMED
NOV 12 2002

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2002 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 63-10240

BOISE PROJECT BOARD OF CONTROL
214 BROADWAY
BOISE ID 83702

Kari Lynn Townsend
Secretary

MICROFILMED
NOV 12 2002

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

The accompanying order or approved document is a **"Preliminary Order"** issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

MICROFILMED

NOV 1 2 2002

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) the petition for reconsideration is disposed of; or
> (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MICROFILMED
NOV 12 2002

MEMORANDUM

To: File 63-10240

From: Sharla

Date: July 25, 2002

Re: Permit Review

This application filing is cumbersome, however, the contents generally fall into the categories of a) protests and matters of litigation, b) updates from FERC, c) correspondence between department personnel and attorneys representing the applicant and protestants, d) orders setting hearings, etc. and e) stipulations for the withdrawal of protests.

As indicated in a memo from Keith Higginson to the Governor at that time, Cecil Andrus, large hydropower filings could only be approved on the Boise River system as an incidental use of water diverted under a prior right. The protests stemmed from the irrigation districts' concerns that in order to obtain a constant flow for power generation, the Bureau of Reclamation would either fail to store water when it should be stored or would release stored water at times when water is not needed for irrigation, thus reducing the supply available to meet irrigation needs later in the season. These assertions were based on the period of use and quantity sought to be appropriated by this application.

The Bureau later assigned this filing to the Boise Project Board of Control which is comprised of the majority of the original protestors. The remaining protests have finally been resolved. A permit is being prepared listing current conditions that are typically used on all power filings and the special conditions noted in Gary Spackman's memo of 7/4/2002. Conditions 2, 4 and 5 noted in his memo are no longer active conditions and the current conditions we use instead of them will be placed on the permit.

7/29/02

I recommend that the eighth condition of approval proposed by Gary Spackman not be used on this right. The condition addresses the authorization to store water, but this right is not for storage purposes.

S. Keen

MICROFILMED

NOV 1 2 2002

APPLICATION FOR PERMIT
STATE OFFICE ANALYSIS
Reviewed by Sharla Curtis on 7/24/02

No. 63-10240 **Name:** BOR **Corp. Officers** N/A **Ad ok** ✓ **Govt Lots**

AREA OF CONCERN: No/Yes _____ **Moratorium** _____ **GWMA** ~~**TRUST/NON-TRUST**~~

GROUNDWATER: (√Flow Chart)

DRILLING PERMIT	
All wells	- 046
Basin 34	- 084 (if necessary)
WMD	- North/East/West
≤ 0.24 cfs/5 acres	- No MD
> 0.24 cfs/5 acres	- 067
~~WMD~~	
Supp irr (irr = only use)	- 065-104
Supp irr (+ other uses)	- 100-105
≤ 0.24 cfs/5 acres	- No MD
> 0.24 cfs/5 acres	- 01M

[redacted] (√Flow Chart)

F&G contacted	- Yes/No Response
In/Above MSF	- WB9
PLANNING REVIEW/RESPONSE	
~~WD~~	[redacted] # 63)
≤ 0.20 cfs/others	- 01H, 01P or No MD
~~> 0.20 cfs~~	[redacted] not 01A DIN
SPRINGS/SINK, INACTIVE WD or ~~WD~~	
≤ 0.24 cfs/5 acres	- No MD
>0.24 cfs/5 acres	- 01M or No MD

LOCATION:

Boise Front LoGeo	- 058 (<85 GW)
Mitigation	- 121
Trust	- 051(consumptive uses)
Non-Trust	- 048 (consumptive uses or non-cons. > 1.0 cfs)

RIVER BASINS: (SW special considerations)

Snake R (01)	- W23, N/A
(02,03)	- 007 (w/ remark WB9 if above Weiser)
Payette R (65)	- W23, 047 (Payette Lake)
Salmon R (70's)	- 029 (fish screens)
Weiser R (67)	- 086-087

~~USES:~~

STORAGE	- 18C-01H-01P-18B-NA
IRR ≤ 5 ac	- R66/R67/R68/R69 (0.03 cfs/ac)
> 5 ac	- R62/R63/R64/R65 (0.02 cfs/ac)
STOCKWATER	- R37 (BLM/FS)-111 (instream stock)
MINING	- 054-106
HEAT/COOL	- R07 (injection well)
FIRE PROT	- 077
COMMERCIAL/ INDUSTRIAL	- 106-R07
DAIRY	- 082-WD8
~~POWER~~	- ~~17H~~ or 17K (+uses) ~~17G~~ (under FERC) or 17M (not FERC regulated)
	~~022-075-R22-08A~~

USES:

MUNICIPAL	
Restricted area	- 022,075
Irr., GW supp to SW	- 102
Future needs	- 007,109
FISH PROP	- 029 (70's only)-007-122-106
DOMESTIC	
Surface water	- WB5 (Big Wood/Boise above Star Bridge)
	- 27A (Payette R)
>1 in restricted area	- 070-071-075(no parks/common areas)
Irr separate or none allowed	- WB5
GW w/irrigation from SW evident	- 065-104
Moratorium approvable	- W03 (2500 gpd – meets domestic def i.e. D/convenience store)

~~**BENEFICIAL USE**~~ **ISSUE:** 8/01/2007

~~MISC CONDITIONS/REMARKS:~~

Protested	- 020-W19
~~Development Period~~	
~~> 1 yr~~	~~- 26A~~
Ownership	~~- 08~~
Non-consumptive	- 027
Water Quality	~~- 006~~ R07
Multiple pd's per ¼¼	- W32
Subd lot desc (pd)	- W59
Subd lot desc (pu)	- W60
Use definitions	- W02 example – S/50 range
Pre-1987 development	- 068-074 (allow 120 days for proof due)
Single p/d intended	- 076

IRRIGATION SEASON _____ - _____ (Per updated map) **IRR VOLUME/ACRE** _____

OTHER CONDITIONS/REMARKS Numerous special cond. listed in Barry Spackman's 7/4/02 memo.

COMMENTS

FERC license has been extended to 3/26/2005

Form No. 202a
3/79

State of Idaho

Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: Dan Dowe APPLICATION NUMBER: 63- 10240

CHECK:

- [x] Source.
- [x] Point of diversion.
- [x] County.
- [x] Quantity of water and period of use.
- [x] Description of diverting works.
- [x] Time required for beneficial use of water.
- [x] Place of use or acres irrigated.
- [x] Map.
- [x] Signature.
- [x] Fee. VOUCHER

Field check by: _____
Date: _____
Comments: _____

- ☐ Yes [x] No Field check required.
- ☐ Yes [x] No Critical groundwater area.
- ☐ Yes [x] No Request dam safety information. Sent by: _____ Date: _____
- [x] Yes ☐ No* In form to receipt.

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: _____

SEND COPIES TO:

- ☐ Idaho State Health Department. Copies sent by: _____ Date: _____
- ☐ Idaho Fish and Game Department.
- ☐ Idaho Department of Lands.
- ☐ U.S. Bureau of Land Management.
- ☐ U.S. Forest Service.
- ☐ Other _____

PROCESSING:

- ☐ Yes [x] No Platted by: _____ Map No. _____
- ☐ Yes [x] No Other rights on same place of use. NO OTHER WTR. RTS. FOR POWER PURPOSES FROM ARROWROCK DAM.
- [x] Yes ☐ No* In form for advertising.
  Final date for protests: June 11, 1984
- ☐ Yes ☐ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- [x] Affidavit of publication received. Date: 6/4/84
- [x] Application published correctly. If not, record action taken: _____
- [x] Fee amount, receipt date & number, recorded on application. $.195.1 34468
- [x] Publication dates and paper, recorded on application. Idaho Statesman 5/24 & 5/31/84
- [x] Protests, dates, withdrawal, etc., recorded on application.
- ☐ Recommendation & initial, recorded on application.
- ☐ Yes [x] No Measuring device required.
- ☐ Yes [x] No Access port required.
- [x] Yes ☐ No Will water be delivered by watermaster? If yes, what district? 63, Boise River
  _____ Date of priority recommended.
  Special conditions of approval or cover letter. See memo dated July 4, 2002.

By: Gary S Date: 7/11/02

STATE OFFICE REVIEW:

☐ See attached sheet for more information.
By: _____ Date: _____

POINT OF DIVERSION AND STREAM INDEX INFORMATION

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH
____	__	___	___	__	_	____.__

IDAHO STREAM CODE INDEX

____.____.____.____.____.___.___.__.__.__

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH
____	__	___	___	__	_	____.__

IDAHO STREAM CODE INDEX

____.____.____.____.____.___.___.__.__.__

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH
____	__	___	___	__	_	____.__

IDAHO STREAM CODE INDEX

____.____.____.____.____.___.___.__.__.__

TRACT	SEC	TWP	RGE	gov't lot	rediv. (R)	REACH
____	__	___	___	__	_	____.__

IDAHO STREAM CODE INDEX

____.____.____.____.____.___.___.__.__.__

Application No. 63-10240

SPECIAL NOTE: _____

PROTEST INFORMATION SHEET

Protestant - Name(s)

Farmers Union Ditch Co., Settlers Irrigation Dist.., Farmers Cooperative Canal Co. & Pioneer Irr. Dist. by Peter J. Boyd, Attorney 343-5454

~~Intervenors Boise Kuna Farmers~~

Address 1010 First Interstate Bldg., P. O. Box 1559, Boise, ID 83701

Attorney - Name & Address same

Date Filed 6/8/84 Protest Date 6/11/84

Issues _____

Applicant - Attorney - Name & Address _____

Dates: _____

Acknowledgement letters: _____

Hearing Notice: _____

Hearing Date: _____

Intervenors for Applicant: Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District & Big Bend Irrigation District.

Other: _____

MICROFILMED
NOV 12 2002

Protest Information submitted in Computer (following hearing): _____

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

FAX TRANSMITTAL COVER SHEET

FAX NUMBER (208) 334-2348

DATE: 6/4/02

TO: Dick Larsen **FROM:** Steve L.

DOCUMENT DESCRIPTION/NOTES: 63-10240 @ Arrowrock-

1) Application

2) NO Re-advertising

3) all protests now withdrawn, technical etc. Review underway, then Appl. file to S.O. for decision.

TOTAL PAGES SENT: 4 **+ COVER SHEET**

CONTACT:

MICROFILMED
NOV 12 2002

✓ faxed per DL's Request

MEMORANDUM

To: File no. 63-10240 in the name of the Boise Project Board of Control
From: Gary Spackman
Date: July 4, 2002

Re: **Recommended Conditions of Approval**

After two decades of review and squabbling by the parties, protests to the Arrowrock Hydropower Project application have been resolved. I recommend the following conditions of approval. Proposed conditions one through ten were lifted directly from one of the permits issued to the Boise Project Board of Control for the Lucky Peak Project. The language was modified slightly because Arrowrock is a Bureau of Reclamation dam. In addition, one condition was eliminated because specific settlement language contained in conditions 11-13 replaces the earlier language. Proposed conditions 11-13 were taken, with some slight modifications in order to read appropriately as conditions, from the agreement for withdrawal of protests signed in April 2002. Please especially note condition 13, which insures that a change in conditions at the time of permitting or licensing will require the filing of an amendment with IDWR. This condition was pivotal to final resolution of the protests.

1. 005 Use of water under this right is subject to control by the watermaster of State Water District No. 63, Boise River.

2. 01A 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.

3. 08A This right is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.

4. 09D Water used under this right if discharged into a natural channel shall meet Idaho Water Quality Standards.

5. 17C Use of water under this right is subordinated to future diversion of water for irrigation or other consumptive beneficial uses.

6. 17G The diversion and use of water under this right and any license subsequently issued is subject to review by the Director on the date(s) of expiration of any license issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

NOV 12 2002

7. 26A 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.

8. Structural modification to the dam and storage of water is contingent upon certification to the dam and storage of water is contingent upon certification to the department that plans and specifications have been reviewed and approved by the U.S. Bureau of Reclamation and that construction has proceeded in full compliance with the final approved plans.

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

025 10. This permit does not constitute IPUC or FERC approval that may be required.

11. This permit or any subsequently issued license 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 water rights and operating procedures for irrigation, flood control or other authorized purposes.

12. Construction, operation, maintenance, repair, replacement or modification of the project works and features under this permit or subsequently issued license shall not injure, reduce, or impair existing water rights established under state law or water rights entitlements under federal contracts relating to the Boise River, its reservoirs, or its tributaries.

13. If the department or the permit holder proposes to eliminate or alter the two preceding conditions (a) limiting use to flows for existing rights, flood control, etc.; and (2) expressly stating that the use under this right cannot negatively impact existing water rights; the elimination or alteration shall be deemed to be a substantial change in the method or proposed use of the water as to Protestant Pioneer Irrigation District, Protestant Farmers Cooperative Ditch Company LTD, and Protestant Farmers Union Ditch Company, requiring an amended application or permit to be filed by the permit holder under the provisions of Idaho Code § 42-211. Notice of any such amended application or permit shall be given to the above listed protestants by the Director of the Department by certified mail. Protestants are entitled to raise any objections to any amendment proposing changes to the conditions referred to above which they could have raised in opposition to issuance of the original permit.

MICROFILMED
NOV 12 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

May 20, 2002

ALBERT P BARKER
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

Re: Application for Permit No. 63-10240 in the Name of Boise Project Board of Control

Dear Protestant:

This letter is to acknowledge the withdrawal of protest of the above-referenced application for permit.

There are no protests remaining in this matter. The department will now continue to process this application, subject to certain conditions of approval.

If you have any questions please call this office.

Sincerely,

Gary Spackman

GS:st

CC: Applicant

MICROFILMED
NOV 12 2002

John A. Rosholt
Albert P. Barker
John K. Simpson
Amy D. Chestnut
Travis L. Thompson

BARKER
ROSHOLT
&
SIMPSON
LLP

205 North 10th Street, Suite 520
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

233 Second Street North, Suite D
Twin Falls, ID 83301
(208) 733-0700 telephone
(208) 735-2444 facsimile

Albert P. Barker
apb@idahowaters.com

May 7, 2002

RECEIVED
MAY 0 8 2002
WATER RESOURCES
WESTERN REGION

Gary Spackman
Manager, Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: In the Matter of Application for Permit No. 63-10240
in the name of the Boise Project Board of Control

Dear Gary:

I am enclosing for filing, the original Stipulation for Dismissal of Protests and Settlement Agreement in the above matter, signed by all parties.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Albert P. Barker

APB/eac

cc: Scott Campbell (w/encl.)
Gene Bailey (w/encl.)

MICROFILMED
NOV 1 2 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-10240 IN THE NAME OF BOISE PROJECT BOARD OF CONTROL	**ORDER VACATING HEARING**

A hearing for the above-entitled matter was scheduled for April 25 and 26, 2002. A request was made to vacate the hearing. The reason for the request is that the parties have reached an agreement to resolve the protest.

ORDER

IT IS HEREBY ORDERED that the hearing for application for water right no. 63-10240 is **vacated.**

Dated this 23rd day of April, 2002.

Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of April 2002 I mailed a true and correct copy, postage prepaid of the above Order Vacating Hearing to the following:

Sue Taylor
Senior Secretary

BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705-3173

SCOTT CAMPBELL
MOFFATT THOMAS
101 S CAPITAL BLVD
BOISE ID 83701

WILLIAM F RINGERT ESQ
RINGERT & CLARK
PO BOX 2773
BOISE ID 83701-2773

JOHN HOCKBERGER
US BOR
BOX 020 550 W FORT ST
BOISE ID 83724

GENE BAILEY
10200 W SCENIC VIEW
STAR ID 83669

FARMERS UNION CANAL
4520 N LINDER
EAGLE ID 83616

FARMERS COOP DITCH CO
PO BOX 430
PARMA ID 83660

ALBERT BARKER
ATTORNEY AT LAW
PO BOX 2139
BOISE ID 83701-2139

MICROFILMED
NOV 12 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED
MAY 0 8 2002
WATER RESOURCES
WESTERN REGION

IN THE MATTER OF THE APPLICATION FOR PERMIT NO. 63-10240 IN THE NAME OF THE BOISE PROJECT BOARD OF CONTROL	)))))	STIPULATION FOR DISMISSAL OF PROTESTS AND SETTLEMENT AGREEMENT

WHEREAS, the Boise Project Board of Control has been assigned the Application for water right no. 63-10240 by the United States of America, Bureau of Reclamation.

WHEREAS, Farmers Union Ditch Company, Settlers Irrigation District, Farmers Cooperative Ditch Company LTD and Pioneer Irrigation District filed protests against the application.

WHEREAS, Settlers Irrigation District withdrew its protest to the Application on or about April 14, 1992.

WHEREAS, the Boise Project Board of Control and its member Irrigation Districts hold a license issued by Federal Energy Regulatory Commission to construct a hydroelectric power plant at Arrowrock Dam. In October 2001, FERC, pursuant to statutory authority, extended the date for commencement of construction of the hydroelectric project to March 2003.

WHEREAS, the parties have exchanged correspondence and held discussions among themselves and with the Department, concerning appropriate conditions to be imposed upon the water right permit and any subsequently issued license.

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NOW THEREFORE, the Applicant and the Protestants desire to resolve the disputes among them concerning the appropriate conditions on the following terms and conditions:

1. Applicant and Protestants hereby request that the Idaho Department of Water Resources insert the following conditions verbatim into any permit and license issued concerning this water right:

   A. "This permit or any subsequently issued license 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 water rights and operating procedures for irrigation, flood control or other authorized purposes."

   B. "Construction, operation, maintenance, repair, replacement or modification of the Project works and features under this permit or subsequently issued license shall not injure, reduce or impair existing water rights established under State law or water rights entitlements under federal contracts relating to the Boise River, its reservoirs, or its tributaries."

2. When a permit has been issued containing the provisions in Paragraph 1 set forth above and either the permit holder or the Department proposes to eliminate or to alter these provisions, in either the permit or in any subsequent license, such elimination or alteration shall be deemed to be a "substantial change" in the method or proposed use of the water as to

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NOV 12 2002

these Protestants, requiring an amended application or permit to be filed by Applicant under the provisions of Idaho Code § 42-211. Notice of any such proposal shall be given to Protestants by the Director of the Department by certified mail. Protestants are entitled to raise any objections to any amendment proposing changes to the agreed –upon language in Paragraph 1 above, which they could have raised in opposition to issuance of the original permit.

3. The provisions of Paragraph 2 shall be incorporated into any permit issued by the Department to establish a procedure to be followed by the Department, Applicant and Protestants in the event changes to the language agreed upon by Applicant and Protestants in Paragraph 1 above is proposed for inclusion into any subsequently issued license.

4. Protestants hereby withdraw their protests to the Application.

5. In the event that the Department fails to include the conditions to the permit set forth above in their entirety, Protestors' withdrawal of their protests shall be null and void at the election of Protestants. Written notice to the Department that the withdrawal of protest is null and void shall be made within ninety (90) days of receipt of the permit, which shall be sent by certified mail to Protestants and Applicant.

6. Each party shall bear its own costs and fees incurred in this action.

7. This stipulation shall be filed with the Department in the records of the proceeding.

MICROFILMED
NOV 1 2 2002

Dated: This 18 day of April, 2002

BARKER ROSHOLT & SIMPSON LLP
Attorneys for the Boise Project Board of Control

Albert P. Barker

Dated: This 18th day of April, 2002

MOFFATT THOMAS BARRETT ROCK & FIELDS CHARTERED
Attorneys for Pioneer Irrigation District

Scott L. Campbell

Dated: This 18th day of April, 2002

MOFFATT THOMAS BARRETT ROCK & FIELDS CHARTERED
Attorneys for Farmers Cooperative Ditch Company LTD

Scott L. Campbell

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NOV 12 2002

Stipulation For Dismissal of Protests and Settlement Agreement

Conversation Memo
9/28/01
Norm Young

454-4815

I returned Warren Tolmie's call. He wanted to meet with Karl to discuss whether the Arrowrock hydropower application should be readvertised. I told him that we had Al Barker's letter on the matter, would review it and a meeting would not be necessary if we agreed that readvertising was not required. If we did not agree, we would call Warren to arrange a meeting before responding to Barker's letter or readvertising.

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NOV 12 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

FAX TRANSMITTAL COVER SHEET

FAX NUMBER (208) 334-2348

RECEIVED
SEP 25 2001
Department of Water Resources

DATE: September 25, 2001

TO: Norm Young **FROM:** Gary Spackman

DOCUMENT DESCRIPTION/NOTES: Attached is Al Barker's response to my letter asking for input about additional public involvement regarding the Arrowrock hydro project. I've skimmed the text - and request John Homan or other legal staff do the research to respond. I will do it if you want but would try to agree with Barker. I'd prefer not republishing.

TOTAL PAGES SENT: myriad + **COVER SHEET**

CONTACT:

MICROFILMED
NOV 12 2002

ALBERT BARKER
ATTORNEY AT LAW
PO BOX 2139
BOISE ID 83701-2139

BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705-3173

FARMERS UNION CANAL CO
C/O RONALD SCHREINER
2153 N POLLARD
STAR ID 83669

FARMERS COOP DITCH CO
PO BOX 430
PARMA ID 83660

SCOTT CAMPBELL
MOFFATT THOMAS
101 S CAPITAL BLVD
BOISE ID 83701

JOHN HOCKBERGER
US BOR
BOX 020 550 W FORT ST
BOISE ID 83724

WILLIAM F RINGERT ESQ
RINGERT & CLARK
PO BOX 2773
BOISE ID 83701-2773

GENE BAILEY
10200 W SCENIC VIEW
STAR ID 83669

4. Peter Boyd protest a'thny for:
Farmer's Union DitchCo
Settler's Irr.
Farmer's Cooperative Canal Co.
Pioneer Irr. Dist.

1. Peter Boyd
Elam, Burke ...
1010 First Interstate Bdg
PO Box 1559... 01

2. Peter Boyd for petition to intervene for 5 Irr. Dist's. (see # 3)
Elam...
PO Box 1559... 01 2A. Approval

3. Various a'thny's petition to intervene for:
Boise-Kuna Irr. Dist.
New York Irr. Dist.
Nampa + Meridian Irr. Dist.
Wilder Irr. Dist
Big Bend Irr. Dist.
} Boise Project Board of Control

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NOV 12 2002

these Protestants, requiring an amended application or permit to be filed by Applicant under the provisions of Idaho Code § 42-211. Notice of any such proposal shall be given to Protestants by the Director of the Department by certified mail. Protestants are entitled to raise any objections to any amendment proposing changes to the agreed –upon language in Paragraph 1 above, which they could have raised in opposition to issuance of the original permit.

3. The provisions of Paragraph 2 shall be incorporated into any permit issued by the Department to establish a procedure to be followed by the Department, Applicant and Protestants in the event changes to the language agreed upon by Applicant and Protestants in Paragraph 1 above is proposed for inclusion into any subsequently issued license.

4. Protestants hereby withdraw their protests to the Application.

5. In the event that the Department fails to include the conditions to the permit set forth above in their entirety, Protestors' withdrawal of their protests shall be null and void at the election of Protestants. Written notice to the Department that the withdrawal of protest is null and void shall be made within ninety (90) days of receipt of the permit, which shall be sent by certified mail to Protestants and Applicant.

6. Each party shall bear its own costs and fees incurred in this action.

7. This stipulation shall be filed with the Department in the records of the proceeding.

MICROFILMED
NOV 12 2002

Dated: This 18 day of April, 2002

BARKER ROSHOLT & SIMPSON LLP
Attorneys for the Boise Project Board of Control

Albert P. Barker

Dated: This 18th day of April, 2002

MOFFATT THOMAS BARRETT ROCK & FIELDS CHARTERED
Attorneys for Pioneer Irrigation District

Scott L. Campbell

Dated: This 18th day of April, 2002

MOFFATT THOMAS BARRETT ROCK & FIELDS CHARTERED
Attorneys for Farmers Cooperative Ditch Company LTD

Scott L. Campbell

MICROFILMED
NOV 12 2002

Dated: This ___ day of _____, 2002

FARMERS UNION DITCH COMPANY

_____
Director

_____
Director

_____
Director

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NOV 12 2002

FARMERS UNION DITCH CO. LTD.
2153 N. POLLARD LN.
STAR, ID. 83669

February 7, 2002

RECEIVED
FEB 11 2002
WATER RESOURCES
WESTERN REGION

Mr. Gary Spackman
Idaho Water Resources
Western Regional Office
2735 Airport Way
Boise, Idaho 83705-5082

Dear Mr. Spackman;

This letter is in reference to our telephone conversation the other day. As I stated on the phone, some of the correspondence from IWR had been sent to an address on Linder Rd. which is an address we no longer use. This caused our Board to miss the meeting that was held on the Arrowrock Hydro Agreement.

Farmers Union Ditch Co., Ltd. wishes to continue with the release of the Arrowrock Hydro Agreement and we will be at the next meeting.

In the future please send all correspondence to our address at 2153 N. Pollard Ln., Star, Id. 83669.

Thank you,

Gene Bailey

Gene Bailey, Pres.

cc: Mr. Scott Campbell
101 S. Capitol Blvd.
Boise, Id. 83702

Mr. Al Barker
1221 W. Idaho, Ste. 600
Boise, Id. 83701

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NOV 12 2002

Boise
Idaho Falls
Pocatello

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
Robert E. Bakes
John C. Ward
D. James Manning
Gary T. Dance
Larry C. Hunter
Morgan W. Richards
Mark A. Ellison
Randall A. Peterman
Mark S. Prusynski
Stephen R. Thomas
Glenna M. Christensen

Gerald T. Husch
Scott L. Campbell
Michael G. McPeek
Kirk R. Helvie
Robert B. Burns
James C. Dale
Michael E. Thomas
Patricia M. Olsson
James C. deGlee
Bradley J Williams
Lee Radford
Michael O. Roe
David S. Jensen
James L. Martin
C. Clayton Gill

Stephanie A. Balzarini
N. Danette Kriehn
David P. Gardner
Julian E. Gabiola
Paul C. Swainston
Angela D. Schaer
Casey C. Robertson
Ray J. Chacko
Dean C. Sorensen
Bradley J. Dixon
Keasa L. Hollister

Willis C. Moffatt,
1907-1980

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829

208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.com

January 24, 2002
Via Facsimile and U.S. Mail

RECEIVED
JAN 25 2002
WATER RESOURCES
WESTERN REGION

Gary Spackman
Manager, Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: In the Matter of Application for Permit No. 63-10240 in the name of the Boise Project Board of Control
MTBR&F File No. 18946.19

Dear Gary:

Pursuant to my correspondence dated January 23, 2002, I am notifying you of additional dates which I am not available. As of today, I am unavailable on April 2, 8 - 12 and 16, May 7, and June 4, 7 and 18. I am available any other time during April, May and June for a hearing on the protests.

Very truly yours,

Scott L. Campbell

SLC/dll
cc: Albert P. Barker (via facsimile)

MICRO
NOV 12 2002

Boise
Idaho Falls
Pocatello

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Eugene C. Thomas
John W. Barrett
R. B. Rock
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Bradley J. Dixon
Keasa L. Hollister

Willis C. Moffatt,
1907-1980

RECEIVED

JAN 24 2002

WATER RESOURCES
WESTERN REGION

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829

208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.com

January 23, 2002
Via Facsimile and U.S. Mail

Gary Spackman
Manager, Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: In the Matter of Application for Permit No. 63-10240 in the name of the Boise Project Board of Control
MTBR&F File No. 18946.19

Dear Gary:

As we discussed at yesterday's prehearing conference, I am not available on the following dates: April 2, 8 and 16, May 7, and June 4, 7 and 18. I am available any other time during April, May and June for a hearing on the protests.

Very truly yours,

Scott L. Campbell

SLC/dll
cc: Albert P. Barker (via facsimile)

MICROFILMED

NOV 12 2002

John A. Rosholt
Albert P. Barker
John K. Simpson
Amy D. Chestnut
Travis L. Thompson

BARKER ROSHOLT & SIMPSON LLP

1221 West Idaho Street, Suite 600
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

233 Second Street North, Suite D
Twin Falls, ID 83301
(208) 733-0700 telephone
(208) 735-2444 facsimile

Albert P. Barker
apb@idahowaters.com

January 22, 2002

VIA FACSIMILE

Gary Spackman
Manager, Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: In the Matter of Application for Permit No. 63-10240
in the name of the Boise Project Board of Control

Dear Gary:

As discussed in today's prehearing conference, my unavailable dates for the months of April, May and June, 2002, are April 11, May 9, May 27-31, June 13 and June 24-28. Any other time during those months I would be available for a hearing on the protestant's protests.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Albert P. Barker

APB/eac

cc: Scott Campbell (via fax)

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NOV 12 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT OF WATER RIGHT NO. 63-10240 IN THE NAME OF THE BOISE PROJECT BOARD OF CONTROL	**NOTICE OF HEARING**

The Department has scheduled the matter for hearing on **Thursday and Friday, April 25 and 26, 2002 at 9:00 a.m. in conference rooms A & B, Department of Water Resources, 1301 N. Orchard, Boise, Idaho 83706.** The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the Department. A copy of the rules may be obtained from the IDWR upon request. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01.606 requires that you provide a copy of exhibits to each party and to the presiding officer.

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

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

Dated this 29th day of January, 2002.

GARY SPACKMAN

MICROFILMED
NOV 12 2002

CERTIFICATE OF MAILING

I hereby certifiy that on the 30th day of January, 2002, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Senior Secretary

CERTIFIED MAIL

BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705-3173

SCOTT CAMPBELL
MOFFATT THOMAS
101 S CAPITAL BLVD
BOISE ID 83701

WILLIAM F RINGERT ESQ
RINGERT & CLARK
PO BOX 2773
BOISE ID 83701-2773

GENE BAILEY
10200 W SCENIC VIEW
STAR ID 83669

FARMERS UNION CANAL
~~4520 N LINDER~~
EAGLE ID 83616

FARMERS COOP DITCH CO
PO BOX 430
PARMA ID 83660

ALBERT BARKER
ATTORNEY AT LAW
PO BOX 2139
BOISE ID 83701-2139

GLEN SAXTON
ID DEPT WATER RESOURCES
1301 N ORCHARD
BOISE ID 83706

John Hockberger - BoR

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NOV 12 2002

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

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

1) Will the proposed appropriation injure other water rights?

2) Is the proposed water supply sufficient for the purpose for which it is sought to be appropriated?

3) Was the application made in good faith or for delay or speculative purposes?

4) Does the applicant have sufficient financial resources with which to complete the proposed project?

5) Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?

6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

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

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

PROCEDURE

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

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CONFERENCE

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

HEARING

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

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

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

EXHIBITS

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

AMERICANS WITH DISABILITIES ACT

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

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NOV 12 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-10240 IN THE NAME OF THE BOISE PROJECT BOARD OF CONTROL	))))	**NOTICE OF DEFAULT**

A prehearing conference regarding the protest against application for permit no. 63-10240 in the name of the Boise Project Board of Control was scheduled on Tuesday, January 22, 2002, at 2:00 p.m. at the Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705. Notice of the hearing was sent to Farmers Union Canal Co. on December 10, 2001.

At the time and place for the prehearing conference, the protestant, Farmers Union Canal Co., did not appear. Farmers Union Canal Co. did not communicate with the Department of Water Resources regarding their absence.

NOTICE OF DEFAULT

Notice is hereby given that a default order is proposed to be issued because of a failure of the protestant to appear at the time and place set for the prehearing conference. Farmers Union Canal Co. has seven (7) days from the date of service to challenge, by written petition, why a default order should not be issued. Good cause must be shown why Farmers Union Canal Co. did not appear at the hearing.

Dated this 28th day of January 2002.

Gary Spackman
Hearing Officer

MICROFILMED
NOV 12 2002

CERTIFICATE OF MAILING

I hereby certify that on this 29th day of January 2002, I mailed a true and correct copy, postage prepaid, of this Notice of Default to those listed below:

Sue Taylor
Senior Secretary

BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705-3173

SCOTT CAMPBELL
MOFFATT THOMAS
101 S CAPITAL BLVD+
BOISE ID 83701

WILLIAM F RINGERT ESQ
RINGERT & CLARK
PO BOX 2773
BOISE ID 83701-2773

GENE BAILEY
10200 W SCENIC VIEW
STAR ID 83669

FARMERS UNION CANAL
4520 N LINDER
EAGLE ID 83616

FARMERS COOP DITCH CO
PO BOX 430
PARMA ID 83660

ALBERT BARKER
ATTORNEY AT LAW
PO BOX 2139
BOISE ID 83701-2139

GLEN SAXTON
ID DEPT WATER RESOURCES
1301 N ORCHARD
BOISE ID 83706

John Hochberger
BOR

MICROFILMED
NOV 12 2002

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY, BOISE, IDAHO 83705

Re: **Application for Permit No. 63-10240 in the Name of the Boise Project Board of Control**

Place: **IDWR Western Region, 2735 Airport Wy, Boise, Idaho 83705**

Date: **January 22, 2002**

Conducted by: **Gary Spackman**

NAME	ADDRESS
Albert Barker	1221 W Idaho Suite 600 Boise Id 83702
Scott Campbell	P.O. Box 829 Boise, Idaho 83701

MICROFILMED

NOV 1 2 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-10240 IN THE NAME OF THE BOISE PROJECT BOARD OF CONTROL	**NOTICE OF SECOND PREHEARING CONFERENCE**

A prehearing conference was held on November 29, 2001. The applicant was represented by Albert Baker, Attorney at Law. Gene Bailey and Bill Flack appeared on behalf of Farmers Union Canal Company. Protestants Farmers Cooperative Ditch Company and Pioneer Irrigation District were represented by Scott Campbell, Attorney at Law.

The parties discussed remaining issues and proposed terms and conditions for a possible settlement. Mr. Barker agreed to draft and distribute to the parties a settlement agreement for review. The parties also agreed another prehearing conference would help the negotiations.

IDWR has scheduled a second prehearing conference on **Tuesday, January 22, 2002, at 2:00 p.m. at the Idaho Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705.** The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

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

MICROFILMED
NOV 12 2002

Dated this 7th day of December 2001.

Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of December 2001, I mailed a true and correct copy, postage prepaid, of the Notice of Second Prehearing Conference to those listed:

Sue Taylor
Senior Secretary

BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705-3173

SCOTT CAMPBELL
MOFFATT THOMAS
101 S CAPITAL BLVD+
BOISE ID 83701

WILLIAM F RINGERT ESQ
RINGERT & CLARK
PO BOX 2773
BOISE ID 83701-2773

GENE BAILEY
10200 W SCENIC VIEW
STAR ID 83669

FARMERS UNION CANAL
4520 N LINDER
EAGLE ID 83616

FARMERS COOP DITCH CO
PO BOX 430
PARMA ID 83660

ALBERT BARKER
ATTORNEY AT LAW
PO BOX 2139
BOISE ID 83701-2139

GLEN SAXTON
ID DEPT WATER RESOURCES
1301 N ORCHARD
BOISE ID 83706

MICROFILMED
NOV 12 2002

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY, BOISE, IDAHO 83705

Re: **Application for Permit No. 63-10240 in the Name of the Boise Project Board of Control**

Place: **IDWR Western Region, 2735 Airport Wy, Boise, Idaho 83705**

Date: **November 29, 2001**

Conducted by: **Gary Spackman**

NAME	ADDRESS
Ken Henley	2465 Overland Rd. B. P. Boise
ALBERT BARKER	1221 W Main Boise Id 83701 "
Bryce Ferris	[redacted] 455 S. Third Boise 83701
Bill Flack	4035 N Hartley Rd 83616
Gene Bailey	10200 W Scenic View Star Idaho
Scott Campbell	P.O. Box 829 Boise, Idaho 83701-0829

MICROFILMED
NOV 12 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-10240 IN THE NAME OF THE BOISE PROJECT BOARD OF CONTROL	**NOTICE OF PREHEARING CONFERENCE**

In 1984, The United States of America, Bureau of Reclamation, submitted application for water right no. 63-10240 to the Department of Water Resources (IDWR). The application sought the appropriation of 5,470 cubic feet per second from the Boise River at Arrowrock Dam. Protests to the application were filed by Boise-Kuna Irrigation District, New York Irrigation Distrct, Nampa & Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District. The above-listed irrigation districts comprise the Boise Project Board of Control. In addition, IDWR received protests against the application from Farmers Union Ditch Company, Settlers Irrigation District, Farmers Cooperative Canal Company, and the Pioneer Irrigation District.

In February of 1991, the Bureau of Reclamation assigned its interest in application for water right no. 63-10240 to the Boise Project Board of Control. Although the irrigation districts comprising the Boise Project of Control are still shown as protestants to the application, the assignment by the Bureau of Reclamation to the Boise Project Board of Control merges the application and the protests together.

A hearing was scheduled for May 8, 1992, but by subsequent order, the hearing was delayed until further notice. On April 14, 1992, Settlers Irrigation District withdrew its protest to the application.

According to IDWR records, a hearing has not been held regarding the protested application. Department records also show that Farmers Union Ditch Company, Farmers Cooperative Canal Company and Pioneer Irrigation District remain protestants to the application.

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NOV 1 2 2002

During 1995 and 1996, the parties exchanged correspondence attempting to negotiate a settlement. The correspondence reflects an agreement was imminent. In a May, 1996 letter to David R. Tuthill, Jr., Western Regional Manager of IDWR, Scott Campbell stated:

> This correspondence will confirm that the protestants I represent in this matter will agree to withdraw the protests if the conditions set forth in Don's May 23, 1996 correspondence are made part of the permit and any subsequently issued license.

In a letter dated September 27, 2001, Scott Campbell, attorney at law, stated that he has not represented Farmers Union Ditch Company and Farmers Cooperative Canal Company since at least 1991. His correspondence referring to a conditional withdrawal of protest could not have applied to the Farmers Union Ditch Company and the Farmers Cooperative Canal Company.

Mr. Campbell also states in his September 27, 2001 letter that the parties never agreed to acceptable condition language for withdrawal of Pioneer Irrigation District's protest.

Farmers Union Ditch Company, Farmers Cooperative Canal Company, and Pioneer Irrigation District are active protestants to application for water right no. 63-10240.

A license was issued by the Federal Energy Regulatory Commission (FERC) to the Boise Project Board of Control for the project. The time within which to begin construction of the project granted by the FERC license was extended until March of 1999. Construction did not begin within the licensed period. On August 16, 2001, FERC issued another extension to commence and complete the project.

NOTICE

IDWR has scheduled a prehearing conference to discuss the protests and status of FERC approval. **The prehearing conference is scheduled for November 29, 2001 at 2:00 p.m. at the Idaho Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705.** The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources.

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

Dated this 22nd day of October, 2001.

Gary Spackman

GarySpackman

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of October, 2001, I mailed a true and correct copy, postage prepaid, of the Notice of Prehearing Conference to the following:

Sue Taylor

Sue Taylor
Senior Secretary

BOISE/KUNA IRRIG DIST
BOX 330
KUNA ID 83634

NEW YORK IRRIG DIST
6616 OVERLAND RD
BOISE ID 83709

NAMPA MERIDIAN IRRIG DIST
1503 FIRST ST SOUTH
NAMPA ID 83651

WILDER IRRIG DIST
PO BOX 416
CALDWELL ID 83605

BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705-3173

PIONEER IRRIG DIST
PO BOX 426
CALDWELL ID 83605

SCOTT CAMPBELL
MOFFATT THOMAS
101 S CAPITAL BLVD+
BOISE ID 83701

JOHN HOCKBERGER
US BOR
BOX 020 550 W FORT ST
BOISE ID 83724

RANDALL FREDERICKS
PO BOX 2835
BOISE ID 83701

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WILLIAM F RINGERT ESQ
RINGERT & CLARK
PO BOX 2773
BOISE ID 83701-2773

GENE BAILEY
10200 W SCENIC VIEW
STAR ID 83669

BIG BEND IRRIG DIST
747 REDTOP RD
ADRIAN OR 97901

FARMERS UNION DITCH CO
4520 N LINDER
EAGLE ID 83616

FARMERS COOP DITCH CO
PO BOX 430
PARMA ID 83660

ALBERT BARKER
ATTORNEY AT LAW
PO BOX 2139
BOISE ID 83701-2139

NORM YOUNG
ID DEPT WATER RESOURCES
1301 N. ORCHARD
BOISE ID 83706

GLEN SAXTON
ID DEPT WATER RESOURCES
1301 N ORCHARD
BOISE ID 83706

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CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

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

1) Will the proposed appropriation injure other water rights?

2) Is the proposed water supply sufficient for the purpose for which it is sought to be appropriated?

3) Was the application made in good faith or for delay or speculative purposes?

4) Does the applicant have sufficient financial resources with which to complete the proposed project?

5) Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?

6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

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

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

PROCEDURE

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

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CONFERENCE

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

HEARING

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

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

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

EXHIBITS

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

AMERICANS WITH DISABILITIES ACT

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

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WATER RESOURCES
WESTERN REGION

MEMORANDUM

TO: Norman C. Young, Administrator, Water Management Division
FROM: Phillip J. Rassier, Deputy Attorney General, IDWR PJR
SUBJECT: Application for Permit No. 63-10240
DATE: October 10, 2001

In response to your verbal request, I have reviewed the notice provisions of I.C. § 42-203A and the amendment provisions of I.C. § 42-211 as they relate to the above-referenced application for permit in the name of the Boise Project Board of Control for the proposed Arrowrock Hydroelectric Project. This review is provided for your guidance only and is not to be considered a formal opinion of the Office of Attorney General.

Your initial inquiry is whether the passage of fifteen years since the Department published legal notice of the application in 1984 requires that notice now be republished prior to IDWR taking action on the application. Additional publication would appear necessary under I.C. § 42-203A only if the original notice failed to comply with then-existing provisions of the statute. Because the original notice for Application for Permit No. 63-10240 appears to have been adequate, republication is not required prior to hearing or other action by the Department. The practice of the Department has been not to require republication of notice solely due to the passage of time between publication of notice and the taking of agency action to approve or deny an application for a permit to appropriate water.

I.C. § 42-211 sets forth the procedures for amending either an application or a permit. With respect to amending a permit, the statute refers to changes in "the place, period, or nature of the intended use, or . . . other substantial changes in the method of diversion or proposed use or uses of the water." The statute provides that the director shall give such notice of the proposed amendment to other affected water users, as he deems appropriate.

I.C. § 42-211 next provides that an application for permit may be amended by endorsement on the original application form by the applicant or his agent. The statute provides that if the amendment will result in the use of more water than originally asked, the priority of the right shall be changed to the date of the amendment. The statute further provides that, "If [the] amendment is made after publication of notice of the original application, said notice shall be republished following amendment . . .."

You ask whether the assignment of application no. 63-10240 by the United States Department of Interior, Bureau of Reclamation on February 4, 1991 to the Boise Project Board of Control constitutes an amendment that requires republication of the application under the provisions of I.C. § 42-211. It is my understanding that the Department has not

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previously treated the assignment of an application as an amendment under I.C. § 42-211. In my view, the Department's past practice reflects a correct reading of the statute.

While I.C. § 42-211 does not separately identify what changes constitute an amendment to an application, the statute clearly provides with respect to permits that it applies when a permit holder desires to "change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water . . .." Reading the statute as a whole in accordance with accepted rules of statutory construction, one may conclude that the list of changes requiring a permit amendment applies also to the amendment of an application. A change in ownership of a water right permit or an application for permit is not treated through the amendment process under I.C. § 42-211.

In conclusion, my view is that neither the passage of fifteen years' time nor the assignment in ownership of the application requires republication of notice by the Department in this case.

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Boise
Idaho Falls
Pocatello

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Eugene C. Thomas
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R. B. Rock
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John C. Ward
D. James Manning
Gary T. Dance
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Morgan W. Richards
Mark A. Ellison
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Michael G. McPeek
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James C. deGlee
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Lee Radford
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James L. Martin
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Stephanie A. Balzarini
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Paul C. Swainston
Angela D. Schaer
John W. Kluksdal
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Willis C. Moffatt,
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WATER RESOURCES
WESTERN REGION

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829

208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.com

September 27, 2001

RECEIVED
OCT 5 - 2001
rtment of Water Resources

Gary Spackman
Manager, Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: Application for Permit for Water Right No. 63-10240
MTBR&F File No. 18946.0003

Dear Gary:

I am responding to the copy of Al Barker's correspondence to you of September 20, 2001, regarding the above referenced matter. I will not attempt to address all of the issues set forth in Al Barker's correspondence. I do believe it is important for me to correct certain misimpressions which may be reflected in his correspondence of September 20, 2001 and in his prior correspondence of March 2, 2000.

First, I do not represent any protestant in the above referenced matter except Pioneer Irrigation District. The record before the Department may be unclear in this respect. I feel it is important to fully clarify that issue at this juncture. While the initial protest was filed by Peter J. Boyd on behalf Farmers Union Ditch Company, Settlers Irrigation District, Farmers Cooperative Canal Company, and Pioneer Irrigation District, I have only personally represented Settlers Irrigation District and Pioneer Irrigation District since my correspondence to David R. Tuthill, Jr., of June 3, 1992 (copy enclosed).

On April 14, 1992, I submitted to the Department a Notice of Withdrawal of the Protest of Setters Irrigation District. Additionally, I have not represented Farmer Union Ditch Company or Farmers Cooperative Canal Company with the above referenced since at least 1991. I do not know if they are currently represented by counsel in this proceeding. Perhaps Al Barker can provide clarification on this point since I recall that he is listed as counsel of record for Farmers Cooperative Canal Company in the Snake River Basin Adjudication.

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Because of these facts, I think it is important for the Department to understand that the language which was agreed to in correspondence between Don Olowinski and me in June of 1995 pertains only to the protest of Pioneer Irrigation District. I would also like to emphasize to the Department that the language agreed to with Don Olowinski and William Ringert was conditional language which presupposes that the Department of Water Resources will concur in the inclusion of the provision highlighted in my June 5, 1995 correspondence as conditions of the permit. If the Department does not concur with that approach, the protest of Pioneer Irrigation District would not be withdrawn.

I must also respectfully disagree with Al Barker's characterization of David Tuthill's letter of May 21, 1996. Mr. Tuthill's correspondence reflected language which was provided by Mr. Ringert in his June 30, 1995 correspondence. The first condition omitted critical language which was later inserted into the condition. The omitted language in Mr. Tuthill's letter which was reflected from Mr. Ringert's letter was the phrase "or any subsequently issued license" which was inserted after the word "permit." I have enclosed copies of correspondence dated May 24, 1996 from William F. Ringert and correspondence dated May 23, 1996 from Don Olowinski, as well as correspondence from me of June 5, 1995 which clarifies this discrepancy. Consequently, Mr. Tuthill's correspondence of May 21, 1996, was never acted upon because the language of the conditions set forth in that correspondence did not correctly represent the conditions agreed to by my client, Pioneer Irrigation District, and the applicants.

I would also like to address the issue of re-noticing the application. While I can understand Mr. Barker's insistence that this application for permit not be re-noticed, I would like to point out that I raised this issue with the Department of Water Resources in correspondence dated December 4, 1987 and December 17, 1987. I have also enclosed a copy of William Ringert's correspondence of December 7, 1987. My correspondence dealing with the need to re-advertize the notice concerning the application because of the change in the identity of the applicant was never properly addressed by the Department of Water of Resources. I have enclosed a copy of correspondence dated December 28, 1987 from David R. Tuthill, Jr. to me. This correspondence confirms that the Department, at that stage of the proceeding, considered the applicant to be unchanged, i.e., the United States Department of the Interior, Bureau of Reclamation.

The record reflects that the application was assigned to the Boise Project Board of Control on February 4, 1991. (See enclosed Notice of Hearing, dated April 6, 1992.) I see nothing in my copy of the Department's record in this matter, which indicates that the Department instituted any re-notification procedures despite the clear amendment of the application by the assignment and change of the designated applicant to the Boise Project Board of Control. This would constitute an apparent violation of Idaho Code section 42-211, which specifically states: "if amendment is made after publication of notice of the original application, said notice shall be

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republished following amendment, upon payment by the applicant of the statutory fee for republication as in this act provided." Based upon these facts, I think it is clearly within the Department's discretion to republish notification in this matter.

Finally, I respectfully disagree with Al Barker's characterization that the delays in this proceeding are a result of the Department's failure to act. Quite to the contrary, most of the delays in this proceeding have been the results of specific requests by the applicant's attorney. I have enclosed copies of some of the written requests submitted by Mr. Olowinski in this regard. In reality, the substantial period of delay in this proceeding is clearly the result of the applicant's inability to proceed forward with this project in a timely fashion. One need only review the tortured process before the Federal Energy Regulatory Commission to discover the extraordinary efforts which the applicant has taken to obtain multiple extensions of time to proceed with construction of this project. The latest extraordinary effort was to seek specific congressional relief for yet another extension of a total of six years, which is reflected in the Federal Energy Regulatory Commission order enclosed with Mr. Barker's letter of September 20, 2001.

In view of these factors, I believe the Department is well within its rights to publish a new notice concerning this application and re-open the protest period. Having said that, I am not withdrawing the agreement which was previously reached with Mr. Ringert and Mr. Olowinski concerning conditions which would be an acceptable basis for withdrawal of the protest of Pioneer Irrigation District. However, if the Department proceeds with re-publication of a notice in this matter, that agreement would have to be reevaluated by my client due to changed circumstances and the substantial additional delay in the resolution of this matter.

I hope that my clarification of the record in this matter is helpful to the Department in its deliberations.

Very truly yours,

Scott L. Campbell

SLC/dll
Enclosures
cc: Albert Barker
Pioneer Irrigation District
David R. Tuthill, Jr.
IDWR Interested Parties

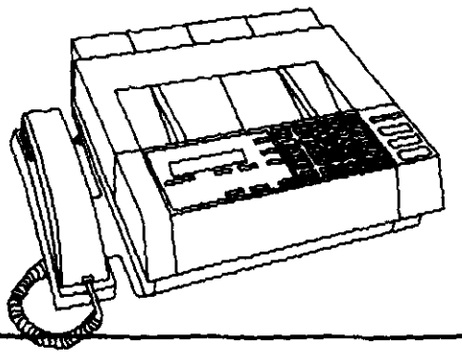
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RANDALL C. FREDRICKS
Attorney-at-Law
P. O. Box 2835
Boise, Idaho 83701-2835

Phone: 208-384-5144

FAX: 208-433-8976



DATE: September 27, 2001

TOTAL PAGES (Including This Page): 1

TO: Gary Spackman

COMPANY: ID Dept. of Water Resources

FAX NO.: 334-2348

PHONE NO.: 334-2190

COMMENTS: RE: Application for Permit No. 63-10240
Boise Project Board of Control
Arrowrock Hydropower Project
Our File No. 01005-00 Boise-Kuna Irrigation District

As you are aware I am the attorney for the Boise-Kuna Irrigation District. On behalf of the said District we fully support the position of Albert P. Barker contained in his letter to you dated September 20, 2001. As he emphasized, it is imperative that you forward the file to the state office with a recommendation that the application be approved with the Department's standard hydropower conditions of approval as delineated in Mr. Barker's letter.

Randall C. Fredricks

Original to Follow by First Class Mail: ___Yes _X No

Copy to Boise-Kuna Irrigation District via FAX to 208-922-5608.

CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the US Postal Service. Thank you.

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WATER RESOURCES
WESTERN REGION

John A. Rosholt
Albert P. Barker
John K. Simpson
Amy D. Chestnut
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Department of Water Resources

September 20, 2001

Mr. Gary Spackman
IDWR
Western Region
2735 Airport Way
Boise, ID 83705-5082

RE: Application for permit No. 63-10240 in the name of the Boise Project Board of Control; Arrowrock Hydroelectric Project

Dear Mr. Spackman:

Thank you for your letter of September 6, 2001, outlining the Department's concerns and proposed course of action. The Boise Project Board of Control appreciates the opportunity to formally respond to the Department's concerns and proposal. As explained below, the legally proper procedure to follow on this application would be to forward the file to the state office with a recommendation that the application be approved with the Department's standard hydropower conditions of approval along with the language set forth in Don Olowinski's letter of May 23, 1996, which was repeated verbatim in my letter of March 2, 2000. If the Department wishes to take public comment or request additional information from the applicant, it is free to make those requests. However, to require the application to be re-noticed would be certain legal error.

Quite clearly there is no legal authority for re-noticing the application for new protests and to do so would be in violation of the Department's statutory and regulatory authority. We explain why that is so below. Moreover, the Department has never cited the source of its legal authority to recognize re-noticing the application. In addition, we believe it is highly inequitable for the Department to have failed to act on this application for more than five years after the parties to a contested proceeding on the application had agreed upon a resolution of the protests and communicated that resolution to the Department, and then for the Department to cite the passage of time as a reason to require the applicant to start the process all over again.

The Boise Project has not withdrawn its application. It has no intention of withdrawing the application and starting this process all over again. The Boise Project has been diligently prosecuting the construction of the hydroelectric facility. The Federal Energy Regulatory

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Commission recognized this diligence and granted an extension of time of the deadline to begin construction. See FERC Order, August 16, 2001, a copy of which is attached. An agreement has been reached with a prospective power purchaser, a developer has been hired and a substantial amount of preparatory work has been undertaken, all in reliance upon the legal process that is in place, including the understanding the Boise Project had with respect to the water permit as outlined Don Olowinski and my letters referred to above. In prior actions on this application the Department has never suggested the need to start this process all over again. Indeed, the last suggestion from the Department was that the application would be forwarded for approval if the parties would agree on certain language to be included in the permit. David Tuthill letter, May 21, 1996. For the Department to pull the rug out from under the Boise Project at this time, not only would be a violation of law, it would be the height of inequity.

The Bureau of Reclamation originally filed application for permit no. 63-10240 in 1984, for power production at Arrowrock Dam. As required by statute, the Department published one legal notice of the application in *The Idaho Statesman* in May of 1984. Several protests were filed against this water right, including protests by the irrigation districts comprising the Boise Project Board of Control (Boise-Kuna, Nampa & Meridian, New York, Wilder and Big Bend) as well as protests by Farmers Union Ditch Company, Settlers Irrigation District, Farmers Cooperative Canal Company, and Pioneer Irrigation District. In February of 1991, the Bureau of Reclamation assigned its interest in application for permit no. 63-10240 to the Board of Control. Since the Boise Project was assigned ownership of the application, its original protests merged into the application, and the Boise Project is now considered the applicant. (*See* letter from Gary Spackman to Hawley Troxell Ennis & Hawley and Scott Campbell, January 25, 2000). Thereafter, only Farmers Union Ditch Company, Settlers Irrigation District, Farmers Cooperative Canal Company, and Pioneer Irrigation District remained as protestors in the proceeding.

Although several attempts were made to schedule a hearing on the application in 1992 and 1995, no hearing was held due to ongoing negotiations between the parties. During that time period the parties exchanged several proposals regarding language for conditions in the permit that would settle the protests. Finally, in 1995 and 1996, the Boise Project and the protestors agreed on two conditions that would satisfy the protestor's concerns and dispel with the need for a formal hearing. The Department's Manager for the Western Regional Office at the time, David Tuthill, stated that the application would be recommended for permit, containing the Department's standard hydropower conditions and the conditions agreed to by the parties. (*See* letter from David Tuthill to W. F. Ringert, Scott Campbell and Don Olowinski, dated May 21, 1996). In response the parties advised the Department that, with certain very minor changes in the language proposed in Mr. Tuthill's letter, the conditions were satisfactory to all the parties. (See letter of Don Olowinski dated May 23, 1996, W. F. Ringert letter of May 24, 1996 and Scott Campbell letter of May 31, 1996.) Unfortunately, the Department failed to issue the permit or even respond to the communication from the parties, despite the parties' agreement to settle the protests.

The Department now questions whether the agreement involved all the protestors; yet that was never an issue when the parties were dealing with Mr. Tuthill. Even if all the protestors had not agreed to the proposed language, that would not justify re-noticing the permit for new

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permits. At best, the protestors who did not agree should be called upon to explain in writing, or at a formal hearing why they do not agree.

Although an agreement was reached by the parties in 1996, the Department failed to process the application in a timely fashion. Later, the new regional manager requested that each party provide the Department with a response regarding the continued interest in both the application and the protest. (Letter from Gary Spackman dated January 25, 2000). The Department indicated that it would schedule a prehearing conference upon receiving confirmation from the parties. The Board of Control immediately replied, conveying its interest in the application and explaining the circumstances surrounding the resolution of the protests, including the agreement reached in 1996. (Albert P. Barker letter to Gary Spackman, March 2, 2000). None of the protestors responded to the Department's letter in writing and no protestor has explained why the agreement reached in 1995 and 1996 did not resolve their concerns. Consequently, the matter was ripe for Department action, i.e. issuing a proposed decision or holding a hearing. Once again, however, the Department failed to act on the application, despite the fact no live protests were pending in the proceeding.

Now, directly contrary to the written position of the Department as set forth in Mr. Tuthill's letter of May 21, 1996, the Department proposes to re-notice the application and essentially "restart" the administrative process for the Board's application. The Department has failed to cite any legal authority for re-noticing the application. Indeed, there is none.

The Idaho Code, Title 42, Chapter 2, and the Department's water appropriation rules (IDAPA 37.03.08) outline the procedures for obtaining a state water permit in Idaho. These statutes and rules also govern how a third party objects to an applicant's proposed appropriation. In particular, I.C. § 42-203A defines the procedure the Department must follow when an application for permit has been filed. The statute provides in part:

> (1) 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 . . . The department shall also state 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.

I.C. § 42-203A(1) (emphasis added).

The statute clearly states that the Department shall prepare "a," or "one" notice, and that any protests against the application must be filed within ten days from the last date of publication. This procedure assures the applicant that its proposed appropriation cannot be protested beyond the designated protest period. Furthermore, it allows the Department to efficiently and effectively process water permit applications. Absent such a limitation, individuals could wait and protest a proposed application at any time before the Department issued a decision. By publishing "one" notice, the Department is assured of an efficient process that cannot be unduly delayed by individuals or entities who fail to file a protest during the statute's designated protest period. Moreover, if the Department could simply re-start the

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application process whenever it felt the urge to do so, the protest period would be extended indefinitely, and no applicant could ever be sure that its application was ripe for a decision.

The administrative code further clarifies the process the Department must follow when processing water permit applications. Those regulations provide:

> b. Protested applications, whether for unappropriated water or trust water, will be processed using the following general steps:
>
> i. Advertisement and protest period;
>
> ii. Hearing and/or conference;
>
> iii. Department review of applications, hearing record and additional information including department field review if determined to be necessary by the director.
>
> iv. Proposed decision (unless waived by the parties).
>
> v. Briefing or oral argument in accordance with the department's adopted Rules of Procedure.
>
> vi. Director's decision accepting or modifying the proposed decision.

IDAPA 37.03.08.040.01. (emphasis added).

Similar to the statute, the regulation contemplates a step-by-step process, including "one" advertisement and protest period. Once filed, an application climbs the administrative procedural ladder until it is either permitted or denied. In the matter of application for permit no. 63-10240, the requisite notice has already been published. In addition, the Boise Project has spent considerable time and resources in securing an agreement with the protestors that have appeared in the proceeding. The administrative process for the Boise Project application has not only begun, it has reached a careful resolution that was presented to the Department in 1996 and again in 2000. Clearly, the process has advanced well beyond the first step, or the notice and protest period

As for the notice requirements, I.C. § 42-203A(2) requires the following:

> 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. When the application proposes a diversion in excess of ten (10) c.f.s. or one thousand (1,000) acre feet, the director shall cause the notice to be published in a newspaper or newspapers sufficient to achieve statewide circulation. Any notice shall be published at least once each week for two (2) successive weeks.

I.C. § 42-203A(2) (emphasis added).

Similar to I.C. § 42-203A(1), the language in paragraph (2) refers to "the," or "one" notice to be published by the director. The statue does not allow the Department to publish multiple notices for an applicant's single water permit application. Although section 42-203A(2)

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was amended in 1985 to include the statewide publication requirement, the Board's application was properly noticed in 1984 in the *Idaho Statesman*, a newspaper circulated state-wide. At no time subsequent to the statute's amendment in 1985 did the Department express a concern that the Board's application needed to be re-noticed. On the contrary, the Department's actions in expressing a willingness to recommend the application for permit in 1996, and the readiness to schedule a prehearing conference in 2000, indicate that the Boise Project's application had clearly advanced past the notice and protest stage. It also suggests that the Department has had a long-held interpretation of the statute that did not require re-noticing an application based on the 1985 amendment. Otherwise, the Department would have ordered the application re-noticed in 1985. Otherwise, every application pending at the time of the amendment would have had been re-noticed. This did not happen. Thus, the Department obviously concluded that re-notice was unnecessary as a result of the 1985 amendment.

Relying on the procedure set forth by statute, the Boise Project expended considerable time and resources on securing an agreement with the protestors that would operate as a complete withdrawal of their protests. Suddenly the Department now seeks to undo this compromise by re-noticing the Boise Project's application and allowing "new" protestors an opportunity to participate in the proceeding. Such an action is not only contrary to the statute and rules, it violates notions of "fundamental fairness." *See State Department of Environmental Protection v. Stavola*, 511 A.2d 622, 628 (N.J. 1986) (denying a regulatory agency's ad hoc standard that purported to regulate an activity which the parties had already begun relying on the statute and rules and the absence of prior agency regulation); *In re Arndt*, 341 A.2d 596 (N.J. 1975) (applying such principles of fundamental fairness beyond those required by the Constitution, to administrative actions).

According to Idaho law, the Department may only re-notice an application in two limited circumstances. First, if an applicant seeks an amendment to its original application the Department must re-notice the application pursuant to I.C. § 42-211. This "new" notice allows the public to be informed of the changes made in the application, and gives the public an opportunity to protest those changes. Second, the Department must re-notice applications for permit that were advertised prior to July 1, 1985 and have been held in abeyance due to the Swan Falls controversy. *See* IDAPA 37.03.08.040.02(b)(i). These applications for "trust water" must be re-noticed to allow protests to be entered with respect to the public interest criteria of I.C. § 42-203C(2). Both the above statute and rule allowing an application to be re-noticed have been promulgated pursuant to law, either through legislative enactment, or formal agency rulemaking.

Unless an application falls into one of these two limited categories, the Department is without any authority to re-notice an application and designate a second "protest period." The Department, like all state agencies in Idaho, is limited to the power and authority granted it by the legislature. *See Roberts v. Transportation Department*, 121 Idaho 727, 732 (Ct. App. 1991). In the matter of application for permit no. 63-10240, the Department published the required notice and protests were received within the statutorily prescribed protest period. Since the Board's application has not been amended, and since it does not seek an appropriation of "trust water," the statutory and administrative provisions for re-publishing notice do not apply.

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Should the Department choose to re-publish notice on the application, such an action would violate both I.C. § 42-203A and the Idaho Administrative Procedures Act. As mentioned earlier, I.C. § 42-203A contemplates only "one" notice and protest period for a water permit application. Adding a "second" protest period not pursuant to statute or rule, essentially re-writes I.C. § 42-203A. The Idaho Judiciary will not enforce a rule that is a rewriting of the statute. *See Moses v. Idaho State Tax Comm'n*, 118 Idaho 676, 680 (1990).

If the Department desires to re-notice water right applications across the board and upon its own initiative, it must follow the proper administrative procedure and adopt rules in substantial compliance with the Idaho Administrative Procedures Act ("Idaho APA"). *See* I.C. § 67-5231(1). Under the Idaho APA, the Department must propose new rules pursuant to the notice-and-comment procedure in I.C. § 67-5220 to § 67-5224. If the Department disregards the notice-and-comment procedure, such action will be found unlawful since it would be carried out "without observance of procedure required by law." *See Idaho Farm Bureau Federation v. Babbitt*, 58 F.3d 1392 (9th Cir. 1995)(finding USFWS to have violated the APA by not providing the public with an opportunity to review an important USGS report and comment on the agency's decision to list a species under the Endangered Species Act).

Furthermore, the Department cannot single out the Boise Project's application among the thousands it has received in the last sixteen years and make an *ad hoc* decision regarding the proper notice procedure. Re-noticing the application would not only defy the purpose of the statute, it would also be highly prejudicial to the Boise Project given the unique circumstances surrounding the application. Based on the record before Department, it is obvious that the Boise Project has expended serious time and effort to resolve the protests that were filed against the application. The Boise Project should not be required to reopen and renegotiate a resolution that was finalized and presented to the Department on two separate occasions.

Although the Idaho courts have not addressed the issue of what constitutes "rulemaking," other courts have addressed the question of when agency actions amount to rulemaking. In *Woodland Private Study Group v. State of New Jersey*, 533 A.2d 387 (N.J. 1987), the court set out six factors to consider whether or not an agency action constitutes rulemaking. Those factors include: (1) wide coverage, (2) applied generally and uniformly, (3) operates only in future cases, (4) prescribes a legal standard or directive not otherwise provided by the enabling statute, (5) expresses agency policy not previously expressed, and (6) is an interpretation of law or general policy. Not all of the factors need to be present in order to declare that an agency's action was in effect a "rulemaking." Should the Department decide that it will re-notice applications based on long-ago statutory amendments, that decision would constitute a rulemaking. First, the Department would prescribe a legal standard of wide and general applicability that is not provided by I.C. § 42-203A, i.e. allowing a second protest period for a previously noticed application. Second, the Department would be expressing an agency policy, i.e. re-noticing applications for permit on its own initiative, that was not previously expressed. Finally, the Department's action would be an interpretation of I.C. § 42-203A. In sum, the Department's proposed action in re-noticing the application would be held to constitute a "rulemaking."

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Apart from the amendment to the notice provision of I.C. § 42-203A(2), the Department proposes re-noticing the application to ensure that all relevant criteria are considered when issuing the permit. In particular, a sixth criteria was added by amendment in 1990 which provides the following:

(f) that it is contrary to conservation of water resources within the state of Idaho

I.C. § 42-203A(5).

This criteria allows the Department to examine appropriations that may be wasteful or inefficient, or that may be too consumptive. Although added to the statute after the Boise Project's application was filed in 1984, the Department may still properly consider it when issuing the permit without re-noticing the application, either through evidence from the protestors, or under its own discretion.

A similar situation was addressed by the Idaho Supreme Court in *Hidden Springs Trout Ranch Inc. v. Allred*, 102 Idaho 623 (1981). In that case the Court held that the new "local public interest" criteria in I.C. § 42-203A could be considered for an application for permit, even though the criteria had been added to the statute after the application was filed. In issuing the trout company a state water permit, the Department inserted a condition that allowed the protestors to submit evidence on the new "local public interest" criteria. However, the Court heard evidence presented only by those protestors who had appeared in the application's proceeding. The Court did not authorize new protestors to come in and participate in the proceeding and present evidence. Although the Court allowed the Department to consider a new criteria in issuing the applicant's permit, it did not allow Department to re-write or alter the permitting process.

Moreover, given the practical effect of the Boise Project's proposed appropriation, evidence of water conservation concerns would be irrelevant to the Department's consideration. First, the application seeks a non-consumptive appropriation for hydropower purposes. Next, since the permit will be subordinated to all subsequent appropriations except hydropower use (I.C. § 42-203C), there is no threat that it will deprive future appropriations. Next, since the hydroplant will only be able to use available water that is passed at Arrowrock Dam, the appropriation will have no effect on how water resources are conserved within the state. Finally, the language that the parties agreed upon in 1995 and 1996 for conditions in the permit and license further assures there will be no negative impact on the conservation of water resources in Idaho.

Even if conservation were a legitimate issue in this license, the Department has the authority and may appropriately condition the permit to ensure that the criteria is fully considered without re-noticing the process for new protests. The administrative regulations provide:

> The director may issue permits with conditions to insure compliance with the provisions of Title 42, Chapter 2, Idaho Code . . . and specifically to meet the criteria of Section 42-203A, Idaho Code, and to meet the requirements of Section

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42-203C, Idaho Code, to the fullest extent possible including conditions to promote efficient use and conservation of energy and water.

IDAPA 37.03.08.050.01. (emphasis added).

Given the discretionary authority the Department possesses to condition the application for permit, it is unnecessary for the participating protestors, or additional "new" protestors, to present evidence regarding this criteria.

As explained above, Idaho law precludes the Department from re-noticing the Boise Project's application for permit no. 63-10240. The passage of time and the amendments to I.C. § 42-203A, do not require the Boise Project to restart the administrative process that has already begun. Furthermore, re-noticing the application statewide today would serve no purpose but to delay the application. Given the delay experienced at the hands of the Department, additional delay could be deadly to the hydropower project. The Boise Project requests that the application process continue in its normal course of proceedings, that the regional office forward the application with a recommendation for approval as stated by Mr. Tuthill, and that Department issue the permit. To do otherwise would be to create an entirely new category of proceedings for this application in violation of Idaho law.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Albert P. Barker

APB/eac

Cc: Wilder Irrigation District
New York Irrigation District
Boise-Kuna Irrigation District
Nampa & Meridian Irrigation District
Big Bend Irrigation District
Boise Project Board of Control
Power Committee
Scott Campbell

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WESTERN REGION

Gary Spackman

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boise-Kuna Irrigation District
Nampa & Meridian Irrigation District
New York Irrigation District
Wilder Irrigation District
Big Bend Irrigation District

Project No. 4656-015

ORDER GRANTING EXTENSION OF TIME TO COMMENCE AND COMPLETE PROJECT CONSTRUCTION

(Issued August 16, 2001)

By application filed on December 18, 2000, supplemented on March 5, 2001, Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, New York Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District (licensees) have requested an extension of time to commence and complete construction of the Arrowrock Dam Project, pursuant to Section 13 of the Federal Power Act (FPA),[1] and Public Law 106-343, 114 Stat. 1317. The licensees also have requested an extension of time to comply with articles 101-110, 112-115, 117, and 304 of the license. The project will be located at the U.S. Bureau of Reclamation's (Reclamation) existing Arrowrock Dam and Reservoir on the South Fork of the Boise River, in Elmore and Ada Counties, Idaho. Parts of the project will occupy lands managed by Reclamation and the U.S. Corps of Engineers (Corps) and lands managed by the U.S. Forest Service (FS) within the Boise National Forest.

BACKGROUND

The Arrowrock Dam Project was licensed in 1989.[2] Article 301 of the license required the licensees to commence construction of the project within two years of license issuance (by March 26, 1991), and to complete construction within four years of

[1]16 U.S.C. § 806.

[2]46 FERC ¶ 61,385 (1989).

license issuance (by March 26, 1993). Pursuant to Section 13 of the FPA,[3] the licensees requested and were granted an extension of time to March 26, 1993 to commence construction, and to March 26, 1995 to complete construction.[4] In addition, the licensees requested and were granted an extension of time to June 15, 1992 to comply with license articles 101-110, 112-115, 117, and 304.[5] Subsequently, the licensees requested and were granted an extension of time to December 24, 1992 to comply with the aforementioned articles.[6]

[3]Section 13 of the FPA authorizes the Commission to grant one two-year extension of the deadline to commence construction and to grant extensions of time to complete construction provided completion is carried on in good faith, with reasonable diligence, and is in the public interest.

[4]Unpublished Order Granting Extension of Time issued January 9, 1991.

[5]The licensees are required to file the following items: article 101, a special use permit; article 102, evidence of consultation with the FS; article 103, a fish and wildlife habitat mitigation plan; article 104, a recreation plan; article 105, a soil erosion control plan; article 106, a solid waste and waste water plan; article 107, a hazardous substance plan; article 108, an excess construction/tunnel spoils plan; article 109, an archeological and cultural resources plan; article 110, a preservation and enhancement plan; article 112, a pesticide and herbicide plan; article 113, an engineering design and mitigation plan of the project area's resources; article 114, a survey and mitigation plan of the endangered species; and article 115, an engineering design plan for road improvement. All of the required plans are to be approved by the FS prior to them being submitted to the Commission. Article 117 of the license requires the licensees to enter into an agreement with Reclamation to coordinate their plans for access to and site activities on lands and property administered by Reclamation. Article 304 of the license requires the licensees to enter into an agreement with the Corps to coordinate their plans for access to and site activities on lands and property administered by the Corps.

[6]Unpublished Order Granting Extension of Time issued April 23, 1992.

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Pursuant to the Energy Policy Act of 1992, Title XVII, § 1701(c)(4)[7] and Section 13 of the FPA, the licensees later requested and were granted a six-year extension of time, until March 26, 1999, to commence construction, and until March 26, 2001, to complete construction.[8] In addition, the licensees were granted an extension of time until December 26, 1998 to comply with articles 101-110, 112-115, 117, and 304 of the license.

Because the licensees were unable to commence construction by March 26, 1999, the licensees requested a stay of the deadline to commence construction and related compliance deadlines in order to provide them sufficient time to obtain necessary legislation from Congress to formally extend the deadline. By order issued May 3, 1999, the Commission denied the request for a stay and gave notice of the probable termination of the license for the Arrowrock Dam Project.[9] However, the license was never terminated.[10]

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[7]Public Law No. 102-486. Section 1704(c)(4) authorized the Commission, "upon the request of the licensee of FERC project numbered 4656 (and after reasonable notice) . . . In accordance with the good faith, due diligence, and public interest requirements of section 13 and the Commission's procedures under such section, to extend until March 26, 1999, the time required to acquire the real property and commence construction of project numbered 4656."

[8]Unpublished Order Granting Extension of Time issued March 22, 1993.

[9]87 FERC ¶ 61,138 (1999). The licensees had asked that the stay be backdated by at least 120 days to allow them time to comply with the license requirements. Requests for stay of licenses or of the statutory deadline for commencement of construction are granted only in narrowly circumscribed circumstances. (See, e.g., Southeastern Hydro-Power, Inc., 71 FERC ¶ 61,074 (1995). The Commission has declined to grant a stay where the licensee seeks time to pursue legislative relief from the deadline. (See, e.g., Town of Telluride, Colorado, 76 FERC ¶ 61,355 (1996).

[10]The licensees request that this order officially reinstate the license for the Arrowrock Dam Project effective as of the date of the expiration of the license. Public Law 106-343 authorizes the Commission to reinstate the license, however, it is not necessary to do so because the license has never been terminated.

On January 29, 2001, public notice of the extension request was issued, with March 1, 2001, as the last day to file comments, motions to intervene, or protests. On February 27, 2001, the Pioneer Irrigation District and Settlers Irrigation District (Pioneer and Settlers) jointly filed a timely motion to intervene.[11] The FS filed an untimely motion to intervene.[12] Idaho Rivers United (IRU) filed timely comments.[13]

DISCUSSION

IRU states that it is not opposed to having a hydro facility at the Arrowrock Dam, but believes the licensees' request for an extension should be denied and the license should be canceled because of the licensees' lack of diligence in pursuing the development of the project. IRU expresses its concern that the licensees have not commenced construction in twelve years and notes that there were several lengthy periods of time in the 1990's that the licensees took no action to pursue the project. IRU also expresses concerns about the licensees' ability to implement protection, mitigation, and enhancement measures required by the license.

IRU's concerns about the licensees' ability to implement protection, mitigation, and enhancement measures as required by the license are compliance matters. We expect the licensees to fully comply with the terms and conditions of their license.

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[11]On March 14, 2001, the licensees electronically filed an answer in opposition to the motion filed by Pioneer and Settlers. Pioneer and Settlers filed a reply to the licensees' answer. Pursuant to rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214(c)(1993), a timely motion to intervene is granted automatically unless it is opposed, in which case it must be expressly granted or denied. The Commission Secretary granted intervention to Pioneer and Settlers by notice issued August 14, 2001.

[12]Pursuant to rule 214(c) of the Commission's Rules of Practice and Procedure, if an intervention is untimely, the movant becomes a party to the proceeding only when the motion is expressly granted. The FS's motion was granted by notice issued August 10, 2001.

[13]On March 23, 2001, the licensees filed a response to IRU's comments indicating that IRU's comments were not justified.

In October 2000, Congress enacted Public Law 106-343.[14] Public Law 106-343 authorizes the Commission to extend the deadline for commencement of construction up to a maximum of three consecutive two-year periods. Consequently, the licensees have requested that the deadline for commencement of construction of the project be extended to March 26, 2003,[15] and the deadline to complete construction of the project be

[14]P.L. 106-343 states in pertinent part:

> (a) IN GENERAL- Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 4656, the Commission may, at the request of the licensee for the project and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of that section and the Commission's procedures under that section, extend the time period during which the licensee is required to commence the construction of the project for three consecutive 2-year periods.
>
> (b) EFFECTIVE DATE- Subsection (a) shall take effect on the date of the expiration of the extension issued by the Commission prior to the date of the enactment of this Act under section 13 of the Federal Power Act (16 U.S.C. 806).
>
> (c) REINSTATEMENT OF EXPIRED LICENSE- If the period required for commencement of construction of the project described in subsection (a) has expired prior to the date of the enactment of this Act, the Commission shall reinstate the license effective as of the date of its expiration and the first extension authorized under subsection (a) shall take effect on the date of such expiration.

[15]The licensees anticipate that the target date for commencement of construction of the project will be the fall of 2001 in order to coordinate the construction of the project with Reclamation's proposed schedule for the rehabilitation and replacement of the 1915 Ensign valves at the Arrowrock Dam. The valves control water releases from the dam. Reclamation's proposed schedule for the valve replacement is to commence construction in the fall of 2001 and to complete construction by the spring of 2003 or the spring of 2004. The licensees plan to commence construction of the hydropower project

(continued...)

extended to March 26, 2005. In addition, the licensees have requested that the deadlines to comply with articles 101-110, 112-115, 117, and 304 of the license be extended to 90 days before commencement of construction of the project (to December 24, 2002).[16]

In support of its extension request, the licensees have submitted documentation dated 2000 and 2001 demonstrating that they have been diligently pursuing the development of the project. The licensees have provided a letter from Reclamation supporting the construction of the hydropower project and encouraging the licensees to continue coordination of the construction of the project with Reclamation's valve replacement project. The licensees submitted a copy of their request for proposals to develop the project and a copy of the public notice for the request for proposals.[17] The licensees report that they have been consulting and negotiating with several developers and that they have selected HPB Hydroelectric (HPB) to develop the project. Further, a copy of the licensees' response to the City of Seattle's Request for Proposal for Renewable Resources[18] and a copy of the licensees' response to the City of Seattle's data requests for the Arrowrock Dam were included in the licensees' instant extension request.

[15](...continued)
at the same time that the Arrowrock Reservoir levels are being modified by Reclamation for the valve replacement project in order to minimize any construction-related impact that the hydropower facility would have on the reservoir.

[16]The licensees maintain that they have consulted with the FS, Reclamation, and the Corps regarding its instant request for an extension of time and the agencies have no objection to the request. The licensees state that an extension to comply with the license articles is necessary in order to synchronize completion of the requirements of the articles with the on-site phase of project construction.

[17]The licensees have decided that rather than develop the project themselves, they have solicited bid proposals from qualified project developers to develop, construct, and operate the project.

[18]In their July 10, 2000 Request for Proposal, the City of Seattle, City Light Department requested proposals from qualified renewable resource power suppliers for providing capacity and energy from renewable resources for meeting City Light's load growth.

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The licensees state that they have been negotiating with several power purchasers, including Idaho Power Company (IPC)[19] and Lassen Municipal Utility District (LMUD), a California municipal utility district, concerning purchasing the project's power. The licensees advise that draft agreements have been forwarded to HPB [20] and LMUD[21] for development of the project and power purchasing and they anticipate that the agreements will be finalized. The licensees state that the project's financing has not been secured yet. However, the licensees indicate that HPB has committed to providing private financing for the project and they have also consulted with LMUD and others about financing the project.

CONCLUSION

In accordance with Section 13 of the FPA and Public Law 106-343, we shall grant the licensees' request to extend the deadline for commencement and completion of project construction. We find the extensions[22] to be in the public interest.

The Director orders:

(A) The deadline for commencing project construction is extended to March 26, 2003.

[19]The licensees submitted a copy of IPC's preliminary proposal to purchase power from the Arrowrock Dam Project.

[20]The licensees state that they have not entered into a binding contract for the manufacturing of turbine and generating units, however, HPB manufactures turbines and generators and, therefore, proposes to provide the turbines and generators for the project. The licensees expect that the execution of a development contract with HPB will lead to a firm contract for the manufacture of turbine and generation units.

[21]The licensees have provided a letter dated March 1, 2001, from LMUD's counsel expressing LMUD's interest in negotiating a power purchase agreement.

[22]By extending the construction commencement and completion dates, all filing deadlines referenced to these dates will be automatically recalculated.

(B) The deadline for completing project construction is extended to March 26, 2005.

(C) The deadlines to comply with articles 101-110 , 112-115, 117, and 304 of the license are extended to December 24, 2002, or 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, whichever is sooner.

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

Hossein Ildari
Division of Hydropower
Administration and Compliance

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boise-Kuna Irrigation District
Nampa & Meridian Irrigation District
New York Irrigation District
Wilder Irrigation District
Big Bend Irrigation District

Project No. 4656-015

ORDER GRANTING EXTENSION OF TIME TO COMMENCE AND COMPLETE PROJECT CONSTRUCTION

(Issued August 16, 2001)

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IRU's concerns about the licensees' ability to implement protection, mitigation, and enhancement measures as required by the license are compliance matters. We expect the licensees to fully comply with the terms and conditions of their license.

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[13]On March 23, 2001, the licensees filed a response to IRU's comments indicating that IRU's comments were not justified.

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In October 2000, Congress enacted Public Law 106-343.[14] Public Law 106-343 authorizes the Commission to extend the deadline for commencement of construction up to a maximum of three consecutive two-year periods. Consequently, the licensees have requested that the deadline for commencement of construction of the project be extended to March 26, 2003,[15] and the deadline to complete construction of the project be

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[14]P.L. 106-343 states in pertinent part:

> (a) IN GENERAL- Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 4656, the Commission may, at the request of the licensee for the project and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of that section and the Commission's procedures under that section, extend the time period during which the licensee is required to commence the construction of the project for three consecutive 2-year periods.
>
> (b) EFFECTIVE DATE- Subsection (a) shall take effect on the date of the expiration of the extension issued by the Commission prior to the date of the enactment of this Act under section 13 of the Federal Power Act (16 U.S.C. 806).
>
> (c) REINSTATEMENT OF EXPIRED LICENSE- If the period required for commencement of construction of the project described in subsection (a) has expired prior to the date of the enactment of this Act, the Commission shall reinstate the license effective as of the date of its expiration and the first extension authorized under subsection (a) shall take effect on the date of such expiration.

[15]The licensees anticipate that the target date for commencement of construction of the project will be the fall of 2001 in order to coordinate the construction of the project with Reclamation's proposed schedule for the rehabilitation and replacement of the 1915 Ensign valves at the Arrowrock Dam. The valves control water releases from the dam. Reclamation's proposed schedule for the valve replacement is to commence construction in the fall of 2001 and to complete construction by the spring of 2003 or the spring of 2004. The licensees plan to commence construction of the hydropower project

(continued...)

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extended to March 26, 2005. In addition, the licensees have requested that the deadlines to comply with articles 101-110, 112-115, 117, and 304 of the license be extended to 90 days before commencement of construction of the project (to December 24, 2002).[16]

In support of its extension request, the licensees have submitted documentation dated 2000 and 2001 demonstrating that they have been diligently pursuing the development of the project. The licensees have provided a letter from Reclamation supporting the construction of the hydropower project and encouraging the licensees to continue coordination of the construction of the project with Reclamation's valve replacement project. The licensees submitted a copy of their request for proposals to develop the project and a copy of the public notice for the request for proposals.[17] The licensees report that they have been consulting and negotiating with several developers and that they have selected HPB Hydroelectric (HPB) to develop the project. Further, a copy of the licensees' response to the City of Seattle's Request for Proposal for Renewable Resources[18] and a copy of the licensees' response to the City of Seattle's data requests for the Arrowrock Dam were included in the licensees' instant extension request.

---

[15](...continued)
at the same time that the Arrowrock Reservoir levels are being modified by Reclamation for the valve replacement project in order to minimize any construction-related impact that the hydropower facility would have on the reservoir.

[16]The licensees maintain that they have consulted with the FS, Reclamation, and the Corps regarding its instant request for an extension of time and the agencies have no objection to the request. The licensees state that an extension to comply with the license articles is necessary in order to synchronize completion of the requirements of the articles with the on-site phase of project construction.

[17]The licensees have decided that rather than develop the project themselves, they have solicited bid proposals from qualified project developers to develop, construct, and operate the project.

[18]In their July 10, 2000 Request for Proposal, the City of Seattle, City Light Department requested proposals from qualified renewable resource power suppliers for providing capacity and energy from renewable resources for meeting City Light's load growth.

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The licensees state that they have been negotiating with several power purchasers, including Idaho Power Company (IPC)[19] and Lassen Municipal Utility District (LMUD), a California municipal utility district, concerning purchasing the project's power. The licensees advise that draft agreements have been forwarded to HPB [20] and LMUD[21] for development of the project and power purchasing and they anticipate that the agreements will be finalized. The licensees state that the project's financing has not been secured yet. However, the licensees indicate that HPB has committed to providing private financing for the project and they have also consulted with LMUD and others about financing the project.

CONCLUSION

In accordance with Section 13 of the FPA and Public Law 106-343, we shall grant the licensees' request to extend the deadline for commencement and completion of project construction. We find the extensions[22] to be in the public interest.

The Director orders:

(A) The deadline for commencing project construction is extended to March 26, 2003.

---

[19]The licensees submitted a copy of IPC's preliminary proposal to purchase power from the Arrowrock Dam Project.

[20]The licensees state that they have not entered into a binding contract for the manufacturing of turbine and generating units, however, HPB manufactures turbines and generators and, therefore, proposes to provide the turbines and generators for the project. The licensees expect that the execution of a development contract with HPB will lead to a firm contract for the manufacture of turbine and generation units.

[21]The licensees have provided a letter dated March 1, 2001, from LMUD's counsel expressing LMUD's interest in negotiating a power purchase agreement.

[22]By extending the construction commencement and completion dates, all filing deadlines referenced to these dates will be automatically recalculated.

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(B) The deadline for completing project construction is extended to March 26, 2005.

(C) The deadlines to comply with articles 101-110 , 112-115, 117, and 304 of the license are extended to December 24, 2002, or 90 days prior to starting any land-clearing, land-disturbing, or spoil-producing activities, whichever is sooner.

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

Hossein Ildari
Division of Hydropower
Administration and Compliance

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State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

September 6, 2001

Albert Barker
Attorney at Law
P.O. Box 2139
Boise, ID 83701-2139

Re: Application for permit No. 63-10240 in the name of the Boise Project Board of Control; Arrowrock Hydropower Project

Dear Mr. Barker:

This letter documents your telephone conversations with me and with Norm Young of the Idaho Department of Water Resources (IDWR). This letter proposes actions that will prompt additional public review in the department's determination of whether application for water right no. 63-10240 should be approved.

Application for water right no. 63-10240 was filed in 1984. Notice of the application was published in the Idaho Statesman in May of 1984. Protests against the application were filed by several entities that deliver water from the Boise River for irrigation within the Treasure Valley. Because of the multiple protests and the delays caused by the review by the Federal Energy Regulatory Commission (FERC), the application remained protested in the files of the IDWR since it was filed. During the approximate 17-year duration, both the notice requirements and the factors the department must consider in determining whether an application should be approved have changed. An application proposing a diversion of water in excess of 10 cfs must be advertised statewide, not just a local newspaper. In addition, an additional factor regarding conservation of waters of the State of Idaho must now be considered by IDWR before approving an application. As a result of these changes in the law as well as the long time period that has expired, IDWR proposes to republish notice of application no. 63-10240 in four newspapers that together have statewide circulation. The publication will reopen the opportunity for the public to protest the application and participate fully as parties.

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The purpose of this letter is to inform you of the proposal, and allow you to respond to this proposal and offer suggestions or alternatives to publication. Please respond to this letter in writing within 14 days of the date of this letter. After the expiration of 14 days, I will ask staff at this office to begin preparing the legal notices for publication.

Sincerely,

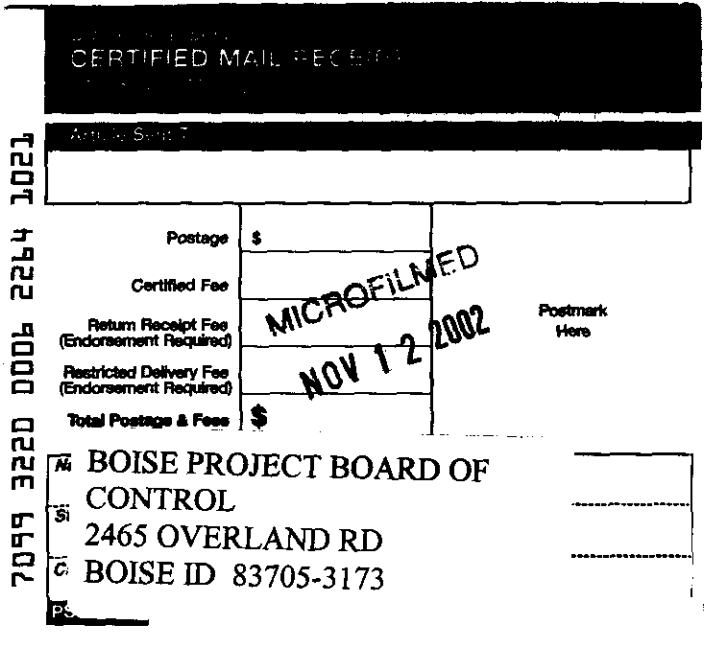
Gary Spackman

cc: Boise/Kuna Irrigation District
New York Irrigation District
Nampa/Meridian Irrigation District
Wilder Irrigation District
Big Bend Irrigation District
Boise Project Board of Control
Farmers Union Irrigation District
Settlers Irrigation District
Farmers Cooperative Canal Co.
Pioneer Irrigation District
Scott Campbell
John Hockberger
Randall Fredericks
Bill Ringert
Gene Bailey
Norm Young
Glen Saxton

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

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Postage $
Certified Fee
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BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705-3173

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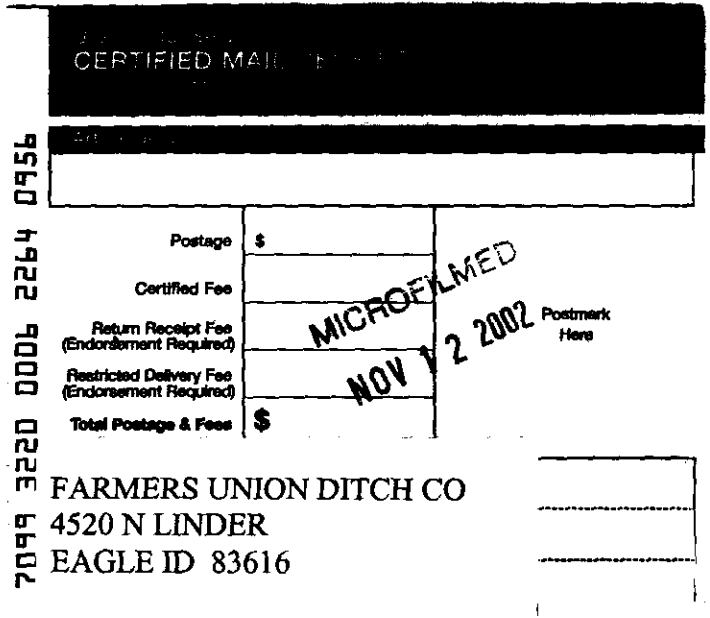
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FARMERS UNION DITCH CO
4520 N LINDER
EAGLE ID 83616

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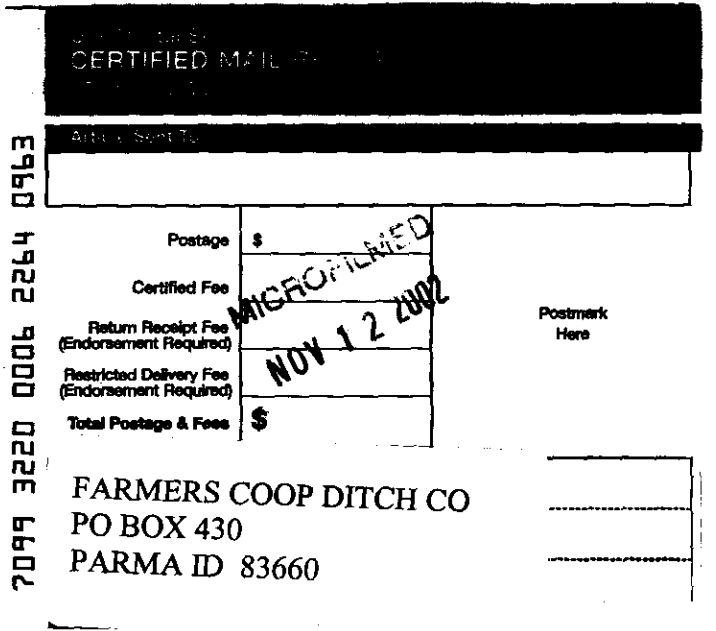
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FARMERS COOP DITCH CO
PO BOX 430
PARMA ID 83660

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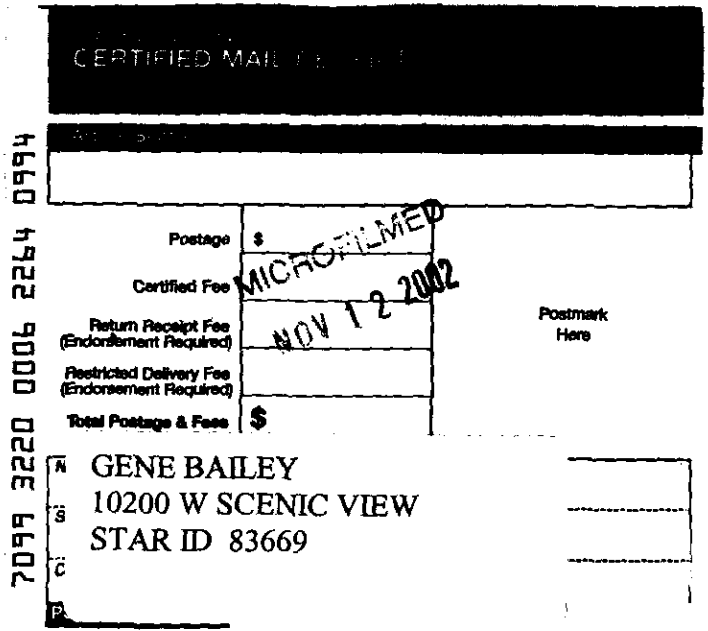
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Total Postage & Fees $
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GENE BAILEY
10200 W SCENIC VIEW
STAR ID 83669

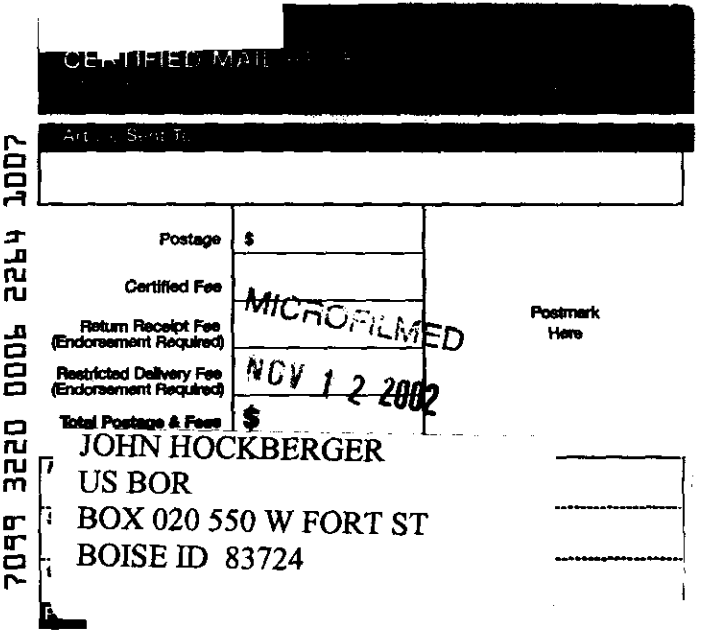
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US BOR
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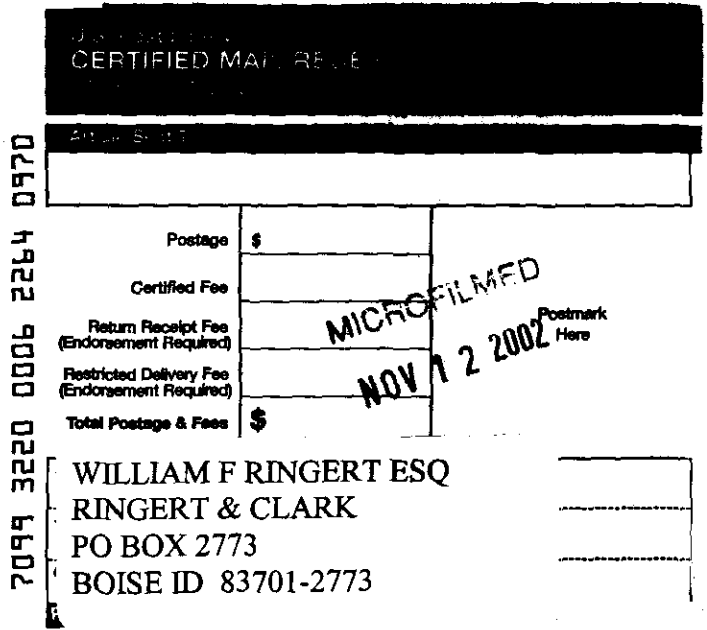
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Total Postage & Fees $
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WILLIAM F RINGERT ESQ
RINGERT & CLARK
PO BOX 2773
BOISE ID 83701-2773

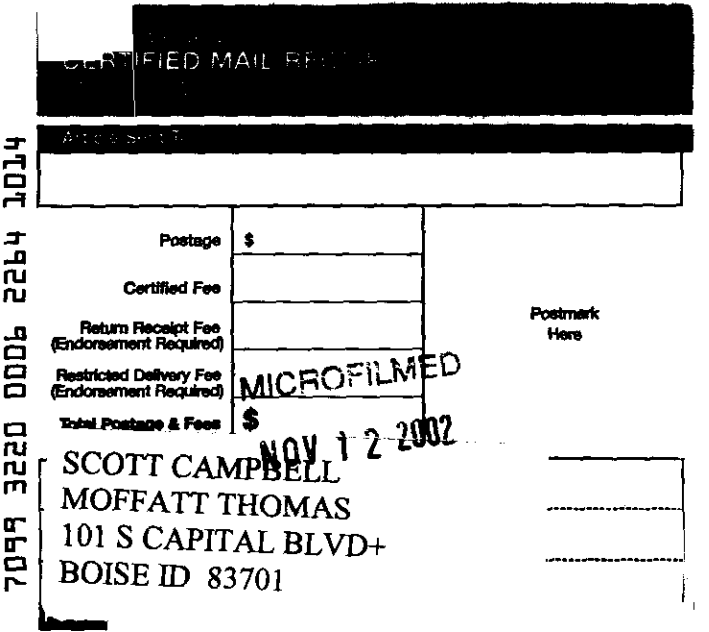
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SCOTT CAMPBELL
MOFFATT THOMAS
101 S CAPITAL BLVD+
BOISE ID 83701

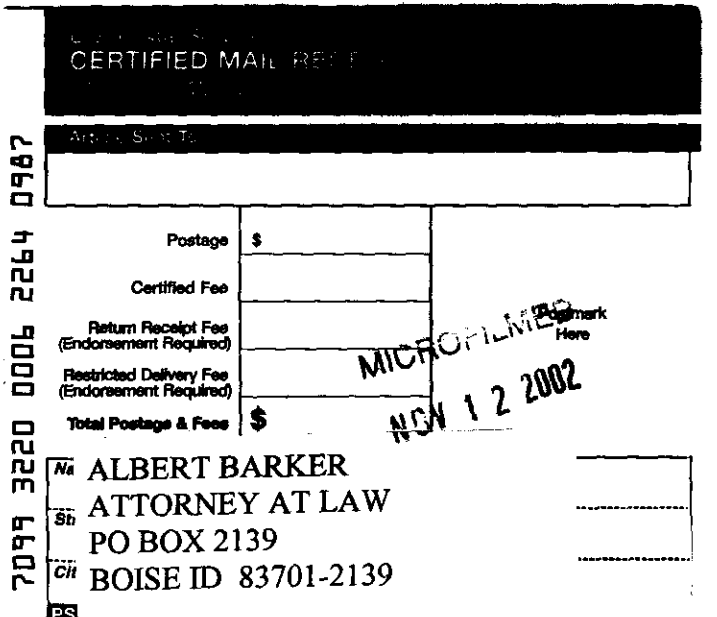
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Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $
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Na ALBERT BARKER
Sh ATTORNEY AT LAW
PO BOX 2139
Ci BOISE ID 83701-2139
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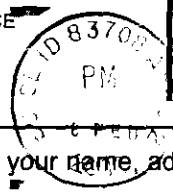
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WATER RESOURCES
WESTERN REGION

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

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06

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FARMERS UNION CANAL CO
C/O RONALD SCHREINER
2153 N POLLARD
STAR ID 83669

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A. Received by *(Please Print Clearly)* | B. Date of Delivery: 2-8-01

C. Signature: X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
2264 1038 63-10240

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

HTEH HAWLEY TROXELL ENNIS & HAWLEY LLP
ATTORNEYS AT LAW

877 Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701-1617
(208) 344-6000 • Fax (208) 342-3829
www.hteh.com

ALBERT P. BARKER
(208)388-4841

EMail: APB@HTEH.COM

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MAR 0 3 2000
WATER RESOURCES
WESTERN REGION

March 2, 2000

Gary Spackman
Manager, Western Region
State of Idaho
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Application for Water Right No. 63-10240
Hydropower Production at Arrowrock Dam

Dear Mr. Spackman:

Thank you for your letter of January 25, 2000 raising the question of the current status of the application for the water right for hydropower production at Arrowrock Dam. I replied by telephone prior to the February 18, 2000 date requested in your letter and am following up our conversation with this letter. Because I was not personally involved in the application in 1995 and 1996, I have researched the records behind this water right application. First, your conclusion that the Boise Project Board of Control and the Districts are the Applicant is correct. They have resolved their issues with the Bureau of Reclamation by the transfer referred to in your letter. Second, the only remaining protests of which we are aware were the protests of Farmers Union, Settlers, Farmers Co-op and Pioneer outlined in your letter. These protests were also resolved. Based upon the correspondence between the attorneys for the Applicants and Protestors, and with the Department, the terms of the permit and any subsequently issued license for this Application, were agreed upon by the Applicants, the Protestors and the Department in 1995 and 1996. At this time, Mr. Tuthill was manager of the Western Regional Office. This agreement was finalized about the time that Mr. Tuthill was transferred to the Adjudication Office within the Department. His transfer may explain why action was not taken by the Department to confirm the agreement reached over the terms of the permit and license.

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Nevertheless, based upon that agreement of the parties, the Department should issue the permit for Water Right No. 63-10240.

The records demonstrate that the Protestors' concern was that the permit and license for the Project arising from Application No. 63-10240 not cause any injury to their water rights or to delivery of their water. Language accomplishing that protection for the Protestors was contained in Mr. Olowinski's May 23, 1996 letter to Mr. Tuthill. Applicants and Protestors agreed to insert the following language:

1) This permit or any subsequently issued license 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 water rights and operating procedures for irrigation, flood control or other authorized purposes.

2) Construction, operation, maintenance, repair, replacement or modification of Project works, and features under this permit or any subsequently issued license, shall not injure, reduce or impair existing water rights established under State law or water rights entitlements under federal contracts relating to the Boise River, its reservoirs or its tributaries.

On behalf of the Applicants, Mr. Olowinski and Mr. Ringert agreed to those terms. On behalf of the Protestants, Mr. Campbell agreed to those terms. I am enclosing for your records copies of Mr. Olowinski's May 23, 1996 letter to Mr. Tuthill, Mr. Ringert's May 24, 1996 letter to Mr. Tuthill and Mr. Campbell's May 31, 1996 letter to Mr. Tuthill, all confirming the agreement that the protest would be resolved by including that language in the permit and any subsequent license. Further, for your records, I am also enclosing the correspondence referenced in Mr. Olowinski's May 23, 1996 letter to Mr. Tuthill, that is, Mr. Ringert's June 30, 1995 letter to Mr. Campbell and Mr. Campbell's June 5, 1995 letter to Mr. Olowinski.

Based upon the foregoing historical record, the permit should be issued by the Department of Water Resources for Water Right No. 63-10240 containing the language agreed upon by the Applicants and Protestors in 1995 and 1996.

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Your letter also asked about the status of the FERC license issued to the Districts and the Boise Project Board of Control for this Project. You correctly indicate that the license was amended, extending the date for construction to begin to March of 1999. Construction on the project did not begin in March of 1999. However, Applicants currently are working with FERC and with the necessary and appropriate persons in Washington, D.C. to authorize an extension for commencement of construction. The Districts are optimistic that the extension will be granted and that construction can begin in the near future.

Regardless of the status of the FERC license, the Applicants will continue to abide by the agreement entered into in 1995 and 1996, i.e. that any grant or exercise of the water rights under this Application will not interfere with any of Protestors' existing water rights on the Boise River.

If you have any further questions or comments, please direct them to me. Thank you for your attention to this matter.

Very truly yours,

HAWLEY TROXELL ENNIS & HAWLEY LLP

Albert P. Barker

APB/eac
Enclosures
cc: Boise Project Board of Control(w/enclosures)
Boise-Kuna Irrigation District(w/enclosures)
New York Irrigation District(w/enclosures)
Nampa & Meridian Irrigation District(w/enclosures)
Wilder Irrigation District(w/enclosures)
Big Bend Irrigation District(w/enclosures)
Scott Campbell, Esq. (w/enclosures)
Daniel V. Steenson, Esq. (w/enclosures)
Randall Fredericks, Esq. (w/enclosures)
John J. Hockberger, Jr., Esq. (w/enclosures)

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2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 25, 2000

Hawley Troxell Ennis & Hawley
P.O. Box 1617
Boise, ID 83701

Scott Campbell
Elam Burke
P.O. Box 1539
Boise, ID 83701-1539

Re: Application for Water Right No. 63-10240 proposing hydropower production at Arrowrock Dam

Dear Sirs:

While reviewing protested applications for water rights that are unresolved, I reviewed application for water right no. 63-10240. The application was filed with the Department of Water Resources (IDWR) by the Bureau of Reclamation, proposing the use of 5,470 cfs at Arrowrock Dam for power production. Documents in the file show that protests to the application were filed by Boise-Kuna Irrigation District, New York Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District. The above-listed irrigation districts comprise the Boise Project Board of Control. In addition, IDWR received protests against the application from Farmers Union Ditch Company, Settlers Irrigation District, Farmers Cooperative Canal Company, and Pioneer Irrigation District.

In February of 1991, the Bureau of Reclamation assigned its interest in application for permit no. 63-10240 to the Boise Project Board of Control. A paper copy of the assignment is located in our files, but ownership information in our electronic database was not changed. A hearing was scheduled for May 8, 1992, but by subsequent order, the hearing was delayed until further notice. According to IDWR records, a hearing has not been held regarding the above application. Although the irrigation districts comprising the Boise Project Board of Control are still shown as protestants to the application, the assignment by the Bureau of Reclamation to the Boise Project Board of Control merges the application and the protest together. As a result, I view the Boise Project Board of Control (or the respective six irrigation districts within the Boise

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Project Board of Control) as the applicant. I also conclude that Farmers Union Ditch Company, Settlers Irrigation District, Farmers Cooperative Canal Company, and Pioneer Irrigation District remain protestants to the application.

An application for a Federal Energy Regulatory Commission license to construct and operate a hydropower facility at Arrowrock Dam was filed by the irrigation districts comprising the Boise Project Board of Control. Our records indicate that a license was issued by FERC although I do not have a copy of the license. Our records show that the license was extended until March of 1999 for the Boise Project Board of Control to begin construction.

The purpose of this letter is to inquire about the intent of the Boise Project Board of Control to continue with this application for water right. As part of the inquiry, I also ask about the status of the FERC license that was issued, or any subsequent filing with FERC that would extend FERC's grant of approval to the Boise Project Board of Control. Upon receiving information from the Boise Project Board of Control, carbon copied to the protestants, I request that the protestants express their interest in continuing the protest should the Boise Project Board of Control want to pursue the application.

I ask that Boise Project Board of Control reply to this letter by February 18, 2000. I also request that the protestants respond to the applicants' submittal by March 10, 2000. Upon receiving confirmation of continuing interest and protest, I will schedule a prehearing conference.

Sincerely,

Gary Spackman
Manager, Western Region

GS/dde

cc: Boise-Kuna Irrigation District
New York Irrigation District
Nampa & Meridian Irrigation District
Wilder Irrigation District
Big Bend Irrigation District
Boise Project Board of Control
Farmers Union Irrigation District
Settlers Irrigation District

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2002

Farmers Cooperative Canal Company
Pioneer Irrigation District

John J. Hockberger, Jr.
Givens Pursley
Randall Fredricks
Bill Ringert
Ron Golus, U. S. Dept. of Interior
Bureau of Reclamation

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NOV 1 2 2002

BOISE VALLEY IRRIGATION DITCH COMPANY

6051 Roe Street, Boise, ID 83703 (208) 853-5288 Fax- 375-7463

RECEIVED

DEC 0 2 1999

WATER RESOURCES
WESTERN REGION

December 1, 1999

Dear Gentlemen;

I'd like to inform you of our new address and phone number for future reference.

Boise Valley Irrigation Ditch Company
6051 Roe Street
Boise ID 83703

Phone number - 853-5288

Contact person- Pat Birkinbine, secretary

Thank you

Pat Birkinbine
Secretary

President – Alfred D. Gibbens – 853-9239
Vice President – Steve Birkinbine –853-2837

Manager – Stanley Matlock – 853-0992
Sec/Treasurer – Pat Birkinbine – 853-5288

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JUN 0 3 1996
WATER RESOURCES
WESTERN REGION

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

May 31, 1996

David R. Tuthill, Jr., P.E.
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Proposed Conditions for Prospective Water Permit No. 63-10240
Arrowrock Dam Hydroelectric Project

Dear Dave:

I have received a copy of the May 23, 1996 correspondence from Don Olowinski to you concerning the above-referenced matter. I expected Don to write this letter because he indicated he would do so during a telephone conversation with me on May 23, 1996. During the telephone conversation I raised the inconsistency, and apparent inadvertent omission of the language which Don identified in his letter.

This correspondence will confirm that the protestants I represent in this matter will agree to withdrawal the protest if the conditions set forth in Don's May 23, 1996 correspondence are made part of the permit and any subsequently issued license.

Please contact me if you have any questions.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:kc g:\kcc\wpdata\1002\37\00006.ltr

cc: William F. Ringert, Esq.
Don A. Olowinski, Esq.
Pioneer Irrigation District Board of Directors

MICROFILMED

File

HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS

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877 MAIN STREET, SUITE 1000
POST OFFICE BOX 1617
BOISE, IDAHO 83701-1617

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FAX
(208) 342-3829

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POST OFFICE BOX 297
KETCHUM, IDAHO 83340-0297

POCATELLO OFFICE
333 SOUTH MAIN STREET
POST OFFICE BOX 100
POCATELLO, IDAHO 83204-0100

DON A. OLOWINSKI

EMail: DAO@hteh.com

May 23, 1996

RECEIVED
MAY 24 1996
WATER RESOURCES
WESTERN REGION

David R. Tuthill, Jr., P.E.
Manager
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: **Proposed Conditions For Prospective Water Permit No. 63-10240, Arrowrock Dam Hydroelectric Project**

Dear Dave:

In response to your letter of May 21, 1996, I am hopeful that both the applicants and protestants are in agreement about conditions which may be inserted into the permit. Some confusion apparently occurred last year in the rounds of wordsmithing among Scott Campbell, Bill Ringert, and me. Scott and I had agreed to add an additional phrase and an additional word to the first condition in Bill's letter which perhaps Bill did not receive or which somehow was omitted in the typing of his June 30, 1995, letter. I have enclosed Scott's letter of June 5, 1995, to me.

The omitted words are inserted and underlined in the conditions Bill set out in his June 30, 1995, letter:

1. This permit or any subsequently issued license 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 water rights and operating procedures for irrigation, flood control or other authorized purposes.

2. Construction, operation, maintenance, repair, replacement or modification of the Project works and features under this permit or any subsequently issued license shall not injure, reduce or impair existing water rights

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established under State law or water rights entitlements under federal contracts relating to the Boise River, its reservoirs, or its tributaries.

I agree that the conditions as set out above may be inserted into the permit if Scott's clients withdraw their protest. I would ask Scott and Bill to confirm with you that these conditions are satisfactory.

Thank you for your continued patience.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

Don A. Olowinski

cc: Scott L. Campbell, Esq.
William F. Ringert, Esq.

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RINGERT
CLARK
CHARTERED
LAWYERS

RECEIVED
MAY 28 1996
WATER RESOURCES
WESTERN REGION

Dw
File

Laura E. Burri
Jeffrey R. Christenson
D. Blair Clark
Michael J. Doolittle
Patrick D. Furey
David Hammerquist
Joseph B. Jones
James P. Kaufman
James G. Reid
William F. Ringert
Daniel V. Steenson
Allyn L. Sweeney

Samuel Kaufman (1921-1986)

May 24, 1996

Mr. David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Protested Application for Permit No. 63-10240 in the Name of Boise Project Board of Control, Hydropower Generation at Arrowrock Dam

Dear Dave:

I concur in Don Olowinski's letter of May 23, 1996, regarding this matter, and confirm that the conditions stated in his letter are satisfactory.

Yours very truly,

W. F. Ringert

WFR:am
cc: Nampa & Meridian Irrigation District
Don Olowinski
Scott Campbell

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State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 21, 1996

W.F. Ringert, Esq.
Ringert and Clark, Chartered
P.O. Box 2773
Boise, ID 83701

Scott Campbell, Esq.
Elam & Burke
P.O. Box 1359
Boise, ID 83792

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

RE: Protested Application for Permit No. 63-10240 in the Name of Boise Project Board of Control, Hydropower Generation at Arrowrock Dam

Gentlemen:

I am writing another letter in this still-unsettled matter. Our file shows that we set tentative hearing dates for May 8, 1992; June 17, 1992; May 23, 1995; and July 5, 1995. Each tentative scheduling has resulted in a request for delay by either the applicant or the protestants.

While we have been extremely patient with this process, I have questions about the ability of this project to withstand concerns about lack of due diligence and speculation. My next step is to set this matter for hearing, and I am doubtful as to our willingness to postpone the hearing date.

This letter is a last step before setting the hearing for an August 1996 date. I am willing to forward the file to our state office with a recommendation that we approve the application with our standard hydropower conditions of approval, including the following as proposed by Mr. Ringert in his letter dated June 30, 1995:

1. 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, or other authorized purposes.

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2. Construction, operation, maintenance, repair, replacement or modification of the Project works and features under this permit or any subsequently issued license shall not injure, reduce or impair existing water rights established under State law or water rights entitlements under federal contracts relating to the Boise River, its reservoirs, or its tributaries.

If these conditions are acceptable, the protestants should consider withdrawing the protests on this basis. If these conditions are not acceptable, please provide to me the dates that you would be available for a hearing during August. I will plan to take further action on this file on June 7, 1996.

Sincerely,

David R. Tuthill, Jr., P. E.
Manager, Western Regional Office

MICRO
NOV 12 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

February 16, 1996

WILLIAM F RINGERT ESQ
RINGERT & CLARK CHARTERED
PO BOX 2773
BOISE ID 83701

RE: Application for Permit No. 63-10240 in the Name of Boise Project Board of Control to Provide for Hydropower at Arrowrock Dam

Dear Bill:

The above-referenced protested water right application is still in our files. It had been my understanding that Scott Campbell and Don Olowinski had prepared language acceptable to them for the resolution of the protest against the application. However, I further understood that you had some concerns about the language and were going to work on it further.

This application has been in our files for almost 12 years, and we need to take some action to move it beyond the application stage. Please advise if it is possible to obtain acceptable protest withdrawal language for this application.

Sincerely,

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

DRT/st

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NOV 1 2002

Don
63-10240 (Protest

RINGERT
CLARK
CHARTERED
LAWYERS

CEIVED
JUL 0 3 1995
WATER RESOURCES
WESTERN REGION

June 30, 1995

William F. Ringert
D. Blair Clark
James G. Reid
Jeffrey R. Christenson
James P. Kaufman
Laura E. Burri
Allyn L. Sweeney
Patrick D. Furey
Michael J. Doolittle
David Hammerquist
Daniel V. Steenson
Steven C. Mahaffy

Samuel Kaufman (1921-1986)

Mr. Scott Campbell
Elam & Burke
Attorneys at Law
P. O. Box 1539
Boise, ID 83701-1539

Re: Application for Water Permit

Dear Scott:

I am recommending that the Board of Directors of Nampa & Meridian Irrigation District agree to the language for proposed conditions as set forth in Don Olowinski's letter of June 1, 1995:

1. 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 or other authorized purposes.

2. Construction, operation, maintenance, repair, replacement or modification of the Project works and features under this permit or any subsequently issued license shall not injure, reduce or impair existing water rights established under State law or water rights entitlements under federal contracts relating to the Boise River, its reservoirs, or its tributaries.

I expect the Board to take action on this matter at the meeting on July 5, 1995, and will advise you and the other concerned parties of the Board's action.

Yours very truly,

W. F. Ringert

WFR:am
cc: Nampa & Meridian Irrigation District
David Tuthill
Don Olowinski

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ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
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BOISE, IDAHO 83701

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208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

June 5, 1995

HAND DELIVERED

Don A. Olowinski, Esq.
HAWLEY TROXELL ENNIS & HAWLEY
P.O. Box 1617
Boise, Idaho 83701

Re: Proposed Conditions for Prospective Water Permit No. 63-10240, Arrowrock Dam Hydroelectric Project

Dear Don:

I am responding to your correspondence of May 19, 1995 and your subsequent telephone call to me last week regarding my reaction to the language contained your correspondence.

Following our discussions during our telephone conversation, I had an opportunity to focus on the language contained in your May 19, 1995 correspondence. Additionally, I reviewed some of the prior documentation with respect to this matter. I would like to suggest that the following condition be added to any water permit issued for the Arrowrock Hydroelectric Project in addition to the condition which you set forth in your May 19, 1995 correspondence:

(1) This permit or any subsequently issued license 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 water rights and operating procedures for irrigation, flood control, or other authorized purposes.

(2) Construction, operation, maintenance, repair, replacement or modification of the Project works and features under this permit or any subsequently issued license shall not injure, reduce or impair existing water rights established under State law or water rights entitlements under federal contracts relating to the Boise River, its reservoirs, or its tributaries.

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I will recommend to them that they consent to the withdrawal of their protest against the application for permit, based upon the inclusion of these two conditions by the Idaho Department of Water Resources.

I hope that this additional clarification of my views in this matter is helpful. Please contact me if you have any questions.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:ma

cc: Board of Directors
Pioneer Irrigation District

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NOV 1 2 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 19, 1994

DON A OLOWINSKI ESQ
HAWLEY TROXELL ENNIS & HAWLEY
PO BOX 1617
BOISE ID 83701-1617

RE: Application for Permit No. 63-10240, Arrowrock Dam Hydroelectric Project, in the Name of Boise Project Board of Control

Dear Don:

I am in receipt of your letter dated April 18, 1994, in which you requested a delay for another year or pending further notice by the applicants or the protestants before a hearing is held in the above-referenced matter.

I have discussed your request with our administration, and we have determined that based on the age of this application and the information that you have provided, we are willing to delay this matter for one year. However, we are reluctant to extend the delay until 1999, the year of expiration of the FERC license. Therefore, please consider this letter to be an indication that we are planning to hold the hearing about this time next year.

By copy of this letter we will advise the protestants in this matter so they can consider their position in this regard. We plan to send notice out in March 1995, for a hearing to be conducted in May 1995. In the interim, perhaps some other resolution to the objections by the protestants can be considered by the parties.

Sincerely,

David R. Tuthill

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

DRT:st

CC: Scott L. Campbell, Esq.
Kenneth Henley
Ron Golus
Donald Sayre
Lawrence V. Gray
Kenneth Brush
Carter Fritschle
Howard Fuller
Raymond D. Givens, Esq.
D. Givens, Esq.
Randall C. Fredericks, Esq.
Larry Sullivan, Esq.
William F. Ringert, Esq.
L. Glen Saxton

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NOV 1 2 2002

HAWLEY TROXELL ENNIS & HAWLEY
ATTORNEYS AND COUNSELORS
FIRST INTERSTATE CENTER
877 MAIN STREET, SUITE 1000
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KETCHUM OFFICE
319 WALNUT AVENUE
POST OFFICE BOX 297
KETCHUM, IDAHO 83340-0297

POCATELLO OFFICE
125 NORTH GARFIELD
POST OFFICE BOX 4167
POCATELLO, IDAHO 83205-4167

DON A. OLOWINSKI

April 18, 1994

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APR 19 1994
WATER RESOURCES
WESTERN REGION

David R. Tuthill, Jr., P.E.
Manager
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: **Application for Permit No. 63-10240**
Arrowrock Dam Hydroelectric Project

Dear Dave:

This is a request that processing of the application to appropriate water for the Arrowrock Dam Hydroelectric Project and its protest by the Pioneer and Settlers Irrigation Districts be delayed for another year or pending further notice by the applicants or the protestors. In support of this request, I offer the following.

The Federal Energy Regulatory Commission has extended the applicants' license to build this project to March 26, 1999. I previously provided you a copy of the extension with my letter of November 30, 1993. The factors involved in that extension of time apply to the water right application as well.

The Districts have been operating under a Memorandum of Understanding with Consolidated Hydro Inc-Mountain States, an experienced developer of hydroelectric projects. Despite good faith efforts, the Districts do not have a power purchaser and no construction activities are scheduled.

I do not believe any other entity has filed an application for a water permit at the Arrowrock Dam, nor, in view of the Districts' FERC License, could anyone else get one. Thus, it would be a significant waste of time and resources both for the Department and the parties to conduct a hearing on the protest and could perhaps raise unnecessary questions of federal/state law.

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I have discussed this request with Scott Campbell, counsel for the Pioneer and Settlers Irrigation Districts. He has no objections at the present time, but wishes to discuss the matter with his clients. I assume he will advise you of his position after he does.

In summary, I hope the Department is flexible enough to recognize that delaying the processing of the application does not prejudice the public interest or the parties and will save everyone considerable time and money. If I may provide you any further information, please let me know.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

Don A. Olowinski

Enclosure
cc: Scott L. Campbell, Esq.

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NOV 12 2002

65-10243
UF

HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS

FIRST INTERSTATE CENTER
877 MAIN STREET, SUITE 1000
POST OFFICE BOX 1617
BOISE, IDAHO 83701-1617

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KETCHUM OFFICE
319 WALNUT AVENUE
POST OFFICE BOX 297
KETCHUM, IDAHO 83340-0297

POCATELLO OFFICE
125 NORTH GARFIELD
POST OFFICE BOX 4167
POCATELLO, IDAHO 83205-4167

DON A. OLOWINSKI

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DEC 0 1 1993
WATER RESOURCES
WESTERN REGION

November 30, 1993

David R. Tuthill, Jr., P.E.
Manager
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

RECEIVED
DEC 0 3 1993
Department of Water Resources

Re: **Arrowrock Dam Hydroelectric Project**

Dear Dave:

This is a status report on this Project. The Districts have received an extension of their Federal Energy Regulatory Commission License. I have enclosed a copy. The Districts now have until March 26, 1999, to commence construction.

The Districts still have not been successful in obtaining a power purchaser. They do have a memorandum of understanding with Consolidated Hydro Mountain States, Inc. to assist in Project development.

If you desire further information, please let me know.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

Don A. Olowinski

Enclosure
cc: Scott L. Campbell, Esq. (w/enc.)

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DEC 1 2 2002

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boise-Kuna Irrigation District, et al. Project No. 4656-010
Idaho

A-63-10240

ORDER GRANTING EXTENSION OF TIME

(Issued March 22, 1993)

The licensee for the Arrowhead Dam Hydroelectric Project requested a six-year extension of the March 26, 1993, deadline for the commencement of project construction.[1] The licensee also requested that the deadlines for articles 101-110, 112-115, 117 and 304 be extended to 90 days before commencement of construction.[2] The licensee requested the extensions pursuant to the Energy Policy Act 1992, Title XVII, § 1701(c)(4) and Section 13 of the Federal Power Act, 16 U.S.C. § 806.

The notice of the filing of the extension of time was issued on January 12, 1993, with March 1, 1993, as the last day to file comments, motions to intervene, or protests. No comments, motions to intervene, or protests were filed.

The reasons advanced by the licensee in support of the requested extensions of time are reasonable and justify the extensions. The deadline for complying with standard article 5 and the completion of construction will be similarly extended.

The Director orders:

(A) The deadline for commencing project construction is extended to March 26, 1999.

(B) The deadline for completing project construction is extended to March 26, 2001.

[1] By an order issued on January 9, 1991, the licensee was granted an extension of time to March 26, 1993, to commence project construction.

[2] By an order issued on April 23, 1992, the licensee was granted an extension of time to December 24, 1992, to comply with articles 101-110, 112-115, 117 and 304 of its license.

(C) The deadlines for filing the items listed below are extended to December 26, 1998, or 90 days before commencement of construction, whichever is sooner:

Article	Item
101	Special-use Permit
102	Evidence of Consultation with the Forest Service
103	Fish and Wildlife Habitat Mitigation Plan
104	Recreation Plan
105	Soil Erosion Plan
106	Solid Waste Plan
107	Hazardous Substance Plan
108	Excess Construction/Tunnel Spoils Plan
109	Archeological and Cultural Resources Plan
110	Preservation and Enhancement Plan
112	Pesticide and Herbicide Plan
113	Engineering Design and Mitigation Plan of the Project Area's Resources
114	Survey and Mitigation Plan of the Endangered Species
115	Engineering Design Plan for Road Improvement

(D) The deadline for entering into an agreement with the Bureau of Reclamation according to article 117 is extended to December 26, 1998, or 90 days before commencement of construction, whichever is sooner.

(E) The deadline for entering into an agreement with the Corps of Engineers according to article 304 is extended to December 26, 1998, or 90 days before commencement of construction, whichever is sooner.

(F) The deadline for acquiring title in fee or right to use in perpetuity all lands necessary for the construction, operation, and maintenance of the project as required by standard license article 5 of Form L-6 is extended to March 26, 1999.

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

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

MAR 22 1993

CALENDARED
16

P-4656-010 63-10240

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission

(January 12, 1993)

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

a.	Type of Application:	Request for Extension of Time to Commence Project Construction
b.	Project No.:	4656-010
c.	Date Filed:	December 23, 1992
d.	Applicant:	Boise-Kuna Irrigation District, et al.
e.	Name of Project:	Arrowhead Dam Hydroelectric Project
f.	Location:	At the U.S. Bureau of Reclamation's existing Arrowrock Dam and Reservoir on the South Fork of the Boise River. The project would be located in Elmore, Boise, and Ada Counties, Idaho, approximately 12 miles east of Boise, Idaho.
g.	Filed Pursuant to:	Energy Policy Act of 1992, Title XVII, § 1701(c)(4) and Section 13 of the Act, 16 U.S.C. § 806.
h.	Applicant Contacts:	Don A. Olowinski and Richard B. Burleigh, Counsel for Boise-Kuna Irrigation District, et al. Hawley Troxell Ennis & Hawley First Interstate Center, Suite 1000 P.O. Box 1617 Boise, Idaho 83701 (208) 344-6000
i.	FERC Contact:	Mr. Lynn R. Miles, (202) 219-2671
j.	Comment Date:	MARCH 1, 1993

k. Description of the Request: Pursuant to the Energy Policy Act of 1992, Title XVII, § 1701(c)(4) and Section 13 of the Act, 16 U.S.C. § 806, the licensee requests that the deadline to commence project construction be extended to March 26, 1999. The licensee also requests that the deadlines to comply with Articles 101-110, 112-115, 117 and 304 be extended to 90 days prior to the commencement of project construction. The licensee states that the extension will provide sufficient time to complete the ongoing power marketing efforts, prepare for and commence construction of

DC-A-19

RECEIVED
JAN 19 1993
Department of Water Resources

CONVERSATION MEMORANDUM

DATE 1/29/1993

FILE 63-10240

Arrowrock Power Protested App

NAME OF PARTY Don Olowinski

EMPLOYEE Dave Tuthill

RE:

FERC License for this project expires on March 26, 1993. However, Congress has authorized a second extension of the license if it is approved by ~~EE~~ FERC. The applicant applied for an extension of the application (up to 7 years). A decision cannot be made re: whether to pursue issuance of a water rt permit until the FERC decides on the extension request.

Hold until March 26, 1993 pending the FERC license extension determination.

DT

MICROFILMED
NOV 12 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

September 29, 1993

DON OLOWINSKI ESQ
HAWLEY TROXELL ENNIS &
HAWLEY
PO BOX 1617
BOISE ID 83702

Re: Protested Application for Permit No. 63-10240 in the Name of Boise Project Board of Control

Dear Don:

My last note in the file regarding the above-referenced protested application was that the project was anticipating an extension of FERC licensing.

Would you please provide for the file information to update the status of this project?

Sincerely,

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

DRT:st

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NOV 1 2 2002

File

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

RECEIVED
JUN - 4 1992
Department of Water Resources
Western Regional Office

SCOTT L. CAMPBELL
(208) 338-8200

June 3, 1992

David R. Tuthill, Jr., P.E.
Manager, Western Region Office
Idaho Department of Water Resources
State of Idaho
2735 Airport Way
Boise, Idaho 83705

Re: **Arrowrock Dam Hydroelectric Project**

Dear David:

This correspondence is to confirm the representation set forth in Don Olowinski's correspondence to you of June 1, 1992, concerning the same matter.

I have discussed the delay of the hearing in this proceeding with my client, and they have no objection to a delay in the hearing on the Application for Permit for the Arrowrock Dam Hydroelectric Project No. 10240 until November, 1992.

I will assume that the hearing, presently scheduled for June 17, 1992, will be vacated, unless I receive written notification to the contrary. Thank you for your assistance in this regard.

Very truly yours,

DAVIS WRIGHT TREMAINE

Scott L. Campbell

SLC:md

cc: Don A. Olowinski, Esq.
Board of Directors - Pioneer Irrigation District

MICROFILMED
NOV 12 2002

JUN - 8 1992
Department of Water Resources
Western Regional Office

DON A. OLOWINSKI

HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS
FIRST INTERSTATE CENTER
SUITE 1000
POST OFFICE BOX 1617
BOISE, IDAHO 83701

TELEPHONE
(208) 344-6000

FAX
(208) 342-3829

POCATELLO OFFICE
125 NORTH GARFIELD
POST OFFICE BOX 4167
POCATELLO, IDAHO 83205

TELEPHONE
(208) 233-0845

June 1, 1992

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

Re: **Arrowrock Dam Hydroelectric Project**

Dear David:

This is to confirm our conversation of last week and to request formally that the hearing on the application for permit for the Arrowrock Dam Hydroelectric Project, No. 10240, be postponed and held in abeyance until November 1992.

I have discussed this request with Scott Campbell, who has orally advised me that his client has no objection. He said he will confirm that in writing upon receipt of my letter.

Thank you for your consideration of this request.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

Don Olowinski

Don A. Olowinski

cc: Scott L. Campbell, Esq.
Boise-Kuna Irrigation District
Nampa & Meridian Irrigation District
New York Irrigation District
Wilder Irrigation District
Big Bend Irrigation District
Boise Project Board of Control

MICROFILMED
NOV 12 2002

63-10240

US DEPT OF INTERIOR
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
550 W FORT ST BOX 043
BOISE, ID 83724

Source: BOISE RIVER Tributary: SNAKE RIVER

Diversion Pt: NWSE Sec 13 T 03N R 04E in BOISE County.

Use: POWER (5470.000 CFS)
Total Diversion: (5470.000 CFS)

Date Filed: 4/19/1984

In: BOISE County
T03N R04E S13 NWSE

Advertised in the:

Idaho World	5/6 & 5/13/92
Post Register	5/7 & 5/14/92
Time News	5/7 & 5/14/92
Lewiston Tribune	5/7 & 5/14/92

Previously advertised in the Idaho Statesman on 5/24 & 5/31/84.

MICROFILMED
NOV 1 7 2000

S T A T E O F I D A H O
DEPARTMENT OF WATER RESOURCES
Western Region
2735 AIRPORT WAY

Boise, Idaho 83705
(208) 334-2190

APRIL 29, 1992

The Idaho World
P.O. BOX 220
Idaho City, ID 83631

Dear Legal Dept.:

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

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

Please send the affidavit of publication and publication billing to this office before MAY 26, 1992.

Yours truly,

GAIL GARRETT
Secretary

Encl.

MICROFILMED
NOV 12 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	
	)	CHANGE IN HEARING DATE
FOR PERMIT NO. 63-10240 IN THE	)	
	)	
NAME OF BUREAU OF RECLAMATION	)	

The Department set a hearing in this matter to be held on May 8, 1992. Per agreement by the applicant, some of the protestants, and the Department, **the date of the hearing has been changed to Wednesday, June 17, 1992.** The time and place remain as 9:00 a.m. in the Second Floor Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, ID 83706.

The Department has been advised that more than one day might be required for this hearing. As a contingency, June 18 and 19 have also been set aside for this matter. However, the department encourages and requests the parties to fully utilize the provisions of Practice and Procedure Rule 9,9, which provides for stipulation of the parties to factual issues and the admission of exhibits in order to streamline the hearing process. The hearing officer is prepared to take official notice of certain documents and evidence pursuant to Rule 9,16 to minimize the actual hearing time required.

Settlers Irrigation District has formally been withdrawn as a protestant in this matter. Therefore, unless the Department is otherwise advised, the names of Don Smitchger, Jimmie James and Dwayne Wolf will be deleted from the mailing list in future mailings.

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, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted

MICROFILMED

2002

Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 1st day of May, 1992.

David R. Tuthill Jr.

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

MICROFILMED
NOV 12 2002

I hereby certify that on the 1st day of May, I mailed a true and correct copy, postage prepaid, on this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Secretary, Office Coordinator

Certified Mail

Scott L. Campbell
Davis, Wright, Tremaine
702 W. Idaho Street, Suite 700
Boise, ID 83702

Don A. Olowinski, Esq.
Hawley, Troxell, Ennis & Hawley
P.O. Box 1617
Boise, ID 83701

Kenneth Henley
Boise Proj. Board of Control
214 Broadway Ave.
Boise, ID 83702

Non-Certified Mail

John J. Hockberger, Jr.
U.S. Dept. of Interior
Box 020 550 W. Fort St.
Boise, ID 83724

Ron Golus
U.S. Dept. of Interior
Bureau of Reclamation
Box 043-550 W. Fort St.
Boise, ID 83724

Donald J. Sayre
Route 2
Caldwell, ID 83605

Lawrence V. Gray
Elm Lane
Nampa, ID 83651

Kenneth Brush
Rural Rt. 8
Caldwell, ID 83605

Carter Fritschle
4310 N. Linder Rd.
Eagle, ID 83616

Howard Fuller
Route 1
Star, ID 83669

Don Smitchger
3890 E. Ustick
Meridian, ID 83642

Jimmie James
4675 N. Ten Mile Rd.
Meridian, ID 83642

Dwayne Wolf
4895 N. Meridian Rd.
Meridian, ID 83642

Raymond D. Givens, Esq.
Box 2720
Boise, ID 83701

Randall C. Fredricks, Esq.
CLEMONS, COSHO & HUMPHREY
1110 First Interstate Bldg.
Boise, ID 83702

Larry Sullivan, Esq.
P.O. Box 220
Vale, OR 97918

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

L. Glen Saxton, IDWR

MICRO
NOV 1 2 2002

John Hockenberger, Jr
Field Solicitor's Office
550 W. Fort
MSC 202
Boise, Id 83724-0020

reattach
to
Before the
Dept. of Water
Resources

MICRO

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)	
)	DELAY IN HEARING DATE
PERMIT NO. 63-10240 IN THE NAME)	
)	
OF BOISE PROJECT BOARD OF CONTROL)	

Pursuant to a request by the applicant the date of the hearing in the above-referenced matter is hereby delayed from Wednesday, June 17, 1992, until further notice.

David R. Tuthill Jr.

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

I hereby certify that on the 2nd day of June, 1992, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor

Sue Taylor
Secretary

Certified Mail

SCOTT L CAMPBELL ESQ
DAVIS WRIGHT TREMAINE
702 W IDAHO ST SUITE 700
BOISE ID 83702

DON OLOWINSKI ESQ
HAWLEY TROXELL ENNIS &
HAWLEY
PO BOX 1617
BOISE ID 83702

KENNETH HENLEY
BOISE PROJ BD OF CONTROL
214 BROADWAY AVE
BOISE ID 83702

Non-Certified

John J. Hockberger, Jr.
U.S. Dept. of Interior
Box 020 550 W. Fort St.
Boise, ID 83724

MICRO

Big Bend Irrig.
747 Red Top Rd
Adrian, OR 97901

Attach
to
Donald J. Sayre

MICRO

Donald J. Sayre
Route 2
Caldwell, ID 83605

Lawrence V. Gray
Elm Lane
Nampa, ID 83651

Kenneth Brush
Rural Rt. 8
Caldwell, ID 83605

Carter Fritschle
4310 N. Linder Rd.
Eagle, ID 83616

Howard Fuller
Route 1
Star, ID 83669

Raymond D. Givens, Esq.
Box 2720
Boise, ID 83701

Randall C. Fredricks, Esq.
CLEMONS, COSHO & HUMPHREY
815 W. Washington
Boise, ID 83702

Larry Sullivan, Esq.
P.O. Box 220
Vale, OR 97918

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

Ron Golus
U.S. Dept. of Interior
Bureau of Reclamation
Box 043-550 W. Fort St.
Boise, ID 83724

L. Glen Saxton, IDWR

Normal C. Young, IDWR

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NOV 12 2002

United States Department of the Interior

OFFICE OF THE SOLICITOR
Intermountain Region
Boise Field Office
Federal Building & U.S. Courthouse
Box 020-550 West Fort Street
Boise, Idaho 83724-0020

Faxogram
(208) 334-1378
FTS 554-1378

Telephone
(208) 334-1911
FTS 554-1911

TAKE PRIDE IN AMERICA

RECEIVED
MAY - 1 1992
Department of Water Resources
Western Regional Office

LBR.BO.0170

APR 30 1992

Mr. David Tuthill, Manager
Western Regional Office
Idaho Department of Water Resources
Statehouse Mail
Boise, ID 83720

RE: Hearing set for May 8, 1992, on Protest of Application for Permit No. 63-10240 in the Name of the Boise Project Board of Control

Dear Mr. Tuthill:

I recently received your April 6 Notice of Hearing in the subject matter. I will be out-of-state on government business the entire week of May 4-8. Consequently, I will be unable to attend the hearing you have set. As your order notes, the Bureau of Reclamation assigned its interest in the permit in question to the Boise Project Board of Control irrigation districts. Therefore, if Reclamation is not considered an indispensible party, it will not be appearing with counsel on May 8. If Reclamation is considered an indispensible party, I would request a rescheduling of the hearing to May 12 or later so that I can attend and participate. Please relay your thoughts to me so that all parties can coordinate their calendars.

Sincerely yours,

John J. Hockberger, Jr.

John J. Hockberger, Jr.
Field Solicitor, Boise

cc: See attached list.

MICROFILMED

Scott L. Campbell
Davis, Wright, Tremain
702 West Idaho St., Suite 700
Boise, ID 83701

Donald J. Sayre
Route 2
Caldwell, ID 83605

Kenneth Brush
Rural Rt. 8
Caldwell, ID 83605

Howard Fuller
Route 1
Star, ID 83669

Jimmie James
4675 N. Ten Mile Rd.
Meridian, ID 83642

Raymond D. Givens, Esq.
Box 2720
Boise, ID 83701

Randall C. Fredricks, Esq.
Clemems, Cosho & Humphrey
1110 First Interstate Bldg.
Boise, ID 83702

Ron Golus
Bureau of Reclamation
Box 020
550 West Fort Street
Boise, ID 83724

Bobby D. Fleenor
Idaho Department of Water Resources
Statehouse Mail
Boise, ID 83720

L. Glen Saxton
Idaho Department of Water Resources
Statehouse Mail
Boise, ID 83720

Norman C. Young
Idaho Department of Water Resources
Statehouse Mail
Boise, ID 83720

Project Superintendent, Boise, Idaho
PN-400 and 420

Don A. Olowinski, Esq.
Box 1617
Boise, ID 83701

Lawrence V. Gray
Elm Lane
Nampa, ID 83651

Carter Fritschle
4310 N. Linder Rd.
Eagle, ID 83616

Don Smitchger
3890 E. Ustick
Meridian, ID 83642

Dwayne Wolf
4895 N. Meridian Rd.
Meridian, ID 83642

Larry Sullivan, Esq.
P.O. Box 220
Vale, OR 97918

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

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NOV 1 2 2002

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

SCOTT L. CAMPBELL
(208) 338-8200

April 17, 1992

RECEIVED
APR 20 1992
Department of Water Resources

R. Keith Higginson, Director
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Re: In the Matter of Application for Permit No. 63-10240 in the Name of Boise Project Board of Control

Dear Keith:

I have enclosed a proposed original Subpoena for Mr. Lee Sisco, Watermaster for Water District No. 63, regarding the above-captioned matter. I request that you execute this Subpoena, pursuant to Idaho Department of Water Resources Rules of Practice and Procedure Rule 9,12.

I have enclosed a pre-addressed stamped envelope for return of the executed Subpoena, which we will serve upon Mr. Sisco.

Thank you for you anticipated cooperation with respect to this matter.

Very truly yours,

DAVIS WRIGHT TREMAINE

Scott L. Campbell

SLC:md
Enclosures

cc: Pioneer Irrigation District - Board of Directors

MICROFILMED
NOV 12 2002

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR WATER RIGHT NO. 63-10240 IN THE NAME OF BOISE PROJECT BOARD OF CONTROL	)	**SUBPOENA**

THE STATE OF IDAHO TO: Lee Sisco

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at the Second Floor Conference Room, Department of Water Resources, 1301 North Orchard, Boise, Idaho, on June 17 - 19, 1992, at 9:00 o'clock a.m., as a witness in the above- entitled matter.

DATED this 20TH day of April, 1992.

R. KEITH HIGGINSON
Director

MICROFILMED
NOV 12 2002

CONVERSATION MEMORANDUM

DATE 4/15/1992

FILE 63-10240

Scott Campbell

NAME OF PARTY Don Olowinski

EMPLOYEE D. Tuthill

RE: Status of Protests - Conference Call

Protestant Concern: Construction or maint act. shall not ~~accrue~~ injure Protestants. ~~to~~

a, b, e are contested (42-204)

Don Olowinski - Several witnesses - likely to last for 1 day

Scott Campbell - 3 to 5 witnesses

Review Mailing list (Change Scott Campbell's address, remove some interested parties)

- Statewide advertising needed (Lewiston, Twin Falls, Id Falls)

- Need 2 to 3 days for hearing

- Tentative dates: 17-19 Jun 92

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RECEIVED
APR 14 1992
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

SCOTT L. CAMPBELL
(208) 338-8200

April 13, 1992

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83706

Re: In the Matter of Application of the Bureau of Reclamation Ident. No. 6310239 and No. 6310240 Proceeding Before the Department of Water Resources for the Arrowrock Hydroelectric Project

Dear David:

I have enclosed an original and one copy of the Notice of Withdrawal of Protest of Settlers Irrigation District with respect to the above-referenced matter.

Very truly yours,

DAVIS WRIGHT TREMAINE

Scott L. Campbell

SLC:md
Enclosures

cc: Donald Olowinski, Esq.
All Parties to this action

MICROFILMED
NOV 12 2002

Scott L. Campbell
DAVIS WRIGHT TREMAINE
702 West Idaho St., Suite 700
Boise, ID 83702
(208) 338-8200

Attorneys for
Settlers Irrigation District

RECEIVED
APR 14 1992
Department of Water Resources
Western Regional Office

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

In the Matter of the Application of	
THE BUREAU OF RECLAMATION	Ident. No. 6310239 and No. 6310240
	NOTICE OF WITHDRAWAL

COMES NOW, Settlers Irrigation District, by and through its counsel of record, Scott L. Campbell of the firm of Davis Wright Tremaine, and hereby withdraws its protest against the above-referenced applications.

DATED this 13th day of April, 1992.

DAVIS WRIGHT TREMAINE

By: _____
Scott L. Campbell
Attorneys for
Settlers Irrigation District

MICROFILMED
1992

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 1992, a true and correct copy of the foregoing NOTICE OF WITHDRAWAL was mailed, postage prepared, to:

Don A. Olowinski, Esq.
Box 1617
Boise, ID 83701

Kenneth Henley
Boise Proj. Board of Control
214 Broadway Avenue
Boise, ID 83702

Bureau of Reclamation
Box 043 - 550 W. Fort St.
Boise, ID 83724

John J. Hockberger, Jr.
U.S. Dept. of Interior
Box 020 - 550 W. Fort St.
Boise, ID 83724

Donald J. Sayre
Route 2
Caldwell, ID 83605

Lawrence V. Gray
Elm Lane
Nampa, ID 83651

Kenneth Brush
Rural Rt. 8
Caldwell, ID 83605

Carter Fritschle
4310 N. Linder Rd.
Eagle, ID 83616

Dwaine Wolf
4895 N. Meridian Rd.
Meridian, ID 83642

Raymond D. Givens, Esq.
Box 2720
Boise, ID 83701

Randall C. Fredricks, Esq.
Clemons, Cosho & Humphrey
1110 First Interstate Bldg.
Boise, ID 83702

Larry Sullivan, Esq.
P. O. Box 220
Vale, OR 97918

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

Ron Golus
U.S. Dept. of Interior
Bureau of Reclamation
Box 043 - 550 W. Fort St.
Boise, ID 83724

Norman C. Young
Bobby D. Fleenor
L. Glen Saxton
Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706

MICROFILMED

Howard Fuller
Route 1
Star, ID 83669

Don Smitchger
3890 E. Ustick
Meridian, ID 83642

Scott L. Campbell

MICRO

NOV 1 2 2002

Dat File

RECEIVED
APR - 7 1992
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

SCOTT L. CAMPBELL
(208) 338-8200

April 6, 1992

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

Re: In the Matter of Application of the Bureau of Reclamation Ident. No. 6310239 and No. 6310240 Proceeding Before the Department of Water Resources for the Arrowrock Hydroelectric Project

Dear David:

This is to confirm our telephone conversation of April 3, 1992, regarding the above-captioned matter. During that conversation, I agreed to the hearing date of May 8, 1992, and a telephone conference call of April 13, 1992. With respect to the May 8, 1992 hearing date, I want to inform you in this correspondence that proceeding on that date, as I indicated during our telephone conversation, is acceptable as far as my schedule is concerned. Unfortunately, I have not yet received confirmation from my principal witnesses as to their availability on that date. My assumption at this point is that they will be available; however, I will be in communication with them in the next several days to confirm that fact. If their unavailability precludes preceding with the hearing on that date, I will contact you as soon as possible with alternative dates for a hearing.

Very truly yours,

DAVIS WRIGHT TREMAINE

Scott L. Campbell

SLC:md

cc: Board of Directors - Pioneer Irrigation District
Don A. Olowinski, Esq.
William F. Ringert, Esq.
Raymond D. Givens, Esq.
Randall C. Fredricks, Esq.

MICROFILMED
NOV 12 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-10240 IN THE NAME OF BOISE PROJECT BOARD OF CONTROL	NOTICE OF HEARING

On April 19, 1984, the Bureau of Reclamation filed with the Department of Water Resources an application for permit to appropriate the public waters of the State of Idaho, for hydropower purposes at Arrowrock Reservoir. The application was protested by Farmers Union Ditch Company, Settlers Irrigation District, Farmers Cooperative Canal Company and Pioneer Irrigation District, and pre-hearing conferences were held by the Department on May 16, 1985, and March 13, 1991. The application was assigned to the Boise Project Board of Control on February 4, 1991.

The Department has now set the matter of protest for a hearing to be held on Friday, May 8, 1992, at 9:00 a.m. at the Second Floor Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706. 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, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and

MICROFILMED
NOV 1 2 2002

Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 6th day of April, 1992.

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

I hereby certify that on the 8th day of April, 1992, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Sue Taylor
Secretary, Office Coordinator

Certified Mail

Scott L. Campbell
ELAM, BURKE, AND BOYD
(Hand Delivered to
Lisa Shepard)
Boise, ID 83701

Don A. Olowinski, Esq.
Box 1617
Boise, ID 83701

Kenneth Henley
Boise Proj. Board of Control
214 Broadway Ave.
Boise, ID 83702

Non-Certified Mail

Bureau of Reclamation
Box 043 - 550 W Fort St
Boise, ID 83724

John J. Hockberger, Jr.
U.S. Dept. of Interior
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Bobby D. Fleenor, IDWR

L. Glen Saxton, IDWR

Normal C. Young, IDWR

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CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR PERMIT

In accordance with IDAHO CODE, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

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

2) Is the proposed water supply insufficient for the purposes intended?

3) Is the application made in good faith or for delay or speculative purposes?

4) Has the applicant sufficient financial resources with which to complete the proposed project?

5) Will the proposed use conflict with the local public interest?

6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The Applicant has the initial burden of proof on issues 1,2,3,4,& 6 above, that is, the applicant has the burden of coming forward with evidence for evaluation of those criteria.

The initial burden of proof on issue 5, local public interest, lies with the both the applicant and protestant as to factors which they are most knowledgable and cognizant of. The applicant has the ultimate burden of persuasion with respect to this issue.

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing.

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At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not predjudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

EXHIBITS

If any party at a hearing intends to present an exhibit to augment the hearing record, such party shall in advance of the hearing, prepare sufficient copies of the exhibit for distribution to all parties at the hearing.

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RECEIVED
FEB 03 1992
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

LAW OFFICES

702 WEST IDAHO STREET · SUITE 700 · BOISE, IDAHO 83702
(208) 338-8200

SCOTT L. CAMPBELL
(208) 338-8219

January 31, 1992

Don A. Olowinski, Esq.
Hawley Troxell Ennis & Hawley
P. O. Box 1617
Boise, Idaho 83701

Re: Proposed Conditions for Prospective Water Permit
No. 63-10240 Dept. of Int.

Dear Don:

Thank you for your correspondence of January 28, 1992. I stand corrected. I apologize for the mistake. Unfortunately, I was relying upon my memory which is obviously failing due to the ravages of time.

I will be meeting with my clients next week to discuss their position with respect to this matter. I may be proposing alternative language after those meetings.

I also believe that it is advisable to conduct a second prehearing conference in this matter. I recommend that we discuss available dates at that time for a hearing if alternative language cannot be agreed upon by the parties. My schedule has become more complicated since my last correspondence. Consequently, I cannot commit to a hearing on this matter in April at this time.

I will provide you with proposed alternative language for a condition to the prospective water permit following my meeting with my clients if they elect to proceed on that course of action.

Very truly yours,

DAVIS WRIGHT TREMAINE

Scott L. Campbell

SLC:kj
cc: David R. Tuthill, Jr., P.E.

MICRO
FEB 1 7 1992

RECEIVED
JAN 29 1992
Department of Water Resources
Western Regional Office
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TELEPHONE
(208) 233-0845

January 28, 1992

Scott L. Campbell, Esq.
DAVIS, WRIGHT, TREMAINE
702 W. Idaho St., Suite 700
Boise, ID 83702

Re: **Proposed Conditions For Prospective Water Permit No. 63-10240**

Dear Scott:

I have enclosed a copy of my letter of June 13, 1991. That letter requests that you submit alternative language for our consideration, so I am puzzled by your letter of January 23, 1992. We are still willing to consider alternative language.

Considering the delays in resolving this matter, I still believe it advisable to have a prehearing conference and to have the Department of Water Resources schedule a hearing. I would like to have this hearing in April so that we may get this matter resolved.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

Don A. Olowinski

Enclosure
cc: **David R. Tuthill, Jr., P.E.,**
IDWR

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MAY 12 2002

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Department of Water Resources
Western Regional Office

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SCOTT L. CAMPBELL
(208) 338-8219

January 23, 1992

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Application for Permit No. 63-10240 for a Hydropower Plant at Arrowrock Dam

Dear David:

I am responding to your correspondence of January 17, 1992, regarding the above-captioned matter.

First, please note that my affiliation has changed and I am now a partner of the law firm of Davis Wright Tremaine at the above-referenced address. I will continue to represent the same parties in this proceeding. Please direct all future correspondence and documents to me at this address.

Second, concerning the status of negotiations regarding revised condition language, I must admit that I have not responded to Mr. Olowinski's correspondence of June 13, 1991. I apologize for this oversight. I can say, however, that my clients are unwilling to accept the condition language presented in Mr. Olowinski's correspondence of that date. I will contact Mr. Olowinski to see if there is any possibility of additional compromise on the part of his clients. If there is no additional possibility of compromise, I also recommend that a hearing date be scheduled.

Unfortunately, a hearing date on March 19, 1992 conflicts with a scheduled hearing date on a contested matter I have before the Idaho Department of Water Resources in the Eastern Region. Consequently, I would not be available for a hearing on that date.

2 2092

Therefore, I believe that a hearing date during the last week of April or sometime in May would be appropriate.

Very truly yours,

DAVIS WRIGHT TREMAINE

Scott L. Campbell

SLC:md

pc: Don A. Olowinski, Esq.
Board of Directors (Settlers Irrigation District)
Board of Directors (Pioneer Irrigation District)

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NOV 1 2002

JAN 27 1992
Department of Water Resources
Western Regional Office

DAVIS WRIGHT TREMAINE

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SCOTT L. CAMPBELL
(208) 338-8219

January 23, 1992

Don A. Olowinski, Esq.
Hawley, Troxell, Ennis & Hawley
P. O. Box 1617
Boise, Idaho 83701

Re: Application for Permit No. 63-10240 for a Hydropower Plant at Arrowrock Dam

Dear Don:

I have enclosed a copy of my correspondence to Mr. David R. Tuthill, Jr., P.E., Manager of the Western Regional Office of Idaho Department of Water Resources. I am also providing a response to your correspondence of June 13, 1991, and the copy of your correspondence of January 20, 1992 to Mr. Tuthill.

As I have indicated in my correspondence to Mr. Tuthill, the alternative language proposed in your correspondence of June 13, 1991 is unacceptable to my clients. If you believe it would be productive, I can propose alternative language in response to your proposal. However, if your clients are unwilling to compromise from the language proposed in your correspondence of June 13, 1991, I do not believe that this additional effort would be worthwhile. In short, my clients are willing to continue to negotiate with regard to this issue, if there is an expression of a possibility of compromise from the language set forth in your June 13, 1991 correspondence. I will be happy to discuss your client's position in this regard at your convenience.

Very truly yours,

DAVIS WRIGHT TREMAINE

Scott L. Campbell

SLC:md
Enclosures

MICRO[illegible] JAN 1[illegible] 1992

pc: David R. Tuthill, Jr., P.E.

RECEIVED
JAN 22 1992
Department of Water Resources
Western Regional Office

DON A. OLOWINSKI

HAWLEY TROXELL ENNIS & HAWLEY

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(208) 233-0845

6 3-10240

January 20, 1992

David R. Tuthill, Jr., P.E.
Department of Water Resources
State of Idaho, Western Region
2735 Airport Way
Boise, ID 83705-5082

Re: **Arrowrock Dam Hydroelectric Project**

Dear Dave:

I have never received a response to my letter of June 13, 1991, stating that we would be willing to consider revised condition language. I thus conclude that it would be appropriate to schedule a hearing.

In that regard, I suggest we have another prehearing conference to discuss which issues will be raised at the hearing so that it can proceed more smoothly. As to the hearing date, I have a trial currently scheduled which may conflict with the March 19 date, and I would respectfully request that the hearing date be moved into April.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

Don A. Olowinski

cc: Scott L. Campbell, Esq.

MICR
NOV

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 17, 1992

DON A OLOWINSKI ESQ
HAWLEY TROXELL ENNIS & HAWLEY
PO BOX 1617
BOISE ID 83701

SCOTT CAMPBELL ESQ
ELAM BURKE & BOYD
PO BOX 1539
BOISE ID 83701-1539

Re: Application for Permit #63-10240 for a Hydropower Plant at Arrowrock Dam

Gentlemen:

At the conference in this matter held on March 13, 1991, the Department agreed to delay action relative to the application pending negotiations between the applicant and protestant regarding language for proposed conditions of approval of a water right permit. The last correspondence this office has received regarding the proposed conditions is a letter dated June 13 from Don Olowinski stating that his client would be willing to consider revised condition language. The purposes of this letter are to request an update regarding the status of the proposed condition negotiations, and to identify a proposed hearing date of March 19, 1992, should the negotiations be unsuccessful.

Please advise this office no later than February 7, 1992, regarding the status of the negotiation, and the acceptability, if necessary, of the proposed hearing date.

Sincerely,

David R. Tuthill, Jr.

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

DRT:st

MICRO
JAN 1992

Submitted by Tom McCreedy (M-K)
3/23/91

ARROWROCK DAM HYDROELECTRIC PROJECT
WATER CONTROL PLAN
KEY FACTS

Section	Item
7-02	**Authorized Reservoir Purposes**

- Normal End-Season Storage - Lake Lowell - 120,000 acre-feet. If below 120,000 start filling in February or March. Complete filling as soon after April 1 as possible.
- Flood Control. November 1 through spring high-water period.
- Irrigation. Draft reservoirs after flood control. Arrowrock drafted first to maintain powerhead at Anderson Ranch.
  - ► When Arrowrock storage is gone, draft Lucky Peak and Anderson Ranch. Do not exceed powerplant capacity at Anderson.
  - ► After September 1, meet irrigation demand from Lucky Peak.

7-03 **Use Priorities**

- Flood control and irrigation.
- IDF&G - 50,000 acre-feet stream flow maintenance.
- Non-contracted space - 102,300 acre-feet also for stream flow maintenance.
- Secondary uses include Anderson Ranch power generation and recreation in all three reservoirs.

7-05 **Flood Control Plan**

- Space requirements and rule curves.
- Lucky Peak non-contracted space.
  - ► 13,900 acre-feet between 3055 and 3060 exclusive flood control space - used only in emergency.

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Section	Item
7-05	**Flood Control Plan (continued)**

- 102,300 acre-feet streamflow maintenance and industrial uses.
- Last 60,000 acre-feet of space filled by mutual agreement of agencies.

Flood Control Objectives

	Flood Control Objective Boise River at Glenwood Gage (cfs)	Assumed Irrigation Diversions Lucky Peak to Glenwood Gage (cfs)	Flood Control Objective Lucky Peak Release (cfs)
1 Jan - 31 Mar	6,500	0	6,500
1 Apr - 30 Apr	6,500	1,600	8,100
1 May - 31 May	6,500	3,700	10,200
1 Jun - 31 Jun	6,500	3,800	10,300

7-06 **Irrigation Water Supply Plan**

- Various water rights for storage
- 5,200 acre-feet reserved for power at Anderson Ranch
- 23,000 acre-feet reserved for Hillcrest area

* Districts hold substantially all storage rights in Arrowrock and Anderson Ranch

** Other Districts hold substantially all of 111,950 acre-feet space allocated for irrigation in Lucky Peak

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Section	Item

7-06 **Irrigation Water Supply Plan (continued)**

- Water Rights

Priority	Rate (cfs)	Volume (acre-feet)	Remarks[1]/
14 December 1903	1,354.58*	--	New York Canal (BD)
13 January 1911	8,000.00	--	Arrowrock (BD)
25 June 1938	--	15,000	Arrowrock (L)
9 December 1940	--	493,161	Anderson Ranch (L)
12 April 1963	--	293,050	Lucky Peak (P)

1/ BD - Bryan Decree; L - License; P - Permit. All of these rights are held by the Bureau of Reclamation for the Department of the Interior.

* Can be used to store water in Lake Lowell.

- Storage rights are primary from November 1 to April 1.
- April 1 to October 31 natural flow rights are = in stature
- Stored water cannot exceed water right or reservoir volume.
- When flood control exceeds irrigation demand, all water considered surplus.
- Minimum flow targets after irrigation season - Lucky Peak 150 cfs.

7-08 **Hydroelectric Power Plan (Secondary)**

- Do not exceed capacity of turbines at Anderson Ranch except for flood control (not stated here, but is current practice).
- Lucky Peak and Arrowrock powerplants (when developed) also have secondary rights if not affecting flood control or irrigation.

Section	Item
7-09	**Recreation Plan (Secondary)**

- Special emphasis on optimizing recreation at Lucky Peak Lake - Maintain full from Memorial Day (if allowed by flood control) to Labor Day (However, can be lowered to meet irrigation demand).
- Favor Lucky Peak recreation by drafting Arrowrock.
- Desirable to enhance Anderson Ranch recreation to the extent possible.

7-10 **Fish and Wildlife Plan**

- Minimum conservation pools
  - ► Lucky Peak 28,767 acre-feet (elevation 2,905).
  - ► Arrowrock 28,700 acre-feet (elevation 3,078.3 - Not maintained in dry years).
  - ► Anderson Ranch 41,000 acre-feet (elevation 4,039.6).
- Minimum flows - verbal agreements.
  - ► Lucky Peak 137 cfs (per 7-11 target is 150 cfs).
  - ► Anderson Ranch 300 cfs non-irrigation season (November 1 through April 1).
  - ► Anderson Ranch 600 cfs to 1,600 cfs irrigation season.

Changes Being Considered
1) Arrowrock Minimum Pool - 28,700 (or) 50,000
2) Delay Lucky Peak fill (dry years)
3) Reduce spring transfer to Lake Lowell
4) Limit Arrowrock discharge to Turbine capacity except for flood control
5) Maintain Lucky Peak recreation level at EL. 3045 or 3050 (dry years).

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✓Don
File

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DON A. OLOWINSKI

RECEIVED
JUN 14 1991
Department of Water Resources
Western Regional Office

June 13, 1991

Scott L. Campbell, Esq.
ELAM, BURKE & BOYD
P.O. Box 1539
Boise, Idaho 83701-1539

Re: **Proposed Conditions For Prospective Water Permit No. 63-10240**

Dear Scott:

This is to confirm our conversation last week in which I advised you I would be willing to consider revised language, if you can propose some. As I understand it, you were going to check with your clients and get back to me. I would appreciate a prompt response, however, so that we can schedule formal proceedings if we cannot agree.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

Don Olowinski

Don A. Olowinski

cc: **David R. Tuthill, Jr.**

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✓ Don
File —

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SCOTT L. CAMPBELL

RECEIVED
JUN 4 1991
Department of Water Resources
Western Regional Office

June 3, 1991

Don A. Olowinski, Esquire
HAWLEY, TROXELL, ENNIS & HAWLEY
P. O. Box 1617
Boise, Idaho 83701-1617

RE: Proposed Conditions for Prospective Water Permit No. 63-10240

Dear Don:

I am responding to your correspondence of March 19, 1991, regarding the above captioned matter.

Unfortunately, my clients cannot accept the language which you suggested as a proposed Condition No. 2 to the prospective water permit. If your clients are unwilling to agree to the proposed Condition No. 2 set forth in my correspondence of March 18, 1991, I am afraid that it will be necessary to proceed to a formal hearing before the Department of Water Resources concerning this matter.

While I am not foreclosing the possibility of reaching a compromise with respect to the language for a proposed Condition No. 2, I do not believe that a compromise is likely unless your clients are willing to accept the major points contained in the proposed Condition No. 2 set forth in my correspondence of March 18, 1991. We may be able to compromise on some issues, but acceptance of the language contained in the Federal Energy Regulatory Commission license will not be sufficient.

I await your reply.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

SLC:jm

cc: David R. Tuthill, Jr.
Board of Directors: Settlers Irrigation District
Board of Directors: Pioneer Irrigation District

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NOV

/Dor File

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MAR 1991

March 19, 1991

Scott L. Campbell, Esq.
ELAM, BURKE & BOYD
P.O. Box 1539
Boise, Idaho 83701

Re: **Proposed Conditions For Prospective Water Permit No. 63-10240**

Dear Scott:

I have reviewed the proposed conditions in your letter of March 18, 1991. I can recommend my clients accept Condition No. 1, which is substantially the same language as contained in the Lucky Peak Hydroelectric Project Water Permit No. 63-9019.

As to Condition No. 2, I would like to maintain consistency with the Districts' underlying Federal Energy Regulatory Commission license. Your proposed language appears to be similar to that which you requested FERC include in the Districts' license, and which it rejected as overbroad. I would therefore propose the following language:

> The permit holders' construction, operation, and maintenance of the Project works and features shall not reduce or impair the delivery of water under existing water rights established under state law in the Boise River or any of its tributaries.

Please give me your comments.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY

Don A. Olowinski

Don A. Olowinski

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cc: **David R. Tuthill, Jr.**

✓ Don
Protest File

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SCOTT L. CAMPBELL

MAR 20 1991

March 18, 1991

Don A. Olowinski, Esquire
HAWLEY, TROXELL, ENNIS & HAWLEY
P. O. Box 1617
Boise, Idaho 83701-1617

RE: Proposed Conditions for Prospective
Water Permits Nos. 63-10239 and 63-10240

Dear Don:

Pursuant to our discussions during the status conference conducted at the Idaho Department of Water Resources State Office on Wednesday, March 13, 1991, I have prepared the following language as conditions to the above referenced permits. As we previously discussed, my clients would voluntarily withdraw their pending protests against the Applications for Permit in exchange for inclusion of this language as conditions on the permits if issued by the Department of Water Resources.

The first condition is based upon language contained in the Lucky Peak Hydroelectric Project Water Permit No. 63-9019. The second condition is language which I prepared.

Condition No. 1:

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 or other authorized purposes.

Condition No. 2:
No direct or indirect activities or actions of the permit holder, or its agents, contractors or assigns, relating, connected with, or

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involving any investigations, studies, construction, testing, operation, maintenance, repair, removal, or replacement of the hydroelectric project ("hydroelectric project" includes, but is not limited to penstocks, gates, valves, turbines, generators, buildings, concrete work and related improvements) authorized under this permit, or any modifications thereof, including any subsequently issued license, shall, in any manner or degree, diminish, decrease, interrupt, interfere with, reduce, impede or impair the delivery, storage, accumulation or distribution of water in the Boise River or any of its tributaries under existing water rights established under state law or any contracts or agreement between Idaho irrigation districts or canal companies and the United States of America. Violation of this condition shall be grounds for voiding this permit or any license based thereon.

Please contact me with your reactions.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

SLC:jm

cc: Board of Directors:
Pioneer Irrigation District
Settlers Irrigation District
David R. Tuthill, Jr.

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NOV 12 2002

ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

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208-384-5844

SCOTT L. CAMPBELL

March 18, 1991

John J. Hockberger, Jr., Esquire
Office of the Solicitor
U. S. BUREAU OF RECLAMATION
550 West State Street
Boise, Idaho 83724

RE: Proposed Conditions for Prospective Water Permits Nos. 63-10239 and 63-10240

Dear Jack:

Pursuant to our discussions during the status conference conducted at the Idaho Department of Water Resources State Office on Wednesday, March 13, 1991, I have prepared the following language as conditions to the above referenced permits. As we previously discussed, my clients would voluntarily withdraw their pending protests against the Applications for Permit in exchange for inclusion of this language as conditions on the permits if issued by the Department of Water Resources.

The first condition is based upon language contained in the Lucky Peak Hydroelectric Project Water Permit No. 63-9019. The second condition is language which I prepared.

Condition No. 1:

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 or other authorized purposes.

Condition No. 2:
No direct or indirect activities or actions of the permit holder, or its agents, contractors or assigns, relating, connected with, or

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involving any investigations, studies, construction, testing, operation, maintenance, repair, removal, or replacement of the hydroelectric project ("hydroelectric project" includes, but is not limited to penstocks, gates, valves, turbines, generators, buildings, concrete work and related improvements) authorized under this permit, or any modifications thereof, including any subsequently issued license, shall, in any manner or degree, diminish, decrease, interrupt, interfere with, reduce, impede or impair the delivery, storage, accumulation or distribution of water in the Boise River or any of its tributaries under existing water rights established under state law or any contracts or agreement between Idaho irrigation districts or canal companies and the United States of America. Violation of this condition shall be grounds for voiding this permit or any license based thereon.

Please contact me with your reactions.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

SLC:jm

cc: Board of Directors:
Pioneer Irrigation District
Settlers Irrigation District
David R. Tuthill, Jr.

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ELAM, BURKE AND BOYD
ATTORNEYS AND COUNSELORS AT LAW

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
TELECOPIER
208-384-5844

SCOTT L. CAMPBELL

March 18, 1991

William F. Ringert, Esquire
RINGERT, CLARK, HARRINGTON, REID, CHRISTENSON & KAUFMAN, CHARTERED
P. O. Box 2773
Boise, Idaho 83701-2773

RE: Proposed Conditions for Prospective Water Permits Nos. 63-10239 and 63-10240

Dear Bill:

Pursuant to our discussions during the status conference conducted at the Idaho Department of Water Resources State Office on Wednesday, March 13, 1991, I have prepared the following language as conditions to the above referenced permits. As we previously discussed, my clients would voluntarily withdraw their pending protests against the Applications for Permit in exchange for inclusion of this language as conditions on the permits if issued by the Department of Water Resources.

The first condition is based upon language contained in the Lucky Peak Hydroelectric Project Water Permit No. 63-9019. The second condition is language which I prepared.

Condition No. 1:

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 or other authorized purposes.

Condition No. 2:
No direct or indirect activities or actions of the permit holder, or its agents, contractors or assigns, relating, connected with, or

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involving any investigations, studies, construction, testing, operation, maintenance, repair, removal, or replacement of the hydroelectric project ("hydroelectric project" includes, but is not limited to penstocks, gates, valves, turbines, generators, buildings, concrete work and related improvements) authorized under this permit, or any modifications thereof, including any subsequently issued license, shall, in any manner or degree, diminish, decrease, interrupt, interfere with, reduce, impede or impair the delivery, storage, accumulation or distribution of water in the Boise River or any of its tributaries under existing water rights established under state law or any contracts or agreement between Idaho irrigation districts or canal companies and the United States of America. Violation of this condition shall be grounds for voiding this permit or any license based thereon.

Please contact me with your reactions.

Very truly yours,

ELAM, BURKE AND BOYD

Scott L. Campbell

SLC:jm

cc: Board of Directors:
Pioneer Irrigation District
Settlers Irrigation District
David R. Tuthill, Jr.

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 29, 1991

U.S. Bureau of Reclamation
P.O. Box 043
550 W. State St
Boise, ID 83724

RE: PROTESTED APPLICATION FOR PERMIT NO. 63-10240 - USBR

Gentlemen:

Department records show that on April 19, 1984, Application for Permit No. 63-10240 was submitted in the name of the Bureau of Reclamation (USBR) to appropriate 5,470 cfs of water of the Boise River for hydro-generation at Arrow Rock Dam. Department records also show that the Federal Energy Regulatory Commission (FERC) has issued license no. 4656 in connection with the project to several irrigation districts which form most of the Boise Project Board of Control.

Please advise the department of your intentions with respect to the pending application. Idaho Code requires that a water appropriation permit be obtained before commencing construction of the project. Either the FERC license holder must make new application or the pending filing be assigned to them.

Since the pending application in the name of the USBR is protested, a hearing will need to be held if it is assigned for use to the project sponsors. If a new filing is made, opportunity to file protests will be provided to those concerned about the project.

The department will appreciate your timely response to this inquiry. Please feel free to contact the department if you have questions.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - W. Region
Boise-Kuna Irrig. Dist.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Boise-Kuna Irrigation District, et al. — Project No. 4656-008 Idaho

ORDER GRANTING EXTENSION OF TIME

(Issued January 9, 1991)

The licensee for the Arrowrock Dam Project has requested extensions of time to comply with articles 101-110, 112-115, 117, and 304.[1] The licensee has also requested an extension of the deadline for commencing project construction. The reasons advanced by the licensee in support of the requested extensions of time are reasonable and justify the extensions. The deadline for completion of construction will be similarly extended.

The Director orders:

(A) The deadline for commencing project construction is extended to March 26, 1993.

(B) The deadline for completing project construction is extended to March 26, 1995.

(C) The deadlines for filing the items listed below are extended to June 15, 1992, or 90 days before commencement of construction, whichever is sooner:

Article	Item
101	Special-use Permit
102	Evidence of Consultation with the Forest Service
103	Fish and Wildlife Habitat Mitigation Plan
104	Recreation Plan
105	Soil Erosion Plan
106	Solid Waste Plan
107	Hazardous Substance Plan
108	Excess Construction/Tunnel Spoils Plan
109	Archeological and Cultural Resources Plan
110	Preservation and Enhancement Plan

[1] The licensee was granted extensions of time to January 26, 1991, to comply with article 304 by order issued on July 27, 1989, articles 101 and 109 by order issued on October 19, 1989, and articles 102-108, 110, 112-115, and 117 by order issued on April 25, 1990.

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112	Pesticide and Herbicide Plan
113	Engineering Design and Mitigation Plan of the Project Area's Resources
114	Survey and Mitigation Plan of the Endangered Species
115	Engineering Design Plan for Road Improvement

(D) The deadline for entering into an agreement with the Bureau of Reclamation according to article 117 is extended to June 15, 1992, or 90 days before commencement of construction, whichever is sooner.

(E) The deadline for entering into an agreement with the Corps of Engineers according to article 304 is extended to June 15, 1992, or 90 days before commencement of construction, whichever is sooner.

(F) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. §385.71

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

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JAN 15 1991
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 63-10240 AND 63-10239 IN THE NAME OF THE BUREAU OF RECLAMATION	NOTICE OF CONFERENCE

On April 19, 1984, the Bureau of Reclamation filed with the Department of Water Resources the above-referenced applications for permit to appropriate the public waters of the State of Idaho. The applications were protested by Farmers Union Ditch Company, Settlers Irrigation District, Farmers Cooperative Canal Company and Pioneer Irrigation District, and a pre-hearing conference was held by the Department on May 16, 1985.

The Department has set the matter of protest for a status conference to be held on Wednesday, March 13, 1991, at 2:00 p.m. in the Second Floor Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. The purposes of the conference are to discuss and review (1) the present status of the projects, (2) the proposed assignment of 63-10240, a copy of which is attached, and (3) the present position of the protestants with respect to the applications. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 23rd day of February, 1991.

David R. Tuthill Jr.

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

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I hereby certify that on the 25th day of February, 1991, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Secretary

Bureau of Reclamation
WR # 63-10240

Certified Mail

Kenneth Brush
Rural Rt. 8
Caldwell, ID 83605

Larry Sullivan, Esq.
P.O. Box 220
Vale, OR 97918

Scott L. Campbell
ELAM, BURKE, AND BOYD
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Carter Fritschle
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Eagle, ID 83616

William F. Ringert, Esq.
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Kenneth Henley
Boise Proj. Board of Control
214 Broadway Ave.
Boise, ID 83702

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Meridian, ID 83642

Bobby D. Fleenor, IDWR

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Normal C. Young, IDWR

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CLEMONS, COSHO & HUMPHREY
1110 First Interstate Bldg.
Boise, ID 83702

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United States Department of the Interior

BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
FEDERAL BUILDING & U.S. COURTHOUSE
BOX 043-550 WEST FORT STREET
BOISE, IDAHO 83724-0043

IN REPLY REFER TO:
PN 424

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FEB 15 1991
Department of Water Resources
Western Regional Office

FEB -5 1991

RECEIVED
FEB 06 1991
Department of Water Resources

Mr. Kenneth Henley
Boise Project Board of Control
214 Broadway Avenue
Boise ID 83702

Subject: Assignment of Application for Permit (Water Rights)

Dear Mr. Henley:

Our records indicate that we have received payment of $58,195.00, as requested in our letter of August 6, 1990. This amount is the total of the $8,195.00 application fee paid by the United states for the water right permit, and the $50,000 study cost agreed to by the Board of Control (Contract No. 4-AB-10-06590).

Enclosed is a completed form for assignment of the water right application for permit No. **63-10240** to appropriate 5,470 cubic feet per second of water at Arrowrock Dam for power generating purposes to the Boise Project Board of Control.

A copy of the completed assignment is being provided to the Idaho Department of Water Resources with a copy of this letter.

Sincerely,

Mary E. Von Ronkey

Regional Supervisor of
Water, Power and Lands

Enclosure

bc: Project Superintendent, Boise ID
w/cy of encl.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District	)	Project No. 4656-002

ORDER ISSUING LICENSE

(Issued March 27, 1989)

Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District (licensees) have jointly filed an application for a major license under Part I of the Federal Power Act (FPA) to construct, operate and maintain the Arrowrock Dam Project No. 4656 1/ in Elmore and Ada Counties, Idaho. The project would be located at the U.S. Bureau of Reclamation's (Reclamation) existing Arrowrock Dam and Reservoir on the South Fork of the Boise River, immediately upstream of licensed Project No. 2832, located at the U.S. Corps of Engineers' (Corps) Lucky Peak Dam and Reservoir. Parts of the project would occupy lands managed by Reclamation and the Corps and lands managed by the U.S. Forest Service within the Boise National Forest.

Intervention in this proceeding was requested by and granted to the Idaho Department of Fish and Game, the Idaho Department of Water Resources, the Idaho Department of Recreation, Idaho Power Company, Pioneer Irrigation District, and Settlers Irrigation District.

Notice of the application has been published, and comments have been received from interested agencies, intervenors, and individuals. In determining whether to issue this license, the Commission has considered all comments and protests filed. Several of the intervenors and commenters expressed concerns regarding the project's environmental impacts. These concerns are addressed in this order and in the Environmental Assessment (EA) and the Safety and Design Assessment (S&DA), which are

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1/ The application was supplemented by filings made on March 14, and September 12, 1985, and May 27, 1986.

attached to and made a part of this license. The significant concerns of commenters and intervenors are discussed below.

Project Description

The proposed project would include a powerhouse and penstock that would be installed at BOR's existing Arrowrock Dam and Reservoir. The powerhouse would contain two 30-MW generating units and would generate 167.6 gWh annually. A more detailed description of the project as licensed herein is contained in Ordering Paragraph (B) below. The project would be operated in essentially a peaking mode in cooperation with Reclamation, which operates the dam and makes all releases.

Changes in Proposed Operation

On March 14, 1988, the licensees notified the Commission that, contrary to the original plans in their application for license, Project No. 4656 would not be operated in a manner that would require a 5-foot drawdown during summer months of the downstream Lucky Peak Lake, the reservoir for Lucky Peak Project No. 2832, which is also licensed to the licensees. Operating the project without a 5-foot drawdown of Lucky Peak Lake in the summer would eliminate several of the impacts to environmental resources predicted in the Commission staff's EA. Without a 5-foot drawdown, existing irrigation systems around Lucky Peak Lake would not be dewatered, and most of the project's impacts to recreational facilities at Lucky Peak Lake, particularly beaches, marinas and boat docks, would be eliminated. Also, visual impacts associated with drawdown would not occur. Consequently, the articles recommended by the Corps to deal with drawdown at Lucky Peak Lake have not been included in this license.

Reclamation and Forest Service Conditions

Section 4(e) of the FPA, 16 U.S.C. § 797(e), provides that licenses issued within any United States reservation must be found by the Commission to not interfere or be inconsistent with the purpose for which such reservation was created, and must include such conditions as the Secretary of the department under whose supervision such reservation falls shall deem "necessary for the adequate protection and utilization of such reservation." Arrowrock Dam and Reservoir, which is operated by the Department of the Interior through Reclamation, and Boise National Forest, which is managed by the Department of Agriculture's National Forest Service, are both federal reservations for purposes of the FPA. Therefore, the Secretary of the Interior and the Secretary of Agriculture both have authority to impose Section 4(e) conditions on the Project No. 4656 license. By letters to the Commission dated November 6, 1983, and November 14, 1983, the

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Department of the Agriculture and the Department of the Interior respectively submitted their Section 4(e) conditions, which have been made a part of this license. 2/ 3/

Recommendations of Federal and State Fish and Wildlife Agencies

Section 10(j) of the FPA, as amended by the Electric Consumers Protection Act of 1986 (ECPA), Pub. L. No. 99-495, requires the Commission to include license conditions, based on recommendations submitted pursuant to the Fish and Wildlife Coordination Act by federal and state fish and wildlife agencies, for the protection, mitigation, and enhancement of fish and wildlife.

The Idaho Department of Fish and Game (Idaho Fish and Game) filed recommendations for fish and wildlife conditions, which are

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2/ The Forest Service's conditions are contained in license Articles 101 through 116. Interior's (Reclamation's) conditions are contained in Articles 117 through 126.

3/ In the Commission's view, the charges for reimbursing Reclamation for certain expenses required by items 2(a) through 2(e) of Article 117, which is a Section 4(e) condition provided by Reclamation, are not permissible. These expenses all appear to be costs of administering Part I of the FPA. The Commission believes that Article 201 is the exclusive vehicle for reimbursing the United states for the costs of administering Part I of the FPA, for use of the U.S. lands, and for the use of a federal dam.

The Commission also questions the validity of two of the Forest Service's Section 4(e) conditions, Articles 111 and 116. Article 111, which requires prior approval by the Forest Service of any changes in the project, purports to vest in the Forest Service some authority over potential amendments to license, even if such amendments do not concern project facilities or features located on a federal reservation. Under Article 116 the Secretary of Agriculture asserts the authority to impose new Section 4(e) conditions on any changes to the project specifications filed pursuant to license articles 2 or 3, irrespective of the nature and scope of the revision and perhaps irrespective of whether the change affects the federal reservation. It is not clear that the authority reserved in Articles 111 and 116 is appropriately within the scope of the Forest Service's Section 4(e) powers. See our comments in Camille E. Held, 42 FERC ¶ 61,032 (1988) at pp. 61,219-220.

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addressed in the EA for the Arrowrock Dam Project. With the exception of one recommendation regarding fish stocking for the project area, the EA concurred with all fish and wildlife recommendations, as discussed below. As is also discussed below (see "Fishery Concerns"), the Commission and Idaho Fish and Game have reached agreement on the fish stocking question.

Requests for Environmental Impact Statements, Consolidation, and Hearings

On August 29, 1986, the Commission staff issued its EA for Project No. 4656. On October 30, 1986, intervenor Pioneer Irrigation District (Pioneer) filed comments on the EA. Characterizing the EA's findings as patently deficient, Pioneer contends that construction and operation of Project No. 4656 would constitute a major federal action significantly affecting the quality of the human environment, primarily because of the project's potential to adversely affect flood control, irrigation, and contractual and statutory water storage rights at Arrowrock Dam and Reservoir. Pioneer therefore argues that under the requirements of the National Environmental Policy Act the Commission staff should prepare an Environmental Impact Statement (EIS) for the project and hold a hearing on the EIS' findings.

We conclude that an EIS is not required. The Commission's determination that an EIS is not needed will be upheld unless the determination is found to be unreasonable. 4/ Parties seeking to reverse a decision not to prepare an EIS have the burden of presenting facts and evidence contradicting the EA's findings. 5/

The EA indicated that Project No. 4656 would be operated in accordance with mandatory license conditions provided by Reclamation pursuant to Section 4(e) of the FPA. These conditions require that the project not affect the structural integrity or operation of Arrowrock Dam and Reservoir or in any way impair Reclamation's ability to provide existing services to irrigation water users. 6/ Pioneer alleges no facts which would indicate that the EA's finding of no significant impact is unreasonable in light of the clear restrictions Reclamation has

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4/ See Foundation for North America Wild Sheep v. United States Department of Agriculture, 681 F.2d 1172, 1177 (9th Cir. 1982).

5/ See Winnebago Tribe of Nebraska v. Roy, 621 F.2d 269, 271 (8th Cir. 1979).

6/ See EA at pp 5-7 and License Article 121.

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placed on the project operation. Pioneer's requests for an EIS and public hearings are therefore denied. 7/

Pioneer also asserts that the environmental impacts and operational requirements of Project No. 4656 are interrelated with those of the licensed Lucky Peak Project No. 2832, located immediately downstream. Pioneer therefore requests that the Commission reopen the Project No. 2832 proceeding, consolidate it with the Project No. 4656 proceeding, prepare a revised EIS, and hold public hearings. In an order issued today 8/ in Project No. 2832, we have denied those requests, since the Lucky Peak Project No. 2832 license, issued in 1980, is final and non-reviewable.

Impacts On Water Use

Much of the Boise River system is regulated by reservoirs. The operation of Anderson Ranch Dam, a Reclamation facility operated for power production, irrigation, and flood control approximately 48 miles upstream from Arrowrock Dam, modifies the flow regime of the South Fork Boise River upstream of Arrowrock Reservoir. Water withdrawn from Arrowrock Reservoir is in turn released into the upper end of Lucky Peak Lake, which the Corps regulates for flood control and irrigation. The storage capacity of Arrowrock Reservoir is entirely allocated to irrigation, and the reservoir is drawn down before Anderson Ranch Reservoir and Lucky Peak Lake are lowered to meet irrigation demands. During dry years, Arrowrock Reservoir has been almost completely emptied.

7/ On December 23, 1986, the licensees filed an answer to Pioneer's comments on the EA. On March 23, 1987, Pioneer filed a motion to strike from the proceeding record certain allegedly prejudicial portions of the licensees' December 23, 1986 response relating to a letter dated December 10, 1986, from a Reclamation Regional Director to the Boise Board of Control, which is comprised primarily of the five irrigation districts comprising the licensees. The Reclamation Regional Director's letter asserts that the project would not affect irrigators on their water storage rights and would not violate any Boise River Water System irrigation storage contracts, such as Pioneer's. We find the licensees' December 23, 1986 response not to be prejudicial and accordingly deny Pioneer's motion to strike.

8/ Order Denying Petitions to Reopen And For Late Intervention, Granting Motion For Timely Intervention, And Approving Transfer of License, Boise-Kuna Irrigation District, et al., 46 FERC ¶ 61,___ (1989).

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Since the licensees no longer propose to operate the project with a 5-foot drawdown of Lucky Peak Lake, irrigation systems served by Lucky Peak Lake would not experience any dewatering as a result of project operation. However, to ensure that all project impacts to water use are minimized, license Article 121 requires that construction, operation, and maintenance of the project must not weaken, damage, or affect the structural integrity of Reclamation's Arrowrock Dam and Reservoir or impair the ability of the dam and reservoir to serve its main purpose, which is irrigation. 9/ Further, Article 121 provides that the licensees' operation of the project powerplant shall be secondary to the operation and maintenance of the federal reservation, and gives Reclamation the authority to stop construction and operation of the project if the structural integrity, safety, or operational purpose of the Arrowrock Dam and Reservoir are endangered. Finally, to implement these restrictions, Article 122 requires the licensees to enter into an operation and maintenance agreement with Reclamation at least 60 days prior to commencement of operation of the project.

Pioneer and another intervenor, Settlers Irrigation District (Settlers), oppose issuance of a license for Project No. 4656 on the ground that operation of the project will deprive them of their contractual rights to irrigation water stored in Arrowrock Reservoir. 10/

The irrigation water concerns of Pioneer and Settlers are adequately addressed by this license's special articles. License Article 121 specifically requires that the construction, operation, and maintenance of Project No. 4656 for hydropower purposes be secondary to irrigation purposes and that the project may not in any way reduce or impair the capability of the Arrowrock Dam and Reservoir to supply water for irrigation. Further, under Article 121 Reclamation has the authority to stop operation of Project No. 4556 in the event the irrigation functions of the dam and reservoir are threatened by the project. Consequently, Project No. 4656 should not affect any contractual or statutory rights to irrigation water or contravene any agreements entered into by the United States regarding the operation of the project for irrigation purposes.

9/ See EA at p.6.

10/ Pioneer states in its motion to intervene that in a February 27, 1913 contract with the United States it agreed to pay $560,000 of the construction, operation, and maintenance costs of Arrowrock Dam and Reservoir.

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Fishery Concerns

In comments contained in its motion to intervene filed on October 5, 1985, Idaho Fish and Game recommended that the licensees annually pay it $12,000 to support a fish-stocking program to mitigate the fish losses that would be caused by fish entrainment at the project intakes and subsequent turbine-related mortality. By letter dated January 29, 1987, staff sent Idaho Fish and Game a copy of its EA on Project No. 4656 and noted the EA's conclusion that it would be premature to establish a specific cash payment as mitigation until site-specific data is collected, since that data may show that actual fish losses exceed the level Idaho Fish and Game anticipates. Staff therefore recommended that the licensees first be required to monitor turbine-induced mortality under a study design prepared with input from Idaho Fish and Game. Staff, pursuant to Section 10(j)(2) of the FPA, requested Idaho Fish and Game's comments in order to resolve this difference in approaches for fish mitigation at the project.

In letter to the Commission staff dated March 6, 1987, Idaho Fish and Game responded that it had no objection to the staff's recommendation that the licensees perform a post-operational monitoring study of fish mortality. Because of the time required to complete the monitoring study there is a need for interim mitigation at the start of project operation until permanent measures are implemented. Therefore, the licensee should pay $12,000 annually to the Idaho Fish and Game to support the fish stocking program. This payment shall commence upon the start of project operation and shall continue unless the amount is modified as a result of the mortality studies conducted under Article 406. Article 405 therefore requires the licensees, in cooperation with Idaho Fish and Game, to go forward with development of a fish stocking program, subject to Commission approval, that would be consistent with the state agency's fish management plans for Lucky Peak Lake and Arrowrock Reservoir. Article 406 requires the licensees, after agency consultation, to develop and conduct a 5-year mortality study and a study to determine if the fish resources are being maintained by the stocking program required by Article 405. Results of these studies would be used to determine appropriate fish mitigative measures, including modification to the monetary compensation required by Article 405 to maintain the fish resources.

Idaho Fish and Game also commented that water level fluctuations associated with the project's proposed peaking mode of operation would be likely to eliminate smallmouth bass reproduction in Lucky Peak Lake and preclude establishment of a reproducing smallmouth bass population in Arrowrock Reservoir. The agency therefore recommended that the licensees not operate

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the project in a peaking mode during a 1-month-long period sometime between May 1 and June 30 of each year. The Commission concurs with Idaho Fish and Game's recommendation. Article 403 therefore requires the licensees, after consultation with Idaho Fish and Game, the United States Fish and Wildlife Service, and the Corps, to develop a plan to determine on an annual basis the smallmouth bass spawning and egg incubation periods in Lucky Peak Lake and Arrowrock Reservoir and to establish a 1-month-long period each year between May 1 and June 30 for operating the project in a run-of-river mode.

Recreation

Reclamation commented that continued increases in recreational use at Lucky Peak Lake can be expected and predicted that such increases could lead to overuse problems. Some of this increased use could be accommodated by Arrowrock Reservoir, which offers a good rainbow and cutthroat trout fishery. The licensees' proposed improvement of the existing access road along the north shoreline of Arrowrock Reservoir would help to attract additional recreationists to Arrowrock Reservoir. License Article 412 requires the licensees to file for Commission approval and then implement a plan to monitor recreational use at Arrowrock Reservoir to ensure that increased recreational use is adequately accommodated and controlled.

The Corps, Reclamation, and Idaho Fish and Game also recommended that the existing access road along the north side of Lucky Peak Lake and Arrowrock Reservoir be rerouted away from the Spring Shores Marina to reduce the impact of construction-related traffic on recreational activity at the marina. Article 410 requires the licensees, after agency consultation, to develop and implement a plan to relocate the existing access road so as to minimize impacts to the marina and avoid long-term impacts to the winter habitat of mule deer.

Cumulative Impacts

The EA for Project No. 4656 assessed cumulative impacts of hydropower development in the Boise River Basin in relation to two pending applications for license, two licensed projects, and seven projects exempted from licensing. 11/ The EA identified

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11/ The two pending applications for license are the Arrowrock Dam Project, located on the main stem of the Boise River, and the North Fork Boise River Project No. 9819, located on the North Fork Boise River. The two licensed projects are the Lucky Peak Project No. 2832 and the Barber Dam Project (continued...)

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water-oriented recreation, trout, mule deer and elk, riparian habitat, and bald eagles as target resources that could be adversely affected by two or more proposed projects in the basin. In analyzing cumulative impacts the EA took into account existing irrigation and flood control uses in the river basin. The EA concluded that construction and operation of Project No. 4656 would have no potential for cumulative adverse impacts to the target resources identified in the Boise River Basin.

Comprehensive Plans

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

Under Section 10(a)(2), federal and state agencies filed 24 comprehensive plans that address various resources in Idaho. Of these, the Commission staff identified and reviewed four comprehensive plans that are relevant to the proposed project. The proposed project would conflict with one of the plans, the 1986 Idaho State Water Plan.

The Idaho Department of Water Resources (Idaho Water Resources) contends that, in order for the project to be consistent with the state water plan and state water law, any license issued for the project should be subordinated to upstream depletionary uses. Section 10(a)(1) of the FPA requires the Commission to find that the project as licensed will be best adapted to a comprehensive plan for conserving or developing the affected waterways for beneficial public purposes. The Commission's determination must be supported by record evidence. The Commission cannot therefore include in a license an open-ended subordination condition, if it does not have evidence on

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11/(...continued)
No. 4881; both of these projects are located on the main stem of the Boise River downstream from the Arrowrock Dam Project. The seven exempted projects (Nos. 5038, 5039, 5040, 5041, 5042, 5043, and 5056) are scattered on numerous diversion canals located in the area around Lake Lowell.

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which to base a finding that a particular future depletion of water for project purposes will be consistent with a comprehensive plan for using the water resources in the public interest. Consequently, a water rights subordination clause has not been included in the project license. However, under the license's standard articles, Idaho Water Resources may at any time file with the Commission a petition, accompanied by appropriate evidence, for license in light of conflicts with upstream water use needs. 12/

Need for Power and Project Economics

Pioneer criticizes as unsupported the EA's finding that the project is economically feasible and asserts that the EA's need for power analysis did not provide any meaningful analysis of what current energy forecasts establish as the need for project output. The need for power analysis was based on what were the latest available forecasts of the Northwest Power Planning Council, the Bonneville Power Administration, and the Pacific Northwest Utilities Conference Committee. The purpose, need for power, economic analysis, and comprehensive development sections of the EA have been superseded by updated information in subsection A and B of the attached S&DA, and the economic evaluation and water resources planning sections of the S&DA confirm the EA's conclusions. The SD&A concluded that Project No. 4656 could be used to off-load fossil-fuel power generation in the northwest region and that, since the project's projected levelized cost is significantly less than the long-term levelized cost of alternative energy to any utility serviceable by the project, the project would be both economically beneficial and financially feasible.

Safety and Adequacy

The licensees propose to construct a powerhouse and penstock at the existing Arrowrock Dam. Reclamation has responsibility for the safety of the dam and makes all releases. Our review indicates that there are no engineering problems that would make construction, operation, or maintenance of the project of the dam site infeasible.

12/ See also Twin Falls Canal Co., 45 FERC ¶ 61,423 (1988); Horseshoe Bend Hydroelectric Co., 42 FERC ¶ 61,072 (1988), aff'd, Idaho Power Co. v. FERC, No. 88-1078 (D.C. Cir. January 24, 1989).

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Summary of Findings

Background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment are contained in the August 29, 1986 EA, which is attached to and made a part of this order. Idaho Department of Health and Welfare issued water quality certification for this project. Issuance of this license is not a major federal action significantly affecting the quality of the human environment.

The design of the project will be consistent with the engineering standards governing dam safety. The project will be safe if constructed, operated, and maintained in accordance with the requirements of this license. Analysis and support for related license articles are provided in the S&DA attached to this order.

Based on our review of the comments filed in this proceeding, and our independent analysis, as discussed herein, we conclude that the Arrowrock Project No. 4656 is best adapted to comprehensive development of the Boise River, taking into consideration the beneficial public uses described in Sections 4(e) and 10(a)(1) of the FPA.

The Commission orders:

(A) This license is issued to Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District (licensee), for a period of 50 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Arrowrock Dam Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

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

Exhibit G-	FERC No. 4656-	Showing
1	2	Revised Project Map
2	3	Revised Project Map
3	4	Project Map

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(2) Project works consisting of: (a) two 13-foot-diameter, 180-foot-long penstocks, with steel trashracks at the entrance of each penstock, located through the Bureau of Reclamation's (BOR's) existing Arrowrock Dam; (b) a 70-foot-wide, 120-foot-long, 130-foot-high powerhouse, at elevation 3,070 feet, containing two 30-MW generating units, operating under a head of 149 feet; (c) a 90-foot-wide, 50-foot-long tailrace discharging into the U.S. Corps of Engineers' Lucky Peak Lake Reservoir over a concrete-capped weir at elevation 3,026 feet; (d) 13.8-kV generator leads; (e) a 13.8/138-kV, 47.6/63.3-MVA transformer bank; (f) a 15.2-mile-long, 138-kV transmission line connecting to the Boise-Bench substation of Idaho Power Company; (g) the 16-foot-wide access road from the Arrowrock Dam to the powerhouse, and (h) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of exhibits A and F recommended for approval in the attached S&DA.

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

(C) The exhibit G described above and those sections of exhibits A and F recommended for approval in the attached S&DA are approved and made part of the license.

(D) This license is subject to the following articles submitted by the Forest Service (articles 101 through 116) and the Bureau of Reclamation (articles 117 through 126) under Section 4(e) of the FPA:

Article 101. Within 6 months following the date of issuance of this license and before starting any activities the Forest Service determines to be of a land-disturbing nature, the licensee shall obtain from the Forest Service a special-use authorization for the occupancy and use of National Forest System lands, and shall file that authorization with the Director, Office of Hydropower Licensing.

The licensee may commence land-disturbing activities authorized by the license and special-use authorization 60 days following the filing date of such authorization, unless the Director, Office of Hydropower Licensing, prescribes a different commencement schedule.

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Notwithstanding the authorization granted under the Federal Power Act, National Forest System lands within the project boundaries shall be managed by the Forest Service under the laws, rules, and regulations applicable to the National Forest System. The terms and conditions of the Forest Service special-use authorization are enforceable by the Forest Service under the laws, rules, and regulations applicable to the National Forest System. The violation of such terms and conditions also shall be subject to applicable sanctions and enforcement procedures of the Commission at the request of the Forest Service. In the event there is a conflict between any provisions of the license and Forest Service special-use authorization, the special-use authorization shall prevail on matters which the Forest Service deems to affect National Forest System resources.

Article 102. Each year during the 60 days preceding the anniversary date of the license, the licensee shall consult with the Forest Service with regard to measures needed to ensure protection and development of the natural resource values of the project area. Within 60 days following such consultation, the licensee shall file with the Commission evidence of the consultation, with any recommendations made by the Forest Service. The Commission reserves the right, after notice and opportunity for hearing, to require changes in the project and its operation that may be necessary to accomplish natural resource protection.

Article 103. Within 1 year from the issuance of this license and before starting any activities of a land-disturbing nature, the licensee, in consultation with the Forest Service, shall file with the Director, Office of Hydropower Licensing, a fish and wildlife habitat mitigation plan approved by the Forest Service. This plan shall identify requirements for construction and mitigation measures to meet Forest Service fish and wildlife habitat objectives and standards. The plan also shall include a schedule for accomplishing these objectives and standards and shall identify any needs for additional studies.

The licensee may not commence activities affected by the interim plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

Article 104. Within 1 year following the date of issuance of this license, and before starting any activities of a land-disturbing nature, the licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service for accommodation of project-induced recreation.

The licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

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The licensee will enhance recreation facilities on the Arrowrock Reservoir to accommodate increased recreation use resulting from road improvement to the dam and the increased reservoir operating level. A significant increase in use will occur at the Arrowrock boat ramp. The licensee will annually provide funds to the Boise National Forest to cover the increased cost of recreation management and facility maintenance caused by the anticipated increase in recreation use resulting from the licensee's activities.

Originally, no recreation improvements were desired due to potential safety hazards associated with the road. Now that the road will be improved to Arrowrock Dam, the safety issue associated with driving to the Arrowrock boat facilities is no longer valid. With the yearly increase of recreational use, decreased reservoir pool level in Lucky Peak, increased reservoir pool level in Arrowrock, and safer and easier access to Arrowrock boat ramp, the above-mentioned recreation enhancement measures are appropriate.

Article 105. Within 1 year following the date of issuance of this license, and before starting any activities of a land-disturbing nature, the licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service for the control of erosion, stream sedimentation, dust, and soil mass movement.

The licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

Article 106. Within 1 year following the date of issuance of this license and before starting any activities of a land-disturbing nature, the licensee, after consultation with the Forest Service, shall file with the Director, Office of Hydropower Licensing, and the Commission's Regional Director in Portland, Oregon, or his authorized representative, a plan approved by the Forest Service for the treatment and disposal of solid waste and waste water generated during construction and operation of the project. The plan shall address, at a minimum, the estimated quantity of solid waste and waste water generated each day; the location of disposal sites and methods of treatment; implementation schedule; areas available for disposal of wastes; design of facilities; comparisons between on-and off-site disposal; and maintenance programs.

The licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

Article 107. Within 1 year following the date of issuance of this license and at least 60 days before starting any activities of a land-disturbing nature, the licensee shall file with the Director, Office of Hydropower Licensing, a plan

approved by the Forest Service for oil and hazardous substances storage and spill prevention and cleanup.

At a minimum, the plan shall require the licensee to maintain in the project area a cache of spill cleanup equipment suitable to contain any spill from the project; periodically inform the Forest Service of the location of the spill cleanup equipment on National Forest System lands and of the location, type, and quantity of oil and hazardous substances stored in the project area; and inform the Forest Service immediately of the nature, time, date, location, and action taken for any spill.

The licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

Article 108. Within 1 year following the date of issuance of this license and before starting any activities of a land-disturbing nature, the licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service for the storage and/or disposal of excess construction/tunnel spoils and slide material. At a minimum, the plan shall address contouring of any storage piles to conform to adjacent land forms and slopes; stabilization and rehabilitation of all spoil sites and borrow pits; and also prevention of water contamination by leachate and runoff. The plan also shall include an implementation schedule and maintenance program.

The licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

Article 109. Within 6 months following the date of issuance of this license and at least 60 days before starting any activities of a land-disturbing nature, the licensee shall file with the Director, Office of Hydropower Licensing, a report and plan approved by the Forest Service for archeological and cultural resources protection and mitigation.

Article 110. Within 1 year following the date of issuance of this license and before starting any activities of a land-disturbing nature relative to the construction of the proposed project features or facilities, the licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service for the design and construction of the project facilities in order to preserve or enhance its visual character. The plan shall consider facility configurations and alignments, building materials, color, conservation of vegetation, landscaping, and screening. Project facilities include, among

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other things, the diversion structure, penstock, powerhouse, transmission lines and corridor, and all access roads.

The licensee may not commence activities affected by the plan until after 60 days following the filing date, unless the Director, Office of Hydropower Licensing, instructs otherwise.

Article 111. Notwithstanding any Commission approval or license provisions to make changes to the project, the licensee shall get written approval from the Forest Service prior to making any changes in the location of any constructed project features or facilities, or in the uses of project lands and waters, or any departure from the requirements of any approved exhibits filed with the Commission. Following receipt of such approval from the Forest Service, and at least 60 days prior to initiating any such changes or departure, the licensee shall file a report with the Commission describing the changes and the reasons for the changes, and showing the approval of the Forest Service for such changes. The licensee shall file an exact copy of this report with the Forest Service at the same time it is filed with the Commission. This article does not relieve the licensee from the amendment or other requirements of Article 2 or Article 3 of this license.

Article 112. The licensee shall not use pesticides or herbicides on National Forest System lands for any purpose without the prior written approval of the Forest Service. Each year, on or about the anniversary date of the license, the licensee shall file a pesticide and herbicide use plan approved by the Forest Service with the Director, Office of Hydropower Licensing. Exceptions to this schedule may be allowed only when unexpected outbreaks of pests require control measures that were not anticipated at the time the annual report was submitted. At that time the Forest Service may grant an emergency approval. The licensee shall, within 1 month, file a copy of this approval with the Director, Office of Hydropower Licensing. Only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned will be considered for use on National Forest System lands. Label instructions will be strictly followed in the preparation and application of pesticides and disposal of excess materials and containers.

Article 113. Within 1 year from the issuance of this license and before starting any activities of a land-disturbing nature, the licensee shall file with the Director, Office of Hydropower Licensing, a plan approved by the Forest Service of the engineering design, construction process, and mitigation of soil, watershed, wildlife, aesthetics, and cultural resource values.

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Article 114. Within 1 year from the issuance of this license and before starting any activities of a land-disturbing nature, the licensee shall file with the Director, Office of Hydropower Licensing, a survey and mitigation plan approved by the Forest Service of the sensitive, threatened, and endangered species located within the area to be disturbed.

Article 115. Within 1 year from the issuance of this license and before starting any activities of a land-disturbing nature, the licensee shall file with the Director, Office of Hydropower Licensing, an engineering design plan approved by the Forest Service for the road improvement measures occurring on land administered by the Boise National Forest.

Article 116. Before any construction of the project occurs on National Forest System land, the licensee shall obtain the prior written approval of the Forest Service for all final design plans for project components which the Forest Service deems as affecting or potentially affecting National Forest Service System resources. The licensee shall follow the schedules and procedures for design review and approval specified in the Forest Service special-use authorization. As part of such prior written approval, the Forest Service may require adjustments in final plans and facility locations to preclude or mitigate impacts and to assure that the project is compatible with on-the-ground conditions. Should such necessary adjustments be deemed by the Forest Service, the Commission, or the licensee to be a substantial change, the licensee shall follow the procedures of Article 2 of the license. Any changes to the license made for any reason pursuant to Article 2 or Article 3 shall be made subject to any new terms and conditions of the Secretary of Agriculture made pursuant to Section 4(e) of the Federal Power Act.

Article 117. No later than 1 year after issuance of this license, and at least 60 days prior to initiating any project activities, the licensee shall enter into an agreement with Bureau of Reclamation (BOR) to coordinate its plans for access to and site activities on lands and property administered by BOR so that the authorized purposes, including operation of the Federal reservation, are protected. In general, the agreement shall identify the facility, the applicable study and construction activities, and terms and conditions under which the studies and construction shall be conducted. The agreement shall include,

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but not be limited to, the following items: (1) reasonable arrangements for access to the Federal reservation to conduct studies and construction activities, such access to be conditioned by BOR as may be necessary to protect the federally authorized project purposes and operations; (2) charges to be paid by the licensee to BOR for (a) technical studies conducted by BOR that relate to the structural integrity or operation of the Federal reservation associated with hydropower development; (b) review of designs including plans and specifications; (c) construction inspections based on personnel costs, where such reviews and inspections are directly related to the structural integrity or operation of the Federal reservation; (d) copies of reports, drawings, and similar data based on printing and mailing costs; and (e) the value of the right of use of land under easements and all associated administrative costs incurred by BOR; provided, that charges shall not be assessed for information or services that would normally be provided to the public.

Article 118. The licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the licensee shall file with the FERC Regional Director, the FERC Director, Division of Dam Safety and Inspections, and the Regional Director, Bureau of Reclamation, one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 119. The licensee shall provide the FERC Regional Director two copies of all correspondence between the licensee and the Bureau of Reclamation (BOR). The FERC Regional Director shall not authorize construction of any project work until the BOR's written approval of construction plans and specifications has been received by the FERC Regional Director.

Article 120. The design and construction of those facilities that would be an integral part of, or could affect the structural integrity or operation of, the federal reservation shall be done in consultation with and subject to the review and approval of the Bureau of Reclamation (BOR), based on the following schedules. The design drawings shall be approved by BOR at 30 percent; 60 percent; and 100 percent completion stages. Two sets of design drawings shall be forwarded at each completion stage to the Regional Director, BOR. The inspection of construction and its conformity to the approved design drawings shall be conducted by BOR at 30 percent; 60 percent; and 100 percent completion stages. Any subsequent changes in the design

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and construction of the project must be approved by BOR prior to implementation.

Article 121. The licensee's construction, operation, and maintenance of the project works, and project investigations related to hydropower development, must not weaken, damage, or affect the structural integrity or operation of the federal reservation or reduce or impair the capability to provide for the purposes and services of the federal reservation, and shall be subject to periodic or continuous inspections by the Bureau of Reclamation (BOR) as appropriate. Any construction, operation, or maintenance deficiencies or difficulties detected by BOR will be immediately reported to the licensee and to the FERC Regional Director. BOR shall report to the FERC Regional Director the need to stop construction, operation, or maintenance while awaiting resolutions of any deficiency or difficulty that would affect the structural integrity of the federal reservation. In those cases when a construction, operation, or maintenance practice or deficiency may result in a situation that would or could endanger the structural integrity, safety, or operational commitment of the federal reservation, BOR shall have the authority to stop construction, operation, or maintenance activities until the problem or situation is resolved to the satisfaction of BOR. Operation of the powerplant shall be secondary to the operation and maintenance of the federal reservation.

Article 122. The licensee shall enter into an operation and maintenance (O&M) agreement with the Bureau of Reclamation (BOR) at least 60 days prior to commencement of operation of the project. The FERC Regional Director shall be invited to attend discussion or negotiation meetings related to the O&M agreement. The O&M agreement shall be subject to revision by the mutual consent of the licensee and BOR as experience is gained by actual project operation.

Article 123. All newly disturbed land areas shall be revegetated by the licensee with plant species indigenous to the area within 6 months of completion of project construction.

Article 124. The licensee shall have no claim against the United States arising from any future changes made to meet authorized federal purposes, from the effect of any changes made in releases from or operation of the federal reservation, from modifications resulting from dam safety requirements, or from any changes in reservoir level of the Bureau of Reclamation project.

Article 125. The licensee shall recognize the primary right of any federal work, either by force account or by contractors or

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both, associated with the federal reservation, associated facilities, access roads, and the operation and maintenance thereto, whether ongoing at the time of commencement of work by the licensee or initiated subsequent to start of the work by the licensee, and to coordinate licensee's work with the federal work.

Article 126. The licensee, within 60 days from the issuance of license, shall contact the Regional Director, Bureau of Reclamation, Pacific Northwest Region, Boise, Idaho 83724, for the coordination of conditions.

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

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

a. For the purpose of reimbursing the United States for the cost of administration of Part I of the FPA, a reasonable amount, as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 80,000 horsepower.

b. For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 57.31 acres of its lands for transmission line right-of-way, a reasonable amount, as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

c. For the purpose of recompensing the United States for utilization of surplus water or water power from a government dam, a reasonable amount, as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 202. The licensee shall clear and keep clear to an adequate width all lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which result from maintenance, operation, or alteration of the project works. All clearing of lands and disposal of unnecessary material shall be done with due diligence to the satisfaction of the authorized representative of the Commission and in accordance with appropriate federal, state, and local statutes and regulations.

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Article 203. The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal or state fish and wildlife agencies or affected Indian Tribes, alterations of project structures and operations to take into account to the fullest extent practicable the regional fish and wildlife program developed pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 301. The licensee shall commence construction of project works within 2 years from the issuance date of the license and shall complete construction of the project within 4 years from the issuance date of the license.

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

Article 303. The licensee shall, within 90 days of completion of construction, file for approval by the Commission revised exhibits A, F, and G to describe and show the project as built, including the access road, the parking area, and the overlook. The access road, the parking area, and the overlook shall also be enclosed within the project boundary.

Article 304. The licensee shall, within 90 days from the issuance date of the license, enter into an agreement with the Corps of Engineers to coordinate its plans for access to and site activities on lands and property administered by the Corps so that the authorized purposes, including operation of the federal facilities, are protected. In general, the agreement shall not be redundant with the Commission's requirements contained in this license, and shall identify the facility and the study and construction activities, as applicable, and terms and conditions under which studies and construction will be conducted. The agreement shall include reasonable arrangements for access to the Corps site to conduct studies and construction activities, such access rights to be conditioned by the Corps as may be necessary to protect the federally authorized project purposes and operations. Should the licensee and the Corps fail to reach an access agreement, the licensee shall refer the matter to the Commission for resolution.

Article 401. The plan for erosion, stream sedimentation, dust, and soil mass movement required by Article 105, and the

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plan for spoil disposal required by Article 108, shall be prepared by the licensee, after consultation with the Idaho Department of Fish and Game, the Department of the Army, Walla Walla District Corps of Engineers, the Bureau of Land Management, the Forest Service, and the Bureau of Reclamation, and shall be filed with the Commission for approval 90 days before starting any project-related, land-clearing, land-disturbing, or spoil-producing activities. The Commission reserves the authority to require changes to the plans. No project-related land-clearing, land-disturbing, or spoil-producing activities shall begin until the licensee is notified that the plans comply with the requirements of this article.

The plans shall be based on actual-site geological, soil, slope, and groundwater conditions and on the final project design, and shall include the following: (1) detailed descriptions of actual-site conditions; (2) detailed descriptions and functional design drawings of control measures; (3) topographic map locations of all control measures; (4) an implementation schedule; (5) details of monitoring and maintenance programs for the project construction period and for project operation; and (6) a schedule for periodic review of the plans and for making any necessary revisions to the plans. The licensee shall include in the filing documentation of consultation with the agencies, copies of agency comments or recommendations on the completed plans after it has been provided to the agencies, and descriptions of how all of the agency comments and recommendations are accommodated by the plans. The licensee shall allow a reasonable time frame, in no case less than 30 days, for the agencies to comment and make recommendations prior to filing the plans.

Article 402. The licensee shall operate the project in a run-of-river mode for a 1-month-long period between May 1 and June 30 for the protection of fish and wildlife resources in Lucky Peak Lake and Arrowrock Reservoir. The 1-month-long run-of-river operational period shall be determined by provisions of Article 403. The licensee, in operating the project in an instantaneous run-of-river mode, shall at all times act to minimize the fluctuation of the water surface elevation of Arrowrock Reservoir, i.e., maintain a discharge from the project so that flow in the Boise River, as measured immediately downstream from the project, approximates the instantaneous sum of inflow to the project reservoir. Instantaneous run-of-river operation may be temporarily modified if required by the Bureau of Reclamation to ensure protection of the authorized purposes of Arrowrock Reservoir, by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement among the licensee, the Idaho Department of Fish and Game, and the Bureau of Reclamation.

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Article 403. The licensee, after consultation with the Idaho Department of Fish and Game (IDFG), the U.S. Fish and Wildlife Service, The Department of the Army, Walla Walla District Corps of Engineers, and the Bureau of Reclamation, shall develop a plan to determine, on an annual basis in cooperation with IDFG, the smallmouth bass spawning and incubation periods in Lucky Peak Lake and Arrowrock Reservoir and to establish a 1-month-long period between May 1 and June 30 for operating the project in a run-of-river mode. The filing shall include a schedule for implementing the plan and documentation of agency consultation and any agency comments on the plan. The licensee shall file the plan with the Commission for approval at least 90 days before beginning commercial operation. The Commission reserves the right to require modifications to the plan. The licensee shall not commence commercial operation until the Commission approves the plan.

Article 404. The licensee shall operate the project such that the level of dissolved oxygen in the powerhouse discharge is at least 6 milligrams per liter at all times. The licensee, after consultation with the Idaho Department of Water Resources, the Idaho Department of Fish and Game, the Bureau of Reclamation, the Department of the Army, Walla Walla District Corps of Engineers, and the U.S. Fish and Wildlife Service, shall file a water quality monitoring plan that would ensure maintenance of 6 mg/l dissolved oxygen in the powerhouse discharge during operation of the Arrowrock Dam Project. The plan should describe in detail the methods and identify the locations for collecting dissolved oxygen data above and below the Arrowrock Dam and should include a schedule for providing the data to the consulted agencies and to the Commission. Further, the plan should have provisions to rapidly modify project operation if dissolved oxygen levels in the powerhouse discharge fall below 6 mg/l, including greater spill over Arrowrock Dam to Lucky Peak Lake and project shutdown. The plan shall be filed with the Commission for approval at least 90 days before beginning project operation and shall include documentation of agency consultation and agency comments on the plan. The Commission reserves the right to require changes to the plan. The licensee shall not begin project operation until the Commission approves the plan.

Article 405. The licensee, in cooperation with the Idaho Department of Fish and Game (IDFG), shall develop, implement, and finance, at an annual amount of $12,000, a fish stocking program at the start of project operation that is consistent with IDFG's fish management plans for Lucky Peak Lake and Arrowrock Reservoir. The plan shall include the species, numbers, and sizes of fish to be stocked and maps showing the proposed stocking locations. The annual payment of $12,000 shall continue unless the amount is adjusted as a result of the mortality

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studies conducted under Article 406. The licensee shall file the plan with the Commission for approval at least 90 days before beginning commercial operation. The licensee shall give IDFG at least 30 days to comment on the stocking program. The filing shall include documentation of agency consultation and any agency comments and recommendations. The Commission reserves the right to require changes to the plan. The licensee shall not commence commercial operation until the Commission approves the plan.

Article 406. The licensee, after consultation with the Idaho Department of Fish and Game, the U.S. Fish and Wildlife Service, and the Bureau of Reclamation, shall develop a plan to monitor turbine-induced injury and mortality to the fish resources and to determine if the fish resources are being protected and maintained by the fish stocking program required by article 405. The licensee shall conduct the monitoring plan for at least 5 years. The monitoring plan shall include a schedule for filing the results of the monitoring and the comments of the consulted agencies. The licensee shall file the plan for Commission approval at least 90 days before starting project operation. The licensee shall not commence commercial operation until the Commission approves the plan.

The results of the monitoring shall be submitted to the Commission according to the schedule, along with the comments from the consulted agencies. If the results of the monitoring indicate that changes in project structures or operations or other measures such as screening the intakes and monetary compensation are necessary to protect and maintain the fish resources, the licensee shall include for Commission approval a schedule for implementing the specific measures, along with comments from the consulted agencies on the measures. The Commission reserves the right to require changes in the measures to protect and to maintain the fish resources.

Article 407. Before implementing the revegetation of disturbed areas as required by article 123, the licensee, 90 days before starting any project related land-clearing, land-disturbing, or spoil-producing activities and after consultation with the U.S. Fish and Wildlife Service, the Forest Service, the Bureau of Land Management, and the Idaho Department of Fish and Game, shall file for Commission approval a plan to revegetate all disturbed areas with plant species beneficial to wildlife. The plan, at a minimum, shall include: (1) a description of the plant species and the planting densities to be used; (2) fertilization and irrigation requirements; (3) a monitoring program to evaluate the effectiveness of the revegetation; (4) a description of procedures to be followed if monitoring shows that the revegetation is not successful; (5) an implementation schedule; and (6) a provision for filing a final report evaluating the

effectiveness of the revegetation program. The licensee shall include in the filing comments of the consulted agencies on the plan. The Commission reserves the right to require changes in the plan. The licensee shall not start any land-clearing, land-disturbing, or spoil-producing activities until the plan is approved by the Commission.

Article 408. The visual quality plan required by article 110, shall be filed for Commission approval at least 90 days before the scheduled start of project related land-clearing, land-disturbing, or spoil-producing activities. The Commission may require changes to the plan. The licensee shall not start any land-clearing, land-disturbing, or spoil-producing activities until the plan is approved by the Commission. The licensee shall prepare the plan after consultation with the Department of the Army, Walla Walla District Corps of Engineers, the Department of the Interior, the Forest Service, and the Idaho Department of Parks and Recreation.

The licensee shall include with the plan documentation of consultation with these agencies and copies of comments and recommendations. If the licensee does not adopt agency recommendations,the filing shall include the licensee's reasons for rejecting the recommendations, based on visual and landscape conditions at the site. The plan should be prepared by a professional landscape architect, and at a minimum, shall include provisions for: (1) blending the project features, including the transmission line, the access road, and the powerhouse regime into existing landscape characteristics; (2) revegetating, stabilizing, and landscaping new construction areas and areas immediately adjacent to the project site that have been disturbed by previous construction or that presently affect the visual resources of the surrounding area; (3) grading, planting grasses, repairing slopes damaged by erosion, and preventing future erosion; (4) scheduling these actions; (5) conducting monitoring and maintenance programs during project construction and operation; and (6) reviewing and revising the plan periodically.

Article 409. The report and plan for archeological and cultural resources protection and mitigation required by Article 109 shall be filed with the Commission for approval before the start of any project related land-clearing or land-disturbing activities that may affect Arrowrock Dam and archeological and historic sites located in the vicinity of the project transmission line corridor (sites 10-AA-72, 10-AA-96,10-AA-129, and the historic placer mining site identified in the Final Report on the Cultural Resources Inventory by R. Harrison, dated August 1986). The licensee shall implement the cultural resources management plan to do the following: (1) minimize project impacts to the dam, as described in the licensee's letter

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to the Commission of January 9, 1985; and (2) avoid or mitigate impacts to the sites. The plan shall be implemented in a manner satisfactory to the Idaho State Historic Preservation Officer (SHPO), the Bureau of Reclamation, Pacific Northwest Region (BOR), the Forest Service, Boise National Forest (FS), and the Historic American Engineering Record (HAER) of the Department of the Interior.

At least 60 days before any construction in the vicinity of the project transmission line corridor, the licensee shall file the following for Commission approval: (1) detailed procedures of the plan for avoiding or mitigating impacts to the sites; (2) a schedule for implementing the plan and for filing reports on any necessary investigations; and (3) letters from the SHPO, BOR, and FS commenting on the acceptability of the procedures and the schedule. The Commission reserves the right to require changes in the plan or schedule. Within 2 years after start of project construction, the licensee shall file the following with the Commission: (1) photographs and other documentation showing that the dam has been documented according to HAER standards and showing that project facilities have been constructed so as to blend with the historical character of the dam, in accordance with the Secretary of the Interior's Standards for Historic Preservation Projects; and (2) copies of letters from the SHPO, BOR, and HAER, commenting on the acceptability of this documentation and this construction. The licensee shall make funds available in a reasonable amount for the required work.

If the licensee discovers any previously unidentified archeological or historic sites during the course of constructing or developing project works or other facilities at the project, the licensee shall stop all construction and development activities in the vicinity of the sites and shall consult a qualified cultural resources specialist and the SHPO, BOR, and FS about the eligibility of the sites for listing in the National Register of Historic Places and about any measures needed to avoid the sites or to mitigate effects on the sites. If the licensee and the SHPO, BOR, FS, or HAER cannot agree on the amount of money to be spent for project-specific archeological and historical purposes, the Commission reserves the right to require the licensee to conduct the necessary work at the licensee's own expense.

Article 410. The licensee, after consultation with the Department of the Army, Walla Walla District Corps of Engineers (Corps), the Bureau of Reclamation, the Idaho Department of Parks and Recreation, and the Idaho Department of Fish and Game, and within 90 days before starting any project related land-disturbing, land-clearing, or spoil-producing activities, shall file with the Commission for approval a plan to relocate the

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existing access road around the Spring Shores Marina. The plan shall include at a minimum: (1) a description of how the new alignment will protect marina users from construction traffic without interfering with the design of the proposed modifications to the marina and the critical mule deer winter habitat; (2) a drawing showing the location of the realigned road in relation to the Spring Shores Marina; and (3) documentation of agency consultation. The licensee shall not commence any land-disturbing, land-clearing, or spoil-producing activities until the plan is approved by the Commission. The Commission reserves the right to require changes to the plan.

Article 411. The licensee, after consultation with the Department of the Army, Walla Walla District Corps of Engineers, the Bureau of Reclamation, and the Idaho Department of Parks and Recreation, and within 90 days before the start of project construction, shall file for Commission approval the final plan and design drawings for a parking area for fishermen near the Arrowrock dam on the north shoreline and an overlook along the access road downstream of Arrowrock Dam. Documentation of agency consultation shall be included in the filing. The Commission reserves the right to require changes to the plan.

Article 412. The licensee, after consultation with the Department of the Army, Walla Walla District Corps of Engineers, the Bureau of Reclamation, the Idaho Department of Parks and Recreation, and the Idaho Department of Fish and Game, and within 90 days before beginning project operation, shall file for Commission approval a plan to monitor recreational use at Arrowrock Reservoir to ensure that such use is adequately accommodated. The licensee shall include in the plan agency comments on the plan and a schedule for filing the results of the monitoring program. Upon receiving Commission approval, the licensee shall implement the monitoring program according to the schedule. Within 6 months after completing the monitoring program, the licensee shall file with the Commission a report containing the results of its monitoring program; a description of the methodology used to monitor recreational use at Arrowrock Reservoir; and documentation of consultation with the agencies. The Commission reserves the right to require changes to the plan to accommodate increased recreational use.

Article 413. The licensee shall design and construct the transmission line in accordance with guidelines set forth in "Suggested Practices for Raptor Protection on Power Lines--the State of the Art in 1981", Raptor Research Report No. 4, Raptor Research Foundation, Inc., 1981. Further, the licensee, after consultation with the U.S. Fish and Wildlife Service, the Idaho Department of Fish and Game, the Department of the Army, Walla Walla District Corps of Engineers, and the Bureau of Land

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Management, and at least 90 days prior to commencing any project-related land-disturbing, land-clearing, or spoil-producing activities, shall file for Commission approval a transmission line design plan that shall include adequate separation of energized conductors, groundwires, and other metal hardware, proper insulation, and any other measures necessary to include detailed design drawings of the transmission line, clearly showing phase spacing, configuration, and grounding practices. Agency comments on the adequacy of the design plan shall be included in the filing. The Commission reserves the right to require changes to the plan. No project-related land-clearing, land-disturbing or spoil-producing activities shall begin until the licensee is notified that the plan complies with the requirements of this article.

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

(G) This order is final unless an application for rehearing is filed within 30 days from the date of its issuance, as provided for in Section 313(a) of the FPA. 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. The licensee's failure to file an application for rehearing shall constitute acceptance of this license.

By the Commission.

(S E A L)

Lois D. Cashell,
Secretary.

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ENVIRONMENTAL ASSESSMENT
DIVISION OF ENVIRONMENTAL ANALYSIS,

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OFFICE OF HYDROPOWER LICENSING
FEDERAL ENERGY REGULATORY COMMISSION

Arrowrock Dam Hydroelectric Project
FERC No. 4656-002--Idaho

August 29, 1986

I. APPLICATION

On July 27, 1984, Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District (applicant) filed an application for a major license for the Arrowrock Dam Hydroelectric Project. The application was supplemented on March 14, and September 12, 1985, and on May 27, 1986.

The proposed project would be developed at Arrowrock Dam, an existing Bureau of Reclamation (BR) dam on the Boise River. The proposed project would be located in Elmore, Boise, and Ada Counties, Idaho, approximately 12 miles east of Boise, Idaho (figure 1). 1/ The project would occupy about 150 acres. This area would include: about 23 acres within the Boise National Forest, administered by the Forest Service (FS); about 24 acres, administered by the Department of the Army, Walla Walla District Corps of Engineers (Corps); and about 14 acres, administered by the Bureau of Land Management (BLM). Arrowrock Dam is 48 miles downstream of BR's Anderson Ranch Reservoir, on the South Fork of the Boise River, and is immediately upstream of Lucky Peak Lake, a reservoir impounded by the Corps' Lucky Peak Dam.

II. RESOURCE DEVELOPMENT

A. Purpose 2/

The proposed project would generate an estimated annual average of 167.6 gigawatthours (GWh) of electrical energy. The applicant proposes to sell the power to one of the public utilities in the Northwest region.

1/ Figures and attachments referenced in the text are omitted from this document due to reproduction requirements.

2/ This subsection is superseded by subsection A in the Safety and Design Assessment.

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B. Need for Power 1/

Available data show that growth in the demand for electric power and energy will continue. Given load growth and an existing generating resource base, a need for additional generating resources can be projected to exist in the future for any power system. Additional resources would have to be obtained for any system at some time in order to meet projected additional load requirements with the same degree of reliability required by an existing criterion for the system. The timing of the need would vary in different systems, depending upon such factors as the rates of load growth, the load characteristics, the available existing power resources, and the reliability criteria established for each system. A power-generating facility may be added to a system before a generating resource deficit exists, if, over its operating life, the additional generation provides benefits that would not be available through operation of the system without the addition.

The proposed project is located in the Northwest Power Planning Council (NPPC) area, within the Northwest Power Pool (NWPP) area of the Western Systems Coordination Council (WSCC) region. The NPPC, in its 1986 Northwest Conservation and Electric Power Plan, projects a northwest regional need for additional power resources by 1992, based on a medium-high load growth rate forecast (2.0 percent per year), and by 1996, based on a medium-low load growth rate forecast (1.3 percent per year). The 1986 forecasts of the Bonneville Power Administration (BPA) and the Pacific Northwest Utilities Conference Committee (PNUCC) show northwest regional energy deficits for mid-range load forecasts beginning in 1994 and 1993, respectively. Individual systems within the northwest region also indicate resource deficits will exist on their systems before northwest regional deficits occur.

Because of the small size of the proposed project in relation to the existing and projected generating capabability in the NPPC area, the traditional approach of linking project development with a forecasted need for a specific project is inapplicable to assessing the need for the proposed project.

The small size of the project in relation to existing and projected generating capability ensures that the power from the project would be integrated into the existing generating resource base without the temporary overbuilding commonly associated with bringing large power projects on-line (becoming commercially operational). Moreover, in accordance with the Federal Power Act, the schedule for the project can be made to accommodate uncertain market conditions to some extent by the licensee's

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1/ This subsection is superseded by subsection B in the Safety and Design Assessment.

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delaying the beginning of construction as much as 4 years after the license is issued.

The power from the project would be useful in meeting a small part of the need for power projected by the NPPC for the northwest region. From the time the project goes on-line, it will be available to displace fossil-fueled power generation in the WSCC region, thereby conserving nonrenewable fossil fuels and reducing the emission of noxious byproducts caused by the combustion of fossil fuels.

C. Economic Analysis 4/

The applicant proposes to sell the power generated to a public utility in the Pacific northwest region. Based on the cost of generating an equivalent amount of power from a generic, coal-fueled stream-electric plant constructed in the Pacific northwest, the project would be economically feasible. The net annual benefit is estimated at about 5.5 mills per kilowatthour, or $866,000.

D. Comprehensive Development 5/

The project's two 30-megawatt (MW) units would have a hydraulic capacity of 2,735 cubic feet per second (cfs) each. The project would develop a head ranging from 97 feet to 186 feet. The discharge at Arrowrock dam would exceed the hydraulic capacity of the proposed units about 10 percent of the time.

The applicant estimates that the project would generate about 167.6 GWh annually, if the 5-foot drawdown of Lucky Peak Lake is allowed. The staff finds this estimate of annual generation reasonable.

The Commission's 1967 planning status report for the Upper Snake River Basin, addresses the existing water resource developments and possible future development within the basin (Federal Power Commission, 1967). The project does not conflict with any existing or planned development or with any pending applications for exemption, license, or preliminary permit.

In summary, the staff's analysis shows that the proposed project would properly develop the hydropower potential of Arrowrock Dam.

4/ This subsection is superseded by the Economic Evaluation section in the Safety and Design Assessment.

5/ This subsection is superseded by the Water Resource Planning section in the S&DA.

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III. PROPOSED PROJECT AND ALTERNATIVES

A. Proposed Project

1. Project Description

The proposed project would consist of: (1) two 13-foot-diameter, 180-foot-long penstocks with steel trashracks; (2) a 70-foot-wide, 120-foot-long, 130-foot-high powerhouse, located on the south side of the Boise River channel, immediately downstream of Arrowrock Dam; (3) two 30-MW generating units operating under a head of 149 feet; (4) a 90-foot-wide, 50-foot-long tailrace, discharging over a concrete-capped weir into the Corps' Lucky Peak Lake; (5) a switchyard and transformer located next to the powerhouse; and (6) a 15.2 mile-long, 138-kilovolt (kV) transmission line connecting to Idaho Power Company's existing Boise Bench substation (figure 2).

The applicant's proposed project operation would be incidental to BR's reservoir operations; however, the applicant proposes two changes in the operation of the reservoir to increase project efficiency. First, the applicant would modify releases from Arrowrock Dam to produce power in a pattern more closely matching the hourly changes in need for power. Instead of making steady releases of water from Arrowrock Reservoir into Lucky Peak Lake, releases through the power plant would be varied daily, as needed, over a 24-hour-long period, to coincide with daily peaks in electrical demand. The applicant refers to this operating regime as "shaping" the releases, but it could also be characterized as peaking.

Second, the applicant would hold some water in Arrowrock Reservoir rather than in Lucky Peak Lake. Under this proposal, Lucky Peak Lake would be filled to the normal full-pool level surface elevation of 3,055 feet, as under current operation. Lucky Peak Lake would then be drawn down 5 feet (to elevation 3,050 feet), and maintained at that elevation for recreational use as long as the available water supply or other conditions permit. In most years, a 5-foot reduction in the full-pool level of Lucky Peak Lake (from 3,055 to 3,050 feet) would occur from mid-July to early-September.

2. Proposed Mitigative Measures

The applicant proposes several measures to minimize project-induced erosion and sedimentation and to stabilize slopes. Open excavations, trenches and similar areas would be protected with barriers, berms (dikes), waterproof coverings, or

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other measures to prevent excessive erosion of disturbed areas and excavated materials. Stockpiles would be covered with polyethylene sheets or other waterproof coverings and berms or drainage trenches would be constructed around the stockpiles to prevent erosion at the base. Drainage ways at construction sites would be temporarily diverted around the sites. Erosion and sediment-control structures would be moved from the construction area, the site restored to its original condition, and the area revegetated. Some permanent slopes cut in basalt and unweathered granite would be protected with rock bolts and screening.

The applicant's proposal to minimize erosion and sedimentation would protect water quality in Arrowrock Reservoir and Lucky Peak Lake. The applicant also would monitor dissolved oxygen (DO) levels in the releases from Arrowrock Reservoir and in Lucky Peak Lake.

To compensate for the increased fish mortality that would be caused by operation of the proposed project, the applicant would provide $12,000 dollars annually to the Idaho Department of Fish and Game (IDFG) to produce rainbow trout and kokanee for planting in the two reservoirs. The applicant would minimize long-term effects on vegetative communities and wildlife by revegetating disturbed areas with grasses, forbs, and shrubs. The proposed transmission line would be designed and constructed to minimize electrocution and collision hazards to raptors.

The applicant proposes to mitigate impacts to recreation caused by the seasonal drawdown and daily fluctuations of Lucky Peak Lake. The proposed mitigation at Lucky Peak Lake would include: (1) adding 18 new dock segments at the Spring Shores Marina; (2) adding 280 dock segments elsewhere on Lucky Peak Lake, chiefly at the dispersed shelter sites; (3) modifying the Robie Creek Picnic Area to maintain existing swimming and wading opportunities; (4) extending the Robie Creek boat ramp; (5) excavating the boating channels at Chimney Rock Recreation Area to maintain boating access; and (6) installing permanent irrigation facilities to maintain trees, shrubs, and grass areas around the lake. As an enhancement measure, the applicant proposes to enlarge the existing Barclay Bay boat ramp and to provide additional parking, consisting of 28 pull-through car-trailer spaces.
To mitigate adverse physical and visual effects of the project on the historical integrity of Arrowrock Dam, a site listed on the National Register of Historic Places, the applicant proposes to (1) document the historical significance of the dam with photographs, drawings, and a narrative, in accordance with the standards of the Historic American Engineering Record (HAER) of the Department of the Interior; (2) construct an interperative exhibit overlooking the dam, to describe the historical significance of this structure to the public; and (3) construct project features so as to be compatible with the historical

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appearance of the dam (letter from Gerald Guentz, Chairman, Bosie Project Board of Control, Bosie, Idaho, January 9, 1985).

B. Federal Land Management Conditions

FS and the Department of the Interior (Interior) provided 4(e) conditions in letters dated November 6, 1985, and November 14, 1985, respectively (attachments 1 and 2).
In summary the FS conditions require the licensee to:

(1) file with the Director of the Office of Hydropower Licensing (Director) a special-use authorization, approved and enforceable by FS;

(2) annually file with the Director a report containing any recommendation for needed measures to protect and to develop the natural resource values of the project area, after consultation with FS;

(3) file with the Director a fish and wildlife habitat mitigative plan, approved by FS, before any land-disturbing activities;

(4) file with the Director a plan, approved by FS, for accommodating project-induced recreation;

(5) file with the Director a plan, approved by FS, for the operation and maintenance of Arrowrock Reservoir.

(6) file with the Director a plan, approved by FS, for the control of erosion, sedimentation, dust, and soil mass movement;

(7) file with the Director a plan, approved by FS, for the treatment and disposal of solid waste and wastewater resulting from project construction and operation;

(8) file with the Director a plan, approved by FS, for the sto[redacted], spill prevention, and clean-up of oil and hazardous sub[redacted]ces;

(9) file with the Director a plan, approved by FS, for the storage and disposal of excess construction spoil and slide material;

(10) file with the Director a plan, approved by FS, for the protection of archeological and cultural resources;

(11) file with the Director a plan, approved by FS, for the design and construction of project facilities that would preserve or enhance the visual character of the area;

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(12) consult and cooperate with FS before making any changes in the location of project features, any changes in the uses of project lands and waters, or any divergence from any approved exhibits, about measures needed to protect and to develop the natural resource values of the area that could be affected by such changes or divergence;

(13) refrain from the use of pesticides or herbicides on National Forest System lands without prior written approval of FS;

(14) file with the Director a plan, approved by the FS, for the design and construction of the project transmission line, including measures to mitigate environmental impacts;

(15) file with the Director a plan, approved by FS, for a survey and a mitigative plan for sensitive, threatened, and endangered species within the project area; and

(16) file with the Director an engineering design plan approved by FS for road improvements that occur on FS lands.

Interior's conditions, in summary, require the licensee to coordinate construction activities with BR and to enter into an agreement with BR on operation and maintenance, at least 60 days before operating the project. Interior conditions also requires the licensee to revegetate all newly disturbed areas with plant species native to the project area within 6 months of completing project construction.

C. Alternatives to the Proposed Project

1. Alternative Projects

The applicant is not an electric utility, so the alternative is not to construct the project. If the proposed project is not constructed, the power that would have been developed eventually would be provided by nonrenewable fuels. It is presumed that projects that would use nonpassive renewable resources other than hydropower, such as wind, biomass, or solar photovoltaic power generation, will be installed when they become commercially and economically feasible. Whether the proposed project is built or not, the installation of projects that would use passive renewable resources, such as solar water or space heating will continue, and conservation efforts will continue, until the market is saturated or until these installations become uneconomical.

2. Alternative Project Operation

An alternative operating plan for the Arrowrock Dam Project would restrict power generation to those releases incidental to the

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existing Arrowrock Reservoir operations, with no special provisions for power production. Under this alternative plan, the daily "shaping" of releases from Arrowrock Reservoir and the 5-foot drawdown of Lucky Peak Lake would not be allowed. Annual generation would be reduced from 167.6 GWh to 156.7 GWh.

D. Alternative of No Action

No action would prohibit the applicant from constructing the project. Under this alternative there would be no construction, no alteration of the existing environment, and no use of the potential hydropower that could be derived from the project.

IV. CONSULTATION AND COMPLIANCE

A. Agency Consultation

Commission regulations require prospective applicants to consult with the appropriate resource agencies before filing an application for license. This consultation constitutes an initial step in compliance with the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, and other federal statutes. Prefiling consultation must be complete and documented in accordance with the Commission's regulations.

After the Commission accepts the application, formal comments may be submitted by concerned entities during the public notice period. In addition, organizations and individuals may petition to intervene and to become a party to any subsequent proceedings. The comments provided by concerned entities are made part of the record and are considered during the review of the proposed project. After a public notice of the application was issued on July 25, 1985, the following entities commented on the application.

Commenting entity	Date of letter
Department of the Army, Walla Walla District Corps of Engineers	September 6, 1985
Idaho Department of Parks and Recreation (IDPR)	September 13, 1985
FS	November 6, 1985
Interior	November 14, 1985
Department of the Army, North Pacific Division Corps of Engineers	November 15, 1985

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The applicant responded to the agency comments in a letter dated January 15, 1986.

Intervenors	Date of motion to intervene
Idaho Department of Water Resources (IDWR)	September 23, 1985
DPR	September 23, 1985
IDFG	October 1, 1985

B. Water Quality Certification

On December 11, 1984, the Idaho Department of Health and Welfare granted the applicant a water quality certificate, as authorized under Section 401 of the Clean Water Act.

C. Pacific Northwest Power Planning and Conservation Act

Under Section 4(h) of the Pacific Northwest Power Planning and Conservation Act (Act), the Council developed the Columbia River Basin Fish and Wildlife Program (Program) to protect, mitigate, and enhance fish and wildlife resources associated with development and operation of hydroelectric projects within the Columbia River Basin (Basin). Section 4(h) states that responsible federal agencies should provide equitable treatment for fish and wildlife resources in addition to the other purposes for which hydropower is developed. Section 4(h) further states that these agencies shall take into account, to the fullest extent practicable, the Program adopted under the Act.

The Program directs agencies to consult with federal and state fish and wildlife agencies, appropriate Indian tribes, and the Council during the study, design, construction, and operation of any hydroelectric development in the Basin. At the time the application was filed, the Commission's regulations required applicants to initiate prefiling consultation with the appropriate federal and state fish and wildlife agencies and tribes and to provided postfiling opportunities to review and to comment on the application. This consultation process has occurred.

The Program states that authorization for new hydroelectric projects should include conditions of development that would mitigate the impacts of the project on fish and wildlife resources. The relevant federal and state fish and wildlife agencies have reviewed and commented on the application. In

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addition, any license issued could provide for mitigative measures to protect fish and wildlife resources and would therefore be consistent with Section 1200 of the Program. Further, any condition of a license could reserve to the Commission the authority to require future alterations in project structures and operation in order to take into account, to the fullest extent practicable, the applicable provisions of the Program.

V. ENVIRONMENTAL ANALYSIS

A. Proposed Project

1. General Description of the Locale

Arrowrock Reservoir and Lucky Peak Lake are located on the Boise River, at the southern edge of the Sawtooth Mountain Range. The surrounding mountains range in elevation from 5,000 to 6,000 feet. The Boise River Canyon is relatively steep-walled, with nearly vertical cliffs bordering the reservoirs in some areas. Numerous deep, V-shaped draws have been cut into the mountains bordering the reservoirs. The climate is generally semi-arid, with warm summers, moderately cold winters, and average annual precipitation that varies between 11 to 15 inches at Boise and up to 20 inches at Arrowrock Dam. July, August, and September are the driest months, and November, December, and January usually are the wettest. The area surrounding Arrowrock Dam is sparsely populated, although, the lower Boise River Valley, which includes the City of Boise, contains the largest concentration of people in the state.

2. Geology and Soils

Affected Environment: Arrowrock Dam is constructed on granite bedrock that underlies the project area. The proposed powerhouse would be built on a basalt bench that extends along the south side of the Boise River Canyon. The basalt rises from 50 to 80 feet above the underlying granite. Most of the basalt formation is hard to very hard and varies from dense to vesicular (containing cavities) to locally very vesicular. The basalt has columnar jointing, and typically erodes in large block fragments.

Much of the area below Arrowrock Dam is covered by a variable layer of overburden material, consisting of alluvium, spoil from construction of the dam, and slope wash from the weathering of the underlying granite bedrock. The proposed powerplant access road and proposed road improvements would be on slope wash characterized as silty or silty sand. The slope wash material in fresh cuts would be subject to moderate erosion and ravelling (loosening) by rainfall.

Environmental Impacts and Recommendations: Construction of the

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proposed project would increases erosion, turbidity, sedimentation, and slope instability during land-clearing and ground-disturbing activities, such as access road improvements, powerhouse and powerline construction and other excavation and spoil-producing activities.

FS provided conditions that would adequately protect geologic and soil resources from any land-clearing and ground-disturbing activities on FS lands.

To protect the soil and geologic resources on state lands, other federally administered lands, and private land affected by the proposed development of the access roads and transmission line, the licensee, before starting any land-clearing or ground-disturbing activities, should file with the Commission a plan to control the erosion, turbidity, sedimentation, and slope instability that would result from project construction.

Unavoidable Adverse Impacts: Short-term increases in erosion, sedimentation, and turbidity would be unavoidable during project construction.

3. Water Resources

Affected Environment: Flows of the Boise River at Arrowrock Dam for the period from 1928 to 1971 averaged approximately 1.75 million acre-feet annually, ranging from less than 1 million acre-feet to more than 3 million acre-feet per year. Average monthly discharge over the 50-year period was 2,400 cubic feet per second (cfs), with a range between 0 cfs during the winter and about 11,700 cfs in May. Natural high flows from snowmelt runoff in the drainage basin occur in May and June, and low flows occur from August through February. At full pool, the surface area of Arrowrock Reservoir is 3,100 acres.
Much of the Boise River system is regulated by reservoirs. The operation of Anderson Ranch Dam, a BR facility approximately 48 miles upstream from Arrowrock Dam, has modified the flow regime of the South Fork Boise River upstream of Arrowrock Reservoir. Anderson Ranch Reservoir is operated for power production, irrigation, and flood control. Water withdrawn from Arrowrock Reservoir is released into the upper end of Lucky Peak Lake, which the Corps regulates for flood control and irrigation. The active storage capacity of Arrowrock Reservoir is entirely allocated to irrigation, and the reservoir is drawn down before Anderson Ranch Reservoir and Lucky Peak Lake are lowered to meet irrigation demands. During dry years, Arrowrock Reservoir has been almost completely emptied.

The water quality in Arrowrock Reservoir and Lucky Peak Lake is generally good. In Arrowrock Reservoir, the following ranges for water quality variables have been recorded: conductivity from 31

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to 75 micromhos per centimeter; pH from 6.0 to 8.1; nitrate nitrogen from 0.03 to 0.15 milligrams per liter (mg/l); and dissolved orthophosphate from 0.002 to 0.023 mg/l as phosphorous. In Lucky Peak Lake, conductivity measurements have ranged from 45 to 67 micromhos per centimeter; pH has ranged from 7.2 to 7.6; dissolved nitrite plus nitrate has been measured at 0.1 mg/l; and dissolved orthophosphate has ranged from 0.001 to 0.007 mg/l as phosphorus.

There is weak temperature stratification in Arrowrock Reservoir during the summer. A water temperature profile taken in Arrowrock Reservoir on July 26, 1982, showed a surface water temperature of 22 degrees celsius (°C) and a 9 °C temperature at 210 feet, with the majority of the profile less than 12 °C.

There is some oxygen depletion in Arrowrock Reservoir, especially during low-flow years. In July 1981, concentrations of DO were 4.5 mg/l at 26 feet and 4.2 mg/l (approximately 53 percent of saturation) at 224 feet. In July 1983, the lowest DO concentration measured was 7.6 mg/l at a depth of 213 feet. The applicant would withdraw water for use in the proposed powerplant from higher than 100 feet above the reservoir bottom, where DO concentrations are generally higher than near the substrate.

Environmental Impacts and Recommendations: The proposed installation and removal of a cofferdam would disturb the sediments on the reservoir bottom and along the shoreline of Lucky Peak Lake, and this would cause short-term increases in turbidity and sedimentation in Lucky Peak Lake.

The applicant propose to minimize the construction-induced degradation of water quality by using appropriate erosion and sediment control measures during project construction.

The licensee, after consultation with the IDWR, the Idaho Department of Lands, the Corps, and the BR, should prepare a sediment and erosion control plan that includes site-specific measures to prohibit contamination of water by dredge spoils and to minimize erosion and the deposition of sediment into Arrowrock Reservoir and Lucky Peak Lake.

The applicant would operate the proposed project using the release schedule of Arrowrock Dam. The potential exists for power peaking, and much of the power production would take place during the summer period of peak power demand. The proposed "shaping" of releases from Arrowrock Reservoir to produce power in a pattern more closely matching the hourly changes in the need for power would cause more frequent fluctuations in discharge, but these fluctuations would produce a maximum change in the pool elevation of Lucky Peak Lake of only three-fourths of a foot during the spring and summer and a maximum daily fluctuation of 1 foot during fall and winter.

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A minimum pool of 28,700 acre-feet would be provided in Arrowrock Reservoir; the minimum pool could be maintained in 43 out of 50 years (Bureau of Reclamation, 1985). To increase the head for the proposed Arrowrock powerplant, the applicant proposes to reduce the water surface elevation in Lucky Peak Lake 5 feet below the normal summer elevation.

At present, releases from Arrowrock Reservoir are reaerated as they fall into Lucky Peak Lake. Project operation would eliminate the aeration afforded by the 50-foot plunge of water. After the addition of a powerplant, releases would enter below the surface of Lucky Peak Lake. This change could result in the release of water containing less than the state standard of 5 mg/l of DO (based on DO profiles in Arrowrock Reservoir). With the proposed powerplant in operation, there would also be less mixing of releases from Arrowrock Reservoir with water in Lucky Peak Lake.

Under the applicant's proposed operating schedule, more water would be retained in Arrowrock Reservoir until later in the summer, and the minimum pool elevation would be substantially higher than under the present operation; the longer water retention time would permit the formation of a more stable water column and more permanent and marked stratification. There would be lower DO concentrations within the hypolimnion than under present operating conditions.

The addition of the proposed powerplant and the proposed changes in operation of Arrowrock Dam could lower DO concentrations in water released from Arrowrock Reservoir and downstream in Lucky Peak Lake. BR used a model (Johnson, 1975) for predicting gas transfer in hydraulic structures to predict DO concentrations in releases from Arrowrock Dam with the proposed powerplant in operation and also to predict DO levels in Lucky Peak Lake (Bureau of Reclamation, 1985). Their analysis was based on a very limited number of DO profiles. BR predicted that DO concentrations in Lucky Peak Lake would be 1 mg/l lower with the proposed power releases than under existing operations. BR concluded that simulated DO concentrations downstream of the zone, where mixing of powerplant releases with Lucky Peak Lake water occurs, would remain above 6.0 mg/l during the critical summer period.

IDWR (letter from A. Kenneth Dunn, Director, Idaho Department of Water Resources, Boise, Idaho, March 9, 1983), states that discharges from the proposed powerplant should contain at least 6.0 mg/l of DO in order to maintain the existing fishery in Lucky Peak Lake. The applicant has agreed to monitor DO concentrations in the proposed penstocks and downstream from the zone where mixing with water in Lucky Peak Lake occurs.

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The licensee should develop a plan for use if DO concentrations in the reservoir releases fall below concentrations required to maintain the existing fishery in Lucky Peak Lake. Davis (1975) recommended that DO levels be maintained at 6.0 mg/l, because prolonged exposure to concentrations less than this level presents a degree of risk to freshwater salmonids. Should DO concentrations drop below levels needed to maintain the salmonid fishery, the licensee should immediately institute appropriate procedures, including spilling water from the present outlet structures or shutting down the project.

Unavoidable Adverse Impacts: Construction of the powerhouse and roads would cause short-term increases in suspended and dissolved solids and turbidity and would have a temporary adverse effect on water quality in Lucky Peak Lake. As a result of increased flow fluctuations for power peaking, shoreline erosion and turbidity would increase in both reservoirs. Operation of the project would eliminate the aeration at the present outlet structures and would reduce the DO concentrations in Lucky Peak Lake.

4. Fish Resources

Affected Environment: Under current operating procedures, both Arrowrock Reservoir and Lucky Peak Lake provide fair to good habitat for coldwater fish. When the reservoirs are full, the physical habitat is varied and provides adequate shelter, but space becomes a limiting factor for fish populations as the reservoirs are drawn down. Annual drawdowns limit fish food production, and productivity of phytoplankton and aquatic insects is low. Both reservoirs have abundant rough fish populations; the sport fishery has depended primarily on hatchery stocking on a put-and-take basis (Casey et al., 1968).

No recent population surveys have been conducted in either reservoir, but in the mid-1960's, it was found that large-scale sucker (Catostomus macrocheilus), bridgelip sucker (C. columbianus), and northern squawfish (Ptychocheilus oregonensis) comprised the largest percentage of the biomass (Casey et al., 1968); redside shiners (Richardsonius balteatus) are considered to be the most abundant species (Bureau of Reclamation, 1985). Squawfish are much less prevalent in Arrowrock Reservoir than in Lucky Peak Lake (Meiser, 1966), probably because rapid drawdowns have occurred frequently in Arrowrock Reservoir during the squawfish spawning period from late May to July (Scott and Crossman, 1973).

Game fish in Arrowrock Reservoir and Lucky Peak Lake include rainbow trout (Salmo gairdneri), bull trout (Salvelinus confluentus), cut- throat trout (Salmo clarki), kokanee (Oncorhynchus nerka), mountain whitefish (Prosopium williamsoni), and yellow perch (Perca flavescens). IDFG annaully stocks from 10,000 to 20,000 catchable-size rainbow trout in Arrowrock

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Reservoir. Rainbow trout reproduce naturally in the tributaries of Arrowrock Reservoir, and it is estimated that about half the population in Arrowrock Reservoir consists of wild fish. Some kokanee spawning also occurs, but most kokanee in Arrowrock Reservoir are introduced from Anderson Ranch reservoir through the South Fork of the Boise River. In Lucky Peak Lake, 50,000 catchable rainbow trout are stocked annually; kokanee and smallmouth bass (Micropterus dolomieui) have also been introduced by IDFG. There is little natural reproduction of trout in Lucky Peak Lake because of generally unfavorable spawning conditions in the tributary streams.

Environmental Impacts and Recommendations: Raising summer surface elevations in Arrowrock Reservoir and establishing a minimum surface elevation would have a positive effect on the production of phytoplankton, macroinvertebrates, and fish. The higher pool elevation in Arrowrock Reservoir would increase the survivability of fish through increased space and increased food production. Higher water levels in Arrowrock Reservoir would increase the areas for fish spawning in tributary streams (Bureau of Reclamation, 1985). An increase in the area suitable for shoreline spawning might allow the introduction into Arrowrock Reservoir of game fish species such as smallmouth bass, which have been successfully introduced into Lucky Peak Lake.

The proposed project operation may change the population levels of squawfish. Under the proposed mode of operation, higher water levels in Arrowrock Reservoir during early summer would allow the spawning of more squawfish, while lower summer water elevations in Lucky Peak Lake might reduce the spawning habitat for squawfish in that reservoir. Squawfish recruitment in Lucky Peak Lake has been high as a result of relatively stable water levels during the summer months (Webb, 1964); the rapid drawdown in Arrowrock Reservoir has frequently occurred during the squawfish spawning period, stranding eggs and fry (Casey et al., 1968). The reduction of lake levels has been used as a control for squawfish (Scott and Crossman, 1973). Juvenile northern squawfish compete with salmon and trout for the same food supply, and larger squawfish eat the young of salmon and trout (Scott and Crossman, 1973). Studies on fish food habits in Lucky Peak Lake have indicated that food may be limiting and that squawfish compete with trout for limited supplies of zooplankton (Casey et al., 1968).

Rotenone treatments (fish poison) have been used along 25 miles of shoreline in Anderson Ranch Reservoir to kill emergent squawfish fry (Idaho Fish and Game Department, 1966). Smallmouth bass, recently introduced into Idaho reservoirs, are an effective biological control against squawfish (personal communication, Al Van Vooren, Fisheries Biologist, Idaho Department of Fish and Game, Boise, Idaho, July 9, 1986). If squawfish population levels increase as a result of the increased surface elevation,

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chemical or biological control treatment programs may be necessary in Arrowrock Reservoir.

The licensee should monitor the squawfish population in Arrowrock Reservoir, and if the squawfish population increases to levels detrimental to the trout population, develop a plan to control squawfish.

Arrowrock Reservoir would continue to be drawn down annually for irrigation and flood control, and some fish would pass from Arrowrock Reservoir to Lucky Peak Lake. The proposed maintenance of Arrowrock Reservoir elevations at higher levels than at present (a minimum pool of 28,700 acre-feet is proposed) would reduce the numbers of fish that are flushed from Arrowrock Reservoir into Lucky Peak Lake. Tagging studies done in 1967 showed that most tagged fish that had been planted in Arrowrock Reservoir were recovered in Lucky Peak Lake from September through March, after Arrowrock Reservoir had been drawn down to approximately 500 acre-feet; from May through August, when the reservoir elevation was higher, few tagged fish from Arrowrock Reservoir were collected in Lucky Peak Lake (Casey, et al. 1968).

The proposed operation of the powerplant without fish screens on the intakes would allow fish to pass through the turbines. It is likely that a substantial percentage of the fish that would pass through the turbines would be killed or injured (Bureau of Reclamation, 1985). The amount of turbine mortality would be higher when the reservoir elevation is lower. At minimum power head, the surface of Arrowrock Reservoir would be about 40 feet above the top of the penstock intakes. A simulation study based on water levels over a 50-year-long period from 1928 through 1977 showed that the powerplant would be operating at the lower water levels, from 40 to 70 feet above the penstock intakes, at some time during 31 years of the 50-year license period, most commonly during September and December (Bureau of Reclamation, 1975).

The U. S. Fish and Wildlife Service (FWS) expresses concern that the extent of the loss of fish through the project turbines has been underestimated (Boise-Kuna Irrigation District et al., 1984). [redacted] makes the point that with the proposed Arrowrock Reservoir at higher minimum pool levels, the fish population could be increased and losses through the turbines could be significant.

To compensate for the fish mortality that would be caused by operation of the proposed power facilities, the applicant has agreed to provide IDFG with $12,000 annually. This compensation fee would be used to produce rainbow trout and kokanee for planting in Arrowrock Reservoir and Lucky Peak Lake.

Turbine injury and mortality during project operation could have a substantial adverse impact on the fish resource of Lucky Peak

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Lake and Arrowrock Reservoir. Schooling fish such as kokanee, which would occur at the depth of the intakes, would be more susceptible to being entrained in large numbers than trout. The number of fish that would be entrained at the intakes and subsequently pass through the turbines is difficult to accurately predict on a site specific basis prior to project operation. The licensee should, therefore, conduct, in cooperation with the appropriate resource agencies, a monitoring program to evaluate turbine injury and mortality to fish during project operation. Results of this monitoring program would provide the basis for implementing measures (e.g., screening the intakes and monetary compensation to IDFG) to minimize or offset losses.

Unavoidable Adverse Impacts: Increased sedimentation and turbidity would affect fish resources during construction of the project facilities. Reducing the water surface elevations in Lucky Peak Lake would reduce the fish habitat. Project operation would cause potentially high levels of entrainment and turbine mortality for several months during low water years.

5. Vegetation and Wildlife Resources

Affected Environment: A shrub-steppe community generally dominates the semi-arid slopes surrounding Arrowrock Reservoir and Lucky Peak Lake. Among the most common shrubs of this widespread vegetative community are big sagebrush (Artemisia tridentata), three-tip sagebrush (A. tripartita), antelope bitterbrush (Purshia tridentata), and rabbit brush (Chrysothamnus spp.). Common understory species include bluebunch wheatgrass (Agropyron spicatum), sandberg bluegrass (Poa sandbergii), Idaho fescue (Festuca idahoensis), arrowleaf balsamroot (Balsamorhiza sagittata), and phlox (Phlox spp.). Cheatgrass (Bromus tectorum) and annual forbs dominate areas where fires, heavy grazing, and other activities have disturbed native vegetation. At high elevations around Arrowrock Reservoir, the shrub-steppe makes a transition to coniferous forest.

Riparian communities in the project area are generally restricted to moist draws and to tributaries of Arrowrock Reservoir and Lucky Peak Lake. These areas support a shrubby growth of willows (Salix spp.), white alder (Alnus rhombifolia), elderberry (Sambucus spp.), and quaking aspen (Populus tremuloides), as well as sagebrush, antelope bitterbrush, and various grasses.

The generally undeveloped shrub-steppe and riparian communities in the project area support a variety of wildlife. Increasing commercial and residential development threatens wildlife populations near Lucky Peak Lake, but little such development occurs near Arrowrock Reservoir. The riparian zone downstream of Lucky Peak dam is especially important to wildlife (Boise Kuna Irrigation District et al., 1985).

Mule deer (Odocoileus hemionus) and elk (Cervus elaphus) are the big game species common to the project area. Black bear (Ursus americanus) and mountain lion (Felis concolor) also occur, but usually frequent higher elevations that those of the project area. Mule deer are part of the Boise River herd, which numbers between 13,000 and 18,000 animals and is probably the most important mule deer herd in Idaho. The mule deer are widely distributed over the area and concentrate at the lower elevations along the river in winter. The IDFG manages about 25,300 acres of winter habitat in the vicinity of Arrowrock Reservoir and Lucky Peak Lake. Elk in the area usually remain at higher elevations north of Arrowrock Reservoir during summer and move into the project area only during severe winters.

Popular upland game species of the Boise River Basin are chukar (Alectoris chukar), gray (Hungarian) partridge (Perdix perdix), California quail (Callipepla californica), mountain quail (Oreortyx pictus), and mourning dove (Zenaida macroura). Important waterfowl habitat exist further downriver near Boise, but few waterfowl use Arrowrock Reservoir or Lucky Peak Lake. A variety of raptors occur in the project area. Species breeding in the area include the prairie falcon (Falco mexicanus), red-tailed hawk (Buteo jamaicensis), and American kestrel (F. Sparverius) The bald eagle (Haliaeetus leucocephalus) is the only federally listed endangered species that occurs in the vicinity of the proposed project. The eagle's use of the project area is limited to occasional hunting flights over Arrowrock Reservoir and Lucky Peak Lake.

Environmental Impacts and Recommendations: Constructing the powerhouse and switchyard would have little impact on vegetation, because the site is almost devoid of vegetation. Constructing the proposed 15.2-mile-long transmission line, however, could disturb up to 147 acres of shrub-steppe, if all the 80-foot-wide right-of-way is affected. Additional small areas of shrub-steppe would be disturbed along the 5-mile-long road from Spring Shores Marina to Arrowrock Dam that the applicant proposes to improve. Of the nearly 150 acres that would be disturbed during construction, less than 5 acres of shrub-steppe would be needed for permanent project facilities.

FS requires that the licensee develop a wildlife mitigative plan for FS lands. Interior requires that all newly disturbed areas be revegetated with plant species native to the area. The applicant proposes to revegetate all temporarily disturbed areas with a mixture of grasses, forbs, and shrubs that occurs naturally in the project area. Revegetation of disturbed areas would mitigate long-term impacts to vegetative communities and wildlife. The licensee should develop a plan to revegetate distrubed areas with a mixture of plant species beneficial to wildlife.

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Increased noise and human presence at Arrowrock dam and along the access road during construction may cause wildlife sensitive to human intrusion to avoid the construction area. This interference with wildlife's use of the area would be temporary and minor.

FWS states that no listed or proposed threatened or endangered species would be affected by the proposed project (letter from James F. Gore, Acting Field Supervisor, U.S. Fish and Wildlife Service, Boise, Idaho, April 6, 1983.

Unavoidable Adverse Impacts: About 150 acres of shrub-steppe would be disturbed during project construction. Less than 5 acres would be required for permanent project facilities. Increased noise and human presence would disturb wildlife during construction.

6. Visual Resources

Affected Environment: The proposed project area has a natural character and a high visual quality, which result from a variety of land, water, and vegetative features, including canyons, deep gorges, high hills, small forested areas, brushy draws, large, open areas of sagebrush grassland, cascading rapids, and slow moving water. Partly because of its high visual quality, the area has a high volume of recreational use.

Environmental Impacts and Recommendations: The Corps states that a 5-foot drawdown in Lucky Peak Lake during project operation would have a significant adverse visual impact, and that this impact should be evaluated and mitigated. IDPR states that the overall affect of the proposed project would decrease the area's attractiveness and would cause a negative aesthetic impact.
The applicant proposed landscaping and revegetation wherever possible. The applicant states, however, that the 5-foot drawdown and the associated open space between the waters edge and the mean high water line would cause a minor, adverse effect that could not be mitigated. According to the applicant, the adverse effect would not reduce the overall recreational experience of area use[illegible].

The proposed project facilities would add to the development in the area and would have a minor, adverse impact on the visual resource. The 5-foot drawdown in Lucky Peak reservoir would diminish the visual quality of the present shoreline by exposing a 30-foot-wide shoreline of light colored sandy soil, vegetation, and in some areas, forest debris and tree stumps. Mitigation may be possible in some areas that are often seen by recreational users in the area.

The licensee should provide a plan to maintain visual quality at

an acceptable level in the area affected by the proposed project facilities, including the transmission line, access road, and powerhouse, by using appropriate building material, alignments, colors, and designs. The plan should also address the adverse impacts caused by the 5-foot drawdown, including the need for mitigation, and the kind of mitigation proposed, if any. The licensee should use a professional landscape architect to prepare the plan.

Unavoidable Adverse Impacts: The presence of men and machinery during construction would cause temporary, minor, adverse effects on the visual resource. During project operation, the presence of man-made structures and the exposed lake bottom caused by the 5-foot drawdown would have a minor, adverse impact on the visual resource of the area.

7. Cultural Resources

Affected Environment: The project has been surveyed for archeological and historic sites (Harrison, 1986). Four historic sites and one archeological site were inventoried that might be affected by the project. One historic site is Arrowrock Dam, a property listed on the National Register of Historic Places. The other sites are located near the proposed transmission line corridor, and include: a wagon road that may be an alternate route of the Oregon Trail; the Mary Hallock Foote house; the Lytle Gulch prehistoric site; and an extensive area of historic placer mining activity. These sites are eligible or potentially eligible for inclusion in the National Register.

Environmental Impacts and Recommendations: Construction of project facilities at Arrowrock Dam would have an unavoidable adverse effect on the historical integrity of this structure. The facilities would physically alter historic features of the dam and would change the appearance of the structure (letter from Gerald Guentz, Chairman, Bosie Project Board of Control, Boise, Idaho, January 9, 1985). Impacts to the sites in the vicinity of the transmission line corridor could be avoided by constructing the transmission line along the proposed route with minor adjustments in the location of the line (Harrison, 1986).

The measures proposed by the applicant to record the significant features of Arrowrock Dam and to minimize visual impacts to this structure should be implemented in a manner satisfactory to the Idaho State Historic Preservation Officer (SHPO), BR, and HAER. The licensee should file with the Commission a report documenting these features, together with letters accepting the report from the SHPO, BR, and HAER, prior to any construction that would affect these features.

The licensee should prepare a cultural resources managment plan

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to avoid or mitigate any impacts to the archeological or historic sites identified in the vicinity of the transmission line corridor. The plan should be prepared in a manner satifactory to the SHPO, BR, and FS. As recommended by FS, the plan should be filed with the Commission and approved by the FS within 6 months after the date of issuance of any license for the project and at least 60 days before construction work begins (letter from J. S. Tixier, Regional Forester, Forest Service, Department of Agriculture, Ogden, Utah, November 6, 1985).

The staff is requesting comments from the Advisory Council on Historic Preservation concerning the project's impact on Arrowrock Dam.

Unavoidable Adverse Impacts: The project's effect on the historical integrity of Arrowrock Dam cannot be avoided.

8. Recreation and Other Land and Water Uses

Affected Environment: Arrowrock Reservoir provides a variety of recreational activities, including boating, fishing, camping, picnicking, hiking, hunting, and nature study. In 1981, approximately 25,000 people visited the reservoir. FS administers recreational facilities around the reservoir. Existing facilities include the Arrowrock boat launch, consisting of a 2-lane boat launch ramp, a 3-section dock, and toilet facilities; Irish Point, a boating area and potential campground with existing toilet facilities; Cottonwood Creek campground, a 3-unit campground with a pit toilet; and Willow Creek campground, a 10-unit campground with toilet facilities and drinking water.

A narrow county road traverses the north side of Arrowrock Reservoir and the upper end of Lucky Peak Lake. This road provides access to Arrowrock Reservoir, but is presently in poor condition. Arrowrock Reservoir receives low levels of recreational use, compared with nearby reservoirs, because of steep terrain, reservoir drawdown, and the poor condition of the access road to the area. In addition, fish and wildlife agencies have not encouraged the building of boating access facilities, because the agencies are concerned that increased use of power boats would adversely affect fish and wildlife (Bureau of Reclamation, 1985).

Lucky Peak Lake, administered by the Corps, FS, and IDPR (under a lease agreement with the Corps), receives heavy recreational use. The lake, is 10 miles from Boise, Idaho, and offers opportunities for waterskiing, boating, fishing, swimming, and picnicking (ABT Associates, Inc., 1978). In 1981, the Corps reported a total use of 895,000 recreation-days (one visit per person during a reasonable portion of a 24-hour period). There are nine developed recreational areas at Lucky Peak Lake. The Spring Shores Marina provides mooring facilities for 280 boats

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and facilities for swimming, picnicking, and parking. The Robie Creek picnic area is a small day-use facility with a swimming and wading area and a boat launch ramp. Other recreational areas along the Lucky Peak shoreline are Chimney Rock, Mock's Creek, Barclay Bay, Tumer Point, Deer Flat, Placer Point, and Charcoal Creek. These areas have facilities for picnicking, boating access, swimming and fishing (Boise-Kuna Irrigation District, et al., 1984).

In addition to recreation, the land near Arrowrock Reservoir and Lucky Peak Lake is used for grazing, wildlife habitat management, flood control, irrigation, and hydropower. There is timber management around the reservoir and residential development on some of the private lands surrounding Lucky Peak Lake.

Environmental Impacts and Recommendations: Maintaining the proposed minimum pool at Arrowrock reservoir would enhance the resident fishery and improve fishing success. The improved visual quality of the reservoir that would result from maintaining the proposed minimum pool would also improve the quality of recreation in Arrowrock Reservoir (Bureau of Reclamation, 1985).

The 5-foot reduction in the pool level of Lucky Peak Lake during the summer would create uneven bottom surface conditions at the swimming area at the Robie Creek Picnic area, substantially limit boat access to the Chimney Rock area, reduce the efficiency of existing irrigation systems around the lake, and interfere with the use of the Robie Creek boat ramp. Daily lake level fluctuations of up to 9 vertical inches would move the shoreline horizontally by 5 feet, reducing the dock space at Spring Shores Marina and other areas around Lucky Peak Lake.

To mitigate these impacts, the applicant proposes to: grade the beach at Robie Creek; widen and deepen channels in the boating zone at Chimney Rock; provide irrigation pumps to water vegetation around the lake; extend the Robie Creek boat ramp and parking area; enlarge the Barclay Bay boat launch ramp, and provide additional parking at the Barclay Bay boat ramp to accommodate 28 cars and trailers. IDPR, BR, and Corp generally concur with the applicant's proposed mitigative measures. The licensee, after further consultation with the Corps, IDPR, and BR, should carry out its proposed mitigative and enhancement measures.

The applicant also proposes to extend the docks at Spring Shores Marina and other docks around Lucky Peak Lake to mitigate impacts of the 5-foot drawdown and the daily fluctuation on the operation of the marina and other docks. The applicant, however, says that the Spring Shores Marina has been leased by a new concessionaire who proposes new development at the marina, but that plans for the development have not been completed. IDPR states that the

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impacts of the project on the new marina cannot be assessed until a final design is determined. IDPR, the Corps, and Interior recommend that the applicant mitigate any effects of reservoir draw down and fluctuations on the marina; the applicant agrees. The licensee, after consultation with IDPR, the Corps, BR, and the concessionaire, should provide the necessary measures to mitigate the impacts of project operation on the Spring Shores Marina and other boat docks at Luck Peak Lake.

IDPR, the Corps, and Interior recommend that the existing access road along the north side of Lucky Peak Lake and Arrowrock Reservoir be rerouted away from the Spring Shores Marina to reduce impacts from construction-related traffic. The applicant considered relocating the road in an area that IDFG considers to be critical winter range for mule deer. IDFG states that putting the road in that area would remove 6 acres of habitat, and that moving the road closer to the marina would remove only 2 acres of habitat. IDPR recommends that the applicant choose the site of the relocated road after the new development at the Spring Shore Marina is completed. The licensee, after consultation with IDPR, IDFG, Corps, and BR, should file with the Commission a plan to relocate the existing access road in a place that will protect marina users from construction traffic without interfering with the design of the new marina, and that will avoid long-term impacts to the winter habitat of mule deer.

The Corps administers and is ultimately responsible for the recreational development at Lucky Peak Lake. The licensee, therefore, should have Corps approval before implementing any changes to recreational facilities at Lucky Peak Lake.

IDPR and the Corps say that the 5-foot drawdown of Lucky Peak Lake during the summer would have an adverse visual effect on recreationists. Although reservoir drawdowns of less than 10 feet may not necessarily affect the amount of water-based recreational use of a reservoir (ABT Associates, Inc., 1978; Morgan and King, 1971; Carson, 1972), the quality of the recreational experience could be reduced for those sensitive to the aesthetic resources of the area. Approximately 30 feet of horizontal shore would be exposed when the lake level is drawn down 5 feet. This visual impact would not be substantial and mitigation of impacts may be possible in some areas that receive high recreational use.

Improving the existing access road and raising the operating level of the reservoir would improve acces to Arrowrock Reservoir and could result in increased use of the reservoir. To accommodate project-induced recreation at the reservoir, FS requires that the licensee file with the Commission a FS-approved plan to enhance recreational facilities at Arrowrock Reservoir. In addition, FS would require the licensee to provide funds annually to the Boise National Forest to cover the increased cost of recreational management and facility maintenance that would be

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caused by the increase in recreational use resulting from the proposed project. Recreational use at Lucky Peak Lake is expected to increase in the future (Bureau of Reclamation, 1985). BR (1985) estimates that if recreational use continues at predicted rates in the project area, "some popular recreation areas will experience overuse" and that such overuse "could lead to reduced enjoyment" and to increasingly complex management problems. To ensure that recreational use is adequately accommodated in the project area, the licensee should monitor recreational use in the project area during the first two recreational seasons.

Unavoidable Adverse Impacts: Relocating the existing access road would temporarily limit vehicular access to Arrowrock Reservoir. Increased traffic, noise, and dust levels during construction would disturb recreational users in the project area. The proposed 5-foot drawdown of Lucky Peak Lake would have a minor visual effect on recreationists visiting the area.

9. Socioeconomic Considerations

Affected Environment: Project construction would produce socio-economic impacts affecting businesses and residents in Ada County, the Boise metropolitan area. The area's economy is based on: federal and state government employment; Boise's position as a banking, insurance, transportation, printing, publishing, and trade center, and as a major provider of health, educational, legal, and business services; the manufacture of electronic computing equipment, semi conductors, and mobile homes; meat packing; and irrigated farming (personal communication, Joe Tintera, Survey Statistician, and Doug Miller, Statistician, Bureau of the Census, Department of Commerce, Suitland, Maryland, June 26, 1986).

The total population of Ada County increased from 93,460 persons in 1960 to 189,300 persons as of July 1, 1984 (personal communication, K. O'Brion, Statistical Information Assistant, Bureau of the Census, Department of Commerce, Suitland, Maryland, June 26, 1986).

Environmental Impacts and Recommendations: During the planned 5-year construction period, project-related vehicles and onsite machinery would produce noise, dust, and exhaust emissions, and would cause minor delays to motorists in the vicinity. The proposed project, however, would not displace any residence or business establishment, and would not adversely affect agricultural lands.

Based on comparable projects, an average of 125 construction personnel would be employed at the project site. Virtually all of these workers would commute daily from residences in the Boise area. The earnings of these workers and their subsequent spending at area retail and service establishments would benefit

the metropolitan area economy. In addition, the project contractor undoubtedly would purchase some construction equipment and material from local suppliers, thus providing additional economic benefits.

Once the proposed facilities are operational, the project would not produce any discernable socioeconomic impacts. Because the applicant is a municipality, the completed project facilities would be exempt from payment of real property taxes.

Since the project's socioeconomic impacts would be primarily beneficial, mitigation would not be required.

Unavoidable Adverse Impacts: Proposed construction activities and project-related truck traffic would produce noise, dust, exhaust emissions, and minor delays to motorists in the project vicinity.

B. Cumulative Environmental Impact Analysis

1. Boise River Basin

The Boise River drains an area of 4,100 square miles in southwestern Idaho (figure 4). The headwaters of the Boise River originate in the Sawtooth Mountains at elevations in excess of 10,000 feet. The river flows in a westerly direction for about 200 miles before emptying into the Snake River near Parma, Idaho, at an elevation of 2,100 feet. The topography of the Boise River Basin varies from the rugged, mountainous terrain near the headwaters of the Boise River and its major tributaries to the relatively flat lands of the Boise Valley. Major tributaries of the Boise River include the North Fork Boise River, Middle Fork Boise River, South Fork Boise River, and Mores Creek.

The basin contains three major storage impoundments, Anderson Ranch Reservoir, Arrowrock Reservoir, and Lucky Peak Lake, and one large offstream storage impoundment, Lake Lowell. These reservoirs supply water storage for flood control, irrigation, recreation, hydropower, and instream flows. During the irrigation season (April to the middle of October), releases are made from the storage reservoirs to satisfy irrigation demands at the New York Canal and other downstream irrigation diversions. The general rule in operating the reservoir system in the basin during the nonirrigation period is to fill the upstream reservoirs first in order to improve the probability of total system refill. (Bureau of Reclamation, 1985).

The environmental resources of the Boise River and its tributaries are distinct from the environmental resources of the Upper Snake River Basin. The Boise River drainage includes the major population center (Boise) in the state; the lower Boise River Basin contains the largest concentration of people in the

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state. In all, about 27 percent of Idaho's 1980 population of 944,000 people live in Ada and Canyon Counties which encompasses the lower Boise River Basin (Boise-Kuna Irrigation District, et al.,1984). Consequently, because of the proximity of the rivers and reservoirs in the basin to the Boise metropolitan area, recreational use of these waters is very high. This concentration of recreational use along the Boise River is therefore different from the dispersed recreation that generally characterizes the mainstem Upper Snake River (Federal Energy Regulatory Commission, 1982).

The Boise River Basin has over 250,000 acres of irrigated cropland and some of Idaho's earliest mining, logging and hydroelectric development. Man-caused impacts have severely degraded some fish habitats in the basin over a long period of time (Idaho Department of Fish and Game, 1985). Because of these factors and the intensive recreational fishing in the basin, IDFG heavily stocks the river and reservoirs with hatchery fish. The dependence on trout stocking for the management of trout populations in the Boise River Basin is therefore different from the predominantly self-sustaining resident trout populations (i.e., value class I fishery) that are important resources for the mainstem Upper Snake River Basin.

2. Proposed and Existing Hydroelectric Development

As of August 1986, there were two pending applications for license, two licensed projects, and seven projects exempted from licensing in the Boise River Basin (figure 4). The two pending applications for license include the Arrowrock Dam Project, FERC No. 4656, located on the mainstem of the Boise River, and the North Fork Boise River Project, FERC No. 9819, located on the North Fork Boise River. The two licensed projects include the Lucky Peak Project, FERC No. 2832, and the Barber Dam Project, FERC No. 4881; both of these projects are located on the mainstem of the Boise River downstream from the Arrowrock Dam Project. The seven exempted projects (FERC Nos. 5038, 5039, 5040, 5041, 5042, 5043, and 5056) are scattered among many sites on numerous diversion canals located in the area around Lake Lowell (figure 4).

3. Target Resources

In the Boise River Basin, the staff identified water-oriented recreation, trout, mule deer and elk, riparian habitat, and bald eagles as target resources because they could be adversely affected by two or more proposed hydropower projects. The staff selected these target resources by reviewing applications for proposed and existing hydropower projects, and comments from federal and state natural resource agencies and the public.

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The Boise River Basin includes the major population center in the state. Consequently, water-oriented recreational use (i.e., fishing, boating, swimming) is very high in the basin. For example, Arrowrock, Lucky Peak, Lake Lowell, and Anderson Ranch Reservoirs provide more than 30 square miles of lake surface and attract more than 1 million recreation-days of public use each year, most of which takes place at Lucky Peak Lake (Bureau of Reclamation, 1985). Public access and recreation sites are provided at all the reservoirs, and boating and other water sports are becoming increasingly popular. Since much of the water-oriented recreation occurs at the reservoirs in the basin, multiple hydropower development could significantly impact the recreational uses enjoyed by the public at these reservoirs by eliminating or degrading the recreational experience.

The trout populations in the Boise River Basin consists of wild populations and hatchery plants. Wild trout populations in the basin vary from fair to excellent. Excellent populations of naturally produced rainbow trout and Dolly Varden are found in the rivers and streams located upstream from Arrowrock Reservoir. Brook trout and cutthroat also occur in some tributary streams in these upstream areas (Idaho Department of Fish and Game, 1985). Due to the heavy angling pressure in the basin, catchable-size, hatchery-reared rainbow trout supplement wild populations in all accessible streams. There is, however, no trout stocking in the South Fork Boise River between Arrowrock Reservoir and Anderson Ranch as this tributary provides the only designated quality trout stream in southwestern Idaho. Finally, the popular rainbow trout fishery that occurs in Lucky Peak Lake and Anderson Ranch Reservoir also depends heavily on stocked catchable size fish. Multiple hydropower projects proposed for the basin could eliminate habitat for this quality recreational trout fishery and could jeopardize the continued quality and survival of natural and hatchery-reared trout populations in the basin.

Mule deer and elk are important big game species in the Boise River Basin; the Boise River mule deer herd is probably the state's most important mule deer population. Multiple hydropower development in the basin could affect these recreationally important big game populations as a result of significant permanent habitat loss, loss of cover (where limiting), loss of special areas (calving and fawning areas, winter range, heavy-use summer range, meadows, or other important use areas), migration blockage, and disturbance due to increased human access (Federal Energy Regulatory Commission, 1985).

Riparian vegetation found along the streams in the Boise River Basin provide important habitat for animal and fish resources. The scarcity of the riparian habitat in the basin makes the remaining pockets of riparian vegetation important for fish and wildlife, such as trout, mule deer, and bald eagles. The

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development of multiple hydropower projects in the basin could eliminate these important riparian habitats.

The bald eagle is a federally listed endangered species in the Boise River Basin. The Boise River from Lucky Peak Lake downstream to the city of Boise supports a wintering bald eagle population ranging from 5 to 30 birds annually (letter from Charles S. Polityka, Regional Environmental Office, Department of the Interior, Portland, Oregon, April 20, 1983). Multiple hydropower project development in the basin could adversely affect bald eagles by significantly increasing human disturbance, removing certain types of vegetation, and reducing fish populations.

4. Environmental Impacts to Target Resources

The water-oriented recreational uses in the Boise River Basin would be maintained and enhanced as a result of the implementation of mitigative measures for the proposed project. For example, the maintenance of the proposed minimum pool at Arrowrock Reservoir would benefit recreation by enhancing the resident fishery and improving fisherman access. The recreational uses (i.e., fishing, boating, and swimming) in Lucky Peak Lake would be maintained and protected by the applicant's proposals (see section 8-Recreation and Other Land and Water Uses). In addition, the applicant would be required to monitor recreational use in the project area in order to ensure that this resource is adequately accommodated. Based on these facts, it is concluded that the proposed construction and operation of the Arrowrock Dam Project would not contribute to cumulative adverse impacts to water-oriented recreation in the Boise River Basin.

The naturally producing trout resources in the basin are managed by IDFG primarily by supplementing the resource with hatchery plants. Nevertheless, the trout resource as presently managed has important recreational value because of the high angler-demand in the populated basin. The applicant's proposal to maintain a minimum pool at Arrowrock Reservoir would potentially enhance the natural reproduction of rainbow trout in Arrowrock Reservoir and its tributaries, such as in the South Fork Boise River. The applicant would also be required to monitor turbine-mortality of fish, including trout, and to implement measures to protect or compensate the resource. Since the proposed project, including the planned fish mitigative measures, would result in a potential enhancement of the naturally producing trout populations upstream of Arrowrock Reservoir, it is concluded that the project construction and operation would result in an overall benefit to the trout populations in the area. For these reasons, the proposed Arrowrock Dam Project would have no potential for causing cumulative adverse impacts to trout populations in the basin.

The proposed project would not impact elk populations in the basin, since elk in the area usually remain at higher elevations north of Arrowrock Reservoir during summer and move into the project area only during severe winters. The IDFG manages about 25,300 acres of mule deer winter habitat in the vicinity of Arrowrock Reservoir and Lucky Peak Lake. The proposed project could affect from 2 to 6 acres of mule deer winter habitat depending on the eventual decision to re-route the existing access road. The staff has recommended that the applicant relocate the road, after consultation with the appropriate agencies, so as to mitigate impact to the mule deer winter habitat. The eventual relocation of the road, therefore, would result in no impact to the mule deer populations in the basin. Consequently, construction and operation of the Arrowrock Dam Project would have no potential for contributing to cumulative adverse impacts to mule deer or elk populations in the Boise River Basin.

Riparian habitat in the project area is generally restricted to moist draws and tributaries to Arrowrock Reservoir and Lucky Peak Lake. Project construction and operation would cause no modification of riparian habitat adjacent to these reservoirs. The proposed transmission line would cross the Boise River downstream near the Boise River Diversion Dam. The riparian habitat at the proposed crossing site, however, has already been significantly disturbed due to the construction of the diversion dam (Boise-Kuna Irrigation District et al., 1984). The applicant would be required to revegetate any disturbed areas with a mixture of plant species beneficial to wildlife. Construction and operation of the proposed project, therefore, would not contribute to cumulative adverse impacts to riparian habitat in the basin.

The Boise River from Lucky Peak Lake to the city of Boise supports a wintering eagle population. The eagles use the large cottonwood, maple, and black locust trees in the riparian zone for roosting. The construction and operation of the proposed project would not affect this bald eagle population (letter from James P. [illegible], Acting Field Supervisor, U.S. fish and Wildlife Service, Boise, Idaho, April 6, 1983); therefore, there would be no potential for the proposed project to contribute to cumulative adverse impacts to bald eagle populations in the Boise River Basin.

In summary, the staff concludes that the construction and operation of the Arrowrock Dam Project would have no potential for cumulative adverse impacts to the target resources identified in the Boise River Basin.

C. Alternatives to the Proposed Project

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The alternative operating regime for the Arrowrock Dam Project would eliminate the daily "shaping" of releases from Arrowrock Reservoir and the 5-foot drawdown of Lucky Peak Lake. Operating according to this alternative would change the projects' impact on fish resources, recreation, and visual quality. To maintain Lucky Peak Lake at 3,055 feet would require discharging more water from Arrowrock reservoir earlier in the summer. The earlier discharge would make it more difficult to maintain the proposed minimum pool of 28,700 acre-feet in Arrowrock Reservoir. Without the higher pool level, there would be less spawning along the shoreline and in tribitaries, and fish survivability would be decreased. Further, since the powerplant would be operated at lower water levels, fish would be more likely to be entrained in the penstock intakes.

The impacts to Lucky Peak Lake's recreational facilities from the proposed drawdown and fluctuations would be avoided under the alterative plan. Likewise, adverse visual impacts at Lucky Peak Lake would be eliminated.

D. Alternative of No Action.

Under the no-action alternative, there would be no construction of project facilities or changes to the existing physical, biological, or cultural components of the area. Electrical power that would be generated by the proposed hydroelectric project would have to be obtained from other available sources or offset by conservation measures.

E. Recommended Alternative.

The proposed project is the preferred alternative because the generation of electricity from a renewable resource would reduce the use of fossil-fueled plants and because the applicant could adequately mitigate the environmental effects of building and operating the project. Further, fish resources in Arrowrock Reservoir would probably be enhanced because pool elevations would be maintained at a higher minimum elevation for a longer period during the summer.

VI. FINDING OF NO SIGNIFICANT IMPACT

Construction-related activities would cause a minor, short-term increase in soil mass movement, erosion, dust, noise, sedimentation, and turbidity. Increased traffic, noise and dust levels during construction would disturb recreational users in the project area. The noise and the increased human activity would also disturb wildlife in the project area. Approximately 150 acres of shrub-steppe vegetation would be disturbed during construction of the transmission line and other facilities. Increased flow fluctuations would slightly increase erosion and turbidity in both reservoirs. Project operation would reduce DO

concentrations in Lucky Peak Lake, because releases through the present outlet structures would be eliminated. The drawdown of Lucky Peak Lake would decrease fish habitat and would have a minor adverse impact on the visual quality of the project area. Project construction would adversely affect the historical integrity of Arrowrock Dam; the applicant would mitigate these effects by documenting the historical features of the dam, in accordance with HAER's standards, by building project facilities so as to blend with the historical appearance of the dam, and by providing an interpretive display for visitors to the dam.

Implementing the mitigative measures proposed by the applicant and recommended by the staff would adequately protect the resources of the project area. On the basis of the staff's independent environmental analysis, issuance of a license for the Arrowrock Dam Hydroelectric Project would not constitute a major federal action significantly affecting the quality of the human environment.

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VIII. List of Preparers

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Angelo Colianni--Geology and Soils (Soil Conservationist; B.S., Agriculture [Range Management, Soil Science]).

Mohamad Fayyad--Purpose, Economic Analysis, and Comprehensive Development (Civil Engineer; M.E.A.).

James Haimes--Socioeconomic Considerations (Economist; B.A., Economics).

John Mitchell--EA Editor (Writer-editor; B.S., Social Science).

Sue A. Perry--Water Resources and Fish Resources (Ecologist; Ph.D., Aquatic Biology).

Edwin Slatter--Cultural Resources (Archeologist; Ph.D., Anthropology).

David C. Starkie--Visual Resources (Landscape Architect; B.L.A., Landscape Architecture).

George Taylor--Cumulative Impact Analysis (Ecologist; M.S., Biology).

Martin J. Thorpe--Need for Power and Alternatives (Engineer; B.S.E.E.).

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SAFETY AND DESIGN ASSESSMENT
ARROWROCK DAM
FERC No. 4656-002-ID

DAM SAFETY

The applicant proposes to construct a powerhouse and penstock at the Bureau of Reclamation's existing Arrowrock dam. The powerhouse would contain two 30-megawatt, vertical Francis units, operating under a rated head of 149 feet and a hydraulic capacity of 2735 cfs each. The proposed project would be operated in coordination with the Bureau of Reclamation, which operates the dam and makes all releases.

The staff's review indicates that there are no engineering problems that would make construction, operation, or maintenance of the project infeasible.

Safety of the Arrowrock dam is the responsibility of the Bureau of Reclamation.

WATER RESOURCE PLANNING

The project's two 30-MW units have a hydraulic capacity of 2735 cfs each. The project develops a head ranging from 97 feet to 106 feet, utilizing a 13-foot diameter penstock. The discharge at Arrowrock dam exceeds the hydraulic capacity of the units about 10 percent of the time.

The applicant estimates that the project would generate about 156.7 GWh, annually or 167.6 GWh annually, if the 5-foot drawdown from Lucky Peak Lake is allowed. The staff finds this estimate of annual generation reasonable.

The Commission's Planning Status Report for the Boise River Basin discusses the existing water resource developments and reconnaissance level plans of possible feature development within the basin. The project does not conflict with any existing or planned development or any pending applications for exemption, license, or preliminary permit.

In summary, the staff's analysis shows that the proposed project is properly designed to develop the hydropower potential of Arrowrock dam.

The staff has reviewed the Idaho State Water Plan, which discusses general water policies, including water allocation, flood control, irrigation, and power. The plan sets forth various average daily flows at points along the major rivers such as the Snake River. The proposed Arrowrock Project would be located in the Upper Snake River Basin and would make nonconsumptive, use of the water of the Boise River. In view of

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this fact, it is concluded that the proposed project would not conflict with the Idaho Water Plan.

ECONOMIC EVALUATION

A proposed project is economically beneficial so long as its projected levelized cost is less than the long-term levelized cost of alternative energy to any utility in the region that can be served by the project.

The staff has calculated the projected levelized alternative energy cost in the region to be 94.2 mills/kWh for a 1993 operation date. This cost is based on the cost of a generic coal-fueled steam-electric plant, forecast by the Northwest Power Planning Council in its proposed resource portfolio to come on-line about the year 2002. The levelized cost of energy from the Arrowrock Dam Project is estimated to be 75.9 mills/kWh; therefore the project is economically beneficial. Furthermore, since this cost is significantly less than the alternative energy cost, the project would be potentially financially feasible. Any further determination of financial feasibility depends on the applicant's efforts to secure a power sales contract and project financing.

EXHIBITS

Exhibit A sections titled "Powerhouse" and "Turbines and Generators," and the following exhibit F drawings conform to the Commission's rules and regulations and should be approved and made a part of the license if issued.

Exhibit F-	FERC No. 4656-	Showing
1	1	Arrowrock Dam Powerplant

RESOURCE DEVELOPMENT

A. Purpose

The proposed project would provide annually an estimated average of 156.7 GWh of electrical energy. Had the 5-foot drawdown of the Lucky Peak Lake not been withdrawn and the Corps agreed to it, the estimated annual generation would have been increased to 167.6 GWh. The applicant proposed to sell the power to one of the public utilities in the Northwest region.

B. Need for Power

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Available data show that growth in the demand for electric power and energy will continue. Given load growth and an existing generating resource base, a need for additional generating resources can be projected to exist in the future for any power system. Additional resources would have to be obtained for any system at some time in order to meet projected additional load requirements with the same degree of reliability required by an existing criterion for the system. Timing of the need would vary in different systems depending upon such factors as the rates of load growth, the load characteristics, the available existing power resources and the reliability criteria established for each system. A power generating facility may, however, be added to a system before a generating resource deficit exists, if, over its operating life, the generating addition provides benefits that would not be available through operation of the system without the addition.

The proposed project is located in the Northwest Power Planning Council (NPPC) area, within the Northwest Power Pool (NWPP) area of the Western Systems Coordination Council (WSCC) region. The NPPC, in the 1986 Northwest Conservation and Electric Power Plan, projects a northwest regional need for additional power resources by 1992, based on a medium-high load growth rate forecast (2.0 percent per year), and by 1996, based on a medium-low load growth rate forecast (1.3 percent per year). The Bonneville Power Administration (BPA) forecast, released in April 1986, and the Pacific Northwest Utilities Conference Committee (PNUCC) forecast, issued in March 1987, show northwest regional energy deficits for mid-range load forecasts beginning in 1994 and 1993-1994, respectively. Individual systems within the northwest region also indicate resource deficits will exist on their systems before northwest regional deficits occur.

Because of the small size of the proposed project in relation to the existing and projected generating capability in the NPPC area, the traditional approach of linking project development with a forecasted need for a specific project is inapplicable to assessing need for the proposed project.

The small size of the project ensures that the project power would be integrated into the existing resources base without the temporary overbuilding commonly associated with bringing large power project on-line (i.e., initiating commercial operation). Moreover, in accordance with the Federal Power Act, the schedule for the project can be made to accommodate uncertain market conditions to some extent by the licensee's delaying commencement of construction as much as 4 years after the license is issued.

The power from the project would be useful in meeting a small part of the need for power projected by NPPC for the

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northwest region. From the time the project goes on-line, it would be available to displace fossil-fueled power generation in the WSCC region, thereby, conserving nonrenewable fossil fuels and reducing the emission of noxious byproducts caused by the combustion of fossil fuels.

C. Alternatives to the Proposed Project

Because the applicant is not an electric utility, the only alternative to the proposed action, in the event of denial of license, is not to construct the project. If the license is not issued and the project is not developed, the power that would have been produced from a renewable resource would be lost and eventually would have to be provided by the consumption of nonrenewable fuels.

D. Energy Conservation Program

The applicant is a public body (e.g., a city, village, or borough, or a county or state agency), that does not sell electric power directly to consumers. The applicant intends to sell the entire project output to a second party but at this time, has no firm power contract (one that is free of potentially nullifying contingency clauses) with a power purchaser.

Consideration of any electricity consumption efficiency improvement program that the applicant might have as the result of being a customer of the utility serving the applicant may be irrelevant with regard to the use of project power, since the applicant does not intend to use project power to meet any of its requirements and may not sell the project power to the utility that does. In addition, the applicant could not reasonably be expected to conserve electricity in lieu of purchasing project power. Furthermore, since the applicant does not have a firm power sales contract, consideration of a potential purchaser's electricity consumption efficiency improvement program would be based on conjecture and could result in findings totally unrelated to how the power is ultimately disposed of.

The staff therefore deems further consideration of electricity consumption efficiency in relation to issuing a license for the project unwarranted.

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ENVIRONMENTAL ASSESSMENT
DIVISION OF ENVIRONMENTAL ANALYSIS,

OFFICE OF HYDROPOWER LICENSING
FEDERAL ENERGY REGULATORY COMMISSION

Arrowrock Dam Hydroelectric Project
FERC No. 4656-002--Idaho

August 29, 1986

I. APPLICATION

On July 27, 1984, Boise-Kuna Irrigation District, New York Irrigation District, Nampa and Meridian Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District (applicant) filed an application for a major license for the Arrowrock Dam Hydroelectric Project. The application was supplemented on March 14, and September 12, 1985, and on May 27, 1986.

The proposed project would be developed at Arrowrock Dam, an existing Bureau of Reclamation (BR) dam on the Boise River. The proposed project would be located in Elmore, Boise, and Ada Counties, Idaho, approximately 12 miles east of Boise, Idaho (figure 1). 1/ The project would occupy about 150 acres. This area would include: about 23 acres within the Boise National Forest, administered by the Forest Service (FS); about 24 acres, administered by the Department of the Army, Walla Walla District Corps of Engineers (Corps); and about 14 acres, administered by the Bureau of Land Management (BLM). Arrowrock Dam is 48 miles downstream of BR's Anderson Ranch Reservoir, on the South Fork of the Boise River, and is immediately upstream of Lucky Peak Lake, a reservoir impounded by the Corps' Lucky Peak Dam.

II. RESOURCE DEVELOPMENT

A. Purpose 2/

The proposed project would generate an estimated annual average of 167.6 gigawatthours (GWh) of electrical energy. The applicant proposes to sell the power to one of the public utilities in the Northwest region.

1/ Figures and attachments referenced in the text are omitted from this document due to reproduction requirements.

2/ This subsection is superseded by subsection A in the Safety and Design Assessment.

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B. Need for Power 3/

Available data show that growth in the demand for electric power and energy will continue. Given load growth and an existing generating resource base, a need for additional generating resources can be projected to exist in the future for any power system. Additional resources would have to be obtained for any system at some time in order to meet projected additional load requirements with the same degree of reliability required by an existing criterion for the system. The timing of the need would vary in different systems, depending upon such factors as the rates of load growth, the load characteristics, the available existing power resources, and the reliability criteria established for each system. A power-generating facility may be added to a system before a generating resource deficit exists, if, over its operating life, the additional generation provides benefits that would not be available through operation of the system without the addition.

The proposed project is located in the Northwest Power Planning Council (NPPC) area, within the Northwest Power Pool (NWPP) area of the Western Systems Coordination Council (WSCC) region. The NPPC, in its 1986 Northwest Conservation and Electric Power Plan, projects a northwest regional need for additional power resources by 1992, based on a medium-high load growth rate forecast (2.0 percent per year), and by 1996, based on a medium-low load growth rate forecast (1.3 percent per year). The 1986 forecasts of the Bonneville Power Administration (BPA) and the Pacific Northwest Utilities Conference Committee (PNUCC) show northwest regional energy deficits for mid-range load forecasts beginning in 1994 and 1993, respectively. Individual systems within the northwest region also indicate resource deficits will exist on their systems before northwest regional deficits occur.

Because of the small size of the proposed project in relation to the existing and projected generating capabability in the NPPC area, the traditional approach of linking project development with a forecasted need for a specific project is inapplicable to assessing a need for the proposed project.

The small size of the project in relation to existing and projected generating capability ensures that the power from the project would be integrated into the existing generating resource base without the temporary overbuilding commonly associated with bringing large power projects on-line (becoming commercially operational). Moreover, in accordance with the Federal Power Act, the schedule for the project can be made to accommodate uncertain market conditions to some extent by the licensee's

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3/ This subsection is superseded by subsection B in the Safety and Design Assessment.

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delaying the beginning of construction as much as 4 years after the license is issued.

The power from the project would be useful in meeting a small part of the need for power projected by the NPPC for the northwest region. From the time the project goes on-line, it will be available to displace fossil-fueled power generation in the WSCC region, thereby conserving nonrenewable fossil fuels and reducing the emission of noxious byproducts caused by the combustion of fossil fuels.

C. Economic Analysis 4/

The applicant proposes to sell the power generated to a public utility in the Pacific northwest region. Based on the cost of generating an equivalent amount of power from a generic, coal-fueled stream-electric plant constructed in the Pacific northwest, the project would be economically feasible. The net annual benefit is estimated at about 5.5 mills per kilowatthour, or $866,000.

D. Comprehensive Development 5/

The project's two 30-megawatt (MW) units would have a hydraulic capacity of 2,735 cubic feet per second (cfs) each. The project would develop a head ranging from 97 feet to 186 feet. The discharge at Arrowrock dam would exceed the hydraulic capacity of

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ENVIRONMENTAL ASSESSMENT
DIVISION OF ENVIRONMENTAL ANALYSIS,

OFFICE OF HYDROPOWER LICENSING
FEDERAL ENERGY REGULATORY COMMISSION

Arrowrock Dam Hydroelectric Project
FERC No. 4656-002--Idaho

August 29, 1986

I. APPLICATION

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II. RESOURCE DEVELOPMENT

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1/ Figures and attachments referenced in the text are omitted from this document due to reproduction requirements.

2/ This subsection is superseded by subsection A in the Safety and Design Assessment.

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B. Need for Power 3/

Available data show that growth in the demand for electric power and energy will continue. Given load growth and an existing generating resource base, a need for additional generating resources can be projected to exist in the future for any power system. Additional resources would have to be obtained for any system at some time in order to meet projected additional load requirements with the same degree of reliability required by an existing criterion for the system. The timing of the need would vary in different systems, depending upon such factors as the rates of load growth, the load characteristics, the available existing power resources, and the reliability criteria established for each system. A power-generating facility may be added to a system before a generating resource deficit exists, if, over its operating life, the additional generation provides benefits that would not be available through operation of the system without the addition.

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3/ This subsection is superseded by subsection B in the Safety and Design Assessment.

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Form L-2
(Revised October, 19[illegible]

FEDERAL ENERGY REGULATORY COMMISSION 402688

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 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.

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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, of the 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.

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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.

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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.

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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

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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.

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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.

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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.

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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

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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.

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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.

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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.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

BOISE-KUNA IRRIGATION DISTRICT, NAMPA & MERIDIAN IRRIGATION DISTRICT, NEW YORK IRRIGATION DISTRICT AND BIG BEND IRRIGATION DISTRICT	)	Project No. 4656-002

REQUEST FOR REHEARING AND STAY
BY BOISE-KUNA IRRIGATION DISTRICT,
NAMPA & MERIDIAN IRRIGATION DISTRICT,
NEW YORK IRRIGATION DISTRICT,
WILDER IRRIGATION DISTRICT
AND BIG BEND IRRIGATION DISTRICT

Pursuant to Rule 713 of the Federal Energy Regulatory Commission's (the "Commission's") Rules of Practice and Procedure, the Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, New York Irrigation District, Wilder Irrigation District and Big Bend Irrigation District(the "Districts"), licensees for the Arrowrock Dam Project, FERC License No. 4656-002 (the "Arrowrock Project" or the "Project") hereby request a rehearing in the above-referenced proceeding.

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On March 27, 1989, the Commission issued to the Districts the license to construct, operate and maintain the Arrowrock Dam Project No. 4656 in Elmore and Ada Counties, Idaho. The Project will be located at the U.S. Bureau of Reclamation's existing Arrowrock Dam and Reservoir on the Boise River, immediately upstream of the Districts' Lucky Peak Power Plant Project No. 2832, located at the U.S. Corps of Engineers' Lucky Peak Dam and Reservoir.

The Districts would request the Commission to modify the license as follows: (1) remove from the license Articles 402 and 403 requiring the operation of the Project in a run-of-the-river mode; (2) modify Article 404 so that the Districts have to meet the state standard of 5 milligrams of dissolved oxygen per liter rather than 6 milligrams per liter and to eliminate the spill over the dam requirement; (3) remove Article 111 from the license as beyond the jurisdiction of the Forest Service to require under Section 4(e) of the Federal Power Act; (4) remove Article 117 from the license because Article 201 is the exclusive vehicle for reimbursing the United States for the cost of administering Part 1 of the FPA, for use of United States lands, and for the use of a federal dam; and (5) modify Articles 104 and 412 of the license to

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require one recreation plan approved by the appropriate agency or agencies and to remove references to the no longer applicable five foot draw down.

DISCUSSION

I. The Districts Have No Authority to Operate the Boise River Reservoirs in a Run-of-the-River Mode As Required by Articles 402 and 403.

Articles 402 and 403 of the license require the Districts to operate the Arrowrock Reservoir in a "run-of-the-river" mode for one month from May 1 to June 30 of each year. "Run-of-the-river" is defined as allowing the same amount of water to be released from Arrowrock as the inflow into it.

The Districts have no authority to control either the volume of water released from the reservoir or the time of its release. The run-of-the-river operation proposed could conflict with the flood control, irrigation and recreation objectives of the Bureau of Reclamation and the Corps of Engineers who do control releases from the reservoir. It could also conflict with water rights obtained pursuant to state law.

Finally, requiring operation in this manner could seriously affect Project economics. A significant portion of the Project's energy potential

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will occur during this period. The proposed condition will not allow an effective balance between the authorized purposes of the reservoir and producing cost effective power from the Project.

A. Description of Boise River Reservoir System.

Within the Boise River Basin, four separate Federal reservoir projects are being operated as one 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

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Manual for Boise River Reservoirs (April 1985) (the "Water Control Manual") at 2-1.[1]

The Arrowrock Project as proposed by the Districts is to be incidental to the authorized purposes listed above. It will use what flows are released from the dam for those authorized purposes without interfering with them.

B. 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 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, the Corps of Engineers, and the

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1. Copies of the Water Control Manual were previously submitted to the Commission by the Districts in this proceeding and in connection with Project No. 2832.

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Boise River Watermaster.[2] 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" (the "Agreement"), 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 procedures 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 1985 Memorandum of Understanding

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2. 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. *See* Water control Manual at 9-7.

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is that the Boise River reservoirs will be regulated according to the criteria and procedures in the Water Control Manual. Significant public input was solicited prior to the preparation of the Water Control Manual. It was prepared in consultation with the applicable state and federal agencies. *See* Water Control Manual, pp. 1-1 to 1-4.

C. 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. 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* Water Control Manual at 7-23 *et seq.* They have no rights for stream flow maintenance purposes. Thus, the Districts could not legally provide for the run-of-the-river operation mode required by the Commission in Articles 402 and 403.

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In addition, operating the Arrowrock Reservoir in a run-of-the-river mode could conflict with the flood control, irrigation and recreation objectives for the Boise River Reservoir System.

For example, the system is operated to maximize recreational opportunities at Lucky Peak Lake, primarily at the expense of recreational opportunities at Arrowrock. Water Control Manual, pp. 7-29, 7-30. One of the system's objectives is to fill Lucky Peak Lake by Memorial Day, and keep it filled as long as possible during the summer. Water Control Manual, p. 7-29. Operating Arrowrock Reservoir in a run-of-the river mode could interfere with this objective, as well as with the flood control and irrigation plans of the system.

The Water Control Manual defines the period of 1 April through 31 July as the "refill period" for the reservoirs. *Id.* at 7-11. It goes on to state:

> Reservoir regulation during the refill period is normally the most difficult and most critical of the three flood control periods. Therefore, it is absolutely essential that required minimal flood control spaces and space distributions be maintained while the reservoir projects are being refilled. Reservoir releases must be scheduled such that flood control requirements are not violated; and yet, release fluctuations at Lucky Peak must be limited as much as practical to avoid unnecessary interference with irrigation diversions during this period.

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Id.

Thus, depriving the Bureau of Reclamation and the Corps of Engineers of release flexibility from the Arrowrock Reservoir would interfere with their operations during this critical period.

The Commission previously recognized the Boise River Reservoir System's needs when it removed a mandatory minimum stream flow requirement from the Districts' license for Project No. 2832:

> 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) [Bureau of Reclamation] 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

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minimum flow requirement in Article 35. 13 F.E.R.C. ¶ 61,032.

The Districts are in a similar situation with regard to the "run-of-the-river" requirement and request that it be deleted.

II. Article 404 of the License Expands the Requirements Under State Law and Would Require the Districts to Operate the Project in a Manner Beyond Their Authority.

Article 404 requires the Districts to maintain a 6 milligram per liter level of dissolved oxygen in the powerhouse discharge at all times. It further requires a plan for a greater "spill" "over Arrowrock Dam" in the event dissolved oxygen levels fall below 6 milligrams per liter.

The State of Idaho Water Quality Standards, Section 1.2276, deals extensively with dissolved oxygen:

> 02. Dissolved Oxygen Concentrations Below Existing Facilities. As of the effective date of these regulations, and except as noted in Idaho Department of Health and Welfare Rules and Regulations Sections 01.2276,03. and 01.2276,04., waters below dams, reservoirs, and hydroelectric facilities shall contain the following dissolved oxygen concentrations during the time period indicated:

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Time Period (annually)	mg/1 Dissolved Oxygen 30-day Mean	7-Day Mean Minimum	Instantaneous Minimum
June 15-Oct. 15	6.0	4.7	3.5 (1-10-86)

03. Dissolved Oxygen Concentrations for Modifications of Existing Facilities or for New Facilities. Modifications of existing facilities or new facilities are subject to the provisions of Idaho Department of Health and Welfare Rules and Regulations Section 01.2276,02. unless the State had documented the existence of significant fish spawning areas below the facility. If such areas exist, then waters below those facilities shall contain the dissolved oxygen concentrations shown in Idaho Department of Health and Welfare Rules and Regulations Section 01.2276,02. during the modified time periods indicated for each species below.

Fish Species	Time Period (annually)
Cutthroat Trout	July 1-Oct. 15
Kokanee and Chinook Salmon	June 15-Aug. 1
Bull Trout	June 15-Sept. 1 (1-10-86)

The State of Idaho has thus made a determination of dissolved oxygen levels and their impact on fisheries.

In addition, any plan to spill water over the Arrowrock Dam would require the concurrence of the Bureau of Reclamation. Such a requirement might not be practical during any time of the year other than the early irrigation season when the reservoir is full, since Arrowrock Reservoir is drawn down early to

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provide for continued recreational opportunities at Lucky Peak. Water Control Manual, pp. 7-29, 7-30.

Furthermore, to the extent that the word "spill" implies a release other than authorized by the Bureau of Reclamation for flood control, irrigation, and/or recreation, the Districts would have no authority to release any water. The Districts believe that this license condition should instead require them to release flows previously authorized by the Bureau of Reclamation through the outlet works for the dam.

The Districts would thus request that Article 404 be amended to require them to comply with the state standard of 5 milligrams per liter and to modify the mandatory requirement to spill water over the dam.

III. Article 111 Should Be Removed or Amended.

Articles 111 was placed into the license at the request of the Forest Service pursuant to Section 4(e) of the Federal Power Act. Article 111 provides in part:

> Article 111. Notwithstanding any Commission approval or license provisions to make changes to the project, the licensee shall get written approval from the Forest Service prior to making any changes in the location of any constructed project features or facilities, or in the uses of project

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> lands and waters, or any departure from the requirements of any approved exhibits filed with the Commission.

The Arrowrock Dam is owned and operated by the Bureau of Reclamation. The land around the Arrowrock Reservoir is administered by the Forest Service pursuant to an interagency agreement between the Forest Service and the Bureau of Reclamantion signed in 1987. The site of the power plant will continue to be administered by the Bureau of Reclamation. *See* Exhibit 1, pp. 13, 15. Thus, the power plant and its penstocks will be on land administered by the Bureau of Reclamation. The power plant will discharge into Lucky Peak Lake, which is administered by the Corps of Engineers.

Pursuant to the interagency agreement, the Forest Service agreed that:

> The Bureau shall have jurisdiction and management responsibility for the operation and maintenance of the water resource project, including responsibility for all improvements within the reclamation zone.

Exhibit 1, p. 13.

Despite the fact that the major portion of the Project will be located on Bureau of Reclamation lands, the Forest Service included Article 111 in its licensing conditions. Article 111 can be read to

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require the Forest Service to approve any changes to the Project, regardless of whether those changes are on Forest Service land. The Commission itself questioned the validity of this article. 46 F.E.R.C. ¶ ____, n.3. It felt, however, that it was bound by Section 4(e) to impose it. The Districts disagree.

In *Escondido Mutual Water Company v. LaJolla Band*, 466 U.S. 765 (1984), the Supreme Court held that the Commission shall include 4(e) conditions relating to a project within a federal reservation's boundaries. It further held, however, that the Commission does not have to include conditions that might affect federal reservations outside of the project's boundaries:

> If a project is licensed "within" any reservation, the Commission must make a "no interference or inconsistency" finding with respect to "such" reservation, and the Secretary may impose conditions for the protection of "such" reservation. Nothing in the section requires the Commission to make findings about, or the Secretary to impose conditions to protect, any reservation other than the one within which project works are located. The section imposes no obligation on the Commission or power on the Secretary with respect to reservations that may somehow be affected by, but will contain no part of, the licensed project works. 466 U.S. at 780-781.

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As mentioned, the powerhouse will be on land administered by the Bureau of Reclamation. As Article 111 relates to project facilities, operations, or other requirements that are not on Forest Service administered land, it is clearly not required by Section 4(e).

The Districts would thus request that it be eliminated. In the alternative, it could be amended to state that the licensee shall get written approval from the Forest Service prior to making any changes in the location of any constructed project features or facilities on Forest Service administered land, or in the uses of project lands and waters administered by the Forest Service, or for any departure from the requirements of any approved exhibits filed with the Commission that relate to Forest Service administered lands.

IV. Article 201 is the Exclusive Method for Reimbursing the United States, and Article 117 Should Thus Be Withdrawn.

Article 201 requires the Districts to pay an annual charge based upon Commission regulations. *See* 18 CFR, part 11. The Federal Power Act, 16 U.S.C. § 803(e), provides as follows:

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> That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this subchapter; for recompensing it for the use, occupancy, and enjoyment of its lands or other property.

Despite these Article 201 payments, the Bureau of Reclamation has included, as reflected in Article 117, a requirement that the Districts compensate it for activities relating to the Project, including design review, construction inspections, and technical studies. The Districts agree with the Commission that Article 201 is the exclusive vehicle for reimbursing the United States for the cost of administering Part 1 of the FPA, for use of United States lands, and for the use of a federal dam.

V. Articles 104 and 412 Dealing With Recreation Are Inconsistent and Should Be Revised.

The Districts would ask the Commission to clarify their obligations in regard to recreation enhancement and planning. In Article 104, the Commission has required that the Districts file a plan approved by the Forest Service for accommodation of Project induced recreation. Article 104 appears to conflict with Article 412 of the license, which requires the Districts to file a plan approved by the

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Corps of Engineers, the Bureau of Reclamation, the Idaho Department of Parks and Recreation, and the Idaho Department of Fish and Game to monitor recreational use to insure that such use is adequately accommodated. The Districts request the Commission to clarify these Articles so that the Districts are not faced with inconsistent obligations. As mentioned, the Forest Service appears to be the lead agency for the lands around the reservoir. *See* Exhibit 1, p. 13.

The recreation enhancement requirements rely partially on the assumption that there will be a decreased reservoir pool level in Lucky Peak and an increased reservoir pool level in Arrowrock and safer and easier access to the Arrowrock boat ramp. As originally proposed, the Arrowrock Project had contemplated the possibility of an increased operating level in the Arrowrock Reservoir and a draw down of the level in Lucky Peak. When the Corps of Engineers expressed concerns over this, the Districts withdrew the drawdown proposal. Thus, the Districts wish to clarify that their recreation obligations should not be increased because of the withdrawn proposal.

The Districts have proposed to improve a portion of the access road leading up to the Arrowrock Dam. No improvements are contemplated for the road

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from the Arrowrock Dam along the reservoir. It is this narrow road hemmed in by steep mountain walls which is a safety hazard and deters increased recreational use. *See* Application for License, p. E-38, E-42. Road improvement beyond the Arrowrock Dam would be prohibitively expensive. While the Districts recognize their obligation to enhance recreation, they wish the Commission to be aware that such enhancement is limited by the operation of the Arrowrock Reservoir and poor access beyond the Arrowrock Dam.

CONCLUSION

The Districts respectfully request that the Commission grant this Petition for a Rehearing and reconsider the Commission's license requirements contained in Articles 104, 111, 117, 402, 403, 404 and 412.

REQUEST FOR STAY

The Districts request a stay of the effective dates of the license and of the consultations and plans required by this license until the Petition for Rehearing is resolved.

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RESPECTFULLY SUBMITTED this 25th day of April, 1989.

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MAR 1 2 2002

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By Larry Sullivan
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Counsel for Big Bend Irrigation District

CERTIFICATE OF PERSONAL SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document on each person designated on the official service list compiled by the secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure (18 C.F.R. § 385.2010)

DATED this 25th day of April, 1989.

HAWLEY TROXELL ENNIS & HAWLEY

Don A. Olowinski
Don A. Olowinski

MAY 12 2002

EXHIBIT "1"

INTERAGENCY AGREEMENT

NO. R4-RO-IA-87-0004 (USDA-FS)
NO. 7-07-10-L0841 (BOR)

for

RESERVOIR MANAGEMENT ACTIVITIES

between the

USDA - Forest Service

and the

Bureau of Reclamation
U.S. Department of the Interior

For Administration and Management of Resources, Facilities, Water Surfaces, and Reclamation Zones of the Cascade, Deadwood, Arrowrock, and Anderson Ranch Reservoirs.

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List of References
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PREFACE

There are four Bureau of Reclamation reservoirs that are within, or partly within, the exterior boundaries of the Boise National Forest. They are the principal storage facilities of the Bureau's Boise Project (formerly called the Payette-Boise Project) and influence the management and activities on the Boise National Forest in varying degrees.

The Boise Project was authorized by the Secretary of Interior under the Reclamation Act of 1902 (32 Stat. 388) on March 27, 1905; examined and reported upon by the Board of Army Engineers pursuant to Section 1 of the Act of June 25, 1910 (36 Stat. 835), and approved by the President on January 5, 1911.

Arrowrock Dam, as authorized by the Reclamation Act of 1902, was approved by the Secretary of Interior on January 6, 1911, completed in 1915 and raised five feet in 1937.

Deadwood Dam, as authorized by the Act of 1902 and as required by the Act of 1910, was approved by the President on October 19, 1928 and was completed in 1931.

The entire Payette Division of the Boise Project, as authorized by the Act of 1902 and as required by the Acts of 1910 and 1924, including Cascade Dam was approved by the President on December 19, 1935, and Cascade Dam was completed in 1948.

Anderson Ranch Dam, as authorized by the Act of 1938 (PL 497), and provisions of appropriation Act of 1939, was reported to the President on June 25, 1940, under the provisions of Section 9 of the Reclamation Project Act of 1939 (53 Stat. 1193) and reported to Congress on August 12, 1940. It was completed in 1950.

Administration of the lands immediately adjacent to the reservoirs, the water surfaces, and related responsibilities have been guided by memoranda of agreement for each reservoir area. The degree of administration and agency responsibility varies with each individual agreement. The following summary itemizes the agreements in effect between the Bureau of Reclamation and the U.S. Forest Service that pertain to the above stated Project and the Boise National Forest as of the date of this agreement.

Reservoir Area	Agreement
Deadwood	Memo of Understanding dated July 30, 1952.
Arrowrock	Memo of Understanding dated July 30, 1952.
Cascade	Memo of Understanding dated May 18, 1961. (Contract #14-06-100-2192)
Anderson Ranch	Memo of Understanding dated January 19, 1970. (Contract #14-06-100-6669)

These agreements were prepared and executed within the framework of a Master Agreement approved in January 1948 by representatives of the Bureau of Reclamation and the Forest Service at the National level. In addition to that agreement, Forest Service policy in this respect has been directed by regulations and manual supplement. (See Appendix)

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A new master agreement was considered in 1983 and an updated version is under consideration at the Washington Offices for the Bureau of Reclamation and United States Forest Service at this time. This Memorandum of Agreement and Reservoir Management Plan is an effort to develop a document which sets forth necessary agreements on site and resource specific bases.

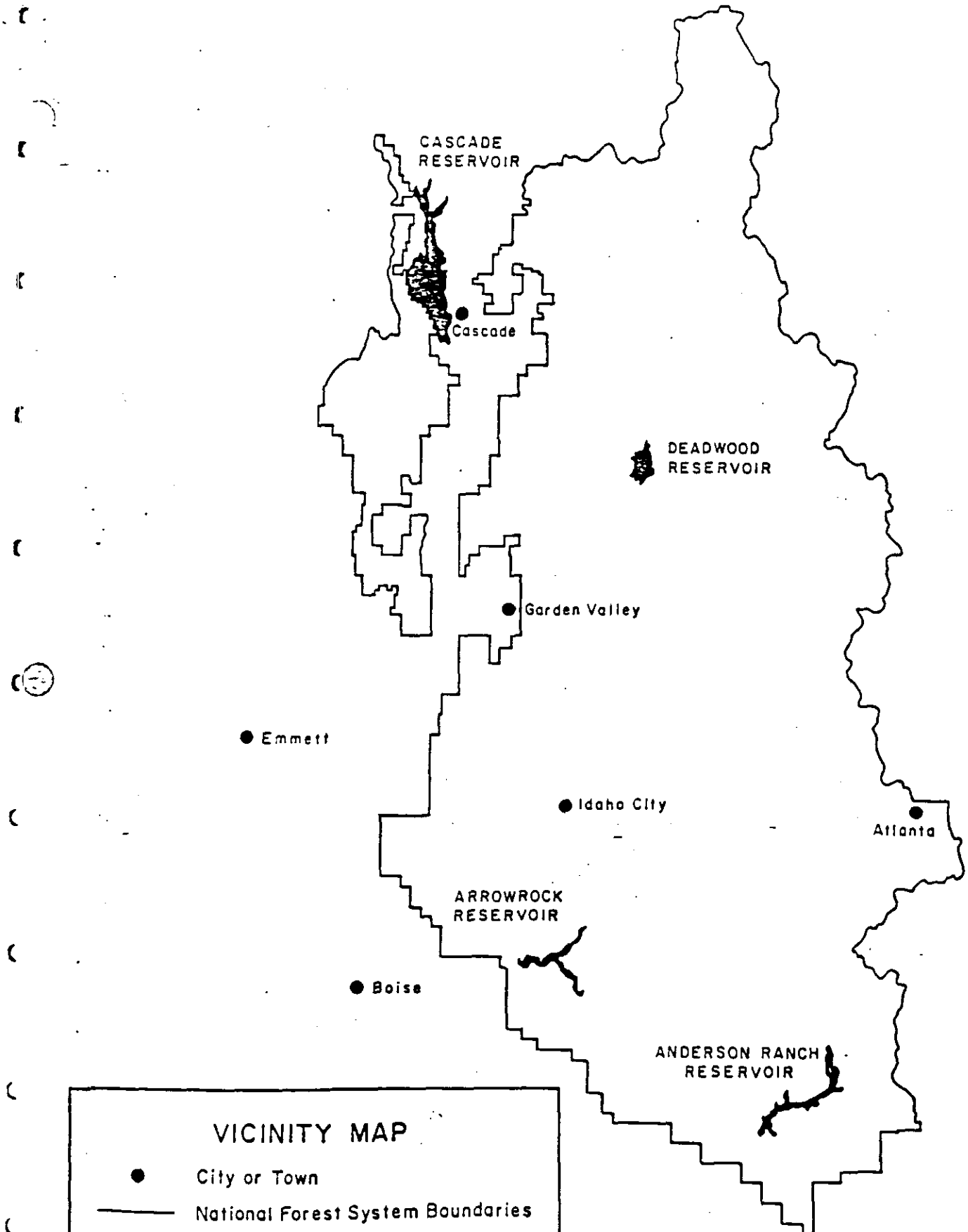
Two of the existing agreements refer to clauses in the 1948 document. In addition, each of the existing local agreements contain elements that appear to be either less applicable or nonapplicable under present conditions and considerations.

Certain problems have occurred because of misunderstandings between the two agencies. These cases are partly due to the above stated reasons and partly due to lack of timely communication apparently caused by the number of agreements and individual lack of complete understanding of the location or the terms of those agreements.

This compilation is designed to combine all agreement terms and plans pertaining to each of the Bureau of Reclamation reservoirs that affect the managment and resources of the Boise National Forest into one source document for the mutual benefit of both agencies. Some uniformity in format from existing plans and agreements between the two agencies is necessarily sacrificed. However, such combination is not unprecedented as evidenced by other agreements. One example being the 1952 Memorandum of Understanding regarding Arrowrock, Anderson Ranch, and Deadwood Reservoirs.

The information and terms contained herein provide a single source of agreement and information regarding the four subject reservoirs. It also eliminates the need for four separate negotiations between the Forest Supervisor, Project Superintendent, and their respective staffs in developing current agreements. Therefore, upon approval by these two officers of the proposed agreement and plans, all previous agreements between the parties hereto regarding Cascade, Deadwood, Arrowrock, and Anderson Ranch Reservoirs, excepting the master agreement, will be terminated.

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CASCADE
RESERVOIR
Cascade
DEADWOOD
RESERVOIR
Garden Valley
Emmett
Idaho City
Atlanta
ARROWROCK
RESERVOIR
Boise
ANDERSON RANCH
RESERVOIR
VICINITY MAP
City or Town
National Forest System Boundaries
Reservoirs jointly managed by the Bureau of Reclamation and the Forest Service

Memorandum of Agreement
between the
Forest Service, U.S. Department of Agriculture
and the
Bureau of Reclamation, U.S. Department of Interior

for

Administration and Management of Resources, Facilities, Water Surfaces, and Reclamation Zones within the Reservoir Areas of the Anderson Ranch, Arrowrock, Deadwood, and Cascade Reservoirs.

I. GENERAL

This Memorandum of Agreement, made this 9th day of June, 1987, between the USDA - Forest Service, hereinafter called the Forest Service acting by and through the Regional Forester, Region 4, Ogden, Utah, hereinafter referred to as the Regional Forester and the U.S. Bureau of Reclamation, Department of Interior, hereinafter called the Bureau acting by and through the Regional Director, Pacific Northwest Region, Boise, Idaho, hereinafter referred to as the Director, acting pursuant to Articles 7 and 9 of the Master Agreement executed by the two agencies in January 1948, and such laws and regulations that may apply:

DO HEREBY AGREE THAT:

1. Whereas, each of the subject reservoirs is unique in many respects and the terms individually applicable are covered in the several other sections of this agreement. Nevertheless, certain considerations are common to the four reservoirs and as described hereafter in this section will equally apply to the administration and management of each, namely, Anderson Ranch, Arrowrock, Deadwood, and Cascade Reservoirs.

2. Whereas, the Memorandum of Understanding executed in January 1948, by the Forest Service and the Bureau is the only Master Agreement in effect at present, and whereas, section 2303 of the Forest Service Manual constitutes a policy statement on the subject, now therefore, the Bureau and the Forest Service recognize their obligation to administer and manage the subject reservoir areas within the framework of those two documents, and that said Master Agreement is valid until revoked in writing by either agency.

3. Whereas, a new nationwide Master Agreement between the Bureau and the Forest Service may be negotiated in the future. Within 1 year of the signing of such, this agreement will be jointly reviewed and, if necessary, modified to correspond with the terms of the new Master Agreement.

4. This Memorandum of Agreement shall be effective from the day it is approved by the Forest Service and the Bureau. It may be amended or supplemented at any time by mutual consent of the Regional Forester and the Director.

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5. Whereas, this agreement applies only to certain lands and waters, now therefore, those lands and waters are described as being included within the perimeter, as shown on the maps that are a part of the several sections, that is designated as the Reservoir Area Boundary. The Reservoir Area includes all lands and waters within that boundary including those designated as the Reclamation Zone. The Reclamation Zone is that portion of the Reservoir Area described by the Bureau as being needed and used for the operation of the dams and related facilities for reclamation purposes and includes the lands inundated by the reservoir waters.

6. Whereas, the Bureau has primary jurisdiction over the land and water within the Reclamation Zone, nevertheless, such land does not lose its National Forest status, if it were so classified prior to withdrawal for power or reclamation purposes or given National Forest status at a later date.

7. Whereas, the Forest Service has not been relieved of its responsibilities for any lands with National Forest status, whether withdrawn or not, the Forest Service recognizes that the needs and requirements of reclamation work within the Reclamation Zone have first priority. The Bureau also recognizes the Forest Service responsibilities and will not make any major or significant alterations or construction without having substantive consultation with the Forest Service as to the scope and extent of such. However, certain modifications or additions may require the application for and issuance of a special use permit by the Forest Service and will be handled under appropriate processes. Authorized Forest Service personnel have the right to enter the Reclamation Zone for official purposes.

8. Whereas, misunderstandings have been a result of unplanned interagency contact between many individuals. To keep the reservoir area management decisions as close to the ground as possible, once this agreement is completed, authority to carry out the terms of this agreement will be delegated to the field administrators of each agency as follows:

Forest Service

Regional Forester through his Staff Director, Watershed Management, is responsible for all matters involving policy concerning this agreement.

Forest Supervisor, Boise National Forest, is responsible for all business required by the various terms of this agreement or related thereto.

Bureau

Regional Director through his Regional Planning Officer is responsible for all matters involving planning for future development.

Project Superintendent, Central Snake Projects, is responsible for all business required by the various terms of this agreement or related thereto.

These designations do not preclude day-to-day contact between the field personnel of the two agencies. Actions or commitments will be considered and may be recommended by either agency for mutual consideration and will be binding when made as so authorized above.

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9. Whereas, both agencies need to keep lines of communication open, each agency will report to the other any changes or studies effecting range, wildlife, recreation, land exchange, water quality, and beach erosion.

10. Whereas, development and administration of each Reservoir Area shall be executed in accordance with the Reservoir Area Management Plans as described in the various sections of this agreement. Any modifications or additions, upon the mutual approval of the Forest Supervisor and the Project Superintendent shall become a part of this agreement and supplemental thereto. Although each Reservoir Management Plan encompasses all lands and waters in the Reservoir Area, the Bureau is responsible for the planned development of the Reclamation Zone and site plans furnished by them become a part of this plan. No modifications thereto will be allowed without prior approval by the Project Superintendent and the Forest Supervisor.

11. Whereas, the Bureau and the Forest Service recognize the need for specific responsibilities for management within the Reservoir Areas described herein, the Reclamation Zone and all lands below the high waterlines also described herein become the land needed or used by the Bureau for the operation of the project or other Reclamation purposes. All other lands and waters within the Reservoir Area boundary not so designated, will be considered as the Reservoir Area and managed as prescribed by the various Reservoir Management Plans that are a part of this agreement. All plans and information supplemental to these plans become a part of this agreement upon approval by the Forest Supervisor and the Project Superintendent.

12. Whereas, the Bureau and the Forest Service shall also cooperate with State, County, and other Federal or local agencies or organizations in the performance of noxious weed control measures on lands and waters covered by this agreement.

13. Whereas, the Forest Service recognizes the need of the Bureau to vary the water surface of the reservoirs as required in connection with the operation and maintenance of its reservoir works as they are now constructed, the Forest Service agrees to include recognition of this in all permits, agreements, and contracts issued or entered into.

14. The Bureau may authorize the Forest Service to take without charge, from any of the subject reservoirs, such water as is necessary for normal campground and other general administrative needs and for the needs of concessionaires in the Reservoir Areas. Such water as may be needed in forest and range fire suppression may be taken as above, except this agreement constitutes approval therefore and no other approval from the Bureau is needed for those emergency purposes.

15. The Bureau agrees to provide the Forest Service any and all information pertaining to operating schedules or other information relating to the subject reservoirs, that they may have, upon request and within a reasonable time therefrom. The Forest Service agrees to provide the Bureau with annual recreation use data, that they may have obtained of the use at sites on each reservoir, upon request also.

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16. The Forest Service and the Bureau agree to include in all leases, licenses, permits, and contracts issued by them pertaining to these Reservoir Areas, provisions by which the lessee, licensee, permittee, or contractor undertakes to indemnify and hold harmless the Federal Government, its officers, agents, and employees, as to any liability for injury or damage to persons or property arising out of the acts or omissions, negligent, or otherwise of the lessee, licensee, permittee, or contractor.

17. The Bureau has control and shall have responsibility for control of storing and releasing water from the reservoirs described herein. However, they agree to coordinate water levels as suggested by the Forest Service whenever it will not be inconsistent with the prescribed purposes for which the reservoirs were established.

18. The Bureau has the right to fence any area within the Reclamation Zone that does not interfere with established public roads and trails. The Forest Service will be permitted access across areas of the Reclamation Zone that are restricted to the public as needed to administer its operations.

19. To ensure mutual understanding and program adjustments, meetings may be called by either agency. Notification should be made at least 30 days in advance of the scheduled time.

20. This agreement shall not obligate the Forest Service or the Bureau to make future expenditures in excess of appropriations authorized by law.

21. No significant project activity will be initiated by either agency within the respective reservoir areas until a cultural investigation has been made and appropriate action taken to comply with existing laws and Executive Orders pertaining to such values.

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II. ANDERSON RANCH RESERVOIR

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A. INTRODUCTION

The lands within the Anderson Ranch Reservoir Area include National Forest lands reserved from the public domain and under Reclamation withdrawal, and lands acquired and withdrawn by the Bureau which were transferred to the Secretary of Agriculture's jurisdiction pursuant to the Federal Water project Recreation Act of July 9, 1965 (79 Stat. 213), and which thus became National Forest lands with Weeks Law status. The reservoir area includes all land above and below the high water line excepting the reclamation zone. These lands are listed and described in Appendix B, Exhibit A.

B. AGREEMENT TERMS

1. Whereas, the Reclamation Zone is the area designated by the Bureau as being needed and used for the operation of the Anderson Ranch Dam and other Reclamation purposes, the Bureau hereby describes those lands as being:

T. 1 S., R. 8 E.
Sec. 1, Lots 3, 4, 5, 6, 7, 8, 9, SW¼SW¼;
Sec. 12, Lots 2, 3, 4, NW¼NE¼;
Sec. 15, Lots 1, 2, 3.

All other lands within the Reservoir Area will be managed as National Forest subject to such exceptions as have been previously described and excepting those lands subject to reserved rights for agricultural and grazing purposes.

2. Development and administration of the Reservoir Area, shall be in accordance with the Anderson Ranch Reservoir Management Plan, and any supplements appended hereto that have been jointly approved by the Project Superintendent and the Forest Supervisor.

3. The Forest Service shall have the jurisdiction and management responsibility for the Reservoir Area including its roads therein and the public use of the water surface.

4. The Bureau shall have jurisdiction and management responsibility for the operation and maintenance of the water resource project including responsibility for all improvements within the Reclamation Zone.

5. It has been found to be beneficial from the standpoint of beaching floatable debris to lower the reservoir several feet from its highest level relatively rapidly. Accordingly, the Bureau will endeavor to the extent it is safe and practicable to employ that type of operational procedure periodically when other circumstances such as water supply and flow considerations in the river below the dam will permit.

6. The Forest Service will, as the work force allows, mark fixed water hazards and other such hazards as may be appropriate. The Bureau will be responsible for such buoys marking the hazard area within the reservoir immediately adjacent to the dam.

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7. The Bureau agrees to hold the level of Anderson Ranch Reservoir as high as possible, after meeting flood control needs, through the recreation and boating season at the expense of Arrowrock storage. However, greater priority will be given to the maintenance of streamflow maintenance flows in the South Fork of the Boise River below Anderson Ranch Dam, in the Boise River below Lucky Peak Dam, and to the maintenance of a conservation pool of 28,700 acre feet in Arrowrock Reservoir. The recreation and boating season is defined as Memorial Day weekend through the Labor Day weekend.

8. The Forest Service shall, as work force dictates, use whatever means are appropriate to clean up or dispose of floatable debris without special approval from the Bureau. Except that any such action that could affect the water quality, shoreline, riprap, or involve sweeping or debris booms will be mutually agreed to by both agencies prior to use. The Bureau will be responsible for the removal of debris within the Reclamation Zone.

9. The Forest Sevice will inspect the reservoir surface to remove or mark debris and water hazards prior to and during the recreation use season.

10. The Forest Service will have responsibility for issuance, administration, and termination of all special use or other permits within the Reservoir Area. The Forest Service should consult with the Bureau prior to issuing special use or other permits where the Bureau's interests are involved.

11. Revenues collected by the Forest Service for occupancy or use of the Reservoir Area and its resources in connection with its administration of the same for recreation or other National Forest System purposes, shall be distributed in accordance with 36 CFR (251.50).

12. The Bureau will have responsibility for installation and maintenance of high water warning signs to the Danskin Bridge below Anderson Ranch Dam. Location and design of these signs will be coordinated with the Forest Service. Other signage by the Bureau within the Reclamation Zone will be in accordance with Bureau standards.

13. The Forest Service will be responsible for cooperative work and relations with the U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game. The Department of Fish and Game has the responsibility to manage the fish population, maintain adequate fish stocking, and to control trash fish populations.

14. The financing, installation, and maintenance of all signs in the Reservoir Area shall be the responsibility of the Forest Service. The location, type, standard, and design of all permanent signs in the Reservoir Area shall also be the responsibility of the Forest Service and all signs installed will be in accordance with the Forest Service sign plan.

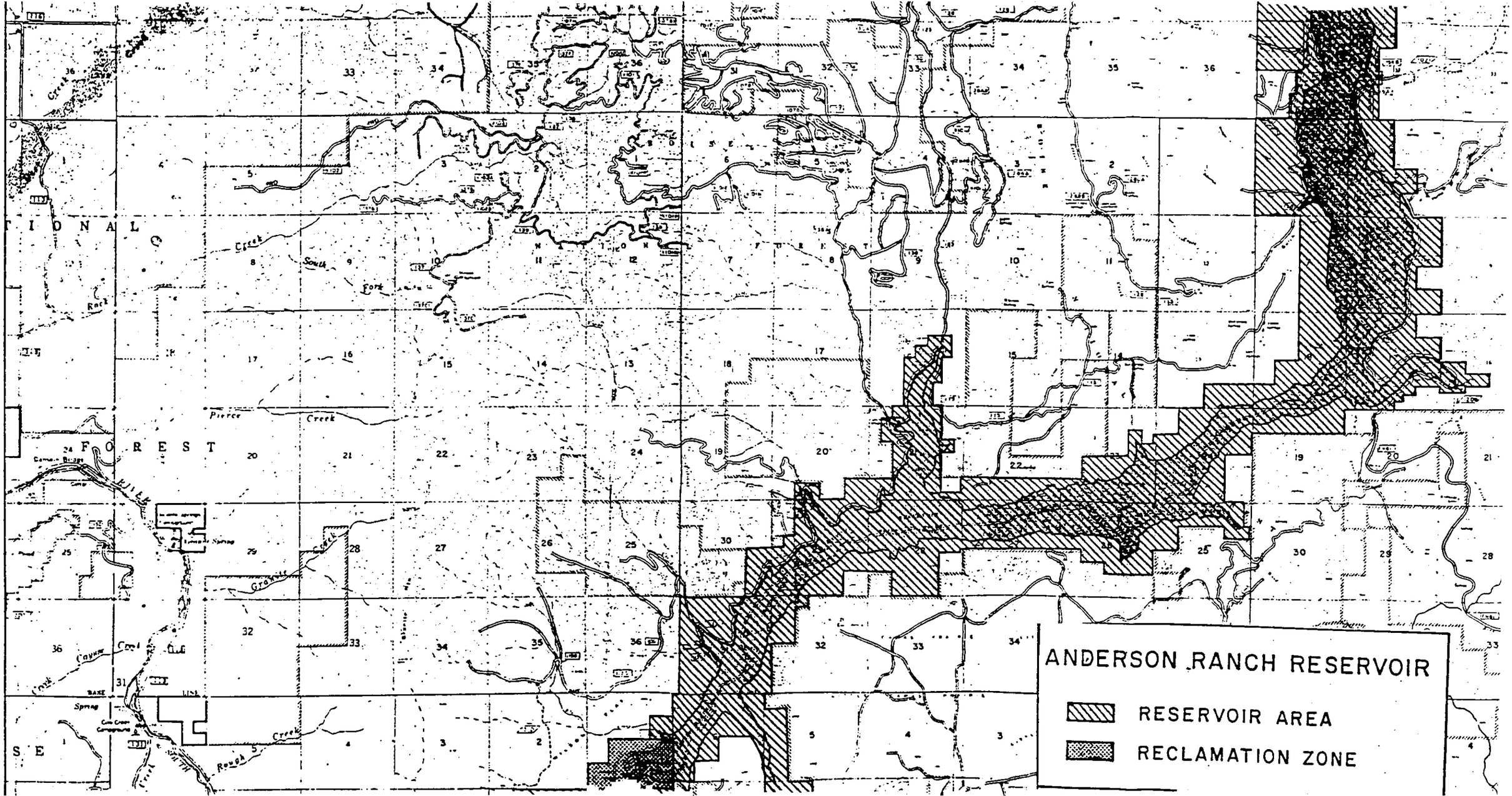
15. The Bureau will assist with trash fish control projects consistent with reclamation project purposes.

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16. No mining or prospecting activity will be allowed on National Forest System lands within the Reservoir Area.

III. ARROWROCK RESERVOIR

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ANDERSON RANCH RESERVOIR
RESERVOIR AREA
RECLAMATION ZONE
F O R E S T
Pierce Creek
South Fork
Rock
Grouse Creek
Rough
Spring
Creek

A. INTRODUCTION

The lands within the Arrowrock Reservoir Area include National Forest lands that were withdrawn for Reclamation purposes and privately owned and State of Idaho lands that were acquired by the Bureau of Reclamation.

With the exception of those lands within the Reclamation Zone, the withdrawal order for National Forest lands involved was revoked by the Secretary of Interior on May 22, 1970. (F.R. Vol. 35, No. 101, Saturday, May 23, 1970.) See the Appendix, Exhibit B.

Jurisdiction of the acquired lands within the Reservoir Area was transferred from the Bureau to the Forest Service by Secretarial Order dated August 21, 1970. They are described in Exhibit B of the Appendix.

The lands within the Reservoir Area that are needed or used for the operation of the Boise Project and for other Reclamation purposes shall continue to be administered by the Bureau to the extent it deems necessary and shall be called the Reclamation Zone.

All agreement terms and management plan items as stated in this section apply only to the Reservoir Area exclusive of the Reclamation Zone unless otherwise specified.

B. AGREEMENT TERMS

1. Whereas, the Reclamation Zone is the area designated by the Bureau as being needed and used for the operation of the Arrowrock Dam and other Reclamation purposes, the Bureau hereby describes those lands as being:

T. 3 N., R. 5 E.
Sec. 13, S½SW¼NE¼, NW¼SE¼, NE¼SW¼; Boise Meridian.

All other lands within the reservoir area will be managed as National Forest.

2. Development and administration of the Reservoir Area, which includes all lands above the high waterline, excepting the Reclamation Zone, shall be in accordance with the Arrowrock Reservoir Management Plan, and any supplements appended hereto that have been jointly approved by the Forest Supervisor and the Project Superintendent.

3. The Forest Service shall have the jurisdiction and management responsibilities for the Reservoir Area including the roads and trails therein, and the public use of the water surface. It shall also be free to issue road right-of-way easements to the counties, or State, wherever appropriate, but will advise the Bureau before issuance.

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4. The Bureau shall have the jurisdiction and management responsibility for the operation and maintenance of the water resource project, including responsibility for all improvements within the Reclamation Zone.

6. The Bureau will, whenever possible, maintain a conservation pool in Arrowrock Reservoir of at least 28,700 acre feet except during those years when the reservoir must be drafted for inspection of the lower tier of valves, to preserve resident trout fisheries. This constraint should hold a high priority and be violated only in the case of a drought, unusual construction or maintenance need, or anticipation of extremely large flood events. The Bureau will advise the Idaho Department of Fish and Game prior to such drawdowns.

7. The Bureau will maintain the levels of Lucky Peak and Anderson Ranch Reservoirs at the expense of Arrowrock water during the recreation season; although the South Fork of the Boise River minimum flow and the Arrowrock Reservoir conservation pool will not be violated.

8. The Forest Service shall have responsibility for issuance, administration, and termination of all special use or other permits within the Reservoir Area, but will advise the Bureau before issuance.

9. Revenue collected by the Forest Service for occupancy or use of the Reservoir Area and its resources in connection with its administration of the same for recreation or other National Forest System purposes shall be distributed in accordance with law.

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IV. DEADWOOD RESERVOIR

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A. INTRODUCTION

The lands within the Deadwood Reservoir Area boundary are all National Forest ownership. They are under a Secretaries Withdrawal Order for the Boise Reclamation Project dated August 19, 1925. National Forest lands outside and immediately adjacent to the Reservoir Area boundary were also included in the withdrawal. However, a partial revocation of the Reclamation Withdrawal was made in 1970 whereby only those lands within the Reservoir Area boundary remain under the subject withdrawal. (Federal Register, Vol. 35, No. 4, Wednesday 1/7/70, copy of which is included in the Appendix as Exhibit C.)

The lands within the Reservoir Area that are needed or used for the operation of the Boise Project and for other Reclamation purposes shall continue to be administered by the Bureau to the extent it deems necessary and shall be called the Reclamation Zone. It is shown on the map immediately following this subsection and is also described in clause 1 of the agreement terms as defined in this section.

All agreement terms and management plan items apply only to the Reservoir Area exclusive of the Reclamation Zone unless otherwise specified.

B. AGREEMENT TERMS

1. Whereas, the Reclamation Zone is the area designated by the Bureau as being needed and used for the operation of the Deadwood Dam and other Reclamation purposes, the Bureau hereby describes those lands as being:

T. 11 N., R. 7 E.
Sec. 8, All of those lands above the high waterline in the SE¼;
Sec. 9, W½,SW¼;
Sec. 17, N½NE¼; Boise Meridian.
All other lands within the reservoir area will be managed as National Forest.

2. Development and administration of the Reservoir Area shall be in accordance with the Deadwood Reservoir Management Plan, and any supplements appended hereto that have been jointly approved by the Forest Supervisor and the Project Superintendent.

3. The Forest Service shall have jurisdiction and management responsibilities for the Reservoir Area including the roads therein, and the public use of the water surface.

4. The Bureau shall have jurisdiction and maintenance responsibility for the operation and maintenance of the water resource project and for all improvements within the Reclamation Zone, except for those facilities known and operated as the U.S. Forest Service. Deadwood Guard Station shall be the responsibility of the Forest Service. Each agency shall on an independent basis, provide utility services for their respective facilities. However, the Bureau is presently attempting to develop a means by which electric power which is produced by a small hydropower generator at the dam outlet works would be made available to the Forest Service. It is anticipated that such electric power will be provided to the Forest Service in those instances when it is available in excess of the Bureau's needs.

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5. Whereas, the outlet works at Deadwood Dam are inadequate for maintaining the proper instream flow in the Deadwood River below the dam. The Bureau will give high priority to implementing an instream flow program in the Deadwood river below the Dam and expects to accomplish this objective upon replacement of the two outlet valves which is programmed for completion in the early 1990's.

6. The Bureau will operate Deadwood Reservoir in coordination with Cascade Reservoir and release flows as prescribed in standard operating procedures.

7. The Forest Service shall, as work force dictates, use whatever means are appropriate to clean up or dispose of floatable debris without special approval from the Bureau. Except that any such action that could affect the water quality, shoreline, riprap, or involve sweeping or debris booms will be mutually agreed to by both agencies prior to use. The Bureau will be responsible for the removal of debris within the Reclamation Zone. The Forest Service will inspect the reservoir surface by boat to mark or remove debris and water hazards.

8. The Forest Service will, as work force allows, mark fixed water hazards, and other such hazards as may be appropriate. The Bureau will be responsible for such buoys marking the hazard area within the reservoir immediately adjacent to the dam.

9. The Forest Service will have sole responsibility for issuance, administration, and termination of all special use and other permits within the Reservoir Area, but will advise the Bureau before issuance.

10. Revenues collected by the Forest Service for occupancy or use of the Reservoir Area and its resources in connection with its administration of the same for recreation or other National Forest System purposes shall be distributed in accordance with law.

11. The Forest Service will be responsible for cooperative work and relations with the U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game. The Idaho Department of Fish and Game has the responsibility to manage the fish population, maintain adequate fish stocking, and to control trash fish populations.

12. The Bureau will have responsibility for installation and maintenance of high water warning signs for a distance of about one mile below Deadwood Dam. Location and design of those signs will be coordinated with the Forest Service. Other signage by the Bureau within the Reclamation Zone will be in accordance with Bureau standards.

13. The financing, installation, and maintenance of all signs in the Reservoir Area shall be the responsibility of the Forest Service. The location, type, standard, and design of all permanent signs in the Reservoir Area shall also be the responsibility of the Forest Service and all signs installed will be in accordance with the Forest Service sign plan.

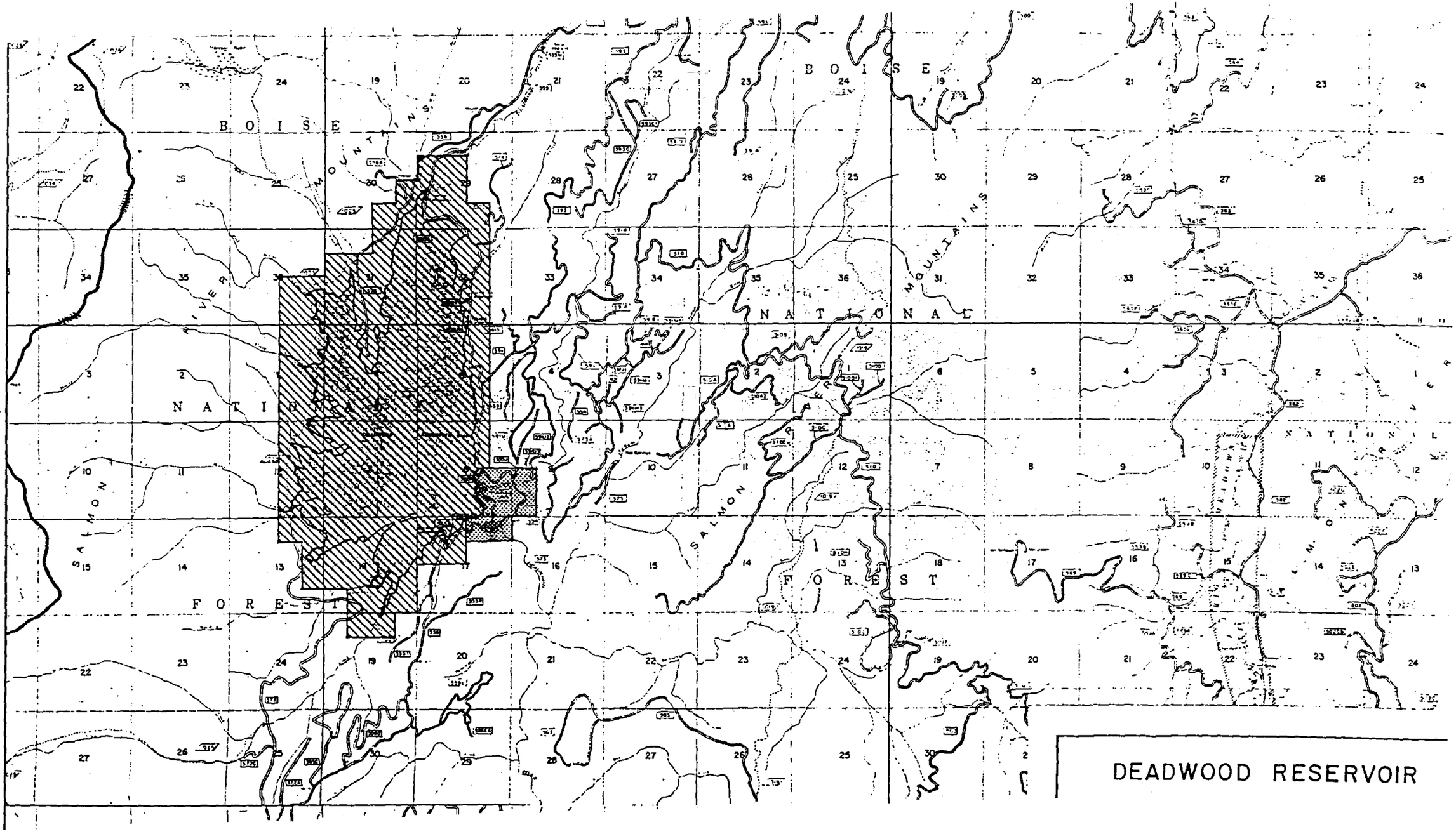
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NOV 1 2 2002

14. The Forest Service shall be responsible for all road maintenance in the Reservoir Area and for the main access road to the Deadwood Guard Station in the Reclamation Zone and shall be responsible for the maintenance and stabilization of the airstrip.

15. No mining or prospecting activity will be permitted within the Reservoir Area.

16. A minimum pool level, a minimum discharge level, and the coordination of reservoir operations between Deadwood Reservoir and Cascade Reservoir are being established by the Bureau's authorized Boise Project Power and Modification Study. This study is being conducted in cooperation with the Forest Service and numerous Federal and State agencies. The operating criteria which will be established as a result of that study will be included in this agreement.

MAR 12 2002


BOISE
NATIONAL
FOREST
SALMON RIVER MOUNTAINS
DEADWOOD RESERVOIR

V. CASCADE RESERVOIR

MICROFILMED
NOV 1 2 2002

A. INTRODUCTION

The lands within the Cascade Reservoir Area include National Forest lands reserved from the public domain. National Forest lands withdrawn for Reclamation purposes, non-federal lands that were acquired by the Bureau of Reclamation, and lands acquired and withdrawn by the Bureau which were transfered to the Secretary of Agriculture's jurisdiction pursuant to the Federal Water Project Recreation Act of July 9, 1965 (79 Stat, 213) and which thus became National Forest lands with Weeks Law status. (See map)

B. AGREEMENT TERMS

1. Lands within the Reservoir Area under the jurisdiction of the Bureau of Reclamation will be managed by the Bureau, and lands under the jurisdiction of the Forest Service will be managed by the Forest Service unless specific agreements are developed to provide for one agency to manage resources of facilities on the other agency's lands.

2. No mining or prospecting activity will be allowed within the Reservoir Area, with the exception of the Crown Point gravel pit.

3. Both agencies will actively and aggressively seek out ways to eliminate duplicate activities associated with Federal land management on the West side of Cascade Reservoir. This cooperation will be developed to include development of reservoir management plans, operation and maintenance of improvements, law enforcement, wildlife studies, livestock management, and recreation management.

NOV 12 2002

VI. APPROVAL PAGE

This agreement and plan shall be effective from the day first below approved by all parties and may be amended at any time as prescribed herein. All previous agreements between the Bureau and the Forest Service concerning the subject reservoirs are hereby terminated.

FOREST SERVICE

for Jack P. Blatt
Regional Forester

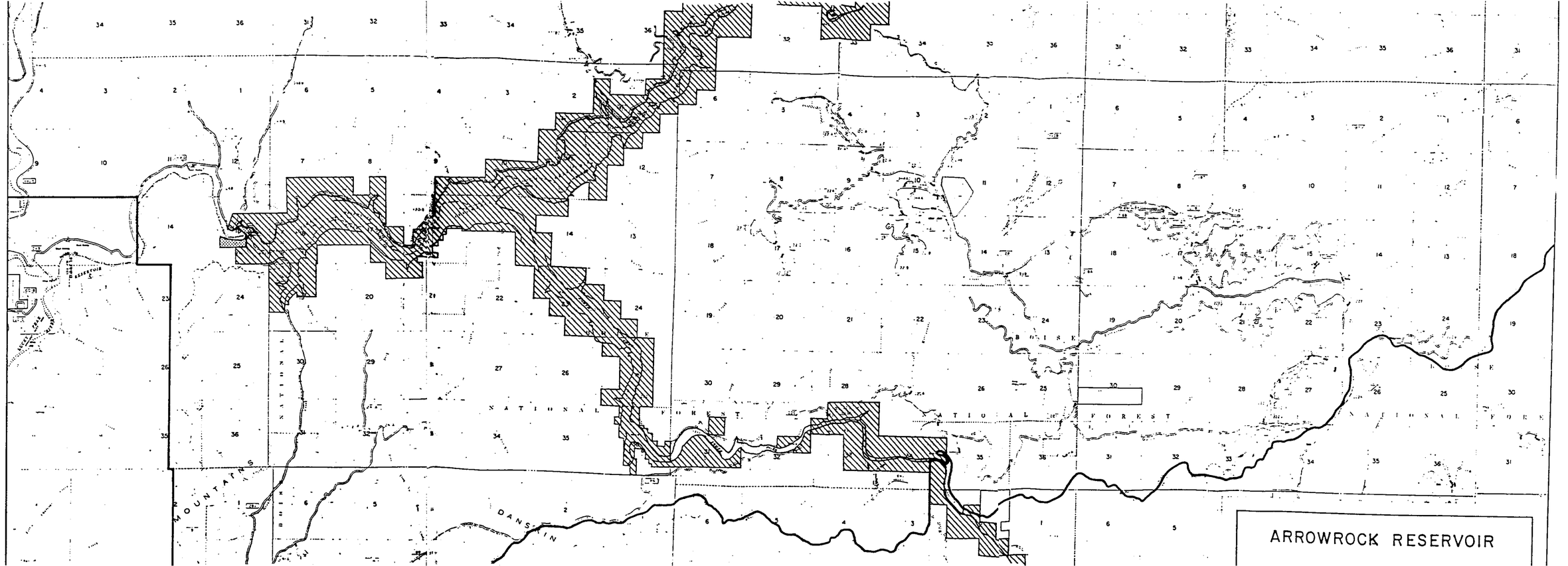
6-9-87
Date

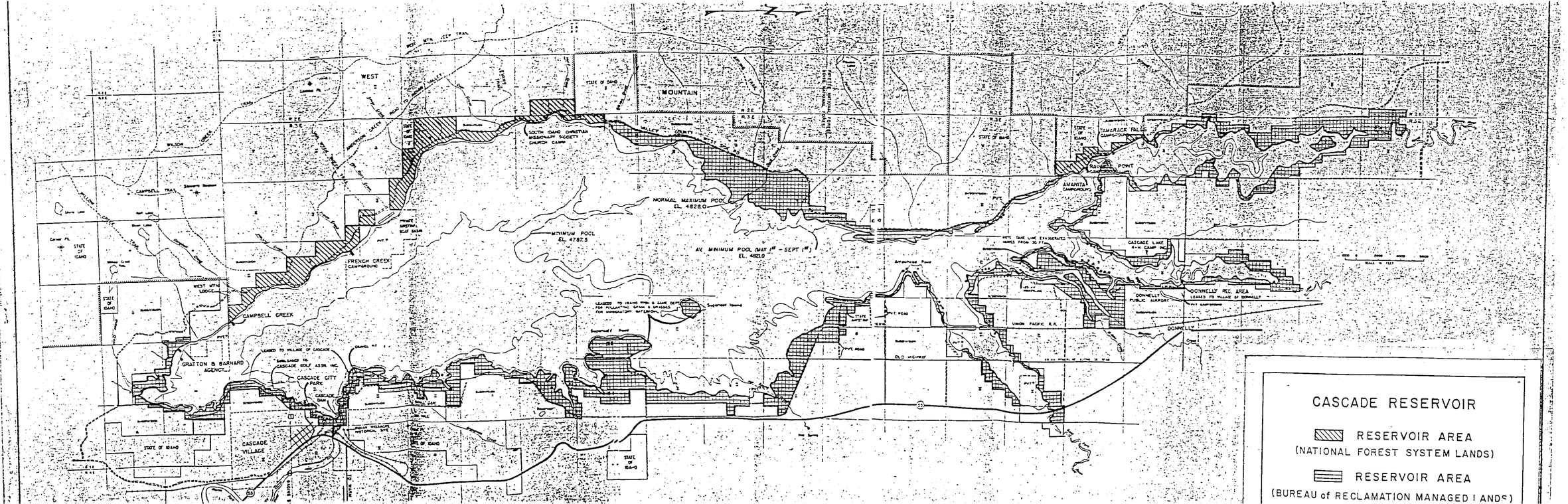
BUREAU OF RECLAMATION

Acting Dave D. Rachetto
Regional Director

March 24, 1987
Date

MORO
NOV 12 2002


ARROWROCK RESERVOIR
NATIONAL FOREST
BOISE
MOUNTAINS
SAWTOOTH
DANSKIN


WEST MOUNTAIN
NORMAL MAXIMUM POOL EL. 4828.0
MINIMUM POOL EL. 4787.5
AV. MINIMUM POOL (MAY 1ST - SEPT 1ST) EL. 4821.0
FRENCH CREEK CAMPGROUND
CAMPBELL CREEK
CAMPBELL TRAIL
WEST MTN. LODGE
GRATTON & BARNARD AGENCY
CASCADE GOLF ASSN. INC.
CASCADE CITY PARK
CASCADE VILLAGE
SOUTH IDAHO CHRISTIAN MISSIONARY SOCIETY CHURCH CAMP
RAINBOW POINT
AMANITA CAMPGROUND
CASCADE LAKE 4-H CAMP INC.
DONNELLY PUBLIC AIRPORT
DONNELLY REC. AREA LEASED TO VILLAGE OF DONNELLY
DONNELLY
UNION PACIFIC R.R.
OLD HIGHWAY
STATE OF IDAHO
CASCADE RESERVOIR
RESERVOIR AREA
(NATIONAL FOREST SYSTEM LANDS)
RESERVOIR AREA
(BUREAU of RECLAMATION MANAGED LANDS)

with Air Navigation Site No. 19, is hereby revoked:

FAIRBANKS MERIDIAN

T. 1 S., R. 2 W.,
Sec. 30, NE¼SE¼.

Containing 40 acres.

The Federal Aviation Administration has applied for an airspace easement under section 16(a) of the Federal Airport Act of May 13, 1946, 60 Stat. 179, 49 U.S.C. 1101 (1964), over the land described in paragraph 1 above, and further disposition of the land will be made subject thereto.

3. The lands are withdrawn by Public Land Order No. 4582 of January 17, 1969, for the determination and protection of the rights of the Native Aleuts, Eskimos, and Indians of Alaska. They will be open to location for metalliferous minerals at 10 a.m. on June 20, 1970.

Inquiries concerning the land should be addressed to the Manager, Fairbanks District and Land Office, Fairbanks, Alaska 99701.

HARRISON LOESCH,
Assistant Secretary of the Interior.

MAY 15, 1970.

[F.R. Doc. 70-6377; Filed, May 22, 1970; 8:45 a.m.]

[Public Land Order 4825]

[Idaho 3145]

IDAHO

Partial Revocation of Reclamation Project Withdrawals

By virtue of the authority contained in section 3 of the Act of June 17, 1902, 32 Stat. 388, as amended and supplemented, 43 U.S.C. 416 (1964), it is ordered as follows:

1. The Secretarial orders dated March 12, 1910, April 24, 1911, January 6, 1912, January 6, 1914, October 6, 1925, and October 18, 1928, withdrawing lands for the Payette-Boise Project and the Boise Project, are hereby revoked so far as they affect the following described lands:

BOISE MERIDIAN

T. 3 N., R. 4 E.,
Sec. 16, SE¼SE¼;
Sec. 11, SE¼, SE¼SW¼, S½S½SE¼;
Sec. 12, N½SW¼NW¼, E½SW¼;
Sec. 13, lots 1 to 5, inclusive, N½NE¼, NW¼SW¼, S½SW¼;
Sec. 14, lot 1, NE¼, E½NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 22, lot 1;
Sec. 23, NW¼NW¼, W½SE¼;
Sec. 24, NE¼, N½NW¼, SE¼SW¼, SE¼;
Sec. 25, N½, W½SW¼;
Sec. 26, NW¼NE¼;
Sec. 32, SE¼SE¼.
T. 3 N., R. 5 E.,
Sec. 1, SE¼NW¼;
Sec. 2, lot 1;
Sec. 9, N½SE¼;
Sec. 10, S½NE¼, SE¼NW¼, NW¼SW¼;
Sec. 12, SE¼NW¼;
Sec. 14, NW¼SE¼, SE¼SW¼;
Sec. 15, N½SW¼, NW¼SE¼;
Sec. 17, E½NE¼, SW¼SW¼;
Sec. 18, SE¼SE¼;
Sec. 19, NW¼SE¼;
Sec. 22, NE¼NE¼;
Sec. 23, NE¼NE¼, W½SW¼, SE¼SW¼;
Sec. 25, SW¼NW¼, NW¼SW¼.
T. 3 N., R. 6 E.,
Sec. 27, W½SW¼;
Sec. 28, NE¼SE¼.

The areas described aggregate 3,251.59 acres of private, public and national forest lands in Ada, Boise, and Elmore Counties, of which the following 350.50 acres are patented.

T. 3 N., R. 4 E.,
Sec. 10, SE¼SE¼;
Sec. 14, lot 1, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 22, lot 1;
Sec. 23, NW¼NW¼.

2. The public land described as the SE¼SE¼, sec. 32, T. 3 N., R. 4 E., is embraced in a withdrawal application (Idaho 03356) of the U.S. Bureau of Sport Fisheries and Wildlife, as to which the regulations in 43 CFR 2311.1-2(a) are applicable.

3. At 10 a.m. on June 20, 1970, the remaining lands which are all within the Boise National Forest, shall be open to such forms of disposition as may by law be made of national forest lands.

Inquiries concerning these lands should be addressed to the Manager, Land Office, Bureau of Land Management, Boise, Idaho.

HARRISON LOESCH,
Assistant Secretary of the Interior.

MAY 15, 1970.

[F.R. Doc. 70-6378; Filed, May 22, 1970; 8:45 a.m.]

[Public Land Order 4829]

[Oregon 6012 (Wash.)]

WASHINGTON

Powersite Cancellation No. 277; Cancellation of Powersite Classification No. 76

By virtue of the authority contained in section 24 of the Act of June 10, 1920, 41 Stat. 1075, as amended, 16 U.S.C. 818 (1964), and pursuant to a determination by the Federal Power Commission in DA-211-Washington, it is ordered as follows:

1. The departmental order of June 5, 1924, creating Powersite Classification No. 76, Washington No. 13, is hereby canceled in its entirety so far as it affects the following described lands:

WILLAMETTE MERIDIAN

SNOQUALMIE NATIONAL FOREST

T. 17 N., R. 7 E.,
Sec. 24, S½;
Sec. 30, lots 3 and 4, E½SW¼, SE¼;
Sec. 32, N½.

The area described aggregates 958.36 acres in Pierce County.

2. The N½ sec. 32, has been patented, subject to section 24 of the Act of June 10, 1920, supra. The remainder all of which is public land, shall at 10 a.m. on June 20, 1970, be open to such forms of disposition as may by law be made of national forest lands.

HARRISON LOESCH,
Assistant Secretary of the Interior.

MAY 15, 1970.

[F.R. Doc. 70-6379; Filed, May 22, 1970; 8:45 a.m.]

[Public Land Order 4830]

[Utah 029290]

UTAH

Revocation of Air Navigation Site Withdrawal

By virtue of the authority contained in section 4 of the Act of May 24, 1928, 45 Stat. 729, 49 U.S.C. 214 (1964), it is ordered as follows:

1. Public Land Order No. 2059 of February 26, 1960, withdrawing the following described lands for air navigation site purposes, is hereby revoked:

SALT LAKE MERIDIAN

T. 29 S., R. 24 E.,
Sec. 22, E½E½SE¼SW¼, S½SE¼;
Sec. 27, N½NE¼, E½E½NE¼NW¼, N½N½S½NE¼.

The area described contains 200 acres in San Juan County.

The lands which are located about miles south of LaSal, Utah, are gently rolling and lie at an elevation of 7,0 feet. The soils are a silt loam, and t vegetation is a reseeded crested whea grass.

2. At 10 a.m. on June 20, 1970, t lands shall be open to operation of t public land laws generally, subject valid existing rights, the provisions of existing withdrawals, and the requirement of applicable law. All valid applicatio received at or prior to 10 a.m. on June 1970, shall be considered as simultaneously filed at that time. Those receiv thereafter shall be considered in t order of filing.

3. The lands will be open to locatio under the U.S. mining laws and to t filing of applications and offers unde the mineral leasing laws at 10 a.m. o June 20, 1970.

Inquiries concerning the lands shou be addressed to the State Director, B reau of Land Management, Salt La City, Utah.

HARRISON LOESCH,
Assistant Secretary of the Interior

MAY 15, 1970.

[F.R. Doc. 70-6380; Filed, May 22, 1 8:46 a.m.]

[Public Land Order 4831]

[Sacramento 076110]

CALIFORNIA

Partial Revocation of Reclamation Withdrawals Amendment and Correction of Public Land Order 4481

By virtue of the authority contained in section 3 of the Act of June 17, 1

NOV 12 2002

Exhibit B

(2 of 5)
REQUIRED LANDS
ARROWROCK DAM AND RESERVOIR AREA

T. 3 N., R. 5 E., B.M., Idaho	Acres
Section 1 - Lot 11	7.50
Section 2 - Lots 5, 6, 7, SE¼SW¼	112.30
Section 9 - SE¼SE¼	40.00
Section 10 - Lots 4, 5, 6, SW¼SW¼; and	112.10
that portion of lot 7 lying northerly of a line beginning at a point 121.6 feet north of the southeast corner of Section 10; thence N. 62°49' W., 1345 feet to a point on the west line of said lot 7.	19.57
Section 11 - Lots 1, 2, 3, 4, 7, 8, 9, 10, 11, W½NW¼, E½NW¼; and	467.20
that portion of lot 12 lying north of a line beginning at a point on the north and south mid-section line of said Section 11, being 240 feet north of the south quarter corner of said Section 11; thence E. 130 feet; thence N. 340 feet; thence N. 50°12' E., 1157 feet to a point on the north line of said lot 12, and being 1640 feet west of the east section line of said Section 11.	10.61
Section 12 - NW¼NW¼	40.00
Section 15 - Lots 1, 2, 3 and 4	106.00
Section 16 - Lot 1; and	14.10
that portion of said Section 16 more particularly described as follows:	274.60
Beginning at a meander corner on the west boundary of said Section 16 on the south side of the Boise River; thence run 8.37 ch. south along the west boundary of said Section 16, to the southwest section corner of said Section 16; thence 15 ch. east along the south boundary of said Section 16; thence north 5 ch.; then east 5 ch.; thence north 5 ch.; thence east 10 ch.; thence north 5 ch.; thence east 5 ch.; thence south 5 ch.; thence east 5 ch.; to the north and south mid-section line of said Section 16; thence east 5 ch.; thence north 5 ch.; thence west 5 ch.; thence north 5 ch.; along the north and south mid-section line of said Section 16; thence east 5 ch.; thence north 10 ch.; thence east 5 ch.; thence north 5 ch.; thence E. 5 ch.; thence N. 5 ch.; thence east 20 ch. along the east and west mid-section line of said Section 16; thence south	

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5 ch.; thence east 5 ch.; thence north 5 ch. to the east quarter corner of said Section 16; thence north 25.81 chains along the east boundary of said Section 16 to a meander corner on the south side of the Boise River; thence in a southwesterly direction along the south bank of the Boise River to a meander corner on the west boundary of said Section 16, the point of beginning.

Beginning again at a meander corner on the west boundary of said Section 16 on the north bank of the Boise River; thence north 7.03 ch. along the west boundary of said Section 16; thence east 10 ch.; thence north 15 ch.; thence east 5 ch.; thence north 5 ch.; thence east 5 ch.; along the east and west mid-section line of said Section 16; thence north 5 ch.; thence east 5 ch.; thence north 10 ch.; thence east 10 ch.; thence north 5 ch.; thence east 5 ch.; thence north 20 ch.; along the north and south mid-section line of said Section 16 to the north quarter corner of said Section 16; thence 20 ch. east along the north boundary of Section 16; thence south along the east boundary of said lot 3 to the meandered shore line on the north side of the Boise River; thence in a southwesterly direction along the north bank of the Boise River to a meander corner on the west boundary of said Section 16, the point of beginning.

Section 19 -

A parcel of land lying in and being a portion of E½NW¼ and NE¼SW¼ described as follows: 48.20

Beginning at a point on the north section line of said Section 19, being 259.3 feet west of the quarter corner common to Sections 18 and 19; thence in a southerly direction at right angles to said section line a distance of 664 feet; thence to the left 20°0' a distance of 758 feet; thence to the right 20°0' a distance of 590 feet; thence to the right 13°0' a distance of 360 feet; thence to the left 84°0' a distance of 1228 feet; thence to the left 50°0' a distance of 500 feet; thence to the right 90°0' a distance of 120 feet; thence to the right 90°0' a distance of 1327 feet; thence to the right 57°0' a distance of 240 feet; thence to the left 47°0' a distance of 638 feet; thence to the left 10°0' a distance of 920 feet; thence to the right 90°0' a distance of 749 feet to the point of beginning.

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Sections 23, 24, 25, 26 - 73.82

A parcel of land located in lots 8 and 10, Section 23; lot 3, Section 24; lot 4, Section 25; and NE¼NE¼, Section 26; as more particularly described as follows: Commencing at a point on the east section line of said Section 26, 8.11 chains S. 0°03' E. of the northeast section corner of said Section 26; thence S. 88°24' E. 8.94 chains; thence S. 60°35' E. 7.97 chains; thence S. 50°15' E. 5.32 chains; thence N. 12.82 chains; thence N. 69°30' W. 8.28 chains to a point on the north section line of said Section 25; 12.23 chains N. 89°58' E. of the northwest corner of said Section 25; thence N. 57°15' W. 7.68 chains; thence N. 48°15' W. 7.60 chains to a point on the east section line of said Section 23, 9.23 chains N. 0°02' W. of the southwest section corner of said Section 23; thence N. 23°30' W. 7.20 chains; thence N. 7°30' E. 7.00 chains; thence N. 25°30' W. 6.00 chains; thence N. 48°30' W. 4.00 chains; thence N. 84°30' W. 6.30 chains; thence N. 48°30' W. 8.36 chains; thence S. 0°03' W. 12.86 chains; thence S. 41°28' E. 4.30 chains; thence S. 33°15' E. 5.24 chains; thence S. 19°05' E. 2.86 chains; thence S. 18°28' E. 4.01 chains; thence S. 1°42' E. 6.07 chains; thence S. 28°43' E. 4.46 chains to a point on the south section line of said Section 23, 9.84 chains N. 89°47' W. of the southeast section corner of said Section 23; thence S. 8°34' E. 5.23 chains; thence S. 63°46' E. 5.20 chains; thence S. 81°15' E. 4.46 chains to the point of beginning.

Section 36 - 234.00

A parcel of land more particularly described as follows: Beginning at the north quarter corner of said Section 36; thence running westerly along the north boundary of said Section 36, 6.23 ch. to a meander corner on the east side of the Boise River; thence in a southeasterly direction along the east bank of the South Fork of the Boise River to a meander corner on the east boundary of said Section 36; thence 19.70 ch. north along said east boundary to the east quarter corner of said Section 36; thence 5 ch. west along the east and west mid-section line of said Section 36; thence 5 ch. south; thence 10 ch. west; thence 5 ch. north; thence 5 ch. west along said east and west mid-section line; thence 10 ch. north; thence 5 ch. west; thence 5 ch. north; thence 5 ch. west; thence 5 ch. north; thence 5 ch. west; thence 20 ch. north to the north boundary of said Section 36; thence 5 ch. west along said north boundary of Section 36 to the north quarter corner of said Section 36, the point of beginning.

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Beginning again at the meander corner on the north boundary of said Section 36 and on the west side of the river; thence running 11.35 ch. west along said north boundary; thence 10 ch. south; thence 5 ch. west; thence 10 ch. south; thence 5 ch. east; thence 15 ch. south; thence 5 ch. east; thence 5 ch. south to the east and west mid-section line of said Section 36; thence 25 ch. south; thence 5 ch. east; thence 15 ch. south; thence 10 ch. east along the south boundary of said Section 36 to the south quarter corner of said Section 36; thence 20 ch. north along the north and south mid-section line of said Section 36; thence 5 ch. west; thence 15 ch. north; thence 5 ch. east to the north and south mid-section line of said Section 36; thence 5 ch. east; thence 5 ch. south; thence 5 ch. east; thence 10 ch. south; thence 5 ch. east; thence 5 ch. south; thence 5 ch. east; thence 5 ch. south; thence 20 ch. east; thence 7.80 ch. north along the east boundary of said Section 36 to a meander corner on the south bank of the South Fork of the Boise River; thence in a northwesterly direction along the south bank of said South Fork of the Boise River to the meander corner on the north boundary of said Section 36; the point of beginning.

Total Acres 1,560.0

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EXHIBIT 3

MAY 29, 1970

[Public Land Order 4924]

[Idaho 0145]

Posted 6-10-70

IDAHO

Partial Revocation of Reclamation Project Withdrawals

Proj Order No. 323

Reg. File No. R-212

By virtue of the authority contained in section 3 of the Act of June 17, 1902, 32 Stat. 388, as amended and supplemented, 43 U.S.C. 416 (1964), it is ordered as follows:

1. The Secretarial orders dated March 12, 1910, April 24, 1911, January 6, 1912, January 6, 1910, October 9, 1928, and October 15, 1930, withdrawing lands for the Payette-Boise Project and the Boise Project, are hereby revoked so far as they affect the following described lands:

BOISE MERIDIAN

T. 3 N., R. 4 E.,
Sec. 10, SE¼SE¼;
Sec. 11, SE¼SE¼SW¼, S½S½SE¼;
Sec. 12, N½SW¼NW¼, E½SW¼;
Sec. 13, lots 1 to 4, inclusive, N½NE¼, NW¼SW¼, S½SW¼;
Sec. 14, lot 1, NE¼, E½NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 22, lot 1;
Sec. 23, NW¼NW¼, W½SE¼;
Sec. 24, NE¼, N½NW¼, SE¼SW¼, SE¼;
Sec. 25, N½, W½SW¼;
Sec. 26, NW¼NE¼;
Sec. 32, SE¼SE¼.
T. 3 N., R. 5 E.,
Sec. 1, S½NW¼;
Sec. 2, lot 1;
Sec. 9, N½SE¼;
Sec. 10, S½NE¼, SE¼NW¼, NW¼SW¼;
Sec. 12, SE¼NW¼;
Sec. 14, NW¼NE¼, SE¼SW¼;
Sec. 15, N½SW¼, NW¼SE¼;
Sec. 17, E½NE¼, SW¼SW¼;
Sec. 18, SE¼SE¼;
Sec. 19, NW¼SE¼;
Sec. 22, NE¼NE¼;
Sec. 23, NE¼NE¼, W½SW¼, SE¼SW¼;
Sec. 25, SW¼NW¼, NW¼SW¼.
T. 3 N., R. 6 E.,
Sec. 27, W½SW¼;
Sec. 28, NE¼SE¼.

The areas described aggregate 3,254.59 acres of private, public and national forest lands in Ada, Boise, and Elmore Counties, of which the following 350.50 acres are patented.

T. 3 N., R. 4 E.,
Sec. 10, SE¼SE¼;
Sec. 14, lot 1, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 22, lot 1;
Sec. 23, NW¼NW¼.

2. The public land described as the SE¼SE¼, sec. 32, T. 3 N., R. 4 E., is embraced in a withdrawal application (Idaho 09350) of the U.S. Bureau of Sport Fisheries and Wildlife, as to which the regulations in 43 CFR 2311.1-2(a) are applicable.

3. At 10 a.m. on June 20, 1970, the remaining lands which are all within the Boise National Forest, shall be open to such forms of disposition as may by law be made of national forest lands.

Inquiries concerning these lands should be addressed to the Manager, Land Office, Bureau of Land Management, Boise, Idaho.

HARRISON LOESCH,
Assistant Secretary of the Interior.

MAY 15, 1970.

[F.R. Doc. 70-6778; Filed, May 28, 1970; 8:45 a.m.]

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EXHIBIT C
(1 of 2)

Copy Sent Manager

debarment together with the reasons for the debarment. The imposition of debarment upon a firm or an individual shall be [illegible] and conclusive except that the party debarred may seek relief in a court of competent jurisdiction.

§ 14–1.605 Suspension of bidders.

§ 14–1.605–1 Causes and conditions under which executive agencies may suspend contractors.

(a) All actions required by § 1–1.605–1 of this title shall be taken by the Assistant Secretary for Administration.

§ 14–1.605–4 Notice of suspension.

(a) All actions required by § 1–1.605–4 of this title shall be taken by the Assistant Secretary for Administration.

§ 14–1.606 Agency procedure.

(a) When in his opinion the facts warrant debarment or suspension, the head of the bureau or office concerned will submit the following to the Assistant Secretary for Administration for appropriate action:

(1) The recommendation for debarment or suspension with a statement of the causes or conditions as set forth in §§ 1–1.604 and 1–1.605–1 of this title.

(2) The suggested term of debarment or suspension, and

(3) All other documentary evidence to support the recommendation.

[F.R. Doc. 70-200; Filed, Jan. 6, 1970; 8:47 a.m.]

PART 14–3—CIRCUMSTANCES PERMITTING NEGOTIATION

PART 14–7—CONTRACT CLAUSES

Miscellaneous Amendments

Pursuant to the authority of the Secretary of the Interior, contained in 5 U.S.C. 301, the following sections of Parts 14–3 and 14–7 of Chapter 14, Title 41 of the Code of Federal Regulations are hereby revised as hereinafter set forth.

It is the general policy of the Department of the Interior to allow time for interested parties to take part in the public rulemaking process. However, because these sections are largely a general statement of Departmental policy and internal procedure the rulemaking process will be waived and these sections will become effective upon publication in the FEDERAL REGISTER.

GEORGE E. ROBINSON,
Deputy Assistant Secretary of the Interior.

DECEMBER 30, 1969.

The following amendments to 41 CFR Part 14–3, Circumstances Permitting Negotiation, published at 32 F.R. 3512 and of 41 CFR Part 14–7, Contract Clauses, published at 31 F.R. 199 revise the Interior Department Procurement Regulations. These amendments are effective upon publication in the FEDERAL REGISTER.

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§ 14–3.303 Determination and findings by the head of the agency.

The heads of bureaus and offices shall make the determination and findings required by § 1–3.211 of this title when the contract will not require the expenditure of more than $25,000.

§ 14–7.153 [Amended]

The following is added to § 14–7.153, *Ocean freight shipments—use of American-flag vessels*, as published at 34 F.R. 199: "A semiannual tonnage report on foreign purchases shipped by ocean carrier is required (see § 14–10.350)."

[F.R. Doc. 70-201; Filed, Jan. 6, 1970; 8:47 a.m.]

PART 14–30—CONTRACT FINANCING

Contract Debts—Compromise, Suspension or Termination

Pursuant to the authority of the Secretary of the Interior, contained in 5 U.S.C. 301, Part 14–30 of Chapter 14, Title 41 of the Code of Federal Regulations is hereby approved as hereinafter set forth.

It is the general policy of the Department of the Interior to allow time for interested parties to take part in the public rulemaking process. However, because this part is largely a general statement of Departmental policy and internal procedure the rulemaking process will be waived and this part will become effective upon publication in the FEDERAL REGISTER.

GEORGE E. ROBINSON,
Deputy Assistant Secretary of the Interior.

DECEMBER 30, 1969.

§ 14–30.50 Contract debts—compromise, suspension or termination.

The Federal Claims Collections Act of 1966 (80 Stat. 308, 31 U.S.C. 951–953) authorizes the compromise of civil claims of the Federal Government that do not exceed $20,000. This statute also authorizes termination or suspension of collection action on such claims. Actions under this statute must conform to standards prescribed jointly by the Attorney General of the United States and the Comptroller General of the United States. These controlling standards have been established by joint regulations (4 CFR Ch. II, 31 F.R. 13391, Oct. 15, 1966). Interior authority under the above statute and joint regulations concerning indebtedness arising in connection with contracts for procurement of property or services, contracts for sale or use of Government property, and charges for Government services has been delegated as follows:

(a) For compromise of such indebtedness, to the Solicitor.

(b) For termination or suspension of such indebtedness, to the head of the bureau or office having jurisdiction over the contracts under which such indebtedness arises with the approval of the Solicitor.

[F.R. Doc. 70-193; Filed, Jan. 6, 1970; 8:46 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4734]

[Arizona 016000-0]

ARIZONA

Revocation of Withdrawal for National Forest Recreation Area

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Public Land Order No. 1545 of November 6, 1957, withdrawing national forest lands as recreation areas, is hereby revoked so far as it affects the following described lands:

SITGREAVES NATIONAL FOREST
GILA AND SALT RIVER MERIDIAN
Fool Hollow Lake Recreation Area

T. 10 N., R. 21 E.,
Sec. 13, W½W½SW¼;
Sec. 14, E½NE¼NE¼, SW¼NE¼NE¼.

The area described aggregates 70 acres in Navajo County.

2. At 10 a.m. on February 4, 1970, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 30, 1969.

[F.R. Doc. 70-177; Filed, Jan. 6, 1970; 8:45 a.m.]

[Public Land Order 4735]

[Idaho 2356]

IDAHO

Partial Revocation of Reclamation Project Withdrawal

By virtue of the authority contained in section 3 of the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), as amended and supplemented, it is ordered as follows:

1. Secretarial orders dated August 19, 1925, and September 10, 1926, withdrawing lands in the Boise National Forest for the Boise Project, are hereby revoked so far as they affect the following described lands:

BOISE MERIDIAN

T. 11 N., R. 6 E.,
Sec. 13, SW¼NE¼, W½SE¼, SE¼SE¼.
T. 12 N., R. 6 E.,
Sec. 36, NE¼.

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T. [illegible], R. 7 E.,
Sec. 5, lot 1 and SE¼NE¼, E½SE¼;
Sec. 8, E½NE¼;
Sec. 9, N½, E½SW¼, SE¼;
Sec. 16, NW¼;
Sec. 17, S½NE¼;
Sec. 13, lot 4;
Sec. 19, lots 1 to 4, inclusive, SE¼NW¼, NE¼, E½SW¼, E½SE¼.
T. 13 N., R. 7 E.,
Sec. 29, NE¼, N½NW¼, N½SE¼, SE¼SE¼;
Sec. 30, NE¼, NW¼SE¼;
Sec. 31, lot 1, NE¼NW¼;
Sec. 32, E½E½.

The areas described aggregate approximately 2,661.31 acres in Valley County.

2. At 10 a.m. on February 4, 1970, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 30, 1969.

[F.R. Doc. 70-178; Filed, Jan. 6, 1970; 8:45 a.m.]

[Public Land Order 4756]

[Montana 11202, Minn.]

MINNESOTA

Powersite Restoration No. 632; Partial Revocation of Powersite Reserve No. 185

By virtue of the authority contained in section 24 of the Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818), as amended, and pursuant to the determination of the Federal Power Commission in DA-11-Minnesota, it is ordered as follows:

1. The Executive order of May 10, 1911, creating Powersite Reserve No. 185, is hereby revoked so far as it affects the following described lands:

FOURTH PRINCIPAL MERIDIAN

T. 62 N., R. 21 W.,
Sec. 35, lot 4.
T. 63 N., R. 21 W.,
Sec. 33, lot 2.

The areas described aggregate approximately 93.05 acres in St. Louis County.

Lot 4 has been patented. Lot 2 is within the Superior National Forest.

2. At 10 a.m. on February 4, 1970, lot 2 shall be open to such forms of disposition as may by law be made of national forest lands.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 30, 1969.

[F.R. Doc. 70-179; Filed, Jan. 6, 1970; 8:45 a.m.]

[Public Land Order 4757]

[New Mexico 7075]

NEW MEXICO

Withdrawal for National Forest Recreation Areas

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from appropriation under the mining laws (30 U.S.C., ch. 2), but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

CIBOLA NATIONAL FOREST

NEW MEXICO PRINCIPAL MERIDIAN

Forest Highway No. 16 Recreation Zone

A strip of land 330 feet on each side of the centerline of Forest Highway No. 16 (State Highway No. 44), through the following subdivisions:

T. 11 N., R. 5 E. (partially surveyed),
Sec. 3, NW¼NW¼NW¼;
Sec. 4, N½N½NE¼, SW¼NW¼NE¼, N½SW¼NE¼, SE¼SW¼NE¼, NE¼NE¼NW¼, NE¼SE¼NW¼, SE¼NW¼SE¼, SW¼SE¼;
Sec. 9, S½NE¼NE¼, N½NW¼NE¼, NE¼SE¼;
Sec. 10, SW¼NW¼, SW¼SE¼NW¼, N½SW¼, E½SE¼SW¼, SW¼NW¼SE¼, SW¼SE¼;
Sec. 14, SW¼NW¼NE¼, W½SW¼NE¼, W½SE¼NE¼NW¼, SE¼SW¼NE¼NW¼, SW¼NW¼NW¼, W½SW¼NW¼NW¼, NW¼SE¼NW¼, NW¼NW¼SE¼, E½SW¼NW¼SE¼, SE¼SW¼SE¼;
Sec. 15, NE¼;
Sec. 23, lot 1, S½NE¼NE¼, NE¼SE¼NE¼, NE¼NE¼NW¼.
T. 12 N., R. 5 E.,
Sec. 4, lot 1;
Sec. 9, NE¼SE¼, NW¼SE¼SE¼, E½SE¼SE¼;
Sec. 10, W½W½SW¼;
Sec. 15, W½NW¼NW¼, SW¼NW¼, W½SW¼;
Sec. 16, E½E½E½SE¼;
Sec. 21, lot 2, SW¼NE¼SE¼, W½SE¼SE¼, SE¼SW¼SE¼;
Sec. 22, W½ of lot 1, lots 6 and 12;
Sec. 27, SW¼SW¼SW¼;
Sec. 28, lot 3, N½ of lot 4, lots 5, 6, SE¼NE¼NE¼, NE¼SE¼NE¼;
Sec. 33, SE¼NE¼, NE¼NE¼SE¼;
Sec. 34, SE¼NW¼NE¼, SW¼NE¼NW¼, W½NW¼NW¼, S½NW¼, E½SW¼, N½NW¼SW¼, SW¼NW¼SE¼, W½SW¼SE¼.

Nine Mile Picnic Ground

T. 11 N., R. 5 E. (unsurveyed),
Sec. 5, W½NE¼NE¼.

Sandia Man Cave Addition

T. 12 N., R. 5 E.,
Sec. 22, W½E½ of lot 3.

Lower La Madera Canyon Recreation Area

T. 11 N., R. 5 E. (unsurveyed)
Sec. 3, N½NE¼NE¼, SW¼NE¼NE¼, NE¼NW¼SE¼, S½NW¼NE¼, N½SW¼NE¼, N½SW¼SW¼NE¼, SE¼SW¼NW¼, SW¼SE¼NW¼, N½SE¼SE¼NW¼.
T. 12 N., R. 5 E.,
Sec. 33, NE¼SE¼SW¼, S½SE¼SW¼.

The areas described aggregate approximately 1,302.28 acres in Sandoval County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 30, 1969.

[F.R. Doc. 70-180; Filed, Jan. 6, 1970; 8:45 a.m.]

[Public Land Order 4758]

[Oregon 03588]

OREGON

Partial Revocation of National Forest Withdrawal

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Public Land Order No. 1867 of May 28, 1959, withdrawing national forest lands for the protection of road rights-of-way, roadside and waterfront areas, is hereby revoked so far as it affects the following described lands:

WILLAMETTE MERIDIAN

WINEMA NATIONAL FOREST

T. 33 S., R. 7½ E.,
Sec. 22, SE¼NE¼, SE¼SW¼SW¼, SE¼SW¼, NW¼SE¼, and W½SW¼SE¼;
Sec. 23, N½NW¼.

The areas described aggregate approximately 230 acres in Klamath County.

2. The lands shall immediately be made available for consummation of a pending Forest Service exchange.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 30, 1969.

[F.R. Doc. 70-181; Filed, Jan. 6, 1970; 8:45 a.m.]

[Public Land Order 4759]

[Colorado 9339]

COLORADO

Partial Revocation of Stock Driveway Withdrawal

By virtue of the authority contained in section 10 of the Act of December 29, 1916 (39 Stat. 865; 43 U.S.C. 300), as amended, it is ordered as follows:

The Departmental order of November 17, 1917, creating Stock Driveway Withdrawal No. 5, is hereby revoked so far as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN

T. 2 N., R. 76 W.,
Sec. 3, W½W½, SE¼SW¼;
Sec. 4, NE¼, NE¼NW¼;
Sec. 10, W½;
Sec. 15, NW¼, N½SW¼.

The areas described aggregate 1,080 acres in Grand County.

The lands are withdrawn for use in connection with the Shadow Mountain Recreation Area, as part of the Rocky Mountain National Park.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 30, 1969.

[F.R. Doc. 70-182; Filed, Jan. 6, 1970; 8:45 a.m.]

FEDERAL REGISTER,
JANUARY 7, 1970

[Public Land Order 4755]

[Idaho 2958]

IDAHO

Partial Revocation of Reclamation Project Withdrawal

By virtue of the authority contained in section 3 of the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), as amended and supplemented, it is ordered as follows:

1. Secretarial orders dated August 19, 1925, and September 10, 1926, withdrawing lands in the Boise National Forest for the Boise Project, are hereby revoked so far as they affect the following described lands:

BOISE MERIDIAN

T. 11 N., R. 6 E.,
Sec. 13, SW¼NE¼, W½SE¼, SE¼SE¼.
T. 12 N., R. 6 E.,
Sec. 36, NE¼.

T. 11 N., R. 7 E.,
Sec. 5, lot 1 and SE¼NE¼, E½SE¼;
Sec. 8, E½NE¼;
Sec. 9, N½, E½SW¼, SE¼;
Sec. 10, NW¼;
Sec. 17, S½NE¼;
Sec. 18, lot 4;
Sec. 19, lots 1 to 4, inclusive, SE¼NW¼, NE¼NE¼, S½NE¼, E½SW¼, E½SE¼.
T. 12 N., R. 7 E.,
Sec. 29, NE¼, N½NW¼, N½SE¼, SE¼SE¼;
Sec. 30, NE¼, NW¼SE¼;
Sec. 31, lot 1, NE¼NW¼;
Sec. 32, E½E½.

The areas described aggregate approximately 2,661.31 acres in Valley County.

2. At 10 a.m. on February 4, 1970, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 30, 1969.

[F.R. Doc. 70-178; Filed, Jan. 6, 1970; 8:45 a.m.]

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EXCERPTS FROM BOISE NATIONAL FOREST

LAND USE PLAN

MICROFILMED
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EXCERPTS FROM CASCADE PLANNING UNIT
Boise National Forest
Land Use Plan

1-1 - Scenic View Retention Area

Description

This management unit occupies approximately 12,210 acres within the West Mountain-Cascade Lake Management Area. It is a highly visible very important scenic unit forming the backdrop for Cascade Lake and Long Valley. Many people view this unit from their homes, while traveling Highway 55, forest roads, and from Cascade Lake and adjacent lands used heavily for recreation.

It is very important to maintain a high quality scenic standard for this unit and avoid alterations that would detract from a natural appearing landscape.

The management objective is to coordinate all management activities so they will blend in with the natural landscape.

Management Decisions

1. Manage to a retention visual quality standard.

2. Manage timber for all aged stand composition.

3. Require a landscape architect to review all proposed activities that could cause alterations of the scenic quality.

4. Provide for intensive slash disposal.

5. Immediately plant new road cut and fill slopes with grass, trees, and/or shrubs.

1-4 - Partial Scenic Retention Area

Description

This management unit occupies 11,940 acres within the West Mountain-Cascade Lake Management Area. It is viewed from a greater distance than the unit designated for scenic retention. These lands are still very important for scenic viewing from focal points such as Cascade Lake, Highway 55, Long Valley, and Snowbank Mountain.

Resource activities should be conducted so they do not dominate the character of the landscape.

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Within this unit is the "Grassy Flat" school which was constructed in 1926. This building provided the facility for 12 children living at the Fawn Creek tie camp to receive some formal education from their teacher, Mr. Kern Riggs. The tie camp closed the following year, families moved out, and the school closed. The heavy logs forming the walls of the 16x20 foot building remain.

The management objective for this unit is to utilize the resources without noticeable changes in the landscape.

Management Decisions

1. Manage to a partial retention visual quality standard.

2. Design timber harvest units so they blend in with the landscape.

3. Immediately plant new road cut and fill slopes with grass, trees, and/or shrubs.

4. Protect the remnants of the old Grassy Flat School building.

1-11 - Cascade Lake Recreation Lands

Description

This management unit occupies approximately 1,270 acres within the West Mountain-Cascade Lake Management Area. It is comprised of those lands that have developed recreation facilities or potential for future recreational development, on the west side of Cascade Lake. Present use is heavy throughout the entire unit with the influence of Cascade Lake being the major attraction. It was the only area on the Ranger District that recorded an increase in use during the 1974 recreation season.

These lands are located between the shore of Cascade Lake and the steep fluvial lands on West Mountain. Topography is gentle and very favorable for recreational development. Domestic water sources are adequate for all planned future facilities.

Vegetation varies from large meadows to heavy stands of good commercial timber composed of lodgepole pine, western larch, ponderosa pine, spruce, and fir. Only a small portion of the unit has been logged in the past.

There are three active allotments within this unit. The Cascade Reservoir North and Cascade Reservoir South cattle allotments are

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managed with a deferred rotation management system. The Van Wyck sheep allotment serves as a one night holdover for sheep using the Van Wyck Driveway in the spring and late fall. With increased recreation use, conflicts between livestock and users are more frequent. This is particularily true with the sheep and campers in French Creek Campground. There has been some concern expressed by the Central Health Department regarding possible water pollution from livestock grazing adjacent to the shore of Cascade Lake.

The transportation system consists of the main artery West Side Cascade Lake Road with short spurs to private lands and Forest Service Campgrounds. A portion of the main road is surveyed, and designed for reconstruction.

An isolated 40 acre tract of land in Section 20, T. 14 N., R. 3 E., completely surrounded by a private recreational subdivision is a constant source of administrative problems.

The management objective for this unit is to coordinate all resource uses to enhance the high recreational values and systematically develop the area as future use demands increase.

Management Decisions

1. Develop a recreation composite plan for this unit. Coordinate our planning with the Bureau of Reclamation.

2. Protect the visual resource and manage to a quality standard of retention.

3. Require a lnadscape architect to review all proposed timber harvest, road construction, or other activities that could adversely affect the recreation resource.

4. Take action necessary to minimize or eliminate conflicts between domestic livestock grazing and recreation use of the area.

5. Stabilize road cuts and fills and revegetate in the shortest time possible.

6. Restrict timber harvest to single tree or group selection.

7. Withdraw all high potential recreation areas from mineral entry.

8. Require all future fences to be of log worm or buck and pole design.

9. Explore the possibility of exchanging the isolated 40 acres of National Forest land in Section 20, T. 14 N., R. 3 E., for the 40 acres adjacent to and south of this tract.

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APPENDIX

MICROFILMED
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EXHIBIT A
(1 of 4)

F.R. Vol. 33, No. 68-63
Bureau of Reclamation

BOISE NATIONAL FOREST, IDAHO

Order of Transfer of Administrative Jurisdiction of Land

By virtue of the authority vested in the Secretary of the Interior by section 7(c) of the Act of July 9, 1965 (79 Stat. 213), and his delegation of authority to the Commissioner of Reclamation dated February 24, 1966, published March 4, 1966 (31 F.R. 3781), jurisdiction over the following described lands, which lie within or adjacent to the exterior boundaries of the Boise National Forest, Idaho, and which were acquired or withdrawn by the Bureau of Reclamation in connection with the development of the Arrowrock Division, Lucky Peak Project, is hereby transferred to the Secretary of Agriculture for recreational and other National Forest purposes.

BOISE NATIONAL FOREST
BOISE TERRITORY
Acquired Lands[1]

T. 1 N., R. 2 E.,
Sec. 16, W½SE¼NW¼, E½SW¼NW¼, SW¼SW¼NW¼, W½NW¼NE¼SW¼, W½NW¼SW¼, NW¼SE¼SW¼, E½SW¼SW¼, SW¼NE¼SW¼, E½SE¼SW¼;
Sec. 20, E½SE¼SW¼, S½N½SE¼SW¼;
Sec. 21, W½NE¼, N½SE¼NE¼, E½NW¼NE¼, SW¼NW¼NE¼, NE¼SW¼NE¼, S½NW¼, NW¼SW¼, S½S½SW¼;
Sec. 22, W½NW¼NW¼, SE¼NW¼NW¼, SE¼SW¼, S½SE¼;
Sec. 23, lots 2, 3, 4;
Sec. 24, W½NW¼NE¼, W½SW¼NE¼, NW¼, NW¼SW¼;
Sec. 26, lots 4, 5, 6, 7;
Sec. 27, lots 4, 5, 6, 7;
Sec. 28, lots 1, 2, 3, 4, 5, 6, 7, 8;
Sec. 29, lots 2, 3, 4, 5, 6, 7, 8, E½NW¼, SW¼SW¼NW¼;
Sec. 33, SE¼SW¼SW¼;
Sec. 34, lots 1, 2, 6, 11;
Sec. 35, lot 1, NW¼NE¼SW¼.

T. 1 N., R. 10 E.,
Sec. 3, lots 3, 4, SW¼, and that portion of the E½W½SW¼ lying west of the existing County road;
Sec. 4, lots 1, 2, 6, 7, 8, 11, 12, E½SW¼;
Sec. 7, lots 5, 6, 8;
Sec. 8, lots 1, 2, 3, 4, W½NE¼, SE¼NW¼, SE¼, SE¼SW¼;
Sec. 16, NW¼SW¼, S½N½SW¼SW¼, N½N½SW¼SW¼;
Sec. 17, lots 1, 2, 4, NW¼NW¼, NE¼SW¼, S½SW¼, NW¼SW¼SW¼, S½NE¼SW¼SW¼, W½SW¼SW¼SE¼;
Sec. 18, lots 1, 2, 3, 4, E½W½, NE¼;
Sec. 20, N½N½SW¼, NW¼.

T. 2 N., R. 10 E.,
Sec. 29, SW¼, NW¼, S½W¼;
Sec. 32, lot 1 except the north 660 feet, the south 792 feet of lot 3, the east 17 acres of lot 6, lots 8, 13, SW¼NE¼, the east 232.5 feet of the SE¼NW¼SW¼, except a tract containing 0.22 acre described as follows: Beginning at a point on the north boundary of said SE¼NW¼SW¼, which point is located 661 feet E. 0°03' W. of the north quarter corner of said sec. 32; thence S. 0°03' E., a distance of 143.0 feet; thence S. 63°18' W., a distance of 60.4 feet; thence along the arc of a curve to the right having a radius of 70 feet, the curve length distance of 102.1 feet; thence north a distance of 78.7 feet, more or less, to a point on the north boundary of said SE¼NW¼SW¼; thence along said north boundary S. 89°57' E., a distance of 117.6 feet, more or less, to the point of beginning.
Sec. 31, lots 2, 7, 11, 12, E½ of lot 10, W½NE¼, NE¼SE¼, NW¼SW¼, NW¼SE¼;
Sec. 33, lot 3, N½NW¼, W½W½SW¼, SW¼, the west 330 feet of the NW¼SW¼SW¼.

The acquired lands to be transferred aggregate 4,070.10 acres, more or less.

Withdrawn Lands

T. 1 N., R. 2 E.,
Sec. 14, S½SW¼.

T. 1 N., R. 10 E.,
Sec. 4, lots 3, 4, 5, 7, SE¼SW¼, NW¼SW¼;
Sec. 8, lots 5, 6, 10, 12, 15, 16, SW¼SW¼;
Sec. 9, lots 2, 13, W½SW¼;
Sec. 16, lots 6, 7, 9, 10, 11, SE¼NE¼;
Sec. 17, lots 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16;
Sec. 18, lots 10, 11, W½, N½SW¼, NE¼SW¼.

T. 2 N., R. 10 E.,
Sec. 19, lots 12, 13;
Sec. 20, lots 4, 5, 7, 8, 10, 11, 12, E½SW¼;
Sec. 21, lots 1, 3, 6;
Sec. 22, lots 1, 2, 3, 7.

The withdrawn lands to be transferred aggregate 1,693.80 acres, more or less.

T. 1 N., R. 2 E.,
Sec. 20, S½SW¼SW¼, S½N½SE¼SW¼;
Sec. 21, S½SW¼;
Sec. 23, lot 4;
Sec. 29, lots 2, 3, E½NW¼, SE¼SW¼SW¼;
Sec. 30, S½SW¼, SE¼.

T. 1 N., R. 10 E.,
Sec. 8, lot 4, SE¼SE¼.

T. 2 N., R. 10 E.,
Sec. 30, lot 1, except the north 660 feet thereof.

Pursuant to said section 7(c) of the aforesaid Act of July 9, 1965, the above lands shall become National Forest lands: *Provided*, That all land and waters within the Anderson Ranch reservoir area needed or used for the operation of the project or for other irrigation purposes shall continue to be administered by the Commissioner of Reclamation to the extent he determines to be necessary for such operation.

This order shall be effective upon publication in the FEDERAL REGISTER.

Dated: January 27, 1969.

FLOYD E. DOMINY,
Commissioner,
Bureau of Reclamation.

[F.R. Doc. 69-1553; Filed, Jan. 31, 1969; 8:47 a.m.]

[1] The following described tracts of acquired land are subject to a reserved right for agricultural and grazing purposes in connection with operation and maintenance of Anderson Ranch Dam and Reservoir.

T. 1 N., R. 10 E.,
Sec. 3, lots 3, 4, SW¼, and that portion of the E½W½SW¼ lying west of the existing County road;
Sec. 4, lots 1, 2, 6, 7, 8, 11, 12, E½SW¼;
Sec. 7, lots 5, 6, 8;
Sec. 8, lots 1, 2, 3, 4, W½NE¼, SE¼NW¼, SE¼, SE¼SW¼;
Sec. 16, NW¼SW¼, S½N½SW¼SW¼, N½N½SW¼SW¼;
Sec. 17, lots 1, 2, 4, NW¼NW¼, NE¼SW¼, S½SW¼, NW¼SW¼SW¼, S½NE¼SW¼SW¼, W½SW¼SW¼SE¼;
Sec. 18, lots 1, 2, 3, 4, E½W½, NE¼;
Sec. 20, N½N½SW¼, NW¼.

T. 2 N., R. 10 E.,
Sec. 29, SW¼, NW¼, S½W¼;
Sec. 32, lot 1 except the north 660 feet, the south 792 feet of lot 3, the east 17 acres of lot 6, lots 8, 13, SW¼NE¼, the east 232.5 feet of the SE¼NW¼SW¼, except a tract containing 0.22 acre described as follows: Beginning at a point on the north boundary of said SE¼NW¼SW¼, which point is located 661 feet E. 0°03' W. of the north quarter corner of said sec. 32; thence S. 0°03' E., a distance of 143.0 feet; thence S. 63°18' W., a distance of 60.4 feet; thence along the arc of a curve to the right having a radius of 70 feet, the curve length distance of 102.1 feet; thence north a distance of 78.7 feet, more or less, to a point on the north boundary of said SE¼NW¼SW¼; thence along said north boundary S. 89°57' E., a distance of 117.6 feet, more or less, to the point of beginning.
Sec. 31, lots 2, 7, 11, 12, E½ of lot 10, W½NE¼, NE¼SE¼, NW¼SW¼, NW¼SE¼;
Sec. 33, lot 3, N½NW¼, W½W½SW¼, SW¼, the west 330 feet of the NW¼SW¼SW¼.

The acquired lands to be transferred aggregate 4,070.10 acres, more or less.

Withdrawn Lands

T. 1 N., R. 2 E.,
Sec. 14, S½SW¼.

T. 1 N., R. 10 E.,
Sec. 4, lots 3, 4, 5, 7, SE¼SW¼, NW¼SW¼;
Sec. 8, lots 5, 6, 10, 12, 15, 16, SW¼SW¼;
Sec. 9, lots 2, 13, W½SW¼;
Sec. 16, lots 6, 7, 9, 10, 11, SE¼NE¼;
Sec. 17, lots 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16;
Sec. 18, lots 10, 11, W½, N½SW¼, NE¼SW¼.

T. 2 N., R. 10 E.,
Sec. 19, lots 12, 13;
Sec. 20, lots 4, 5, 7, 8, 10, 11, 12, E½SW¼;
Sec. 21, lots 1, 3, 6;
Sec. 22, lots 1, 2, 3, 7.

The withdrawn lands to be transferred aggregate 1,693.80 acres, more or less.

T. 1 N., R. 2 E.,
Sec. 20, S½SW¼SW¼, S½N½SE¼SW¼;
Sec. 21, S½SW¼;
Sec. 23, lot 4;
Sec. 29, lots 2, 3, E½NW¼, SE¼SW¼SW¼;
Sec. 30, S½SW¼, SE¼.

T. 1 N., R. 10 E.,
Sec. 8, lot 4, SE¼SE¼.

T. 2 N., R. 10 E.,
Sec. 30, lot 1, except the north 660 feet thereof.

Pursuant to said section 7(c) of the aforesaid Act of July 9, 1965, the above lands shall become National Forest lands: *Provided*, That all land and waters within the Anderson Ranch reservoir area needed or used for the operation of the project or for other irrigation purposes shall continue to be administered by the Commissioner of Reclamation to the extent he determines to be necessary for such operation.

This order shall be effective upon publication in the FEDERAL REGISTER.

N. E. Plummer, Jr.,
Acting Commissioner of Reclamation.

March 26, 1968.

[F.R. Doc. 68-4059; Filed, Apr. 3, 1968; 8:45 a.m.]

F.R. Vol. 33, No. 84-63
Bureau of Reclamation

BOISE NATIONAL FOREST, IDAHO

Order of Transfer of Administrative Jurisdiction of Land; Correction

In F.R. Doc. 68-4059, appearing on page 5415 of the issue for Tuesday, April 9, 1968, in the land description heading "Acquired Lands," delete the footnote reference. After the sentence "The withdrawn lands to be transferred aggregate 1,693.80, more or less," insert the heading "Acquired Lands Subject to Reserved Right for Agriculture and Grazing Purposes."

Dated: April 16, 1968.

FLOYD E. DOMINY,
Commissioner of Reclamation.

[F.R. Doc. 68-4815; Filed, Apr. 23, 1968; 8:45 a.m.]

F.R. Vol. 33, No. 84-63
Bureau of Reclamation

BOISE NATIONAL FOREST, IDAHO

Order of Transfer of Administrative Jurisdiction of Land

By virtue of the authority vested in the Secretary of the Interior by section 7(c) of the Act of July 9, 1965 (79 Stat. 213), and his delegation of authority to the Commissioner of Reclamation dated February 24, 1966, published March 4, 1966 (31 F.R. 3781), jurisdiction over the following described lands, which lie within or adjacent to the exterior boundaries of the Boise National Forest, Idaho, and which were acquired or withdrawn by the Bureau of Reclamation in connection with the development of the Arrowrock Division, Lucky Peak Project, is hereby transferred to the Secretary of Agriculture for recreational and other National Forest purposes.

BOISE NATIONAL FOREST
BOISE TERRITORY, IDAHO

T. 1 S., R. 6 E.,
Sec. 13, lot 6—21.8 acres;
Sec. 16, lot 6—22.9 acres.

The lands to be transferred aggregate 44.7 acres, more or less.

Pursuant to said section 7(c) of aforesaid Act of July 9, 1965, the above lands shall become National Forest lands: *Provided*, That all lands and waters within the Anderson Ranch reservoir area needed or used for the operation of the project or for other irrigation purposes shall continue to be administered by the Commissioner of Reclamation to the extent he determines to be necessary for such operation.

This order shall be effective upon publication in the FEDERAL REGISTER.

Dated: January 27, 1969.

FLOYD E. DOMINY,
Commissioner,
Bureau of Reclamation.

[F.R. Doc. 69-1552; Filed, Jan. 31, 1969; 8:47 a.m.]

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EXHIBIT A

(2 of 4)

A. INTRODUCTION

The lands within the Anderson Ranch Reservoir Area include National Forest lands reserved from the public domain and under Reclamation withdrawal, and lands acquired and withdrawn by the Bureau which were transferred to the Secretary of Agriculture's jurisdiction pursuant to the Federal Water Project Recreation Act of July 9, 1965 (79 Stat. 213), and which thus became National Forest lands with Weeks Law status. These lands are described as follows:

Acquired Land

Boise Meridian

T. 1 N., R. 9 E.
Sec. 16, W½SE¼NE¼, E½SW¼NE¼, SW¼SW¼NE¼, W½W½NE¼SE¼, NW¼SE¼, W½E½SW¼SE¼, W½SW¼SE¼, E½SE¼SW¼, SE¼NE¼SW¼;
Sec. 20, S½SE¼SW¼, S½N½SE¼SW¼;
Sec. 21, W½NE¼, SW¼SE¼NE¼, E½NW¼, SE¼NW¼NW¼, NE¼SW¼NW¼, NE¼SW¼, S½SW¼, NW¼SE¼, S½S½SE¼SE¼;
Sec. 23, W½SE¼NW¼, SE¼SE¼NE¼, SE¼SW¼, S½SE¼, NE¼SE¼;
Sec. 24, Lots 6, 7; NW¼SW¼;
Sec. 25, W½NE¼NE¼, W½E½NE¼NE¼, NW¼NE¼, N½SE¼NE¼;
Sec. 26, Lots 4, 5, 6, N½NE¼SW¼, N½SE¼;
Sec. 27, Lots 4, 5, 6, 7;
Sec. 28, Lots 1, 2, 3, 4, 5, 6, 7, 8;
Sec. 29, Lots 2, 3, 5, 6, 7, 8, E½NW¼, SE¼SW¼NW¼;
Sec. 30, SE¼SW¼SE¼;
Sec. 31, Lots 1, 6, 8, 11;
Sec. 32, Lot 1, NW¼NE¼NW¼.

T. 1 N., R. 10 E.
Sec. 5, Lots 5, 6, SW¼ and that portion of the SW¼SE¼ lying West of the existing County road;
Sec. 6, Lots 1, 2, 6, 7, 8, 11, 12, E½SW¼;
Sec. 7, Lots 1, 5, 6, 9;
Sec. 8, Lots 1, 2, 3, 4, W½NE¼, NE¼NW¼, SE¼SE¼;

T. 1 N., R. 10 E.
Sec. 16, NW¼SW¼, S½NE¼SW¼, N½N½SW¼SW¼;
Sec. 17, Lots 1, 2, 4, NW¼NE¼, NE¼SW¼, S½SW¼, NW¼SW¼SE¼, N½NE¼SW¼SE¼, W½SW¼SW¼SE¼;
Sec. 18, Lots 3, 4, 6, 7, 8, 9, NE¼NE¼;
Sec. 20, N½N½NW¼NW¼.

T. 2 N., R. 10 E.
Sec. 29, SW¼NW¼, SW¼;
Sec. 30, Lot 1 except the North 990 feet, the South 7.04 acres of Lot 3, the East 17 acres of Lot 6, Lots 8, 13, SE¼NE¼, the East 292.2 feet of the SE¼NE¼NW¼

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Acquired Land (Continued)

Boise Meridian

except a tract containing 0.38 acre described as follows: "Beginning at a point on the North boundary of said SE¼NE¼NW¼, which point is located 667 feet S. 8°35' W. of the North quarter corner of said Sec. 30; thence S. 0°02' E., a distance of 148.8 feet; thence S. 88°14' W., a distance of 40.4 feet; thence along the arc of a curve to the right having a radius of 75 feet, the curve length distance of 120.1 feet; thence North a distance of 75.7 feet, more or less, to a point on the North boundary of said SE¼NE¼NW¼; thence along said North boundary S. 89°44' E., a distance of 117.6 feet, more or less, to the point of beginning."

Sec. 31, Lots 2, 7, 11, 12, E½ of Lot 10, W½NE¼, E½E½NE¼SW¼, NW¼SE¼;
Sec. 32, Lot 8, N½NW¼, W½W½SE¼NW¼, the West 396 feet of the NW¼NE¼SW¼.

T. 1 S., R. 8 E.
Sec. 15, Lot 6;
Sec. 16, Lot 6.

The acquired lands aggregate 4,418.83 acres, more or less.

Withdrawn Lands

Boise Meridian

T. 1 N., R. 9 E.
Sec. 13, S½SE¼.

T. 1 N., R. 10 E.
Sec. 5, Lots 3, 4, 7, SE¼NW¼, NW¼SE¼;
Sec. 6, Lots 5, 9, 10, 13, 14, 15, 16, SE¼NW¼;
Sec. 7, Lots 2, 10, W½E½;
Sec. 8, Lots 6, 7, 8, 9, 10, E½NE¼;
Sec. 17, Lots 3, 5, 7, 7, S½NE¼, N½SE¼;
Sec. 18, Lots 10, 11, W½NE¼, NE¼SW¼;

T. 2 N., R. 10 E.
Sec. 19, Lots 12, 13;
Sec. 30, Lots 4, 5, 7, 9, 10, 11, 12, E½SW¼;
Sec. 31, Lots 1, 5, 6;
Sec. 32, Lots 1, 2, 3, 7.

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The withdrawn lands aggregate 1,699.90 acres, more or less.

The following described tracts of acquired land are subject to a reserved right for agricultural and grazing purposes compatible with operation and maintenance of Anderson Ranch Dam and Reservoir:

T. 1 N., R. 9 E.
Sec. 20, S½SE¼SW¼, S½N½SE¼SW¼;
Sec. 21, S½SW¼;
Sec. 28, Lot 4;
Sec. 29, Lots 2, 3, E½NW¼, SE¼SW¼NW¼;
Sec. 30, SE¼SW¼SE¼.

T. 1 N., R. 10 E.
Sec. 8, Lot 4, SE¼SE¼.

T. 2 N., R. 10 E.
Sec. 30, Lot 1, except the North 900 feet thereof.

The Order of Transfer of Administrative Jurisdiction, by which the lands obtained Weeks Law Status (F.R. Vol. 33, No. 66, dated April 4, 1968, P. 5375, as corrected in F.R. Vol. 33, No. 80, dated April 24, 1968, P. 6250, and F.R. Vol. 34, No. 21, dated January 31, 1969, P. 1567), provided that all lands and waters within the Reservoir Area needed or used for the operation of the Boise Project and for other Reclamation purposes shall continue to be administered by the Commissioner of Reclamation to the extent he deems necessary for such operation. The Reclamation Zone as defined by the Bureau is described as clause 1 of the agreement terms included in this section.

All agreement terms and the management plan as stated in this section apply only to the Reservoir Area exclusive of the Reclamation Zone unless otherwise specified.

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MASTER AGREEMENT

between

U.S. FOREST SERVICE

and

U.S. BUREAU OF RECLAMATION

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MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF RECLAMATION, UNITED STATES DEPARTMENT OF THE INTERIOR, AND THE FOREST SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, PERTAINING TO THE DEVELOPMENT AND ADMINISTRATION OF RECREATIONAL FACILITIES AT BUREAU OF RECLAMATION RESERVOIRS THAT ARE WHOLLY OR SUBSTANTIALLY WITHIN THE BOUNDARIES OF NATIONAL FORESTS.

1. THIS MEMORANDUM OF UNDERSTANDING, made and entered into by and between the BUREAU OF RECLAMATION, hereinafter referred to as the Bureau and the FOREST SERVICE, hereinafter referred to as the Service, as agencies of the United States of America.

WITNESSETH THAT:

2. WHEREAS, the Secretary of the Interior has withdrawn, under authority of the Reclamation Act of June 17, 1902 (32 Stat. 388), area of public domain lands which are wholly or in part within the exterior boundaries of existing National Forests; and

3. WHEREAS, the Bureau and the Service recognize that good public land management requires that all of the resources of these lands must be managed in accordance with sound management practices, and made available for the use and enjoyment of the general public insofar as is consistent with the dedication of these lands to reclamation and National Forest purposes; and

4. WHEREAS, the Bureau and the Service recognize that unified planning and administration of these lands is generally desirable and necessary in the public interest.

NOW, THEREFORE, the Bureau and the Service agree that the following principles shall govern the management of all lands, now or hereafter withdrawn or acquired for reclamation purposes, lying within the exterior boundaries of National Forests:

5. The Bureau is responsible for the construction, maintenance, and operation of reclamation works, and to the extent necessary to execute those functions, has primary jurisdiction over the water surfaces of all reservoirs and over all lands needed for reclamation works. The Service, however, will be responsible for the administration of National Forest lands in a reclamation withdrawal which are not in actual use in connection with reclamation works.

6. The Bureau reserves the right to determine the area subject to its primary jurisdiction in each case, but agrees that this will usually be confined to the water surfaces of reservoirs, lands within 300 feet horizontal distance above the high water mark of the reservoirs, areas actually occupied by structures of the Bureau and areas required for the administration, maintenance, and protection of such structures. The Service may permit recreational or other use of these lands or waters or the utilization of the resources thereof with the consent of the Bureau, but the Service will be responsible for the design of structures and the conduct of resource management. Receipts from any permits therefor will be covered into the Reclamation fund, and

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the Bureau shall receive an annual report from the Forest Supervisor showing the uses permitted, the resources utilized, and the receipts therefrom.

7. On areas within National Forests withdrawn for reclamation purposes, but not in actual use in connection with reclamation work, the Service will administer the lands as ordinary National Forest lands, and any income therefrom shall be covered into the Forest Reserve Fund. The Service will consult with the Bureau in regard to the general management policy, as reflected by issuance of permits or contracts, utilization of resources, or improvements, in order that no practice that might lead to interference with reclamation purposes may be introduced into the withdrawn areas.

8. Any permits or leases heretofore issued by the Bureau on National Forest land will be turned over to the Service for administration in accordance with the terms and conditions of such permits or leases. The Bureau will not issue any additional permits or leases on National Forest lands withdrawn for reclamation purposes.

9. Subject to the instructions and limitations imposed by these general principles, the Regional Director and the Regional Forester are designated as the authorized representatives of the Bureau and the Service, respectively, and are hereby granted authority to execute agreements covering any reclamation withdrawals or reclamation acquired lands within National Forests, over which they have mutual jurisdiction.

10. FURTHERMORE, the Bureau and the Service recognize that unification of management is generally desirable on all lands adjacent to a reclamation reservoir regardless of whether the reservoir is wholly inside or partly inside and partly outside National Forest boundaries and that the general principles enumerated above with respect to National Forest lands may be applied properly to adjacent lands outside National Forest boundaries which are acquired or withdrawn for reclamation purposes, and therefore it is agreed that:

11. When a reclamation reservoir is partially inside and partially outside of a National Forest boundary, the adjacent nonarable reclamation withdrawn or acquired lands outside the boundary may be made subject to an agreement similar in principle to that outlined above for lands within National Forest boundaries and managed by the Service. Such agreements will be worked out by the local representatives of the Bureau and the Service but must be approved by the respective heads of the agencies.

12. In connection with all phases of this agreement having to do with the planning and approval of the development of recreational facilities, it is understood that the Bureau will be represented at any or all times by the National Park Service, as its agent.

/s/ Michael W. Straus	/s/ C.M. Granger
BUREAU OF RECLAMATION	Acting Chief, FOREST SERVICE
Date Jan. 20, 1948	Date Jan. 26, 1948

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SECRETARY OF AGRICULTURE'S

POLICY LETTER

September 27, 1957

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The following letter, from the Secretary of Agriculture to the Secretary of the Interior, deals with the same subject as the foregoing agreement. The Secretary's letter constitutes a policy statement on the subject.

DEPARTMENT OF AGRICULTURE
WASHINGTON 25, D.C.

September 27, 1957

The Honorable
The Secretary of the Interior

Dear Mr. Secretary:

The National Park Service and the Forest Service have cooperated on many activities through the years but there have also been some conflicts of interest and differences of policy. Mr. McArdle and Mr. Wirth are both aware of this situation and they have recently discussed ways and means of resolving some of these problems. They have agreed to endeavor to bring about closer cooperation between the two Services. We want to aid that effort in every way, and believe that a recognition of the problems at the departmental level, together with a departmental statement of certain broad principles of policy, would be helpful to the Park Service and the Forest Service in working towards closer cooperation. It is in that spirit that this letter is written.

One problem of immediate concern which needs to be resolved promptly to facilitate and harmonize work in the field is clarification of the responsibilities of the two agencies in the planning, development, maintenance, and operation of recreation resources and facilities on national-forest lands withdrawn for reclamation purposes under the Reclamation Act of June 17, 1902 (43 U.S.C. 416). The problem has come into focus in connection with recreational planning activities of the Forest Service and the National Park Service on proposed reservoirs in the Upper Colorado Basin--specifically on the Paeonia and Flaming Gorge projects. In the case of the Paeonia project we frankly believe the Forest Service went too far in recommending recreational developments on a reservoir lying entirely outside national-forest boundaries but which nonetheless will have important impacts on the management of nearby national-forest lands. In the case of the Flaming Gorge project the Forest Service seriously questioned the desirability of the National Park Service making recreation plans on national-forest lands. Consequently a Park Service survey party was requested to refrain from making a recreation survey on national-forest lands until the question of responsibility could be clarified. This action resulted more from concern over what might happen with regard to recreation planning on national forests in the future, particularly in the Upper Colorado Basin, than over what has happened in the past.

As you know, Section 8 of the Colorado River Storage Project Act of April 11, 1956, now authorizes and directs the Secretary of the Interior to plan, develop, maintain and operate recreation facilities on project lands. These projects include national-forest lands withdrawn for reclamation purposes. The Act further authorizes the Secretary to cooperate with States and local agencies, to withdraw lands for recreation purposes, and transfer such lands to other Federal agencies, States, and local governments for administration. It is significant that there is nothing in the Act which revokes the authority of the Secretary of Agriculture with respect to these lands.

The Department of Agriculture raised a question as to the provisions of Section 8 before enactment. We still strongly question whether the Secretary of the Interior should exercise the authority given to him by this Act to plan, develop, maintain and operate recreation facilities on national-forest lands included in the project boundaires. We also would seriously object to any action by the Department of the Interior to transfer national-forest lands in reclamation withdrawal to the States for administration without consent of this Department.

Recent three way discussions between this Department, the Department of Interior, and the Bureau of the Budget, resulted in an administration policy with respect to national-forest lands in reclamation projects. Our report on the Fryingpan-Arkansas Project bill, S. 60 in the 85th Congress, which was developed as a result of these discussions and had the approval of the Bureau of the Budget, proposed the following amendment to Section 6 of the bill, which Section was quite similar to Section 8 of the Act of April 11, 1956:

> Provided, That all lands within the exterior boundaries of a national forest acquired for recreational or other project purposes which are not determined by the Secretary of the Interior to be needed for actual use in connection with the reclamation works shall become national-forest lands; Provided further, That the Secretary of the Interior shall make his determination hereunder within five years after approval of this Act, or, in the case of individual tracts of land, within five years after their acquisition by the United States; and Provided further, That the authority contained in this section shall not be exercised by the Secretary of the Interior with respect to national-forest lands without the concurrence of the Secretary of Agriculture.

Assistant Secretary Fred G. Aandahl, in testifying on S. 60 before the Senate Interior and Insular Affairs Committee stated that the recommend amendment was satisfactory to the Department of Interior. The Senate adopted the recommended amendment. It has also adopted a similar amend ment to the Burns Creek Project bill S. 2757.

This Department believes that the principles expressed in these amendments should apply to all reclamation projects within the national

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forests, including those in the Upper Colorado Basin. We suggest that the Department of Interior include such language in subsequent draft bills which it may submit to the Congress authorizing additional reclamation projects involving national-forest lands. We believe that you can redeem your responsibilities under Section 8 of the Act of April 11, 1956, as to recreation facilities on national-forest lands withdrawn for reclamation by utilizing data and plans developed by the Forest Service and by recognizing its responsibility to develop, operate, and maintain the recreation areas on national-forest lands.

With respect to the authorization in the second part of Section 8 relating to disposition of recreation lands to other Federal agencies, States and local governments, we believe that any action which would affect national-forest lands should be undertaken only with the consent of this Department. National forests are intensively managed public properties and any disposal of such lands by an agency not responsible for the management of the national forests may adversely affect other important resource values.

Our present position on the question of planning and administering recreational resources on national-forest lands included in reclamation withdrawals might seem inconsistent with previous relationships between the Forest Service and the Department of the Interior agencies. For this reason we would like to review some of these relationships.

The National Park Service has never indicated any intention of developing or administering the recreation resources on the national-forest lands involved in reclamation reservoir projects. Neither did the question of disposal of national-forest lands to States and local governments by the Department of the Interior arise prior to the passage of the Colorado River Storage Project Act. Your Department, however, has taken the position that you have some responsibility for recreation planning on national-forest lands withdrawn for reclamation purposes, in addition to your responsibilities for reclamation works.

This, we believe, stems partly from an understandable desire on the part of the National Park Service to exercise leadership in the planning of recreation on public lands, and to cooperate with and advise States and local agencies on recreation planning on their lands. The Act of June 23, 1936 (49 Stat. 1894) directs the National Park Service to undertake planning and development work on Federal lands and to cooperate with States and local agencies, but all lands under the jurisdiction of this Department are exempted from the provisions of that Act. We recognize that the National Park Service has done a very commendable job in the field of recreation planning and development and that it is doing an outstanding job of managing the National Park System and cooperation with the States and local agencies. However, recreation planning for national-forest lands presents a different problem as these lands are managed for multiple uses and the job is logically one for the Forest Service.

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Some years ago the Bureau of Reclamation issued a few permits for resorts and summer homes on national-forest lands withdrawn for reclamation purposes at the Tieton Reservoir in the State of Washington. This Department discussed the matter with the Bureau of Reclamation and explained that, in our opinion, the withdrawal of national-forest lands under the Reclamation Act gave Interior primary jurisdiction over the lands for reclamation purposes, but that the reclamation withdrawal did not supersede the national-forest status of the lands, and that the Department of Agriculture had the sole authority to manage the lands for purposes other than reclamation--subject, of course, to the prior needs for reclamation purposes.

As a result of these discussions a Memorandum of Understanding was adopted by the Bureau of Reclamation and the Forest Service in January 1948 whereunder the Forest Service manages all resources on national-forest land withdrawn for reclamation, subject to the requirements of the reclamation project. Cooperation between the Bureau of Reclamation and the Forest Service under this agreement since 1948 has been excellent. A copy of this Memorandum of Understanding is attached.

We recognize that the National Park Service has been designated to act as the Bureau of Reclamation's agent with respect to recreation responsibilities under the Memorandum of Understanding. The National Park Service has been making recreation surveys and broad recreation plans for reclamation projects, including those in the national forests. This has been done with the knowledge of and without objection by the Forest Service. One of the reasons no questions have been raised before this was the relatively low level of financing of the Forest Service recreation program. The plans developed by the National Park Service for national-forest lands were turned over to the Forest Service and adapted and used in the few areas where it was possible for the Forest Service to finance the developments. Now the Forest Service is in a position, as a result of the increased financing of the Operation Outdoors program, to do the necessary planning work on all national-forest lands.

The demand for use of all resources of the national forests is growing rapidly. Recreation visits to the national forests are breaking records annually. The same is true of the demand for timber, water, wildlife, minerals, and other national-forest resources. This means that the national forests must be managed more intensively than ever before if they are to yield a maximum of public benefits. The job of coordinating the various uses is becoming more complex and it is vitally important that it be done well. It is not possible to plan wisely on a functional basis. We cannot, for example, make an adequate recreation plan for a particular area of national-forest land without taking into account that in the national forests there must be coordinated land use and that no one resource can be planned without considering all other resources and uses. The Forest Service is best qualified to plan and administer the multiple uses of these lands, including recreation.

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This Department feels that the following principles should govern the management of national-forest lands which have been withdrawn for reclamation purposes under the Act of June 17, 1902:

1. The Department of the Interior has primary jurisdiction over the lands for the construction, maintenance and operation of reclamation works.

2. National-forest lands withdrawn for reclamation purposes retain their national-forest status and the Department of Agriculture is responsible for planning, development and administration of the land and resources, provided that the needs and requirements of reclamation work must be recognized as having first priority.

3. Recreation use on all national-forest lands in reclamation projects will be planned and managed by the Forest Service in accordance with the Memorandum of Understanding agreed to by the Bureau of Reclamation and the Forest Service in January 1948, provided that for national-forest lands in the Colorado River Storage Project, which are subject to Section 8 of the Act of April 11, 1956, the Forest Service will furnish its recreation plans and programs to the Secretary of the Interior.

4. When reclamation projects are both inside and outside national-forest boundaries the Department of the Interior and the Department of Agriculture will cooperate on a coordinated plan of recreation management for the entire reservoir areas, so that the resource of the reservoir and the adjacent lands may be managed for their highest public usefulness. In such instances the two Departments may agree that one or the other will undertake the entire recreation planning, development and administration job, subject to legal limitations on the expenditure of funds.

I believe that these principles are necessary for the proper development and utilization of the resource and the coordinated management of national forest lands withdrawn for reclamation purposes.

Assistant Secretary E.L. Peterson is fully acquainted with the situation and if you believe that a discussion between our Departments is desirable to clarify our respective positions he will be glad to arrange a meeting.

Sincerely yours,

/s/ E.T. Benson

E.T. Benson
Secretary of Agriculture

2062

RESTRICTION ORDER

Pursuant to the authority vested in me under 36 CFR 261.50 the following restrictions are hereby established for the occupancy and use of general undeveloped areas of the Boise National Forest.

No tent, camper, trailer, or other type of mobile home may occupy any general undeveloped area of the National Forest land for more than fourteen (14) consecutive days in one location without the Forest Officer in charge issuing prior written permission for an authorized use of National Forest land. Use of the site may continue following a 14 day absence from the site or the user may move to a location at least 5 miles away. (36 CFR 261.58a)

A vehicle may not be left or parked in violation of a posted sign. (36 CFR 261.58g)

A person is prohibited from being publicly nude. (36 CFR 261.58j)

Violation of the foregoing prohibition is subject to a maximum fine of $500 or 6 months imprisonment, or both. (16 USC 551)

7/6/79
Date

JOHN J. LAVIN
Forest Supervisor
Boise National Forest

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Irrigation District Boise-Kuna Irrigation District Wilder Irrigation District Big Bend Irrigation District Nampa & Meridian Irrigation District	Project No. 4656

PIONEER AND SETTLERS IRRIGATION DISTRICTS'
REQUEST FOR REHEARING OF ORDER ISSUING LICENSE

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"),[1/] Intervenors Pioneer Irrigation District ("Pioneer") and Settlers Irrigation District ("Settlers") hereby request rehearing of the Commission's Order Issuing License in the above-captioned proceeding.[2/]

SUMMARY

The Commission was without jurisdiction to issue a license for the Arrowrock Project because the Project was authorized by Congress in 1946 for development by the U.S. Bureau of Reclamation ("Bureau") and remains so authorized.

1/ 18 C.F.R. § 385.713.

2/ Boise-Kuna Irrigation District, et al., Project No. 4656, Order Issuing License, _____ FERC ¶ _____ (March 27, 1989).

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The Project may only be developed by the Bureau pursuant to its own authorities. The license for the Arrowrock Project, Project No. 4656 ("Project"), is therefore void and the Commission should disclaim jurisdiction over it.

Even if FERC were authorized to license the Project, the existing license is fatally flawed by a number of substantive and procedural deficiencies.

First, although the Commission recognizes that all irrigation water rights should be protected, there is no express provision in the license to protect the natural flow water rights of Pioneer, Settlers, and other holders of natural flow rights in the Boise River. The Commission relies on a license condition submitted by the Bureau which makes Project construction and operation subject to reservoir storage rights. However, the license condition does not preclude interference with Pioneer's and Settlers' natural flow rights and the Bureau has no legal obligation to protect those rights.

Second, Articles 402 and 403 of the license would alter the current operation of Arrowrock Dam and Reservoir for irrigation and flood control purposes and would directly conflict with Pioneer's and Settlers' irrigation water rights. Those license articles require that the Project be operated in a run-of-river mode for a one-month period every year for protection of smallmouth bass spawning in Arrowrock

Reservoir and in the downstream Lucky Peak Reservoir. Depending on the quantity of flows in the river, Pioneer and Settlers may desire, and be entitled under their water rights, to store water for later irrigation use during the one-month period covered by Articles 402 and 403 or to release stored water in excess of reservoir inflows. In either case, Pioneer's and Settlers' water rights would be infringed by the run-of-river requirement. Although Article 402 provides that run-of-river operation may be temporarily modified to ensure protection of reservoir storage rights, no provision is made for protection of natural flow rights. In addition, Articles 402 and 403 do not accomplish the purpose for which they were intended, since maintaining a constant reservoir level in Arrowrock Reservoir does not ensure a constant reservoir level for spawning in Lucky Peak Reservoir.

Third, the problems discussed above graphically illustrate the Commission's lack of understanding of how the Project will actually operate as part of a highly adjudicated, multi-project river system and how that operation will affect irrigation water rights and the environment. The Environmental Assessment ("EA") and Safety and Design Assessment ("SDA") performed for the Project address these issues in the most superficial way and are simply inadequate. In addition, the EA and SDA appear to

authorize the Project to operate in a peaking mode with no discussion of the effects of peaking operation. The licensees' failure to explain how the Project actually will operate has resulted in FERC's failure to understand and evaluate how Project operation will affect irrigation water rights and the environment. These failures are serious flaws in FERC's analysis under the National Environmental Policy Act ("NEPA"). Compliance with NEPA requires that the Commission rescind the license and perform a new EA with a detailed analysis of Project operation. An adequate assessment of the Project's operation and the potential impacts of that operation will require public notice and comment on the EA, and may require the Commission to perform an Environmental Impact Statement ("EIS") for this 60 MW peaking plant. Any license which ultimately is issued for the Project must (1) include provisions to protect Pioneer's and Settlers' natural flow water rights as well as reservoir storage rights; and (2) delete any requirement for run-of-river operation.

ARGUMENT

I. FERC DOES NOT HAVE JURISDICTION TO LICENSE THE ARROWROCK PROJECT.

The Commission has the jurisdictional authority under sections 4(e) and 4(f) of the Federal Power Act ("FPA") to issue preliminary permits and licenses for hydroelectric projects located at federal dams and facilities.[3/] However, this jurisdiction is withdrawn if the hydroelectric project is authorized for development by the federal government, or if Congress otherwise unambiguously indicates that the Commission's jurisdiction over the project has been withdrawn. Chapman v. F.P.C., 345 U.S. 153 (1953); Uncompahgre Valley Water Users Association v. FERC, 785 F.2d 269 (10th Cir.), cert. denied sub nom. Town of Norwood v. Uncompahgre Valley Water Users Association, 479 U.S. 829 (1986); City of Cascade Locks and Public Utility District No. 1 of Skamania County, 29 FERC ¶ 61,315 (1984); City of Redding, California, 28 FERC ¶ 61,342 (1984); City of Gillette, Wyoming, 25 FERC ¶ 61,366 (1983).

The Boise Project, of which the Arrowrock Dam is a part, was authorized by the Secretary of the Interior under the original Reclamation Act of 1902 ("Act") on March 27, 1905.[4/] The project was examined and reported upon by a

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3/ 16 U.S.C. §§ 797(e), 797(f).

4/ Bureau of Reclamation, U.S. Dept. of the Interior, Bureau of Reclamation Project Feasibilities and Authorizations (1957 Ed.), at 121 et seq.

Board of Army Engineers pursuant to section 1 of the Act on June 25, 1910 (36 Stat. 835), and approved by the President on January 5, 1911.[5/]

The Arrowrock Dam itself was approved by the President on January 6, 1911. While the initial report of the Board of Engineers did not provide for hydroelectric development at Arrowrock,[6/] Congress subsequently authorized the Bureau of Reclamation ("Bureau") to develop power generation facilities at the site.

In the Flood Control Act of 1946, Pub. L. No. 526, 79th Cong., 2d Sess., 60 Stat. 650 (1946),[7/] Congress authorized numerous water projects, among them the Lucky Peak Dam on the Boise River immediately below the existing Arrowrock structure. Section 10 of the Flood Control Act of 1946 provides in relevant part, that:

> [T]he following works of improvement for the benefit of navigation and the control of destructive flood-waters and other purposes are hereby adopted and authorized to be prosecuted under the direction of the Secretary of War and the supervision of the Chief of Engineers in accordance with the plans in the respective reports hereinafter designated and subject to the conditions set forth therein: . . . .

5/ Id.

6/ Id. at 127-130.

7/ Exhibit 1.

Boise River Basin

> The project for the Lucky Peak Reservoir on Boise River, Idaho, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated May 13, 1946, at an estimated cost of $10,684,000: Provided, That said dam and reservoir shall be so constructed as not substantially to damage the structure of the Arrow Rock Dam and shall be operated in such manner as not materially to interfere with the operation of said Arrow Rock Reservoir.

60 Stat. 650 (emphasis added).

The Chief of Engineers' recommendations[8/] are based upon the report of R.C. Crawford, District Engineer, by report dated April 30, 1946.[9/] That report evaluates the potential benefits and anticipated costs of constructing additional facilities on the Boise River to alleviate flooding. The report also provides for the construction of a 13,000 kilowatt hydroelectric plant at the Arrowrock Dam. Paragraph 9 of the report states:

> The district engineer finds that Arrowrock and Anderson Ranch Reservoirs cannot be augmented economically by additional channel and levee improvements to correct the flood damage problem. He presents a plan in the interest of flood control, irrigation and hydroelectric power development which provides for construction of Lucky Peak Reservoir on Boise River with dam site about 10 miles above Boise. The

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8/ Exhibit 2.

9/ Exhibit 3.

> proposed dam is an earth fill structure 251 feet high above low water and would have above it a drainage area of 2,650 square miles which includes 430 square miles below Arrowrock Reservoir. Lucky Peak Reservoir would have 26,000 acre-feet of dead storage and 280,000 acre-feet of active storage and the improvement would include an access road to the reservoir and construction of an adjacent park for recreation. The plan also provides for construction of a hydroelectric power plant with 13,000 kilowatt capacity at Arrowrock Dam and minor alterations in the drainage system at that dam; installation and operation of a network of climatological stations for forecasting seasonal runoff; and for operation as a system, in accordance with runoff forecasts, of the storage space in Anderson Ranch, Arrowrock and Lucky Peak Reservoirs in the combined interest of flood control, irrigation and power. 10/

In paragraph 10 of the report, the District Engineer further describes the projected generation capacity of the Arrowrock Project. The report states, in relevant part,

> Maintenance of the proposed dead storage in Lucky Peak Reservoir would reduce the pumping head for supplying certain irrigation water to the Mountain Home Area by about 80 feet. This reservoir by serving as a flow reregulator would remove the past objection to development of hydroelectric power at Arrowrock Dam. The district engineer estimates the average salable energy output of the proposed Arrowrock power plant at 38,150,000 kilowatt-hours annually. . . . 11/

10/ Id. (emphasis added).

11/ Id. (emphasis added).

The timing of generation plant construction is also addressed. The District Engineer recommends that "the described power plant at Arrowrock Dam be authorized for construction and operation by the Bureau of Reclamation, this facility to wait until justified by the demand for power . . . ."[12/]

Finally, the District Engineer estimated the cost of constructing the Arrowrock drainage changes and hydroelectric facilities at $885,000, with an average annual maintenance cost of $10,000.[13/] The report's final assessment and recommendation of the total project's cost was $10,684,000, plus annual maintenance of $25,000, which included the projected costs of the hydroelectric facilities.[14/] This final cost projection, including the initial cost and maintenance of the Arrowrock power facilities, was included in the Chief of Engineers' May 13, 1946 report, and, as set out above, in the text of the Flood Control Act of 1946.

It was not necessary for Congress to have authorized federal hydroelectric development when the dam was first constructed in order to remove the Arrowrock Project from

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12/ Exhibit 3, Paragraph 12 (emphasis added).

13/ Exhibit 3, Paragraph 11.

14/ Exhibit 3, Paragraph 18.

FERC jurisdiction. City of Gillette, Wyoming, 25 FERC ¶ 61,366 (1983). In Gillette, the Bureau protested FERC's issuance of a preliminary permit or license for development of power facilities at the Buffalo Bill Dam on the Shoshone River in Wyoming. In reviewing the project's history, the Commission found that in 1904, the Secretary of the Interior ("Secretary"), pursuant to his authority under the Reclamation Act of 1902, 32 Stat. 388 (1902), found the project feasible and authorized its construction. The dam was included in the Secretary's authorization, but no mention was made of hydroelectric development. 25 FERC at p. 61,817.

In 1922, the Shoshone Powerplant was constructed with an installed capacity of 5000 kW. There is no apparent record of formal authorization for the powerplant construction. Id. In 1982, some 78 years after the project was authorized, Congress enacted legislation to renovate the Shoshone Powerplant. Pub. L. No. 97-293, § 101, 96 Stat. 1261 (1982). The authorized improvements added an additional 15 MW of capacity, and placed the plant back into operation. 25 FERC at p. 61,817. On the basis of this record, the Commission dismissed all preliminary permit and license applications for the site, holding that the powerplant had been reserved for exclusive federal development in 1982, and was therefore not within the Commission's licensing jurisdiction.

It was also not necessary for Congress to authorize immediate commencement of hydroelectric construction at Arrowrock for withdrawal of FERC jurisdiction to occur. City of Cascade Locks and Public Utility District No. 1 of Skamania County, 29 FERC ¶ 61,315 (1984). Nor is the Secretary of the Interior obligated to take specific actions toward development of federally authorized hydropower projects in order to oust FERC claims of concurrent jurisdiction. Uncompahgre Valley Water Users Association v. FERC, 785 F.2d 269 (1986).

In City of Cascade Locks, the Commission deferred to the jurisdiction of the U.S. Army Corps of Engineers. In that case, Congress determined that certain power generation facilities should be constructed by the Corps "when in the judgment of the administrator such additional generating facilities are desirable to meet actual or potential market requirements for such electric energy." 29 FERC at p. 61,660. The District Engineer's Report respecting power development at Arrowrock contains essentialy the same provision, i.e., that such facilities "shall wait until justified by the demand for power. . . ."[15/]

Similarly, in Uncompahgre, Congress authorized the Bureau to develop the power potential of a certain

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15/ Exhibit 3, Paragraph 12.

reclamation project authorized, as the Arrowrock Dam was authorized, pursuant to the original Reclamation Acts of 1902 and 1906. The FERC argued that its own jurisdiction was not "diluted" until the Secretary of the Interior took specific actions to "proceed with or to contract for" the development of hydroelelectric projects associated with the operation of the Uncompahgre irrigation system. 785 F.2d at 275. Indeed, the Bureau had apparently taken no action to develop power at the project since authorized to do so in 1938. Id.

The Tenth Circuit Court of Appeals rejected this argument, holding that it could find nothing in the authorizing legislation which required the Secretary to implement any administrative actions in order to preserve the Bureau's entitlement to exclusive jurisdiction. Id. In other words, once Congress reserves hydroelectric development to the federal government, FERC's licensing jurisdiction is forever withdrawn unless Congress again acts. Here, as in Uncompahgre, there is no indication in the Flood Control Act of 1946 that the Bureau was required to proceed with immediate development of hydropower at Arrowrock.

Finally, it is of no consequence that the capacity of the Arrowrock Project as licensed (60 MW) exceeds the 13 megawatt capacity authorized by Congress. In City of

Redding, California, 28 FERC ¶ 61,342 (1984), the Commission ruled that it "lacks the jurisdiction to allow a non-federal entity to develop even the unauthorized excess power resources of a site if they propose to use power facilities already reserved for federal development." Id. at p. 61,626.

As shown, Congress expressly authorized the Boise Project development recommendations set forth in the Chief of Engineers' report.[16/] That report included cost and maintenance budgets for the development of hydroelectric generating facilities at the Arrowrock Dam. Further, the report relied upon the specific findings and recommendations of the District Engineer, which findings and recommendations included the projected size, annual generating capacity, construction cost, and maintenance cost of power generation facilities at Arrowrock.

In some cases, the Commission has declined to defer jurisdiction in reliance upon Chapman v. FPC, 345 U.S. 153 (1953). In Chapman, the Secretary of the Interior challenged FERC jurisdiciton over 11 dams and reservoirs in the Roanoke River Basin, asserting that Congress had withdrawn the Commission's jurisdiction through enactment of a comprehensive plan for federal hydropower development through the Flood Control Act of 1944.

16/ Exhibits 1-3.

In rejecting Interior's claims, the Court emphasized a distinction between Congressional "approval" of federal hydropower development, and actual "authorization" of such development. As the Court put it,

> [W]e do not think the word "approval" carries the application of "adoption" or "authorization" by its own force. Read together with other legislative action concerning water resources and with the history of federal activity in that regard, Congressional "approval" without more cannot be taken, we think, to indicate in this case more than a legislative finding that the proposed projects . . . are desirable and consistent with the ordered development of the Nation's water resources.

345 U.S. at 163.

The Commission has also focused on this distinction. In Mitex, Inc., et al., 27 FERC ¶ 61,176 (1984), FERC declined to recognize a withdrawal of jurisdiction for certain stages of the Pick-Sloan Missouri Basin Program, finding that the specific facilities at issue, i.e., the After Bay Dam, had been "approved" by Congress but not "authorized." 27 FERC at p. 61,324.

This case is clearly distinguished from Chapman, and, of course, from Mitex. Here, the statute provides exclusively for "authorization," not "approval."[17/] Moreover, this is not an instance where Congress made vague,

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17/ Exhibit 1.

general references to hydroelectric development in the context of a regional water resources development scheme. Section 10 of the Flood Control Act of 1946 is project specific, includes a budget for the particular hydroelectric development, and incorporates by reference engineering reports which detail installed capacity and timing of construction.[18/]

Congress authorized the Bureau's construction of hydroelectric generating facilities at the Arrowrock Dam in the Flood Control Act of 1946, thereby withdrawing FERC jurisdiction over such facilities. Accordingly, the Commission's Order Issuing License dated March 27, 1989 is void as a matter of law.

II. THE LICENSE WHICH FERC HAS ISSUED IS FATALLY FLAWED.

Even if FERC were authorized to license the Project, the existing license is fatally flawed and must be rescinded.

18/ It bears noting that in 1980, Congress authorized water resource development feasibility studies for numerous projects and regions, including the Boise Project. Pub.L. No. 96-365, 94 Stat. 1505 (1980), at section 2. Section 13 provides that nothing in the act shall be interpreted to preclude or delay the issuance of a Commission license for capacity at dams within the Boise Project not already authorized for federal development. See Black Canyon, Gem, and Ridgeview Irrigation Districts, 38 FERC ¶ 61,293 at p. 61,960 (1987). Since the Arrowrock Project was authorized for federal development pursuant to the Flood Control Act of 1946, it remains unaffected by section 13.

A. There Is No Express Provision In The License To Protect Pioneer's And Settlers' Natural Flow Water Rights.

The Boise River system is a highly adjudicated and regulated river system which is operated for irrigation, flood control, and power production purposes as well as for municipal water supply, recreational and fishery benefits. The primary use of water from the Boise River, however, is irrigation. The Arrowrock Reservoir reflects this primary use. As recognized in the Order Issuing License, storage of water in the Arrowrock Reservoir is allocated entirely to irrigation and the "main purpose" of the dam and reservoir is irrigation.[19/] The downstream Lucky Peak Project[20/] and the upstream Anderson Ranch Dam and Reservoir also are operated in large part for irrigation.

The stored water captured by the Boise River system of dams and reservoirs, however, is not the only source of water for use on the irrigated farm lands of the Boise River Valley. In addition to and quite apart from this stored irrigation water, the unregulated, natural flow of the Boise River is diverted for irrigation use pursuant to a multitude of natural flow water rights held by numerous irrigation entities including Pioneer and Settlers.[21/] These natural

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19/ Order Issuing License at 5-6.

20/ FERC Project No. 2832.

21/ The natural flow water rights permitting the use of Boise River water for irrigation purposes are held by

[footnote continued next page]

flow water rights entitle Pioneer and Settlers to divert specified quantities of water from the natural flow portion of the Boise River for irrigation purposes. Under these natural flow water rights, the irrigators are entitled to divert water from April 1 through October 31 of each year. This period is referred to as the "irrigation season."

During the irrigation season the Boise River storage reservoirs, including Arrowrock Reservoir, are only permitted to capture and store that portion of the Boise River system flows which exceed the natural flow water right diversions.[22/] Accordingly, during the irrigation season when the irrigation companies and districts request water deliveries by the Idaho State Water Master for Water District No. 63, water releases from Anderson Ranch, Arrowrock, and Lucky Peak Reservoirs will include, with minor exceptions, both a natural flow and a contract storage water right component.

[footnote continued from previous page]

Pioneer and Settlers and approximately 133 additional irrigation companies, districts, and individuals. These water rights were established by two state court decrees: the "Stewart Decree," entered in 1906; and the "Bryan Decree," entered in 1929.

22/ During the non-irrigation season, or "storage season," the reservoirs may capture all of the Boise River system flows for storage purposes, unless the reservoir system has refilled to the point that flood storage space is required.

Pioneer and Settlers, as well as a number of smaller irrigation companies, possess significant natural flow water rights upon which they primarily rely to fulfill their irrigation requirements.[23/] Pioneer and Settlers also have certain storage water rights in Lucky Peak, Arrowrock and Anderson Ranch Reservoirs. These storage rights are used to supplement natural flow water rights as the natural flow of the Boise River diminishes later in the irrigation season when the winter snowpack melting process nears completion.[24/]

If the construction, operation, or maintenance of Project No. 4656 were to interrupt or prevent delivery of Pioneer's or Settlers' irrigation water under their natural flow water rights, the consequences could be disastrous. Pioneer and Settlers depend on their natural flow water rights for irrigation of over 45,000 acres of land.[25/] Crop

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23/ Some irrigation entities do not possess significant natural flow water rights, but instead must rely extensively on stored water captured by the reservoir system. The licensees for Project No. 4656 are a prime example of irrigation entities which do not possess significant natural flow water rights. With the exception of the Ridenbaugh Division of the Nampa & Meridian Irrigation District, the licensees rely almost exclusively upon stored irrigation water in the Boise River reservoir system.

24/ This water is captured and stored pursuant to state water rights and delivered pursuant to irrigation storage contracts Pioneer and Settlers have entered into with the U.S. Bureau of Reclamation.

25/ The Pioneer and Settlers Irrigation Districts together comprise a service area of approximately 46,347 acres.

[footnote continued next page]

damage or total crop loss resulting from interference with irrigation releases could amount to several hundred millions of dollars in actual and consequential damages.

The Commission's intent in issuing the license for Project No. 4656 clearly was to protect the irrigation purposes of the Boise River system which could be affected by the Project. In response to concerns raised by Intervenors Pioneer and Settlers regarding impacts of the Project on their irrigation water rights, the Commission stated:

> The irrigation water concerns of Pioneer and Settlers are adequately addressed by this license's special articles. License Article 121 specifically requires that the construction, operation, and maintenance of Project No. 4656 for hydropower purposes be secondary to irrigation purposes and that the project may not in any way reduce or impair the capability of the Arrowrock Dam and Reservoir to supply water for irrigation. Further, under Article 121 Reclamation has the authority to stop operation of Project No. 4656 in the event the irrigation functions of the dam and reservoir are threatened by the project. Consequently, Project No. 4656 should not affect any contractual or statutory rights to irrigation water or contravene any agreements entered into by the United States regarding the operation of the

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[footnote continued from previous page]

Excluding the licensees for Project No. 4656, the other districts, companies and individuals relying upon natural flow deliveries from the Boise River irrigate an additional 122,972 acres of land.

project for irrigation purposes.[26]

It is apparent that the Commission in issuing the license weighed irrigation benefits against the benefits of power production from the Project and arrived at the appropriate public interest balance which dictated that Project power production not interfere with irrigation rights.[27]

Unfortunately, the Commission's reliance on Article 121, a mandatory term and condition submitted by the Bureau pursuant to section 4(e) of the Federal Power Act,[28] is misplaced and inadequate. Contrary to the Commission's apparent understanding, Article 121 does not protect all irrigation water rights, but only those water rights related to "the purposes and services of the federal reservation,"[29] i.e., reservoir storage rights. License

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26/ Order Issuing License at 6 (emphasis added). That the Commission's intent was not to impair irrigation water rights is further supported by the fact that neither the Order Issuing License, the EA, nor the SDA discusses costs of acquiring water rights as part of the economic evaluation of the Project. It is clear that the Commission did not anticipate that operation of the Project would result in a taking of state water rights which would require just compensation.

27/ Pioneer and Settlers do not concede that the Commission has jurisdiction under the FPA to impair state-created water rights. See FPA § 27, 16 U.S.C. § 821. However, Pioneer and Settlers believe it is unnecessary to reach that issue because the Commission has stated its intent to fully protect irrigation water rights.

28/ 16 U.S.C. § 797(e).

29/ Order Issuing License at 19.

Article 121 does not protect against potential adverse effects of the construction, operation, and maintenance of Project No. 4656 upon Pioneer's and Settlers' natural flow water rights. While Article 121 gives the Bureau oversight authority and responsibility for protecting reservoir storage rights, the Bureau has no statutory or contractual duty to protect natural flow water rights.[30/]

As stated above, and as discussed in greater detail in Section II.C., below, Pioneer and Settlers believe that the license for Project No. 4656 must be rescinded for failure to comply with NEPA. If a license is ultimately issued for this Project after adequate compliance with NEPA, the license must contain provisions specifically to protect natural flow water rights as well as reservoir storage rights in order to fulfill the Commission's intent that the Project not in any way reduce or impair irrigation rights in the Boise River system. Moreover, because the Bureau has no obligation to protect natural flow rights, the Commission cannot delegate responsibility for protection of those rights to the Bureau.[31/] In order to ensure that the

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30/ The Idaho State Water Master for State Water District No. 63 is charged with the responsibility of allocating natural flow water rights on the Boise River system. The Water Master is under the supervision of the Idaho Department of Water Resources.

31/ The Bureau also has no contractual or statutory authority to interfere with Pioneer's and Settlers' natural flow water rights.

Project does not adversely affect Pioneer's and Settlers' irrigation water rights, the licensees must be required to consult with Pioneer and Settlers and develop plans for construction, maintenance and operation of the Project which fully protect those rights.

Pioneer and Settlers propose that the Commission add the following license article to any license ultimately issued for Project No. 4656:

> Article 414. The construction, operation or maintenance of the project is subject to, and may not reduce or impair in any way, the delivery of water for irrigation whether the irrigation water being supplied derives from natural flow water rights or reservoir storage water rights.
>
> The licensee, after consultation with Pioneer Irrigation District ("Pioneer") and Settlers Irrigation District ("Settlers"), shall develop a plan to ensure that irrigation water deliveries for use by Pioneer or Settlers are not reduced or impaired by construction of the project. The licensee shall file the plan, along with the comments of Pioneer and Settlers on the plan, for Commission approval at least 60 days prior to commencement of constructon.
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> The licensee, after consultation with Pioneer and Settlers, shall also develop an operating plan to ensure that irrigation water deliveries for use by Pioneer or Settlers are not reduced or impaired by maintenance or operation of the project. The licensee shall file the plan, along with the comments of Pioneer and Settlers on the plan, at least 90 days prior to commencement of operation, and shall not commence operation until the Commission has approved the plan.

B. License Articles 402 And 403 Directly Conflict With Pioneer's And Settlers' Irrigation Water Rights.

License Articles 402 and 403, which require that the Project be operated in a run-of-river mode for a one-month period every year for protection of smallmouth bass spawning in Arrowrock and Lucky Peak Reservoirs, directly conflict with Pioneer's and Settlers' natural flow and contract storage water rights. Consequently, these license articles are inconsistent with the Comission's stated intent that Project operation not affect irrigation water rights.

License Article 402 states:

> The licensee shall operate the project in a run-of-river mode for a 1-month-long period between May 1 and June 30 for the protection of fish and wildlife resources in Lucky Peak Lake and Arrowrock Reservoir. The 1-month-long run-of-river operational period shall be determined by provisions of Article 403. The licensee, in operating the project in an instantaneous run-of-river mode, shall at all times act to minimize the fluctuation of the water surface elevation of Arrowrock Reservoir, i.e., maintain a discharge from the project so that flow in the Boise River, as measured immediately downstream from the project, approximates the instantaneous sum of inflow to the project reservoir. Instantaneous run-of-river operation may be temporarily modified if required by the Bureau of Reclamation to ensure protection of the authorized purposes of Arrowrock Reservoir, by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement among the licensee, the Idaho Department of Fish and Game, and the Bureau of Reclamation.32/

32/ Order Issuing License at 22.

License Article 403 requires development of a plan to arrive at an appropriate time period for run-of-river operation.[33/]

The run-of-river operation required by these provisions would substantially alter the existing operational procedures for Arrowrock Dam and Reservoir. Presently, at the beginning of the irrigation season on the Boise River system (April 1 of each year), the Bureau works in cooperation with the Idaho State Water Master for Water District No. 63 to discharge from Arrowrock Reservoir that portion of the natural flow of the river system which is necessary to fulfill the downstream natural flow irrigation water rights. If the spring and early summer snowmelt runoff produces river flows which exceed the amounts necessary to satisfy the downstream natural flow irrigation water rights, this excess is captured and stored in Arrowrock Reservoir for later release to satisfy irrigation needs.[34/] The run-of-river release pattern required by license Article 402 would require this excess runoff water to be discharged from Arrowrock Reservoir, thereby precluding its capture and later discharge for irrigation use.

33/ Id. at 23.

34/ The same procedure applies to Anderson Ranch and Lucky Peak Reservoirs.

Additionally, those irrigation districts and companies which lack substantial natural flow water rights usually require releases of stored water from Arrowrock Reservoir from April through June of each year. Therefore, under the present operational scheme, discharges from the reservoir during the timeframe described in Article 402 (i.e., "a 1-month-long period between May 1 through June 30") would include contract storage water releases in addition to natural flow water releases. The contract storage water component of the releases would exceed the run-of-river releases contemplated by Article 402. Consequently, if Article 402 is allowed to remain in the license, release of stored water from Arrowrock Reservoir to satisfy irrigation contracts would be precluded.

Arrowrock Reservoir is also utilized in conjunction with Anderson Ranch and Lucky Peak Reservoirs for flood control purposes.[35/] During the spring and early summer (typically April 1 through June 30), releases from Arrowrock Reservoir may also include flood release discharges which exceed the run-of-river release amounts required by license Article 402. Accordingly, Article 402 would directly

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35/ The coordinated use of the three reservoirs for flood control as well as irrigation and power production occurs by virtue of contracts executed among the Bureau of Reclamation and the irrigation entities possessing storage rights in the reservoirs. Those entities include Pioneer and Settlers.

conflict with the established operational procedures for flood control purposes as well as with irrigation discharge requirements.

The changes to the present operational procedures for Arrowrock Reservoir required by Article 402 could well damage or destroy Pioneer's and Settlers' natural flow and contract storage water rights. Those changes would also interfere with flood control operations on the Boise River system. Although Article 402 provides that run-of-river operation "may be temporarily modified if required by the Bureau of Reclamation to ensure protection of the authorized purposes of Arrowrock Reservoir" (emphasis added), it is more than likely that run-of-river operation could rarely, if ever, be maintained during the period from May 1 to June 30 consistent with seasonal irrigation and flood control demands. Moreover, the "authorized purposes" of Arrowrock Dam and Reservoir do not encompass Pioneer's and Settlers' natural flow water rights.[36/] Thus, those rights are not protected at all by Article 402.

Pioneer and Settlers do not concede that the Commission possesses jurisdictional authority under the FPA to implement the changes in Arrowrock Reservoir operations required by license Article 402.[37/] Without resolving that

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36/ See supra Section II.A.

37/ See supra n. 27.

issue, however, the Commission's clear intent to protect the irrigation purposes of Arrowrock Dam and Reservoir requires that Articles 402 and 403 be deleted.

Pioneer and Settlers would further point out that run-of-river operation of Arrowrock Reservoir as required by Articles 402 and 403 would be entirely ineffectual in promoting smallmouth bass spawning in Lucky Peak Reservoir. Run-of-river operation at Arrowrock will not produce a stable water surface elevation in Lucky Peak Reservoir because Article 402 does not control discharges from Lucky Peak. It only controls discharges from Arrowrock. Since the Lucky Peak Project is not a run-of-river facility, and since Lucky Peak Reservoir discharges will not be controlled by Article 402, it is highly unlikely that run-of-river discharges from Arrowrock Reservoir will produce a stable water surface elevation in Lucky Peak Reservoir.[38/]

C. The Commission Has Failed To Comply With NEPA.

The Arrowrock Project is a major, 60 MW project to be located at an existing dam. The most significant environmental impacts of such an existing dam project are,

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38/ Even if the Commission were somehow able to reopen and modify the Lucky Peak license to ensure run-of-river operation of Lucky Peak in coordination with Article 402 of the Arrowrock license, Pioneer and Settlers would likely have the same objections to run-of-river discharge regulation from Lucky Peak Reservoir as they have already expressed with regard to Arrowrock Reservoir.

necessarily, the impacts of project operation on the environment established by the existing dam and reservoir and on their historic operation. Ironically, there is almost a complete lack of record evidence in this case as to: how Project No. 4656 will operate; how such operation will affect historic operation of the Arrowrock Dam and Reservoir; how the operational changes could affect other, competing uses of the Boise River system; and how operation of the Project could effect the environment. The Order Issuing License, the SDA, the EA, and the record before the Commission are woefully inadequate in this regard.

The deficiencies in the license discussed in Sections II.A. and II.B., above, result from and amply illustrate this serious underlying problem. As illustrated above, FERC staff in the EA seems to have no concept of how a one-month run-of-river requirement for bass spawning would affect the irrigation and flood control functions of Arrowrock Reservoir, or why imposing a run-of-river requirement on Arrowrock will not in fact ensure a stable reservoir level at Lucky Peak for spawning.

The EA and the Order Issuing License also describe the Project mode of operation as a "peaking" or "essentially a peaking mode."[39/] However, as explained in more detail

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39/ EA at 4; Order Issuing License at 2.

below, there is virtually no discussion of the effects of this mode of operation on the environment or on irrigation releases.

The Order Issuing License discusses a change in the proposed operation of the Project whereby the licensees allegedly agreed, in a letter to the Commission dated March 14, 1988, to eliminate the proposed five-foot drawdown of Lucky Peak Reservoir during the summer months.[40/] The Order Issuing License states that elimination of the five-foot drawdown "would eliminate several of the impacts to environmental resources predicted in the Commission staff's EA."[41/] Unfortunately, the Order Issuing License does not identify precisely which impacts are being eliminated.

However, licensees also appear to have proposed other changes in operation of Arrowrock Reservoir to increase power production. In addition to the five-foot drawdown in Lucky Peak, licensees proposed to "shape" releases from Arrowrock to produce power in a pattern more closely matching the hourly changes in need for power.[42/] Releases

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40/ Order Issuing License at 2.

41/ Id.

42/ Whose hourly demand curve licensees propose to follow is unstated and probably unknown. However, the pattern of storage and releases, with resultant upstream and downstream impacts, cannot be determined without that information.

would be varied daily, over a 24-hour-long period, to coincide with daily peaks in electrical demands.[43/] The EA describes this mode of operation as a "peaking" mode.[44/]

Licensees' March 14, 1988 letter in which they agreed to withdraw their proposal for a five-foot drawdown of Lucky Peak does not address their proposal to operate the Project in a peaking mode. Neither the Order Issuing License nor the SDA discusses the "shaping" of releases from Arrowrock Reservoir, nor does the Order Issuing License explain what it means by operation of the Project in "essentially a peaking mode."[45/]

Assuming that "shaping" of releases is authorized by the license,[46/] there is no analysis of how this peaking

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43/ EA at 4.

44/ Id.

45/ Order Issuing License at 2.

46/ It is not entirely clear that the "shaping" of releases as described in the EA is authorized by the Order Issuing License. The EA states that the five-foot drawdown of Lucky Peak and the "shaping" of releases from Arrowrock Reservoir would, together, increase average annual generation of the Project from 156.7 GWh to 167.6 GWh. EA at 8. The Safety and Design Assessment states that without the five-foot drawdown the Project will produce an average of 156.7 GWh annually. Safety and Design Assessment at 2. (The Order Issuing License, apparently mistakenly, states that average annual production will be 167.6 GWh. Order Issuing License at 2.) Thus, it is not clear whether FERC staff in the Safety and Design Assessment believed that the Project would no longer be operated in a peaking mode, or whether the EA is incorrect in attributing part of the increased generation

[footnote continued next page]

operation would affect irrigation releases or the environment. With respect to irrigation releases, the Bureau in a letter dated December 10, 1986[47/] alleged that it has adequate flexibility in its contracts with irrigators to vary the timing of releases during any given 24-hour period as long as the total quantity of releases during that period remains the same. Pioneer and Settlers do not agree that the Bureau necessarily has that flexibility and find no record evidence to suppport that naked assertion. In addition, Pioneer's and Settlers' natural flow water rights are not under contract with the Bureau and do not appear to be covered by the Bureau's purported flexibility. In any case, without knowing more precisely how licensees propose to "shape" releases, Pioneer and Settlers cannot determine how those releases might affect their irrigation rights.

With respect to environmental impacts, licensees asserted in their application that the "shaping" of releases could be accomplished with "very little impact" on water

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[footnote continued from previous page]

from 156.7 to 167.6 GWh to the "shaping" of releases. If the latter is true, then there is no quantification, at least on the record of this proceeding, of the increased generation resulting from peaking operation of the Project.

47/ Exhibit A to Answer of Nampa & Meridan Irrigation District, et al. to Comments and Objections of Pioneer Irrigation District to Environmental Assessment, Arrowrock Dam Hydroelectric Project No. 4656-002-Idaho and Motion for Hearing and Consolidation, filed December 23, 1986.

surface elevations in Arrowrock and Lucky Peak Reservoirs if appropriate "restrictions" were developed.[48/] However, there is no explanation of what those "restrictions" would be, nor does the EA recommend, or the Order Issuing License impose, any such restrictions.

It is not clear, then, what limits, if any, exist on fluctuation of Arrowrock and Lucky Peak Reservoirs for purposes of power generation. There are no limitations on drawdown in the license. The license does not even expressly prohibit the five-foot drawdown of Lucky Peak. Rather, the Commission assumes, based solely on licensees' March 14, 1988 letter, that the five-foot drawdown will not occur. Moreover, it is not at all clear that drawdowns of up to but less than five feet of Lucky Peak Reservoir or Arrowrock Reservoir are prohibited.

Before the Commission authorizes a change in operation of Arrowrock Dam and Reservoir, it is crucial that it understands what changes it is authorizing. Fluctuations in reservoir levels could result in environmental impacts on the fishery, on recreation, and on visual resources. Changes from existing patterns of releases also could affect irrigation rights. Thus, it is important that third parties such as Pioneer and Settlers also understand the changes so they can assess the effects, if any, on their rights.

48/ Application, Exhibit B, page 1.

For the reasons discussed above, the Commission's EA and the Order Issuing License have failed to address significant questions regarding the effects of construction and operation of the Arrowrock Project on irrigation water rights and the environment. The Commission's finding that issuance of the license is not a major federal action significantly affecting the quality of the human environment, and that an EIS was not required under NEPA,[49/] is therefore unreasonable. See Foundation for North Am. Wild Sheep v. U.S. Dept. of Agriculture, 681 F.2d 1172, 1177 (9th Cir. 1982). The Commission in this case has failed to take a "hard look" at the potential impacts of the Project. Humane Society of the United States v. Hodel, 840 F.2d 45, 62 (D.C. Cir. 1988).

The Commission, citing Winnebago Tribe of Nebraska v. Ray, 621 F.2d 269, 271 (8th Cir. 1980), asserts that parties seeking to reverse a decision not to prepare an EIS "have the burden of presenting facts and evidence contradicting the EA's findings."[50/] In fact, the circuits are divided on the issue of whether there is any burden of coming forward on a party challenging an EA. See Gee v. Boyd, 471 U.S. 1058 (White, J., dissenting). The D.C. Circuit, for example, imposes no such burden. See id; Sierra Club v. Peterson, 717 F.2d 1409, 1413 (D.C. Cir. 1983).

49/ 42 U.S.C. § 4321 et seq.

50/ Order Issuing License at 4.

In addition, the Commission misstates the test applied in Winnebago. The Winnebago case makes clear that in the Eighth Circuit a party challenging an EA need only "'allege facts [omitted from consideration in the administrative record] which, if true, would constitute a 'substantial' impact upon the environment.'" 621 F.2d at 271 (quoting Hiatt Grain & Feed, Inc, v. Bergland, 446 F. Supp. 457, 490 (D. Kan. 1978) (citations omitted), aff'd, 602 F.2d 929 (10th Cir. 1979), cert. denied, 444 U.S. 1073 (1980)). The party need not show that significant effects will in fact occur. LaFlamme v. FERC, 852 F.2d 389, 397 (9th Cir. 1988). Thus, only the initial burden is placed on the party who contends that the EIS should have been filed; once a deficiency in the administrative record has been established, that party's obligation is satisfied. Monarch Chemical Works, Inc. v. Exon, 466 F. Supp. 639, 647 (D. Neb. 1979); see Hiatt Grain & Feed, 446 F. Supp. at 490. The burden of proof as to the inadequacy of the EA then shifts to the federal agency which must support its findings by a preponderance of the evidence. Monarch Chemical, 466 F.Supp at 647; Pokorny v. Costle, 464 F. Supp. 1273, 1276 (D. Neb. 1979); Simmans v. Grant, 370 F. Supp. 5, 12 (S.D. Tex. 1974).

In the instant case, Pioneer and Settlers have raised a number of issues with regard to operation of the Arrowrock

Project which have not been addressed by the Commission and which clearly represent deficiencies in the record. Until those issues are thoroughly examined by the Commission, it is not reasonable to conclude that the Project will have no significant impacts on the environment. To the extent Pioneer and Settlers had an initial burden of raising a substantial issue, they have met it. The burden now shifts to the Commission, which must either (1) convincingly demonstrate that any potential adverse impacts from the Project are not significant, or (2) prepare an EIS. See Hiatt Grain & Feed, supra. At the very least, the Commission must prepare a new EA which adequately addresses impacts of the Project's operation on irrigation water rights and on the environment. Further, the Commission must publish the EA for public notice and comment so that Pioneer, Settlers and others may assess the impacts of the Project on their interests and inform the Commission of those impacts.

CONCLUSION

For all of the above reasons, the Commission should grant rehearing to Pioneer and Settlers and provide the following relief:

(1) Disclaim jurisdiction over Project No. 4656 and declare the license null and void because the Arrowrock Project has been authorized for federal development; or

(2) Rescind the license for failure to comply with NEPA and take the following steps:

(a) Require the licensees to provide a detailed analysis of Project operation, including any plans to "shape" releases to increase power production, and to explain how that operation will affect existing irrigation releases and the environment;

(b) Perform a new EA for the Project which fully addresses the impacts and potential impacts of the Project on existing irrigation rights and the environment;

(c) Publish the EA for public notice and comment; and

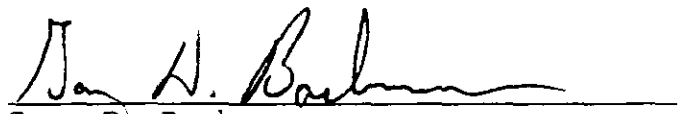
(d) Only then issue a license, if appropriate, which is conditioned among other things so as to fully protect the irrigation water rights of Pioneer and Settlers, by:

(i) adopting the license Article 414 proposed herein;

(ii) deleting Articles 402 and 403 requiring run-of-river operation during a one-month period between May 1 and June 30 of each year; and

(iii) adopting any other measures deemed necessary to protect Pioneer's and Settlers' irrigation water rights.

Respectfully submitted,



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Counsel for Pioneer and Settlers
Irrigation Districts

April 26, 1989

Exhibit 1

Blind Pass, Pinellas County, Florida.
Pass a Grille Pass, Pinellas County, Florida.
Julington Creek, Florida.
Little Pottsburg Creek, Florida.
Rice Creek, Putnam County, Florida.
Sebastian Inlet, Florida.
West Palm Beach Canal, Hillsboro Canal, New River Canal, and Miami Canal, for the purpose of raising the water table in the area of Lake Okeechobee, Florida.
Boca Raton Inlet, Florida, including connection with the Intracoastal Waterway.
Saint George Sound at East Point, Florida.
East Point, Apalachicola Bay, Florida.
Apalachicola Bay, Florida, with a view to constructing a yacht basin.
West Gap, Saint George Island, Florida.
Waterway from Saint Mary DeGalvez Bay, across Santa Rosa Peninsula, to Sound Bay, Florida.

Alabama and Florida.
Choctawhatchee River, Alabama and Florida.

Georgia.
Flint River, Georgia.

Mississippi.
Sioux Bayou and connecting waterways, Mississippi.

Louisiana.
Bayou Segnette, Louisiana.

Texas.
Channel from Port Lavaca, Texas, and Palacios, Texas, to the Gulf of Mexico by way of Pass Cavallo, Cotton Bayou or any other suitable outlet to the Gulf of Mexico.
Turtle Cove, Texas.

Arkansas.
Arkansas River, from Little Rock, Arkansas, to Mississippi River via Grand Prairie.

Oklahoma and Arkansas.
Arkansas and Canadian Rivers, Oklahoma and Arkansas.

Arkansas.
Mississippi River at West Memphis, Arkansas, with a view to the construction of a harbor.

Mississippi and Tennessee.
Hatchie River, Mississippi and Tennessee, in the interest of navigation and flood control.

Minnesota.
Harbor at Springsteel Island, Lake of the Woods, Minnesota.

Missouri.
Lake Taneycomo, Missouri.
Mississippi River at Louisiana, Missouri.

South Dakota and Nebraska.
Gavins Point, on the Missouri River, South Dakota and Nebraska.

Illinois.
Lake De Pue in Bureau County, Illinois, and its connecting channels to the Illinois River.

Minnesota.
Mississippi River at Winona, Minnesota.

Wisconsin.
Wisconsin River, Wisconsin.

Lake Superior.
Lake Superior shore line from Middle Island Point south to the mouth of Carp River with a view to providing a harbor for light-draft vessels.

Michigan.
Black River, Port Huron, Michigan.
Charlevoix Harbor, Michigan: The South Arm, with a view to the construction of a breakwater at or near East Jordan.
Leland Harbor, Michigan, with a view to shore protection.
Millecoquin River, Michigan, and the adjacent waters of Lake Michigan.
Grand Traverse Bay on Lake Michigan and adjacent waters, with a view to the establishment of a suitable lock system to permit the passage of boats between Grand Traverse Bay and Torch Lake and other lakes in Antrim County, Michigan.

Indiana.
West Fork of White River, Indiana.

Ohio.
Fairport Harbor, Ohio, with a view to shore protection.
Muskingum River, Ohio.

New York.
Cattaraugus Creek, New York.
Irondequoit Bay, New York.

Utah.
Great Salt Lake, at or near Garfield, Utah, with a view to providing a harbor for light-draft vessels.

California.
The coast of northern California from Point Pinos to the northern boundary of the State, including the San Francisco Bay area, with a view to the establishment of harbors for light-draft vessels.
Harbor at Camp Pendleton, California, with a view to shore protection.
Harbor at Anaheim Bay, California, with a view to shore protection.
Harbor at Port Hueneme, California, with a view to shore protection.

Illinois.
Ohio River at Brookport, Illinois.

Oregon.
Drift Creek, Oregon.
Siuslaw River and Bar, Oregon.

Washington.
Duwamish Waterway, Washington.
Deception Pass, Skagit Bay, Washington.
Shilshole Bay, Ballard Locks, Seattle, Washington.
Olympia Harbor, Washington.

Alaska.
Harbor at Hydaburg, Alaska.
Harbor at Angoon, Alaska.
Channel to connect Oliver Inlet and Seymour Canal, Alaska.
Tenakee Harbor, Alaska.
Harbor at Pelican, Alaska.
Harbor at Gustavus, Alaska.

Hawaii.
Hilo Harbor, Hawaii, including consideration of a seawall to protect against tidal waves and excessive high tides.
Kawaihae Harbor, Hawaii.

Approved July 24, 1946.

[CHAPTER 596]

July 24, 1946
[H. R. 6807]
[Public Law 534]

AN ACT

Authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Flood Control Act of 1946".

Flood Control Act of 1946.

SEC. 2. That section 3 of the Act approved June 22, 1936 (Public, Numbered 738, Seventy-fourth Congress), as amended by section 2 of the Act approved June 28, 1938 (Public, Numbered 761, Seventy-fifth Congress), shall apply to all works authorized in this Act except that for any channel improvement or channel rectification project, provisions (a), (b), and (c) of section 3 of said Act of June 22, 1936, shall apply thereto, and except as otherwise provided by law: *Provided*, That the authorization for any flood-control project herein adopted requiring local cooperation shall expire five years from the date on which local interests are notified in writing by the War Department of the requirements of local cooperation, unless said interests shall within said time furnish assurances satisfactory to the Secretary of War that the required cooperation will be furnished.

State, etc., cooperation.
49 Stat. 1571; 52 Stat. 1215, 33 U. S. C. §§ 701c, 701c-1; Supp. V, § 701c note.

Time limitation.

The provisions of section 1 of the Act of December 22, 1944 (Public, Numbered 534, Seventy-eighth Congress, second session), shall govern with respect to projects herein authorized; and the procedures therein set forth with respect to plans, proposals, or reports for works of improvement for navigation or flood control and for irrigation and purposes incidental thereto shall apply as if herein set forth in full.

Procedures.
58 Stat. 887.

It is hereby declared to be the policy of the Congress that the following provisions shall be observed:

Declaration of policy.

No project or any modification not authorized, of a project for flood control or rivers and harbors shall be authorized by the Congress unless a report for such project or modification has been

Submission of report.

Alterations of railroad bridges

previously submitted by the Chief of Engineers, United States Army, in conformity with existing law.

SEC. 3. That hereafter for authorized flood protection projects which include alterations of railroad bridges the Chief of Engineers is authorized to include at Federal expense the necessary alterations of railroad bridges and approaches in connection therewith.

58 Stat. 889. 16 U. S. C., Supp. V, § 460d.

SEC. 4. That section 4 of the Act approved December 22, 1944 (Public, Numbered 534, Seventy-eighth Congress), is amended to read as follows:

Recreational facilities in reservoir areas

"The Chief of Engineers, under the supervision of the Secretary of War, is authorized to construct, maintain, and operate public park and recreational facilities in reservoir areas under the control of the War Department, and to permit the construction, maintenance, and operation of such facilities. The Secretary of War is authorized to

Leases.

grant leases of lands, including structures or facilities thereon, in reservoir areas for such periods and upon such terms as he may deem

Nonprofit organizations.

reasonable: *Provided*, That leases to nonprofit organizations may be granted at reduced or nominal rentals in recognition of the public service to be rendered in utilizing the leased premises: *Provided further*, That preference shall be given to Federal, State, or local

Preference in granting of licenses.

governmental agencies, and licenses may be granted without monetary considerations, to such agencies for the use of all or any portion of a reservoir area, when the Secretary of War determines such action to be in the public interest, and for such periods of time and upon

Public use of water areas.

such conditions as he may find advisable. The water areas of all such reservoirs shall be open to public use generally, without charge, for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such water areas along the shores of such reservoirs shall be maintained for general public use, when such use is determined by the Secretary of War not to be contrary to the public interest, all under such rules and regulations as the Secretary of War may deem necessary. No use of any area to which this section applies shall be permitted which is inconsistent with the laws for the protection of fish and game of the State in which such area is situated. All moneys received for leases or privileges shall be deposited in the Treasury of the United States as miscellaneous receipts."

48 Stat. 400. 33 U. S. C., Supp. V, § 701c-3.

Receipts from land leases.

Payments to States.

SEC. 5. That section 7 of the Act approved August 18, 1941 (Public, Numbered 228, Seventy-seventh Congress), is hereby amended to read as follows:

"That 75 per centum of all moneys received and deposited in the Treasury of the United States during any fiscal year on account of the leasing of lands acquired by the United States for flood-control purposes shall be paid at the end of such year by the Secretary of the Treasury to the State in which such property is situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county, or counties, in which such property is situated: *Provided*, That when such property is situated in more than one State or county, the distributive share to each from the proceeds of such property shall be proportional to its area therein."

Apportionment.

School facilities.

SEC. 6. That the Chief of Engineers is authorized to provide such school facilities as he may deem necessary for the education of dependents of persons engaged on the construction of the projects listed below, and to pay for the same from any funds available for said projects: *Provided*, That when it is determined to be in the public interest, the Chief of Engineers may enter into cooperative arrangements with local agencies for the operation of such Government facilities; for the expansion of local facilities at Federal expense, and for contribution by the Federal Government to cover the

Cooperative operation, etc.

increased cost to local agencies of providing the educational services required by the Government:

Harlan County Reservoir, Nebraska. — Nebraska.
Garrison Reservoir, North Dakota. — North Dakota.
Fort Randall Reservoir, South Dakota. — South Dakota.
Detroit Reservoir, Oregon. — Oregon.
Dorena Reservoir, Oregon.
Lookout Point Reservoir, Oregon.
Bull Shoals Reservoir, Arkansas. — Arkansas.
Clearwater Reservoir, Missouri. — Missouri.

Easements for rights-of-way.

SEC. 7. That the Secretary of War is hereby authorized and empowered, under such terms and conditions as are deemed advisable by him, to grant easements for rights-of-way over, across, in, and upon acquired lands under his jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the War Department, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for (a) railroad tracks; (b) oil pipe lines; (c) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines; (d) canals; (e) ditches; (f) flumes; (g) tunnels; (h) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements; (i) roads and streets; and (j) for any other purpose or purposes deemed advisable by the Secretary of War: *Provided*, That such rights-of-way shall be granted only upon a finding by the Secretary of War that the same will not be incompatible with the public interest: *Provided further*, That such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted: *And provided further*, That all or any part of such rights-of-way may be annulled and forfeited by the Secretary of War for failure to comply with the terms and conditions of any grant hereunder or for nonuse for a period of two consecutive years or abandonment of rights granted under authority hereof. Copies of all instruments granting easements over public lands pursuant to this section shall be furnished to the Secretary of the Interior.

Condition.

Forfeiture.

Copies of instruments for Secretary of the Interior.

Use of property.

SEC. 8. That the Secretary of War is authorized and empowered, in his discretion, to use any property or parts thereof, including lands other than lands withdrawn from public domain, under his control and jurisdiction for the prosecution of any authorized civil work or function administered by the War Department without charge, except usual handling charges, against appropriations for such civil works or functions.

Damage to highways, etc.

SEC. 9. Whenever the Chief of Engineers shall find that any highway, railway, or utility has been or is being damaged or destroyed by reason of the operation of any dam or reservoir project under the control of the War Department, he may utilize any funds available for the construction, maintenance, or operation of the project involved for the repair, relocation, restoration, or protection of such highway, railway, or utility: *Provided*, That this section shall not apply to highways, railways, and utilities previously provided for by the War Department, unless the Chief of Engineers determines that the actual damage has or will exceed that for which provision had previously been made.

Nonapplicability.

Projects authorized.

SEC. 10. That the following works of improvement for the benefit of navigation and the control of destructive flood-waters and other purposes are hereby adopted and authorized to be prosecuted under the direction of the Secretary of War and the supervision of the Chief of Engineers in accordance with the plans in the respective reports hereinafter designated and subject to the conditions set forth therein:

Prosecution of plans, etc.

Initiation of projects.

Installation of penstocks, etc.

Provided, That the necessary plans, specifications, and preliminary work may be prosecuted on any project authorized in this Act with funds from appropriations heretofore or hereafter made for flood control so as to be ready for rapid inauguration of a construction program: *Provided further*, That the projects authorized herein shall be initiated as expeditiously and prosecuted as vigorously as may be consistent with budgetary requirements: *And provided further*, That penstocks and other similar facilities adapted to possible future use in the development of hydroelectric power shall be installed in any dam authorized in this Act for construction by the War Department when approved by the Secretary of War on the recommendation of the Chief of Engineers and the Federal Power Commission:

DELAWARE RIVER BASIN

Lehigh River, Pa.

The project for flood protection on the Lehigh River, Pennsylvania, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 587, Seventy-ninth Congress, second session, at an estimated cost of $12,471,000.

POTOMAC RIVER BASIN

Cumberland and West Cumberland, Md.; Ridgeley, W. Va.

49 Stat. 1574. 33 U. S. C. § 701a *et seq.*; Supp. V, § 701b *et seq.* Ante, p. 641.

The local flood-protection project at Cumberland and West Cumberland, Maryland, and Ridgeley, West Virginia, authorized in the Flood Control Act approved June 22, 1936 (Public, Numbered 738, Seventy-fourth Congress), is hereby amended to provide for completion of the project substantially in accordance with plans on file in the Office of the Chief of Engineers at an estimated cost to the United States of $7,420,000 and subject to the conditions of local cooperation prescribed for that project in the Act approved June 22, 1936, as modified, now estimated at $1,520,000.

Waynesboro, Va.

The project for flood protection at Waynesboro, Virginia, on South River is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 622, Seventy-ninth Congress, second session, at an estimated cost of $1,431,000.

Washington, D. C.

Supra.

The project for protection at Washington, District of Columbia, on Potomac River, authorized by the Act of June 22, 1936, is hereby modified substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 622, Seventy-ninth Congress, second session, at an estimated cost of $500,000.

Savage River Dam, Md.

Completion of the Savage River Dam on Savage River, Maryland, is hereby authorized substantially in accordance with the plan contained in House Document Numbered 622, Seventy-ninth Congress, second session, at a cost to the United States now estimated at $1,900,000, subject to the conditions that local interests make a cash contribution of $200,000 toward the cost of the work, and agree to hold and save the United States free from damages due to the construction works, and to maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of War.

RAPPAHANNOCK RIVER BASIN

Salem Church Reservoir, Va.

The project for the Salem Church Reservoir on Rappahannock River, Virginia, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated April 8, 1946, at an estimated cost of $17,755,000: *Provided*, That the power pool shall be maintained at an elevation not to exceed two hundred and twenty feet.

JAMES RIVER BASIN

Gathright Reservoir and Falling Spring dam, Va.

The project for the Gathright Reservoir and the Falling Spring reregulating dam on Jackson River, Virginia, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated April 18, 1946, at an estimated cost of $11,000,000.

YADKIN-PEE DEE RIVER BASIN

The project for the construction of four detention reservoirs at the Wilkesboro, Upper Wilkesboro, Reddies Numbered 1 and Reddies Numbered 3 sites is hereby authorized substantially in accordance with plans contained in the report of the Chief of Engineers dated June 19, 1946, with such modifications thereof as in the discretion of the Secretary of War and the Chief of Engineers may be advisable, at an estimated cost of $7,194,000.

ALTAMAHA RIVER BASIN

Macon, Ga.

The project for flood protection at Macon, Georgia, on Ocmulgee River, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 560, Seventy-ninth Congress, second session, at an estimated cost of $349,000.

LOWER MISSISSIPPI RIVER

58 Stat. 924. 33 U. S. C. §§ 702a-702m, 704. Supp. V, § 702a *et seq.*

The project for flood control and improvement of the Lower Mississippi River adopted by the Act approved May 15, 1928, as amended by subsequent Acts, is hereby modified and expanded to include the following items and the authorization for said project is increased accordingly:

Arkansas and Louisiana.

58 Stat. 891. 33 U. S. C., Supp. V, § 701a *et seq.*; 16 U. S. C., Supp. V, §§ 460*l*, 825s, 43 U. S. C., Supp. V, § 390. Ante, p. 642.

(a) Improvement of the Boeuf and Tensas Rivers and Bayou Macon at an estimated cost of $5,013,000 authorized in the Act approved December 22, 1944.

(b) Extension of the authorized improvement under subparagraph (a) to include the improvement of Bayou LaFourche, Louisiana, including cut-offs, as may be found requisite to effectuate the purposes of the plan, at an estimated cost of $5,913,000 and substantially in accordance with the recommendations of the Chief of Engineers in Senate Document Numbered 191, Seventy-ninth Congress, second session.

(c) Extension of the authorized improvement under subparagraph (a) to include the improvement of the Boeuf and Tensas Rivers and Bayou Macon north of the Louisiana State line, including cut offs, as may be found requisite to effectuate the purposes of the plan, at an estimated cost of $4,030,000 substantially in accordance with the report of the Chief of Engineers dated April 8, 1946.

Mississippi Improvements.

58 Stat. 887. 33 U. S. C., Supp. V, § 701a *et seq.*; 16 U. S. C., Supp. V, §§ 460*l*, 825s; 43 U. S. C., Supp. V, § 390. Ante, p. 642.

(d) Improvement of Big Sunflower, Little Sunflower, Hushpuckena, and Quiver Rivers and their tributaries, and on Hull Brake—Mill Creek Canal, Bogue Phalia, Ditchlow Bayou, Deer Creek, and Steele Bayou, Mississippi, at an estimated cost of $5,752,000 authorized in the Act approved December 22, 1944.

(e) Extension of the authorized improvement under subparagraph (d) upstream and downstream, including cut-offs, as may be found requisite to effectuate the purposes of the plan, at an estimated cost of $2,500,000 for modification of the authorized project.

Yazoo River

(f) Extension of the authorized headwater project for the Yazoo River and tributaries to include improvements in the area between the Yazoo-Tallahatchie-Coldwater River System and the hills to protect against overflows from the main stem and hill tributaries in

such cases and by such means as the Chief of Engineers may consider warranted, at an estimated cost of $7,500,000 for modification of the authorized project.

(g) Extension of the authorized headwater project for the Yazoo River and tributaries to include the drainage of run-off waters from the watershed of McKinney Bayou or the providing of pumping capacity additional to that now existing for said waters in the proportion determined by the Chief of Engineers are authorized in the discretion of the Chief of Engineers at an estimated cost of $300,000 for modification of the authorized project.

Louisiana.
Infra.

(h) The Bayou des Glaises diversion channel, Louisiana, authorized by and constructed under the Act approved June 22, 1936.

North Little Rock, Ark.
49 Stat. 1570, 46 Stat. 834.
33 U. S. C. §§ 701a et seq., 702a et seq.; Supp. V, §§ 701b et seq., 702d
White River.

(i) That portion of the North Little Rock to Gillette, Arkansas, levee on the north bank of the Arkansas River along and below Plum Bayou authorized by and constructed under the Act approved June 22, 1936, work thereon to be hereafter prosecuted in accordance with the Act of May 15, 1928, as amended.

(j) The projects for local flood protection on the White River, on the east side between Augusta and Clarendon, Arkansas, and at the town of DeValls Bluff, Arkansas, at an estimated cost of $2,847,500 authorized by the Act approved August 18, 1941.

56 Stat. 638.
33 U. S. C., Supp. V, § 701b et seq.
Ante, p. 642; post, p. 663.
Tiptonville-Obion Levee.
Supra.

(k) The Tiptonville-Obion Levee authorized by and constructed under the Act approved June 22, 1936.

(l) Extension of the levee under subparagraph (k) to include the levee and drainage improvements, at an estimated cost of $6,000,000 substantially in accordance with the report of the Chief of Engineers dated April 16, 1946.

Saint John's Bayou, Mo.

(m) The improvement of Saint John's Bayou, Missouri, at an estimated cost of $1,300,000, substantially in accordance with the report of the Chief of Engineers, dated April 16, 1946.

Memphis, Tenn.

(n) The improvement of the harbor at Memphis, Tennessee, at an estimated cost of $17,120,000, substantially in accordance with the report of the Chief of Engineers dated April 12, 1946.

Vicksburg, Miss.

(o) Modification of the main line levee system of the authorized project for the Lower Mississippi River to include protection of the potential industrial area immediately north of Vicksburg, Mississippi, known as the Vicksburg-Yazoo area, together with local dredging and the construction of such drainage facilities as in the opinion of the Chief of Engineers are requisite and justified, at an estimated cost of $4,000,000, subject to the conditions that local interests provide without cost to the United States all rights-of-way required for levees and drainage, and maintain and operate the works after completion.

Drainage.

(p) Modification of the authorized project for the Lower Mississippi River to provide drainage in the discretion of the Chief of Engineers where drainage is impaired by levees hitherto or hereafter constructed, at an estimated cost of $500,000, subject to the conditions that local interests provide without cost to the United States all rights-of-way and maintain and operate the works after completion.

Saint Francis and Yazoo River Basins.

(q) Modification of the authorized project for the Lower Mississippi River to provide that the local cooperation to be hereafter furnished for the works authorized in the Saint Francis River Basin and the Yazoo River Basin shall consist of the requirement that responsible local interests agree to maintain levees in accordance with the provisions of section 3 of the Act of May 15, 1928, where maintenance is required under existing law.

48 Stat. 355.
33 U. S. C. § 702c.
Mississippi River Commission.
Retired Army officers.

(r) Any former officer of the Corps of Engineers who, after retirement and recall to active duty in the Army, has served over fifteen years as a member of the Mississippi River Commission while on such active duty shall, upon being relieved of such active duty, be eligible to and shall retain, during the will of the President, the position and office held by him as a member of the Mississippi River Commission, without prejudice to his status as a retired Army officer, and, in addition to his authorized Army retired pay, shall receive from the Mississippi flood control funds the difference between the authorized salary of a member of the Mississippi River Commission and the Army retired pay received by him.

Pay.

Purchase of amphibian airplane.

(s) To facilitate the inspection, supervision, and conduct of flood fighting, flood control, and navigation operations, the president of the Mississippi River Commission is hereby authorized, notwithstanding any other provision of law, to purchase, maintain, and operate an amphibian airplane from any appropriations heretofore or hereafter made for flood control: *Provided*, That the cost of such airplane shall not exceed $120,000.

Restriction.

Increased authorization for costs of construction.

In order to provide for the increased costs of construction of the authorized project for the Lower Mississippi River as recommended by the president of the Mississippi River Commission and the Chief of Engineers, the authorization for flood control and improvement of the Lower Mississippi River is hereby increased by an additional $100,000,000.

Jefferson Parish, La.

The project for flood control along Lake Pontchartrain in Jefferson Parish, Louisiana, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 691, Seventy-ninth Congress, second session, at an estimated cost of $900,000.

Memphis, Tenn.

The project for flood protection at Memphis on Wolf River and Nonconnah Creek, Tennessee, authorized by the Act approved August 28, 1937 (Public, Numbered 406, Seventy fifth Congress), as amended by the Act approved June 28, 1939 (Public, Numbered 154, Seventy-sixth Congress), is further amended to authorize the completion of the project at an additional estimated cost of $1,500,000.

50 Stat. 868.
Post, p. 852.
52 Stat. 804.

RED-OUACHITA RIVER BASIN

Shreveport, La.

The project for flood protection on Bayou Pierre in the vicinity of Shreveport, Louisiana, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 285, Seventy-ninth Congress, first session, at an estimated cost of $127,000.

Red River.

The general plan for flood control on Red River, Texas, Oklahoma, Arkansas, and Louisiana, below Denison Dam, Texas and Oklahoma, including the incorporation therein of the several separate existing projects for flood control along the Red River below Denison (above the jurisdiction of the Mississippi River Commission) and providing for the modification of the existing or authorized Federal and non-Federal levees, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 602, Seventy-ninth Congress, second session, at an estimated cost of $77,500,000.

ARKANSAS RIVER BASIN

Additional appropriation authorized.

In addition to previous authorizations, there is hereby authorized to be appropriated the sum of $40,000,000 for the prosecution of the comprehensive plan for the Arkansas River Basin, approved in the Act of June 28, 1938, as amended and supplemented by subsequent Acts of Congress.

52 Stat. 1218.
33 U. S. C. § 701b et seq.; Supp. V, § 701b et seq.
Canton Reservoir.

The Chief of Engineers is authorized to provide in the Canton Reservoir on the North Canadian River sixty-nine thousand acre-feet of irrigation storage, upon the condition that when siltation of the

reservoir shall encroach upon the flood control allocation the irrigation storage will be reduced progressively unless provision is made to raise the height of the dam or otherwise provide compensatory storage for flood control on the basis of an equitable distribution of the costs among the water users and other beneficiaries of conservation storage, as determined at that time.

Oklahoma City, Okla.

The project for flood protection at Oklahoma City, Oklahoma, on North Canadian River, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 572, Seventy-ninth Congress, second session, at an estimated cost of $2,037,000.

Carden's Bottom Drainage, Ark.

The project for local flood protection of Carden's Bottom Drainage District Number 2, Yell County, Arkansas, on Arkansas River, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated June 17, 1946, at an estimated cost of $1,485,000.

Heyburn Reservoir, Okla.

The project for the Heyburn Reservoir on Polecat Creek and for channel improvement on Rock Creek and on Polecat Creek, Oklahoma, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated June 17, 1946, at an estimated cost of $1,838,500.

WHITE RIVER BASIN

Additional appropriation authorized.

In addition to previous authorizations, there is hereby authorized to be appropriated the sum of $40,000,000 for the prosecution of the comprehensive plan for the White River Basin approved in the Act of June 28, 1938, as amended and supplemented by subsequent Acts of Congress.

52 Stat. 1218. 33 U. S. C. § 701b et seq.; Supp. V, § 701b et seq.

UPPER MISSISSIPPI RIVER BASIN

Additional appropriation authorized.

In addition to previous authorizations, there is hereby authorized to be appropriated the sum of $10,000,000 for the prosecution of the comprehensive plan for the Upper Mississippi River Basin approved in the Act of June 28, 1938, as amended and supplemented by subsequent Acts of Congress.

52 Stat. 1215. 33 U. S. C. § 701b et seq.; Supp. V, § 701b et seq.

Prairie du Rocher.

The project for flood protection on the Mississippi River at Prairie du Rocher and vicinity is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated April 17, 1946, at an estimated cost of $2,575,000.

Sny Basin, Ill.

The project for local flood protection on McCraney, Hadley, Kiser, Six-Mile, and Bay Creeks in the Sny Basin, Illinois, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated April 17, 1946, at an estimated cost of $4,854,944.

MISSOURI RIVER BASIN

Additional appropriation authorized.

In addition to previous authorizations, there is hereby authorized to be appropriated the sum of $150,000,000 for the prosecution of the comprehensive plan approved by the Act of June 28, 1938, as expanded by section 9a of the Act approved December 22, 1944 (Public, Numbered 534, Seventy-eighth Congress), for continuing the works in the Missouri River Basin to be undertaken under said expanded plans by the Corps of Engineers.

52 Stat. 1218, 58 Stat. 891. 33 U. S. C. § 701b et seq.; Supp. V, § 701b et seq.

Mandan, N. Dak.

The project for flood protection at Mandan, North Dakota, on Heart River, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 294, Seventy-ninth Congress, first session, at an estimated cost of $246,000.

OHIO RIVER BASIN

Additional appropriation authorized.

In addition to previous authorizations, there is hereby authorized to be appropriated the sum of $125,000,000 for the prosecution of the comprehensive plan for the Ohio River Basin approved in the Act of June 28, 1938, as amended and supplemented by subsequent Acts of Congress including: (1) Such channel rectification works or other measures at or below the Muskingum River Reservoirs as in the discretion of the Chief of Engineers and the Secretary of War may be found necessary to provide for the most efficient operation of those reservoirs, at an estimated cost of $2,200,000, and (2) the following projects in tributary basins, namely:

52 Stat. 1218. 33 U. S. C. § 701b et seq.; Supp. V, § 701b et seq.

Galax, Va.

The local flood-protection works at Galax, Virginia, on Chestnut Creek, substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 506, Seventy-eighth Congress, first session, at an estimated cost of $276,125;

Wabash River Basin, Ill. and Ind.

The plan of improvement for flood control in the Wabash River Basin, Illinois and Indiana, substantially in accordance with the recommendations of the Chief of Engineers in his report dated April 9, 1946, at an estimated cost of $9,366,000;

Olean, N. Y.

The local flood-protection works at Olean, New York, on Allegheny River, substantially in accordance with the recommendations of the Chief of Engineers in his report dated April 12, 1946, at an estimated cost of $2,282,400;

Portville, N. Y.

The local flood-protection works at Portville, New York, on Allegheny River, substantially in accordance with the recommendations of the Chief of Engineers in his report dated April 12, 1946, at an estimated cost of $1,281,500;

Allegany, N. Y.

The local flood-protection works at Allegany, New York, on the Allegheny River, substantially in accordance with the recommendations of the Chief of Engineers in his report, dated April 12, 1946, at an estimated cost of $388,800;

West Fork Reservoir, Ohio.

The project for the West Fork Reservoir on the West Fork of Mill Creek in Ohio, substantially in accordance with the recommendations of the Chief of Engineers in his report dated April 8, 1946, at an estimated cost of $1,527,000.

GREAT LAKES BASIN

Mount Clemens, Mich.

The project for flood protection at Mount Clemens and vicinity, Michigan, on Clinton River, is hereby authorized substantially in accordance with the recommendations in House Document Numbered 694, Seventy-ninth Congress, second session, at an estimated cost of $378,000.

BRAZOS RIVER BASIN

Belton Reservoir, Tex.

The project for the Belton Reservoir on Leon River, Texas, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated April 19, 1946, at an estimated cost of $15,500,000.

Irrigation.

Of the conservation storage capacity provided by such reservoir, not to exceed forty-five thousand acre-feet of such capacity shall be available for irrigation purposes in the Leon, Lampasas, and Little River Valleys.

Eastland, Tex.

The project for flood protection at Eastland, on Leon River, Texas, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated April 19, 1946, at an estimated cost of $82,800.

GILA RIVER BASIN

Whitlow Ranch Reservoir, Ariz.

The project for the Whitlow Ranch Reservoir on Queen Creek, Arizona, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated June 24, 1946, at an estimated cost of $1,645,000.

GREAT SALT BASIN

Spanish Fork River, Utah.

The project for local flood protection on Spanish Fork River, Utah, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 518, Seventy-ninth Congress, second session, at an estimated cost of $74,500.

Salt Lake City, Utah.

The project for flood protection at Salt Lake City, Utah, on Jordan River, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 562, Seventy-ninth Congress, second session, at an estimated cost of $412,000.

Magna, Utah.

The project for flood protection at Magna, Utah, on Little Valley Wash, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 562, Seventy-ninth Congress, second session, at an estimated cost of $222,000.

LOS ANGELES-SAN GABRIEL BASIN AND BALLONA CREEK

Additional appropriation authorized.

In addition to previous authorizations, there is hereby authorized to be appropriated the sum of $25,000,000 for the prosecution of the comprehensive plan for the Los Angeles-San Gabriel Basin and Ballona Creek, California, approved in the Act of August 18, 1941, as amended and supplemented, by subsequent Acts of Congress.

55 Stat. 638.
33 U. S. C., Supp. V, § 701b *et seq.*
Ante, p. 642; *post*, p. 653.

SALINAS RIVER BASIN

Salinas River, Calif.

The project for flood protection along Salinas River, California, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated April 29, 1946, at an estimated cost of $1,905,000.

BOISE RIVER BASIN

Lucky Peak Reservoir, Idaho.

The project for the Lucky Peak Reservoir on Boise River, Idaho, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated May 13, 1946, at an estimated cost of $10,684,000: *Provided*, That said dam and reservoir shall be so constructed as not substantially to damage the structure of the Arrow Rock Dam and shall be operated in such manner as not materially to interfere with the operation of said Arrow Rock Reservoir.

Arrow Rock Dam.

WILLAMETTE RIVER BASIN

Additional appropriation authorized.

In addition to previous authorizations, there is hereby authorized to be appropriated the sum of $35,000,000 for the prosecution of the comprehensive plan for the Willamette River Basin approved in the Act of June 28, 1938, as amended and supplemented by subsequent Acts of Congress.

52 Stat. 1215.
33 U. S. C. § 701b *et seq.*, Supp. V, § 701b *et seq.*

Eugene, Oreg.

The project for flood protection on Amazon Creek at Eugene and vicinity, Oregon, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in Senate Document Numbered 138, Seventy-ninth Congress, second session, at an estimated cost of $226,000.

TERRITORY OF ALASKA

Skagway, Alaska.

Modification of the existing project for Skagway on Skagway River and Harbor, Alaska, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 695, Seventy-ninth Congress, second session, at an estimated cost of $438,000.

Preliminary examinations and surveys.

SEC. 11. The Secretary of War is hereby authorized and directed to cause preliminary examinations and surveys for flood control and allied purposes, including channel and major drainage improvements, and floods aggravated by or due to wind or tidal effects, to be made under the direction of the Chief of Engineers, in drainage areas of the United States and its Territorial possessions, which include the following-named localities, and the Secretary of Agriculture is authorized and directed to cause preliminary examinations and surveys for run-off and waterflow retardation and soil-erosion prevention on such drainage areas; the cost thereof to be paid from appropriations heretofore or hereafter made for such purposes: *Provided*, That after the regular or formal reports made on any examination, survey, project, or work under way or proposed are submitted to Congress, no supplemental or additional report or estimate shall be made unless authorized by law except that the Secretary of War may cause a review of any examination or survey to be made and a report thereon submitted to the Congress if such review is required by the national defense or by changed physical or economic conditions: *And provided further*, That the Government shall not be deemed to have entered upon any project for the improvement of any waterway or harbor mentioned in this Act until the project for the proposed work shall have been adopted by law:

Supplemental reports, etc., restriction.

Narraguagus River and tributaries, Maine. — Maine.

Westfield River, Massachusetts, with a view to modifying the existing Knightville Reservoir to provide low flow regulation. — Massachusetts.

Oneida Creek and tributaries, New York. — New York.

Susquehanna River, at and in the vicinity of Sidney, New York. — New York.

Hackensack River and tributaries, New Jersey and New York. — New Jersey and New York.

Schuylkill River and tributaries, Pennsylvania. — Pennsylvania.

Marshy Hope Creek and tributaries, Maryland. — Maryland.

Caloosahatchie River and Lake Okeechobee Drainage Area, Florida, for drainage improvement and flood control along North New River Canal in Broward County, Florida. — Florida.

Coosa River and tributaries, at and in the vicinity of Rome, Georgia. — Georgia.

Choctawhatchee River and tributaries, Alabama and Florida. — Alabama and Florida.

Cold Water Creek, Calhoun County, Alabama. — Alabama.

Big South Fork River and tributaries, Tennessee. — Tennessee.

Cypress Creek, Harris County, Texas. — Texas.

Port Arthur, Texas (with a view to providing protection against damage from Sabine Lake resulting from erosion and from floods due to hurricane winds and tide).

The provision of outlets in the interest of providing egress of flood waters for Jefferson County drainage districts, into existing waterways in the general vicinity of Port Arthur, Texas, including Taylors Bayou in the interest of flood control, drainage and navigation.

Eight-Mile Creek and Locust Creek and their tributaries, Arkansas. — Arkansas.

Saint Francis Bay Straight Slough and Big Bay Ditch, Arkansas, and tributary area.

Choctawhatchee River, Florida and Alabama. — Florida and Alabama.

Bear Creek, a tributary of Big Black River, Mississippi. — Mississippi.

Pearl River and tributaries, Mississippi.

Lost Creek, Missouri, at and in the vicinity of Seneca, Missouri. — Missouri.

Chunky River, Mississippi. — Mississippi.

Mississippi. Opookta Creek, Attala County, Mississippi, for flood control and drainage.

Potacocowa Creek, Mississippi.

Oklahoma. Gates Creek and tributaries, Oklahoma, with a view to the completion of the Fort Towson Dam and flood control reservoir.

Missouri. Lower Grand River, Missouri, with a view to providing protection from erosion and bank caving.

Arkansas. Saint Francis River and its tributaries, Arkansas, with special reference to Tyronza and Little Rivers; Big Creek; and Blackfish, Fifteen Mile, and Frenchman Bayous; and the tributaries of these streams for flood control, drainage, and allied purposes.

Ouachita River, Arkansas, with a view to providing navigation from Camden, Arkansas, to Rockport, Arkansas.

Illinois. Mississippi River at and in the vicinity of East Cape Girardeau and Clear Creek, North Alexander, Clear Creek, Preston and Miller Pond drainage and levee district, Illinois.

Missouri. Mississippi River at and in the vicinity of Perry County drainage and levee districts numbered 1, 2, and 3, Missouri.

Wisconsin. Mississippi River at and in the vicinity of La Crosse, Wisconsin, with a view to providing a small boat harbor improvement at Isle La Plume.

West Virginia. Little Kanawha River and tributaries, West Virginia.

Four Pole Creek, West Virginia.

Illinois. Lost Creek and tributaries, White and Hamilton Counties, Illinois.

Wabash River at and in the vicinity of Mount Carmel, Illinois.

Tennessee. Coal Creek and tributaries, Tennessee.

West Virginia and Pennsylvania. Buffalo Creek and tributaries, West Virginia and Pennsylvania.

Iowa and Missouri. Chariton River and tributaries, Iowa and Missouri.

Wisconsin. All streams and rivers, and tributaries thereof, flowing into Lake Superior in Ashland, Bayfield, or Douglas Counties, Wisconsin.

Fox River and its tributaries, Wisconsin, for flood control and other purposes.

Wisconsin and Illinois. Pecatonica River and tributaries, Wisconsin and Illinois.

Minnesota. Lost River and tributaries, Minnesota.

Root River and tributaries, Minnesota.

Michigan. Clinton River and tributaries, Michigan.

Sagining River and tributaries, Michigan.

North Dakota. Red River and its tributaries, North Dakota, for flood control and other purposes.

California and Oregon. Smith River and tributaries, California and Oregon.

Alaska. Gold Creek and tributaries, Alaska.

Chena Slough, Alaska.

55 Stat. 650. 33 U. S. C., Supp. V, § 701a. Rescue work.

SEC. 12. That section 5 of the Flood Control Act of August 18, 1941, is hereby amended to read as follows:

"That the Secretary of War is hereby authorized to allot, from any appropriations heretofore or hereafter made for flood control, not to exceed $2,000,000 for any one fiscal year to be expended in rescue work or in the repair or maintenance of any flood-control work threatened or destroyed by flood."

50 Stat. 877. 33 U. S. C. § 701g; Supp. V, § 701g. Removal of debris, etc.

SEC. 13. That section 2 of the Flood Control Act of August 28, 1937, as amended, is hereby further amended to read as follows:

"That the Secretary of War is hereby authorized to allot not to exceed $1,000,000 from any appropriations heretofore or hereafter made for any one fiscal year for flood control, for removing accumulated snags and other debris, and clearing and straightening the channel in navigable streams and tributaries thereof, when in the opinion of the Chief of Engineers such work is advisable in the interest of flood control: *Provided*, That not more than $50,000 shall be expended for this purpose for any single tributary from the appropriations for any one fiscal year."

Limitation.

Emergency bank-protection works.

SEC. 14. That the Secretary of War is hereby authorized to allot from any appropriations heretofore or hereafter made for flood control, not to exceed $1,000,000 per year, for the construction of emergency bank-protection works to prevent flood damage to highways, bridge approaches, and public works, when in the opinion of the Chief of Engineers such work is advisable: *Provided*, That not more than $50,000 shall be allotted for this purpose at any single locality from the appropriations for any one fiscal year.

Limitation.

Appropriations authorized.

SEC. 15. That the sum of $772,000,000 is hereby authorized to be appropriated for carrying out improvements by the War Department, the sum of $10,000,000 additional is authorized to be appropriated and expended in equal amounts by the Departments of War and Agriculture for carrying out any examination or survey provided for in this Act and any other Acts of Congress to be prosecuted by said Departments.

Expenditure by Departments of War and Agriculture.

Buffalo Creek, N. Y. 58 Stat. 906.

SEC. 16. That the program on the watershed of Buffalo Creek and its tributaries authorized in section 13 of the Flood Control Act of December 22, 1944, is hereby amended to authorize the Secretary of Agriculture to include and prosecute works for the stabilization of stream banks such as described in House Document Numbered 574, Seventy-eighth Congress, second session, at an estimated additional cost of $1,842,400.

Appropriations authorized. 55 Stat. 641. 33 U. S. C., Supp. V, § 701f note.

SEC. 17. That the $5,000,000 authorized to be appropriated in section 10 of the Flood Control Act approved August 18, 1941, is reauthorized to be appropriated, and the sum of $20,000,000 additional is authorized to be appropriated, for expenditure by the Department of Agriculture for the prosecution of the works of improvement authorized to be carried out by that Department by the Flood Control Act of December 22, 1944.

58 Stat. 887. 33 U. S. C., Supp. V, § 701a f. et seq. *Ante*, p. 642. Missouri River Basin.

SEC. 18. In addition to previous authorizations, there is hereby authorized to be appropriated the sum of $150,000,000 for the prosecution of the comprehensive plan adopted by section 9a of the Act approved December 22, 1944 (Public, Numbered 534, Seventy-eighth Congress), for continuing the works in the Missouri River Basin to be undertaken under said plans by the Secretary of the Interior.

58 Stat. 891.

Approved July 24, 1946.

[CHAPTER 597]

AN ACT

July 24, 1946 [H. R. 6008] [Public Law 527]

To extend the times for commencing and completing the construction of a toll bridge across the Saint Louis River between the States of Minnesota and Wisconsin, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the times for commencing and completing the construction of a toll bridge across the Saint Louis River, between the States of Minnesota and Wisconsin, authorized to be built by the city of Duluth in the State of Minnesota by an Act of Congress approved August 7, 1939; which Act was heretofore amended and extended by an Act of Congress approved April 30, 1940; and further extended and amended by an Act of Congress approved May 9, 1941; and further revived and reenacted, and extended and amended by an Act of Congress approved October 16, 1945, the same being Public Law Numbered 196, Seventy-ninth Congress; are hereby extended one and three years, respectively, from October 16, 1946.

Bridge, Saint Louis River.

53 Stat. 1398, 54 Stat. 172, 58 Stat. 887; 59 Stat. 845.

SEC. 2. Public Law 333, Seventy-sixth Congress, is hereby amended by adding a new section to read as follows:

53 Stat. 1398.

"SEC. 3a. No toll or other charge shall be levied against any official

or employee, civil or military, or any vehicle or conveyance of the United States for the use of such bridge in the performance of official duties."

SEC. 3. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved July 24, 1946.

[CHAPTER 600]

July 24, 1946 [S. 141] [Public Law 520]

AN ACT

To clarify the law relating to the filling of the first vacancy occurring in the office of district judge for the eastern district of Pennsylvania, and to provide for the appointment of an additional United States district judge for the eastern, middle, and western districts of Pennsylvania.

U. S. Courts.

28 U. S. C. § 1 note; Supp. V, § 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proviso contained in section 2 (a) of the Act approved May 24, 1940, entitled "An Act to provide for the appointment of additional district and circuit judges" (54 Stat. 219), as amended, is amended to read as follows: "*Provided*, That the first vacancy occurring in the office of district judge in each of said districts, except the district of New Jersey and the eastern district of Pennsylvania, shall not be filled."

Pennsylvania. Additional judge for designated districts.

SEC. 2. The President is authorized to appoint, by and with the advice and consent of the Senate, one additional United States district judge, who shall be an additional district judge for the eastern, middle, and western districts of Pennsylvania. The judge so appointed shall at the time of his appointment be a resident and a citizen of the State of Pennsylvania: *Provided*, That when a vacancy occurs in said office it shall not be filled: *Provided further*, That unless the President shall submit a nomination to the Senate to fill the office hereby created within ninety days after the effective date of this Act, then in that event this Act shall be of no force and effect.

Time limitation.

Approved July 24, 1946.

[CHAPTER 601]

July 24, 1946 [S. 708] [Public Law 521]

AN ACT

To amend Veterans Regulation Numbered 9 (a), as amended, so as to increase the limit of amounts payable thereunder in connection with the funeral and burial of deceased veterans.

54 Stat. 969, 1193. 38 U. S. C. note foll. § 724.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Veterans Regulation Numbered 9 (a), as amended, is amended by striking out the amount "$100" wherever such amount appears in paragraphs II and III thereof, and inserting in lieu thereof the amount "$150".

Approved July 24, 1946.

[CHAPTER 602]

July 24, 1946 [S. 1601] [Public Law 522]

AN ACT

Authorizing the appointment of an additional judge for the district of Delaware.

Delaware. Additional U. S. district judge.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States, by and with the advice and consent of the Senate, shall appoint an additional judge of the district court of the United States for the judicial district of the State of Delaware, who, except where because of seniority other provision is made, shall possess the same powers, perform the same duties, and receive the same compensation and allowance as the present judge of said district: *Provided*, That the first vacancy occurring in the office of district judge in said district shall not be filled: *Provided further*, That unless the President shall submit a nomination to the Senate or make a recess appointment to fill the office hereby created within ninety days after the effective date of this Act, then in that event this Act shall be of no force and effect.

Time limitation.

Approved July 24, 1946.

[CHAPTER 603]

July 24, 1946 [S. 2201] [Public Law 531]

AN ACT

To authorize the Secretary of the Navy to transfer a vessel to the American Antarctic Association, Incorporated.

American Antarctic Association, Inc. Transfer of naval vessel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, the Secretary of the Navy is authorized to transfer to the American Antarctic Association, Incorporated, a nonprofit scientific corporation duly organized and existing under the laws of the State of Maryland, for use in a projected scientific expedition to the Antarctic one naval vessel and related and necessary equipment on such terms and subject to such conditions as are deemed appropriate by the Secretary: *Provided, however*, That such transfer shall be for purposes of carrying out the projected Antarctic expedition only, and that prior to the transfer the American Antarctic Association, Incorporated, deposits with the Secretary a bond with good and sufficient sureties to guarantee payment to the United States Government of such charge as is determined by the Secretary as is reasonable for the use of the vessel and to reimburse the United States in the event of the loss of the vessel or its return to the Navy in a damaged condition.

Deposit of bond, etc.

SEC. 2. The vessel transferred to the American Antarctic Association, Incorporated, under this Act shall be returned to the Navy if the projected scientific expedition has not departed from the continental United States within six months after the date of the transfer of the vessel and, subject to unforeseen circumstances, shall be returned to the Navy at a port within the continental United States no later than July 1, 1948.

Return of vessel.

Approved July 24, 1946.

[CHAPTER 604]

July 24, 1946 [H. R. 3833] [Public Law 532]

AN ACT

To authorize revisions in the boundary of the Hopewell Village National Historic Site, Pennsylvania, and for other purposes.

Hopewell Village National Historic Site, Pa. Withdrawal of lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to withdraw from the Hopewell Village National Historic Site, Pennsylvania, all or any part of the lands added to the Hopewell Village National Historic Site by the Act approved June 6, 1942, entitled "An Act to authorize the disposition of recreational demonstration projects, and for other purposes", which in his opinion are not required for historic-site purposes. Any lands so withdrawn shall revert to the status of a recreational demonstration area.

56 Stat. 326. 16 U. S. C., Supp. V, §§ 459f-459f1.

Approved July 24, 1946.

[CHAPTER 605]

AN ACT

July 24, 1946
[H. R. 5921]
[Public Law 533]

To amend sections 4 and 8 of the Act of September 2, 1937, as amended.

Wildlife-restoration projects.
50 Stat. 918.
16 U. S. C. § 669c.
Supp. V, § 669c note.
Apportionments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Act of September 2, 1937 (50 Stat. 917; 16 U. S. C. 669), is hereby amended by striking out the provisos thereof and inserting in lieu thereof the following: "*Provided*, That such apportionments shall be adjusted equitably so that no State shall receive less than one-half of 1 per centum nor more than 5 per centum of the total amount apportioned to all the States."

50 Stat. 919.
16 U. S. C. § 669g

SEC. 2. That section 8 of said Act is amended so as to read as follows:

State maintenance of established projects.

"SEC. 8. Maintenance of wildlife-restoration projects established under the provisions of this Act shall be the duty of the States in accordance with their respective laws: *Provided*, That beginning July 1, 1945, the term 'wildlife-restoration project', as defined in section 2, shall include maintenance of completed projects, but not more than 25 per centum of the total amount apportioned to any State under the provisions of this Act may be expended for such maintenance."

Approved July 24, 1946.

[CHAPTER 606]

AN ACT

July 24, 1946
[H. R. 6180]
[Public Law 534]

To amend the law relating to larceny in interstate or foreign commerce.

Larceny in interstate or foreign commerce.
57 Stat. 670.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of February 13, 1913, as amended (47 Stat. 773; U. S. C., title 18, secs. 409 to 411), be, and it is hereby, amended to read as follows:

"(a) Whoever shall—

Unlawful entry, etc.

"(1) unlawfully break the seal or lock of or enter any railroad car, vessel, aircraft, motortruck, wagon, or other vehicle containing interstate or foreign shipments of freight or express, with *intent to commit larceny therein*; or

Embezzlement, etc., of property.

"(2) embezzle, steal, or unlawfully take, carry away, or conceal, or by fraud or deception obtain from any—

(i) railroad car, motortruck, wagon, or other vehicle,
(ii) station house, platform, depot, or terminal,
(iii) steamboat, vessel, or wharf,
(iv) aircraft, airport, aircraft terminal or air navigation facility,

any goods or property moving as or which are a part of or which constitute an interstate or foreign shipment of freight or express, with intent to convert such goods or property to his own use, or *shall buy, receive, or have in his possession any such goods or* property, knowing the same to have been embezzled or stolen; or

Possession.

Baggage.

"(3) embezzle, steal, or unlawfully take, carry away, or by fraud or deception obtain any baggage which shall have come into the possession of any carrier for transportation in interstate or foreign commerce, or shall break into, steal, take, carry away, or conceal any of the contents thereof, with intent to convert the same or any part thereof to his own use, or shall buy, receive, or have in his possession any such baggage or any article therefrom, of whatever nature, knowing the same to have been embezzled or stolen; or

Money, etc.

"(4) embezzle, steal, or unlawfully take by any fraudulent device, scheme, or game, from any railroad car, motortruck, steamboat, vessel, aircraft, or other vehicle operated by any carrier, or from any passenger or employee thereon, when such railroad car, or the train of which it is a part, motortruck, steamboat, vessel, aircraft, or other vehicle is moving in interstate or foreign commerce, any money, baggage, goods, or property, with intent to convert the same or any part thereof to his own use, or shall buy, receive, or have in his possession any such money, baggage, goods, or property, knowing the same to have been embezzled or stolen; or

Embezzlement of funds by employee.

"(5) being an employee of any carrier riding in, on or upon any railroad car, motortruck, steamboat, vessel, aircraft, or other vehicle of such carrier transporting passengers or property in interstate or foreign commerce and having in his custody funds arising out of or accruing from such transportation, embezzle or unlawfully convert to his own use any such funds; shall in each case be fined not more than $5,000 or imprisoned not more than ten years, or both.

Penalty.

Transporting from one State to another, etc.

"(b) The carrying or transporting of any such money, freight, express, baggage, goods, or property from one State or Territory or the District of Columbia into another State or Territory or the District of Columbia, knowing the same to have been embezzled or stolen, shall constitute a separate offense and subject the offender to the penalties prescribed in subsection (a).

"Interstate or foreign commerce."

"(c) The term 'interstate or foreign commerce' shall include transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.

"Aircraft."

"(d) The term 'aircraft' shall mean airplane, glider, blimp, balloon, dirigible, helicopter, rocket ship, parachute, or any contrivance used or designed for navigation of or flight in the air.

"Motortruck."

"(e) The term 'motortruck' shall mean truck, truck tractor, trailer, semitrailer, automobile, bus, or other vehicle used upon or designed *for use upon roads, highways, or streets.*

"Wharf."

"(f) The term 'wharf' shall mean dock, quay, pier, or any structure or contrivance designed for the loading or unloading of water craft.

Prosecutions.

"(g) Prosecutions under this Act may be instituted in any district wherein the crime shall have been committed, or in which the offender may have taken, removed, brought or been in possession of said money, freight, express, baggage, goods, or property.

Jurisdiction of State courts.

"SEC. 2. Nothing herein shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

Waybill

"SEC. 3. To establish the interstate or foreign commerce character of any shipment in any prosecution under this Act the waybill, or other shipping document, of such shipment shall be prima facie evidence of the place from which such shipment was made."

Approved July 24, 1946.

[CHAPTER 607]

July 24, 1946
[H. R. 4484]
[Public Law 535]

AN ACT

Relating to the construction and maintenance of building and improvements for banking purposes on the Fort Ord Military Reservation, California.

Fort Ord Military Reservation, Calif.
Use of land.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War may, upon such terms and conditions as he may prescribe, authorize the use and occupancy of land on the Fort Ord Military Reservation, California, by the Monterey County Trust and Savings Bank, Salinas, California, for the purpose of constructing and maintaining a building or buildings and other improvements for use in conducting a branch bank on such reservation.

Approved July 24, 1946.

[CHAPTER 608]

July 24, 1946
[H. R. 4651]
[Public Law 536]

AN ACT

To amend section 6 of the Civil Service Retirement Act of May 29, 1930, as amended.

46 Stat. 473.
5 U. S. C. § 713, Supp. V, § 713.
Annuity.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the third paragraph of section 6 of the Civil Service Retirement Act of May 29, 1930, as amended, is amended to read as follows:

"If a recovered disability annuitant whose annuity is discontinued subsequent to June 30, 1945, shall after due diligence on his part fail to obtain reemployment in any position included in the provisions of this Act, he shall be considered as having been involuntarily separated from the service within the meaning of section 7 of this Act as of the date he was retired for disability and shall, after the discontinuance of the disability annuity, be entitled to an annuity in accordance with the provisions of such section, computed at the attained age at the date of discontinuance of the disability annuity."

46 Stat. 474.
5 U. S. C. §§ 733, 735, 736, Supp. V, §§ 733, 735, 736.

Approved July 24, 1946.

[CHAPTER 609]

July 24, 1946
[H. R. 4701]
[Public Law 537]

AN ACT

Granting the consent of Congress to the States of Utah, Idaho, and Wyoming to negotiate and enter into a compact for the division of the waters of the Bear River and its tributaries.

Bear River.
Consent of Congress to interstate compact for division of waters.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the States of Utah, Idaho, and Wyoming to negotiate and enter into a compact providing for an equitable division and apportionment among the said States of the waters of the Bear River and all of its tributaries in the three States, upon condition that one suitable person from the Department of the Interior, who shall be appointed by the President of the United States, shall participate in said negotiations as the representative of the United States and shall make report to Congress of the proceedings and of any compact entered into: *Provided*, That any such compact shall not be binding or obligatory upon any of the parties thereto unless and until the same shall have been ratified by the legislature of each of said States and approved by the Congress of the United States.

Ratification and approval.

Approved July 24, 1946.

[CHAPTER 610]

July 24, 1946
[H. R. 5900]
[Public Law 538]

AN ACT

To authorize school districts in Alaska to issue bonds for school construction, and for other purposes.

Alaska.
Issuance of bonds for school construction, etc.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of May 31, 1938 (52 Stat. 589; 48 U. S. C., sec. 315 and the following), entitled "An Act to authorize public utility districts in the Territory of Alaska to incur bonded indebtedness, and for other purposes", is hereby amended to read: "That public utility and school districts in the Territory of Alaska, organized or which may be organized under the laws of the Territory, are hereby authorized to construct, improve, extend, better, repair, reconstruct, acquire, and operate any and all types of public utilities and improvements, school buildings and facilities connected therewith, respectively, under and in accordance with and to the full extent provided by the laws of said Territory relating to public utility and school districts in said Territory, and to incur bonded indebtedness and to issue negotiable bonds for any or all of said purposes: *Provided, however*, That no public utility or school district shall incur bonded indebtedness or issue its negotiable bonds under this Act to an amount which shall exceed 10 per centum of the aggregate value of the real and personal property within such district subject to taxation by such district."

Limitation.

SEC. 2. Section 2 of the above entitled Act is hereby amended by inserting after the words "public utility" the words "or school".

52 Stat. 589.
48 U. S. C. § 315a.

Approved July 24, 1946.

[CHAPTER 611]

July 24, 1946
[H. R. 5820]
[Public Law 539]

AN ACT

Relating to mail service on Lake Winnepesaukee, New Hampshire.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby repealed the proviso (39 U. S. C. 208) appearing in the first section of the Act of February 28, 1919 (40 Stat. 1189, 1194), entitled "An Act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1920, and for other purposes", providing as follows: "*Provided*, That hereafter the compensation for the carrier of mail on Lake Winnepesaukee from the post office at Laconia, New Hampshire, who furnishes his own equipment, shall be $1,800 per annum."

Repeal.

Approved July 24, 1946.

[CHAPTER 612]

July 24, 1946
[H. R. 5831]
[Public Law 540]

AN ACT

To include the heads of executive departments and independent agencies within the purview of the Civil Service Retirement Act of May 29, 1930.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 (a) of the Civil Service Retirement Act of May 29, 1930, as amended, is amended by striking out the words "and heads of executive departments".

56 Stat. 147.
5 U. S. C., Supp. V, § 693.
Post, p. 880

SEC. 2. This Act shall be effective, with respect to any head of a department, at the beginning of his first pay period commencing in the second month following the month in which this Act is enacted. As used in this section the term "department" means any department, independent establishment, or agency (including corporations) in the executive branch of the Government.

Effective date.

"Department."

Approved July 24, 1946.

[CHAPTER 613]

AN ACT

July 24, 1946
[H. R. 6055]
[Public Law 841]

Authorizing the Indiana State Toll Bridge Commission to construct, maintain, and operate a toll bridge or a free bridge across the Ohio River at or near Cannelton, Indiana.

Bridge, Ohio River.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to promote interstate commerce, improve the postal service, and provide for military and other purposes, the Indiana State Toll Bridge Commission be, and is hereby, authorized to construct, maintain, and operate a bridge and approaches thereto across the Ohio River, at a point suitable to the interests of navigation, at or near Cannelton, Indiana, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters", approved March 23, 1906, and subject to the conditions and limitations contained in this Act.

34 Stat. 84; 33 U. S. C. §§ 491-498.

Acquisition of real estate, etc.

SEC. 2. There is hereby conferred upon the Indiana State Toll Bridge Commission all such rights and powers to enter upon lands and to acquire, condemn, occupy, possess, and use real estate and other property needed for the location, construction, maintenance, and operation of such bridge and its approaches, as are possessed by railroad corporations for railroad purposes or by bridge corporations for bridge purposes in the State in which such real estate or other property is situated, upon making just compensation therefor, to be ascertained and paid according to the laws of such State, and the proceedings therefor shall be the same as in the condemnation or expropriation of property for public purposes in such State.

Tolls.

SEC. 3. The Indiana State Toll Bridge Commission is hereby authorized either to operate said bridge free of tolls or to fix and charge tolls for transit over such bridge, and the rates of toll so fixed shall be the legal rates until changed by the Secretary of War under the authority contained in the Act of March 23, 1906.

Supra.

Sinking fund.

SEC. 4. In fixing the rates of toll to be charged for the use of such bridge the same shall be so adjusted as to provide a fund sufficient to pay for the reasonable cost of maintaining, repairing, and operating the bridge and its approaches under economical management, and to provide a sinking fund sufficient to amortize the cost of such bridge and its approaches, including interest at a rate of not to exceed 5 per centum per annum and reasonable financing cost, as soon as possible, under reasonable charges, but within a period of not to exceed thirty years from the completion thereof. After a sinking fund sufficient for such amortization shall have been so provided, such bridge shall thereafter be maintained and operated free of tolls. An accurate record of the cost of the bridge and its approaches, the expenditures for maintaining, repairing, and operating the same, and the daily tolls collected shall be kept and shall be available for the information of all persons interested.

Records.

SEC. 5. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved July 24, 1946.

[CHAPTER 614]

AN ACT

July 24, 1946
[H. R. 6222]
[Public Law 842]

To extend the times for commencing and completing the construction of a bridge across the Calcasieu River at or near Lake Charles, Louisiana.

Bridge, Calcasieu River.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the times for commencing and completing the construction of a bridge across the Calcasieu River, at or near Lake Charles, authorized to be built by the State of Louisiana, by an Act of Congress approved June 22, 1943, and heretofore extended by the Act approved June 1, 1944, are hereby extended two and four years, respectively, from June 22, 1946.

57 Stat. 160; 58 Stat. 262.

SEC. 2. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved July 24, 1946.

[CHAPTER 615]

AN ACT

July 24, 1946
[H. R. 6618]
[Public Law 843]

To amend the Act entitled "An Act authorizing the Nebraska-Iowa Bridge Corporation, a Delaware corporation, its successors and assigns, to construct, maintain, and operate a bridge across the Missouri River between Washington County, Nebraska, and Harrison County, Iowa", approved March 6, 1928.

Bridge, Missouri River.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of Section 4 of the Act entitled "An Act authorizing the Nebraska-Iowa Bridge Corporation, a Delaware corporation, its successors and assigns, to construct, maintain, and operate a bridge across the Missouri River between Washington County, Nebraska, and Harrison County, Iowa", approved March 6, 1928, is amended by striking out the word "twenty" and inserting in lieu thereof the word "thirty".

45 Stat. 196.

SEC. 2. The second sentence of section 5 of such Act is amended to read as follows: "After a sinking fund sufficient to pay the cost of acquiring the bridge and its approaches shall have been so provided, such bridge shall thereafter be maintained and operated free of tolls."

45 Stat. 198.

Tolls.

SEC. 3. Said Act is further amended by adding thereto four new sections to be numbered 9, 10, 11, and 12, respectively, as follows:

Approval of agreement.

"SEC. 9. Approval is hereby granted, insofar as such approval by the Congress is required, of the agreement entered into on the 9th day of May 1946, by and between the Nebraska-Iowa Bridge Corporation and the State of Iowa, acting by and through its State highway commission, and the State of Nebraska, acting by and through its department of roads and irrigation, which agreement provides for the liquidation of all indebtedness outstanding against said Nebraska-Iowa Bridge Corporation on account of said bridge on the date that said agreement was entered into, for the acquisition by said States and liquidation in like manner of said corporation's equity in said bridge over and above such outstanding indebtedness (the total amount of such outstanding indebtedness and the amount of value of the equity which said corporation shall have in said bridge after liquidation of said indebtedness having been heretofore determined and agreed upon and set forth in said agreement), and for the said Nebraska-Iowa Bridge Corporation on and after the date thereof to continue in control of and to maintain and operate said bridge as trustee for all of the parties to said agreement for the purpose of carrying out the terms thereof.

Transfer of title, etc., to States.

"SEC. 10. When the revenues derived from the operation of the bridge, after meeting reasonable annual maintenance, repair, and operation costs, shall have provided funds sufficient to pay all outstanding indebtedness and pay the equity of said Nebraska-Iowa Bridge Corporation in said bridge, pursuant to the terms of the hereinabovementioned agreement, the Nebraska-Iowa Bridge Corporation shall by deed or other suitable instrument of conveyance transfer to the State of Iowa all right, title, and interest held by said corporation in and to that portion of said bridge and its approaches, rights, rights-of-way,

and appurtenances located in the State of Iowa and shall likewise transfer to the State of Nebraska all of the right, title, and interest held by said corporation in and to that portion of said bridge and its approaches, rights, rights-of-way, and appurtenances located in the State of Nebraska. Upon acceptance by each of said States of the portion of said bridge and its approaches located therein the trusteeship of said Nebraska-Iowa Bridge Corporation under the terms of the afore-mentioned agreement shall cease and the corporation shall thereupon cease the collection of tolls and release the respective portions of said bridge and approaches thereto, rights, rights-of-way, and appurtenances to the States of Iowa and Nebraska pursuant to the terms of said agreement and as provided in this Act. Said States shall thereafter maintain and operate said bridge and approaches free of tolls.

Filing of financial statement by corporation.

"SEC. 11. The corporation shall at the close of each year during its trusteeship file with the highway departments of the States of Nebraska and Iowa a sworn financial statement of its operation of the said bridge during such year. Such statement shall show funds on hand and indebtedness at the beginning and at the end of the year, receipts, disbursements, indebtedness retired during the year, and any other information required by either of said departments to show the true and complete accounting of revenues, expenditures, and financial status and operation of such bridge and approaches thereto.

Submission of annual budget.

"SEC. 12. The Nebraska-Iowa Bridge Corporation shall prepare and submit an annual budget of estimated operating and other expenditures for or on behalf of said bridge and approaches at the beginning of each year, and such budget shall be subject to approval by the highway departments of the States of Nebraska and Iowa before becoming effective. Expenditures during any year shall not exceed the approved budget unless an increase in the annual budget be likewise approved by said departments.

Restriction on expenditures.

Use of bridge by U. S. employees.

"SEC. 13. No toll or other charge shall be levied against any official or employee of the United States, civil or military, or any vehicle or conveyance of the United States for the use of such bridge in the performance of official duties."

Approved July 24, 1946.

[CHAPTER 616]

July 24, 1946
[H. J. Res. 330]
[Public Law 644]

JOINT RESOLUTION

Relating to cotton marketing quotas under the Agricultural Adjustment Act of 1938, as amended.

Cotton marketing quotas.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of sections 341–350, inclusive, of the Agricultural Adjustment Act of 1938, as amended (U. S. C., 1940 edition, title 7, secs. 1341 to 1350, inclusive), and in view of the critical shortage of fats and oils and protein feeds, cotton marketing quotas shall not be proclaimed with respect to the marketing year beginning August 1, 1947, and no National, State, county, or farm acreage allotments for cotton for the 1947 crop shall be established.

52 Stat. 55.
7 U. S. C., Supp. V, § 1344.

Approved July 24, 1946.

[CHAPTER 617]

JOINT RESOLUTION

July 24, 1946
[H. J. Res. 359]
[Public Law 645]

Relating to peanut marketing quotas under the Agricultural Adjustment Act of 1938, as amended.

Peanut marketing quotas.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of sections 357–359, inclusive, of the Agricultural Adjustment Act of 1938, as amended (U. S. C., 1940 edition, Supp. IV, title 7, secs. 1357 to 1359, inclusive), and in view of the critical shortage of high protein foods and feeds, and fats and oils, peanut marketing quotas shall not be proclaimed with respect to the crop of peanuts produced in the calendar year 1947, and no National, State, or farm acreage allotments for peanuts for the 1947 crop shall be established.

55 Stat. 88.
7 U. S. C., Supp. V, §§ 1357-1359.
Post, p. 708.

Approved July 24, 1946.

[CHAPTER 642]

AN ACT

July 25, 1946
[H. R. 6469]
[Public Law 646]

To extend the period within which the Secretary of Agriculture may carry out the purposes of the Soil Conservation and Domestic Allotment Act by making payments to agricultural producers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 (a), as amended, of the Soil Conservation and Domestic Allotment Act (U. S. C., 1940 edition, Supp. IV, title 16, sec. 590h (a)) is amended (a) by striking out "January 1, 1947" wherever appearing therein and inserting in lieu thereof "January 1, 1949", and (b) striking out "December 31, 1946" and inserting in lieu thereof "December 31, 1948".

55 Stat. 860.
16 U. S. C., Supp. V, § 590h (a).

Approved July 25, 1946.

[CHAPTER 643]

AN ACT

July 25, 1946
[H. R. 6627]
[Public Law 647]

For the acquisition of buildings and grounds in foreign countries for the use of the Government of the United States of America.

Foreign Service Buildings Act, 1926.
Additional appropriation authorized.

Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembled, That for the purpose of further carrying into effect the provisions of the Foreign Service Buildings Act of May 7, 1926, as amended (22 U. S. C. 291–297), there is authorized to be appropriated in addition to the amount authorized by such Act, and the Act of May 25, 1938, an amount not to exceed $125,000,000, of which $110,000,000 shall be available exclusively for payments representing the value, in whole or in part, of property or credits of whatever nature acquired through lend-lease settlements, the disposal of surplus property abroad, or otherwise, and held abroad by the Government or owing the Government by any foreign government or by any person or organization residing or situated abroad, which property or credits may be used by the Department of State for sites, buildings, equipment, construction, and leaseholds; such payments to be made to the agency of the United States administering the property or credits and be treated by such agency as though made by the foreign government, person, or organization concerned. Sums appropriated pursuant to this Act shall be available for the purposes and subject to the conditions and limitations of the above Acts, except that there shall be no limitation on the amount to be appropriated in any one year and that expenditures for furnishings shall not be subject to the provisions of section 3709 of the Revised Statutes.

44 Stat. 403, 52 Stat. 441.
22 U. S. C. § 292 et seq.

41 U. S. C. § 5.
Post, p. 808.

Approved July 25, 1946.

Exhibit 2

Subject: Review of Report on Boise River, Idaho (Basic: 2 Jan. 1946)

800.922(Boise River, Id.)
Port Dist. PADGB 1st Ind.

Office, Division Engineer, Pac. Divn., San Francisco, Calif., 4 Feb. 1946.

To: The Chief of Engineers, U. S. Army, WASHINGTON, D. C.

1. Basic control of floods in the Boise River valley is accomplished by locally owned levees and through incidental benefits obtained during the storing of irrigation water in Arrowrock Reservoir. Federal flood control improvements have been authorized to supplement that control. These improvements consist of Anderson Ranch Reservoir, now under construction, where 212,500 acre-feet, or 42.5% of the gross storage capacity, has been allotted to flood control; and changes to increase the discharge capacity of the outlet works at Arrowrock Dam which will provide increased control of floods incidental to storing water there for irrigation purposes. Collectively, the existing and authorized improvements for the control of floods are inadequate, because they furnish protection against only the smaller and more frequent floods. With those improvements only and with economic developments as existing in 1944, annual damages are estimated to average approximately $600,000.

2. Additional protection against floods is economically feasible only by scientific and system operation of Arrowrock Reservoir, Anderson Ranch Reservoir, and the proposed Lucky Peak Reservoir in the combined interests of flood control, irrigation and power. Such operation would be accomplished through the efficient forecasting of runoff from data obtained from an adequate network of meteorological and hydrological stations. Interest in the operation of those reservoirs as a system is threefold, since local water users, the Bureau of Reclamation, and the Corps of Engineers are vitally concerned in them.

3. The District Engineer's recommended plan of improvement would provide a large measure of additional protection from floods, and more dependable water supply for irrigation and power.

4. The average annual flood control benefits creditable to the recommended plan have been conservatively estimated at $444,810, and the irrigation, power, and recreation benefits at $96,900, $89,200 and

and $2,000, respectively. The annual tangible benefits total $632,910, which exceeds the estimated annual cost of the plan by about 25 per cent. Without the installation and operation of power facilities at Swanrock Dam, which is to await the demand for power, and without the saving in the cost of pumping water from Lucky Peak Reservoir for use in the proposed Mountain Home irrigation project, which conceivably might not be realized, the average annual tangible benefits would be $453,310, or about equal to the estimated annual cost, $460,600. The ratio of benefits to costs is practically 1 to 1 without consideration of the benefits to be derived from future power, to any intangible benefits, or to any savings in future pumping costs for irrigation. The recommended plan, therefore, is fully justified.

5. I concur in the conclusions and recommendations of the District Engineer.

S. E. NORTNER
Colonel, Corps of Engineers
Acting Division Engineer.

PADGE-295-46

Exhibit 3

WAR DEPARTMENT
THE BOARD OF ENGINEERS FOR RIVERS AND HARBORS
WASHINGTON

April 30, 1946.

824.02(Boise River, Idaho)

Subject: Boise River, Idaho.

To: The Chief of Engineers, U. S. Army.

1. This report is in response to the following resolutions adopted October 12, 1943, and November 10, 1943, respectively:

"Resolved by the Committee on Commerce of the United States Senate, That the Board of Engineers for Rivers and Harbors, created under Section 3 of the River and Harbor Act, approved June 13, 1902, be, and is hereby, requested to review the report on the Boise River, Idaho, contained in House Document Numbered 957, Seventy-six Congress, with a view to determining whether or not additional improvements in the interest of flood control are advisable at the present time."

"RESOLVED, BY THE COMMITTEE ON FLOOD CONTROL, HOUSE OF REPRESENTATIVES, That the Board of Engineers for Rivers and Harbors created under Section 3 of the River and Harbor Act approved June 13, 1902, be, and is hereby requested to review the report on the Boise River and tributaries in Idaho, published as House Document No. 957, Seventy-six Congress, Third Session, with a view to determining whether improvements for flood control on the Boise River and tributaries are advisable at this time."

2. Boise River, which drains 4,134 square miles in southwestern Idaho, is formed by the junction of its Middle and North Forks, flows west for 95 miles and empties into Snake River near Parma, Idaho. Other large tributaries are its South Fork and Mores Creek which join the river about 80 and 70 miles above the mouth, respectively. The upper river and these tributaries flow in deep canyons through mountains and their foothills. About 60 miles above its mouth, Boise River leaves the canyon section and meanders to Snake River through the fertile alluvial plain of Boise Valley. This valley contains approximately 120 square miles divided into two parts by a short narrow section in the vicinity of Caldwell about 25 miles above the river mouth. Bordering the valley and 50 to 100 feet above its floor are benchlands which extend laterally for many miles. The average annual precipitation ranges from less than 8 inches at the river mouth to over 50 inches in the mountains drained by the headwaters where at least 75 percent is snowfall. The population of the watershed,

about 100,000, is concentrated in the western part of the basin. Boise, Idaho, the state capital and the largest city in the watershed, has a population of 26,130 and is located on the river a short distance below the head of Boise Valley. Principal natural resources of the area are timber, grazing and irrigable farm lands and mineral deposits.

3. At present about 342,000 acres of the basin are irrigated. Included is a considerable area northwest of Caldwell supplied with water by canal from Payette River which drains the adjoining watershed to the north. In addition the irrigated lands are served by 1,926 miles of other main and lateral canals. Water for irrigation is conserved by six completed reservoirs in the basin. However, four of these have a combined storage of only 42,500 acre-feet. Deer Flat Reservoir, located off the river south of Caldwell, has 177,000 acre-feet of storage and is supplied with water principally through Main South Side Canal by diversion from Boise River at the Diversion Dam 62 miles above the river mouth. Arrowrock Reservoir constructed by the Bureau of Reclamation on Boise River about 22 miles above Boise has a capacity of 286,500 acre-feet. The Boise Project Board of Control owns the Main South Side Canal and several others and contracts for the waters stored in Arrowrock Reservoir. Although all the storage is used for irrigation, some incidental flood control is obtained during the filling period. Penstocks for possible use in the development of hydroelectric power were included in Arrowrock Dam when it was constructed, but a power plant has not been provided for the reported reasons that the power plant discharge would not fit the irrigation demand for water and a reservoir below to suitably reregulate the power flows is not available. With these improvements the irrigated lands have experienced a shortage of water during about 60 percent of the seasons. Hydroelectric power is developed by the Idaho Power Company at Barber Dam about 4 miles above Boise.

4. To supply additional water for irrigation, provide storage for flood control and develop hydroelectric power, the Bureau of Reclamation has under construction Anderson Ranch Reservoir on the South Fork of Boise River about 63 miles above Boise. This reservoir will have a capacity of 500,000 acre-feet and provision will be made for the generation of 30,000 kilowatts of hydroelectric power. The storage has been allocated 212,500 acre-feet for flood control, an equal amount for irrigation, 45,000 acre-feet for power and 30,000 acre-feet for silt. In operation of the flood control storage on the basis of flood forecasts from snow surveys largely financed by local interests, increased storage for irrigation will be realized. The project contemplates coordinated operation of the Arrowrock and Anderson Ranch Reservoirs. The district engineer finds that use of the storage to maximum advantage, including flood control, would require drawdown of the reservoirs early in the year and refilling on the basis of runoff forecasts. Irrigationists oppose this method of operation as they fear that it might jeopardize the storage of water for

irrigation. Hence, no definite agreement has been made for the use of Arrowrock storage for flood control. The project provides for increasing the outlet capacity of Arrowrock Dam in the interest of more efficient joint operation.

5. The basin contains good unirrigated land in the Willow Creek area northeast of Caldwell. Also south of Boise, partially within the Boise River basin and partially outside the basin draining directly to Snake River, is a large tract of irrigable land which the Bureau of Reclamation refers to as the Mountain Home Area. The Bureau has developed a plan for the Mountain Home project to irrigate these lands which provides among other works the construction of a reservoir in the Payette River basin; an aqueduct to convey water from this reservoir to the Boise River Diversion Dam; pumping plants and a canal system to deliver water from the Diversion Dam to the Mountain Home Area; and a diversion dam on the South Fork of Boise River about 5 miles below Anderson Ranch Reservoir with a tunnel leading therefrom to the Mountain Home Area. Under this tentative plan, the Bureau contemplates that water imported from the Payette Basin will be exchanged for the Boise River water from Anderson Ranch Reservoir which will be used in the Mountain Home Area. The district engineer indicates that some of the imported water is expected to be used for gravity irrigation of land in the Willow Creek area and that some will have to be pumped through a lift of 285 feet to serve the Mountain Home Area. His studies indicate that under this plan, occasional shortage of irrigation water will occur amounting to an average of 11,500 acre-feet annually.

6. Commencing at an early date local interests have constructed various levees and bank protective works in the basin. While the levees have materially decreased the area subject to inundation by minor floods they do not afford protection from larger floods. During the period 1937-1939, the Work Projects Administration spent about $231,600 plus a local contribution of $20,700 in constructing embankments along Boise River to prevent overflow through side channels and inundation of certain low areas. Subsequent to the flood of 1943 about $450,000 of Federal emergency funds have been spent in the repair of the existing minor flood control works.

7. Boise River is subject to frequent destructive floods which occur in spring and early summer as a result of rapid melting of snow in the headwater area and are characterized by a duration of two or three months above bankfull stage. Since 1865, inclusive, 27 major floods and many smaller floods have been experienced in Boise Valley. Natural peak discharges of the major floods at the Diversion Dam, as estimated, or obtained from records since 1895, range from 16,550 cubic feet per second to 50,000 cubic feet per second for the flood of May 1872. The largest recent flood was that of April 1943 which had an actual peak discharge at

the Diversion Dam, as reduced by the effects of Arrowrock Reservoir and irrigation canal diversions, of 20,000 cubic feet per second and an estimated natural peak discharge of 25,040 cubic feet per second. The safe channel capacity is 6,500 cubic feet per second. Lower flows result in some damage from stream bed movement and siltation of irrigation canals. With Arrowrock and Anderson Ranch Reservoirs in operation and including irrigation diversions, studies of the district engineer indicate that the safe channel capacity discharge or greater can be expected with an average frequency of once in two years and a flow of 50,000 cubic feet per second once in 100 years. The flood of 1943 inundated about 29,000 acres mostly agricultural land but some waste and including a considerable amount of urban and suburban property. A flood with peak discharge of 55,000 cubic feet per second would inundate about 58,400 acres including 1,780 acres of urban and suburban property. Although urban areas are inundated and there is considerable damage to highways, railroads and other utilities, the principal flood damage is agricultural. This consists of loss of crops, damage to farm lands and property in inundated areas and agricultural losses in irrigated areas outside the flood plain due to flood effects on irrigation works which render them incapable of use for the delivery of water. Taking into account the protection afforded by previously constructed levees, the diversion of water through the irrigation canals and the reduction of flood flows by Arrowrock and Anderson Ranch Reservoirs after construction of the latter is completed, the district engineer estimates the average annual direct and indirect flood damages in the basin at $593,660 assuming economic developments in the area as they existed in 1944.

8. Local interests desire construction of additional reservoirs to regulate flows in the interest of flood control and irrigation; additional channel improvement along the full length of the river in the alluvial plain section to accommodate larger discharges without damage to adjacent property; development of power for pumping irrigation water; and the control of silt by reservoirs and watershed improvements.

9. The district engineer finds that Arrowrock and Anderson Ranch Reservoirs cannot be augmented economically by additional channel and levee improvements to correct the flood damage problem. He presents a plan in the interest of flood control, irrigation and hydroelectric power development which provides for construction of Lucky Peak Reservoir on Boise River with dam site about 10 miles above Boise. The proposed dam is an earth fill structure 251 feet high above low water and would have above it a drainage area of 2,650 square miles which includes 430 square miles below Arrowrock Reservoir. Lucky Peak Reservoir would have 20[illegible] acre-feet of dead storage and 280,000 acre-feet of active storage and the improvement would include an access road to the reservoir and construction of an adjacent park for recreation. The plan also provides for construction of a hydroelectric power plant with 13,000 kilowatt capacity at

Arrowrock Dam and minor alterations in the drainage system at that dam; installation and operation of a network of climatological stations for forecasting seasonal runoff; and for operation as a system, in accordance with runoff forecasts, of the storage space in Anderson Ranch, Arrowrock and Lucky Peak Reservoirs in the combined interest of flood control, irrigation and power.

10. The district engineer finds that with this added reservoir and use of an adequate factor of safety in forecasting runoff, additional storage space in Anderson Ranch and Arrowrock Reservoirs can be used for flood control when needed without endangering the irrigation water supply and that additional water for irrigation would be made available thereby. He proposes to furnish this supplemental water to the irrigationists who use Arrowrock Reservoir water as a recompense for the proposed flood control use of that reservoir. Maintenance of the proposed dead storage in Lucky Peak Reservoir would reduce the pumping head for supplying certain irrigation water to the Mountain Home Area by about 80 feet. This reservoir by serving as a flow reregulator would remove the past objection to development of hydroelectric power at Arrowrock Dam. The district engineer estimates the average salable energy output of the proposed Arrowrock power plant at 38,150,000 kilowatt-hours annually. With the three reservoirs operated according to his plan and repetition of the flood cycle for the period 1865 to 1943, inclusive, he finds that in only 8 of the 79 years would the modified flood discharge at the Diversion Dam have exceeded 6,500 cubic feet per second, that the peak discharge of the maximum known flood, 50,000 cubic feet per second, would have been reduced to 28,000 cubic feet per second and that a design flood with peak flow of 55,000 cubic feet per second could be reduced to a peak of 40,000 cubic feet per second.

11. The first cost of the plan is estimated by the district engineer at $10,634,000 for Lucky Peak Reservoir including $50,000 for recreational facilities; $885,000 for the drainage changes, power plant and auxiliaries at Arrowrock Dam; and $25,000 for the hydrometeorological network; a total of $11,544,000. He estimates the annual cost of operation and maintenance for Lucky Peak Reservoir at $22,000, for the meteorological network at $3,000 and for the power plant at $10,000. The estimated annual cost for the complete plan is $507,630 of which $47,030 is for the power features and $460,600 for the remainder. Average annual tangible benefits as evaluated by the district engineer are as follows:

Reduction of flood losses	$426,870
Increased land use	17,940
Supplemental water for irrigation	11,500
Reduction of pumping lift for contemplated Mountain Home project	85,400
Recreation	2,000
Power value	85,200
Total	$632,910

This indicates a ratio of annual costs to benefits of 1.0 to 1.25 neglecting intangible benefits such as fish and wildlife values and prevention of probable loss of life in major floods.

12. The district engineer recommends that Lucky Peak Reservoir with gross capacity of 306,000 acre-feet to be used primarily for flood control be authorized for construction and operation by the War Department; that the described power plant at Arrowrock Dam be authorized for construction and operation by the Bureau of Reclamation, this facility to wait until justified by the demand for power; that the War Department be authorized to install and operate the flood forecasting network of climatological and hydrological stations; and that initiation of the proposed construction be conditioned upon obtaining satisfactory assurances from interested water users that, in consideration of the irrigation benefits to be derived from the additional storage in Lucky Peak Reservoir, they will agree to use of Anderson Ranch and Arrowrock Reservoirs for flood control as proposed in the present report of the district engineer.

13. The division engineer notes that without the power facilities, which as proposed by the district engineer would not be constructed until justified by the demand for power, and without the benefits for saving in pumping cost which are concerned with the contemplated but uncertain Mountain Home irrigation plan, the estimated annual costs would be $460,600 and the estimated annual benefits $458,310, an economic ratio of about 1 to 1. In his opinion the proposed plan is economically justified and he concurs in the recommendation of the district engineer.

14. Local interests were advised of the nature of the report of the division engineer and afforded an opportunity to present additional information to the Board. No communications have been received.

Views and Recommendations of the Board of Engineers for Rivers and Harbors.

15. The Board concurs in the findings of the reporting officers that further improvement of Boise River, Idaho, by construction of Lucky Peak Reservoir is economically advisable.

16. The plan of the district engineer contemplates joint use of the storage in Lucky Peak, Arrowrock and Anderson Ranch Reservoirs and his recommendation makes initiation of construction of Lucky Peak Reservoir contingent upon securing certain prior agreements from local interests. In the opinion of the Board, the plan should be flexible in regard to combined operation of the reservoirs in order that the use of storage may at all times conform to changing conditions and best serve the varying needs of the locality. It also believes that construction should not be delayed for the time required to secure the contemplated agreements. Accordingly,

the Board proposes that accomplishment of the plan be initiated by construction of Lucky Peak Reservoir, for operation as a flood control facility, by the War Department under the direction of the Secretary of War and supervision of the Chief of Engineers, with the understanding that complete or partial joint use of the storage in the three reservoirs may be undertaken at such time as may be mutually agreed upon by the Secretary of War, the Secretary of the Interior and local interests concerned with flood control and the use of irrigation water. By initial use of the storage in Lucky Peak Reservoir, and the 212,500 acre-feet of flood control storage in Anderson Ranch Reservoir, for flood control, all floods of the magnitude of those which have occurred in the 46-year period, 1898 to 1943, inclusive, except that of 1943, could be reduced to the bankfull discharge of 6,500 cubic feet per second or less passing Diversion Dam and a flood such as that of 1943 could be reduced from a natural peak discharge of 25,040 cubic feet per second to a controlled peak of about 9,000 cubic feet per second. Thus during the interim between completion of Lucky Peak Reservoir and accomplishment of arrangements for combined use of all three reservoirs a substantial degree of flood control would be obtained. The interim period, would be terminated upon the consummation by the Bureau of Reclamation of its plans for irrigation of the Mountain Home Area and the conclusion of satisfactory agreements for combined operation of the three reservoirs to secure the much greater multiple-purpose benefits.

17. Lucky Peak Reservoir as a purely flood control facility including the flood forecasting network of climatological and hydrological stations is estimated to cost $10,684,000 for construction and $25,000 annually for maintenance and operation. The Board is of the opinion that the reservoir should be authorized for construction at this time and for operation initially for flood control with the understanding that changes in the method of operation will be made in the future when the Secretary of War, upon the advice of the Chief of Engineers, finds that such changes are in the best interest of flood control, irrigation and power development, and that they are agreeable to the Secretary of the Interior and to local interests concerned with flood control and the use of irrigation water. The annual cost for the project is estimated as $460,600. Benefits during the interim period when the reservoir would be operated primarily for flood control, are estimated as $392,930 annually, of which $379,430 is for flood control, $11,500 for supplemental irrigation, and $2,000 for recreation. When operated in combination with the other reservoirs for multiple purposes the benefits would be increased to $543,700, of which $444,800 would be for flood control, $93,900 for irrigation, and $2,000 for recreation. With intangible benefits taken into account, the ratio of cost to benefits would be approximately 1 to 0.9 during the early stages of operation and 1 to 1.2 during the later period.

18. Accordingly, the Board recommends that Boise River, Idaho, be further improved by construction, operation and maintenance, by the War

824.02(Boise River, Idaho)
Subject: Boise River, Idaho.

Department under the direction of the Secretary of War and supervision of the Chief of Engineers, of Lucky Peak Reservoir with gross capacity of 306,000 acre-feet primarily for flood control, in accordance with the plans of the district engineer and the comments herein and with such changes as in the discretion of the Secretary of War and the Chief of Engineers may be advisable, at an estimated cost of $10,684,000 for construction and $25,000 annually for operation and maintenance.

For the Board:

R. C. Crawford,
Brigadier General,
Senior Member.

Incls:
Review of survey report, 1/2/46,
Record of hearing,
8 tracings and
Letter of transmittal, 1/29/46.

VERIFICATION

This Request for Rehearing is executed in the District of Columbia by Michael A. Swiger, Esquire, Van Ness, Feldman, Sutcliffe & Curtis, A Professional Corporation, 1050 Thomas Jefferson Street, N.W., Seventh Floor, Washington, D.C. 20007, who, being duly sworn, deposes and says the contents of this Request are true to the best of his knowledge and belief and that he is duly authorized as counsel for Pioneer and Settlers Irrigation Districts to file this Request. The undersigned has signed this Request this 26th day of April, 1989.

Respectfully submitted,

Michael A. Swiger

Michael A. Swiger
Van Ness, Feldman, Sutcliffe
& Curtis
A Professional Corporation
1050 Thomas Jefferson Street, N.W.
Seventh Floor
Washington, D.C. 20007
(202) 298-1800

Subscribed and sworn to before me this 26th day of April, 1989.

Notary

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 26th day of April, 1989.

Michael A. Swiger

Michael A. Swiger
Van Ness, Feldman Sutcliffe
& Curtis
A Professional Corporation
1050 Thomas Jefferson Street, N.W.
Seventh Floor
Washington, D.C. 20007
(202) 298-1800

April 26, 1989

63-10240
F.L #3

APPLICATION FOR LICENSE FOR MAJOR PROJECT--EXISTING DAM

ARROWROCK DAM HYDROELECTRIC PROJECT

FERC PROJECT NO. 4656

The attached application is submitted for filing. The undersigned states that he is the Chairman of the Boise-Kuna Irrigation District, that he has read the application and knows its contents, that the contents are true as stated to his best knowledge and belief, and that the signer possesses full power and authority to sign this filing.

/s/ Carl German

(name) Carl German

(title) Chairman

Boise-Kuna Irrigation District

APPLICATION FOR LICENSE FOR MAJOR PROJECT--EXISTING DAM

ARROWROCK DAM HYDROELECTRIC PROJECT

FERC PROJECT NO. 4656

The attached application is submitted for filing. The undersigned states that he is the Chairman of the New York Irrigation District, that he has read the application and knows its contents, that the contents are true as stated to his best knowledge and belief, and that the signer possesses full power and authority to sign this filing.

/s/ Burton Guiles

(name) Burton Guiles

(title) Chairman

New York Irrigation District

APPLICATION FOR LICENSE FOR MAJOR PROJECT--EXISTING DAM

ARROWROCK DAM HYDROELECTRIC PROJECT

FERC PROJECT NO. 4656

The attached application is submitted for filing. The undersigned states that he is the John J Gale , of the Nampa & Meridian Irrigation District Irrigation District, that he has read the application and knows its contents, that the contents are true as stated to his best knowledge and belief, and that the signer possesses full power and authority to sign this filing.

/s/ John J. Gale

(name) John J Gale

(title) President of the Board

Nampa & Meridian Irrigation District

APPLICATION FOR LICENSE FOR MAJOR PROJECT--EXISTING DAM

ARROWROCK DAM HYDROELECTRIC PROJECT

FERC PROJECT NO. 4656

The attached application is submitted for filing. The undersigned states that he is the Chairman of the Wilder Irrigation District, that he has read the application and knows its contents, that the contents are true as stated to his best knowledge and belief, and that the signer possesses full power and authority to sign this filing.

/s/ Vernon E. Case

(name) Vernon E. Case

(title) Chairman

Wilder Irrigation District

APPLICATION FOR LICENSE FOR MAJOR PROJECT--EXISTING DAM

ARROWROCK DAM HYDROELECTRIC PROJECT

FERC PROJECT NO. 4656

The attached application is submitted for filing. The undersigned states that he is the Voting Delegate of the Big Bend Irrigation District, that he has read the application and knows its contents, that the contents are true as stated to his best knowledge and belief, and that the signer possesses full power and authority to sign this filing.

/s/ Ben Witty

(name) Ben Witty

(title) Voting Delegate

Big Bend Irrigation District

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Initial Statement

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

APPLICATION FOR LICENSE FOR MAJOR PROJECT--EXISTING DAM

INITIAL STATEMENT

1. The Boise-Kuna Irrigation District, the New York Irrigation District, the Nampa and Meridian Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District (which make up the Boise Project Board of Control) hereby apply to the Federal Energy Regulatory Commission (FERC) for a license for the Arrowrock Dam Hydroelectric Project (FERC Project No. 4656), a proposed water power project described in the attached exhibits. FERC issued a preliminary permit for the proposed project to the five irrigation districts listed above in August 1981, effective for a 24-month period. On August 15, 1983, FERC granted the applicants' request for a 12-month extension of the preliminary permit.

2. The location of the proposed project is:

   State: Idaho
   Counties: Elmore, Boise, and Ada
   Nearby town: Boise
   Stream: Boise River

3. The exact names and business addresses of the applicants are:

   President
   Boise-Kuna Irrigation District
   311 South School Street
   Kuna, Idaho 83634

   Chairman
   New York Irrigation District
   214 Broadway Avenue
   Boise, Idaho 83702

   President
   Nampa and Meridian Irrigation District
   1503 First Street South
   Nampa, Idaho 83651

   Chairman
   Wilder Irrigation District
   P.O. Box 416
   Caldwell, Idaho 83605

   President
   Big Bend Irrigation District
   P.O. Box 3193
   Adrian, Oregon 97901

The exact name and business address of each person authorized to act as agent for the applicants:[1/]

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

Mr. Royse Van Curen
Project Manager
Boise Project Board of Control
214 Broadway
Boise, Idaho 83702

Mr. Raymond Givens
Attorney
Boise Project Board of Control
214 Broadway
Boise, Idaho 83702

4. The applicants are municipalities as defined by the Federal Power Act.

5. The statutory or regulatory requirements of the State of Idaho, in which the project would be located, that affect the project as proposed, with respect to the streambed and banks and to the appropriation, diversion, and use of water for power purposes, and with respect to the right of the applicants to engage in the business of developing, transmitting, and distributing power and in any other business necessary to accomplish the purposes of the license under the Federal Power Act, are listed below.

   (a) Water quality certification is administered by the Idaho Department of Health and Welfare in implementing section 401 of the Federal Water Pollution Control Act (also known as the Clean Water Act). Certification is required to insure that the proposed project conforms to the current Idaho Water Quality Standards and Wastewater Treatment Requirements.

   (b) Unless specifically exempted, alterations of continuously flowing streams and encroachments into lakes or reservoirs within the State of Idaho require stream alteration permits, lake encroachment permits, easements, or licenses from the Idaho Department of Water Resources and the Idaho Department of Lands, respectively. The State laws which apply to those activities

---

1/ *The Boise Project Board of Control is an entity formed in 1926 by contracts between the five irrigation districts making this application and the U.S. Department of the Interior. The Boise Project Board of Control may be delegated the authority to act as the agent of those irrigation districts and is wholly controlled by the districts.*

are the Idaho Stream Channel Protection Act (Title 42, Chapter 38, Idaho Code) and the Idaho Lake Protection Act (Section 58-142 et seq., Idaho Code).

(c) The laws of the State of Idaho relating to the appropriation of water and the required permits are found in Idaho Code, title 42. The Idaho Department of Water Resources administers that program.

(d) The State Water Plan is a statement of the water resource policy of the State of Idaho, including several aspects of hydropower development. The Idaho Water Resource Board is charged with formulating the State Water Plan; the current plan was adopted by the Board in January 1982.

(e) The Idaho Department of Water Resources administers the Idaho safety of dams program in accordance with title 42, chapter 17, Idaho Code.

(f) The applicants are irrigation districts which have the authority to develop a hydroelectric powerplant and to generate and sell hydroelectric power because of their powers as public agencies operating under title 43 of the Idaho Code or chapter 545 of the Oregon Revised Statutes.

Under the provisions of section 43-313, Idaho Code, the Boards of Directors of the Boise-Kuna Irrigation District, the New York Irrigation District, the Nampa and Meridian Irrigation District, and the Wilder Irrigation District have the following authority:

> 43-313. Electric power plants--Construction and operation.--The board of directors of any irrigation district, organized under the laws of the state of Idaho, shall have the power to construct and operate, or to contract for the construction and operation, of electric power plants, power transmission lines, and all other works in connection therewith necessary or proper for generating and transmitting electric power, and for pumping water for irrigation and domestic use; and to contract to sell surplus power generated at such power plants.

In addition, section 43-2301 et seq., Idaho Code, grant to irrigation districts the power to construct hydroelectric generating facilities and related structures in connection with the modification of an existing dam, to enter into

agreements with the United States and its agencies to carry out the construction and operation of such improvements, and to take related actions.

Under the provisions of section 545.102, Oregon Revised Statutes, the Board of Directors of the Big Bend Irrigation District has the following authority:

> 545.102. Furnishing water and electric power.--An irrigation district may provide for and furnish water for lands not included within the district and for lands within the district but not subject to assessment thereby, upon receiving proper compensation. The district may dispose of and furnish electric power in or out of the district upon receiving proper compensation; provided, that any district shall be deemed a public utility within the meaning of ORS 757.005, as to electric power so furnished outside the district....

In addition, chapter 543 of the Oregon Revised Statutes gives irrigation districts and other special districts the right to develop hydroelectric power in connection with their water systems.

6. The steps which the applicant has taken or plans to take to comply with the above State laws and regulations are listed below.

   (a) Water quality certification under section 401 of the Federal Water Pollution Control Act (the Clean Water Act) will be obtained from the Idaho Department of Health and Welfare prior to construction.

   (b) Under the current rules, regulations, and policies for implementing the Idaho Stream Channel Protection Act and the Idaho Lake Protection Act, the proposed Arrowrock hydroelectric project would evidently be exempt from the requirements of those laws. Prior to project construction, however, the applicants would apply for permits through the joint permit program of the State of Idaho and the Corps of Engineers under the two State laws noted above (as well as under Federal requirements including section 404 of the Clean Water Act and section 10 of the River and Harbor Act of 1899).

That joint application will insure that the proposed project meets the requirements of the Idaho Department of Water Resources, the Idaho Department of Lands, and the Corps of Engineers for work in the waters and wetlands of Idaho.

(c) The Bureau of Reclamation, which owns the existing Arrowrock Dam and holds the storage rights for Arrowrock Reservoir, has applied to the Idaho Department of Water Resources for a permit for the nonconsumptive use of Boise River water for hydroelectric generation at the Arrowrock powersite. Such use would not adversely affect other proposed or existing uses of the available water resource. Reclamation has agreed to transfer the hydropower permit to the applicants if the applicants decide to pursue a wholly non-Federal power development at Arrowrock. This approach has been discussed with the Idaho Department of Water Resources and is agreeable to that agency.

(d) The Idaho Department of Water Resources has stated that the proposed Arrowrock hydroelectric development would not be in conflict with the Idaho State Water Plan.

(e) The Idaho Department of Water Resources and the Bureau of Reclamation both make periodic safety inspections of Arrowrock Dam. The requirements of the Idaho safety of dams program will therefore be met under existing programs.

(f) The applicants intend to fully comply with other laws and regulations which may be determined to be applicable to the proposed project.

7. The proposed powerplant would be developed at the existing Arrowrock Dam, a facility which is owned and operated by the Bureau of Reclamation.

Exhibit A

Project Description

EXHIBIT A

PROJECT DESCRIPTION

A 60-megawatt-capacity powerplant is proposed for development at Arrowrock Dam, an existing Bureau of Reclamation structure on the Boise River and a key feature of the Boise Project, a Federal Reclamation project. The powerplant will discharge into Lucky Peak Lake, an existing Corps of Engineers' reservoir located immediately downstream from Arrowrock Dam.

EXISTING PROJECT

Arrowrock Dam

The proposed Arrowrock Powerplant will be built just downstream from the Bureau of Reclamation's Arrowrock Dam. Two penstocks will be placed through the dam to serve the new powerplant. The concrete thick arch dam is located on the Boise River 22 river-miles upstream from Boise, Idaho. Construction of the dam was completed in 1915. The dam was raised 5 feet in 1937; as a result, the crest of the dam is 261 feet above streambed.

The side channel spillway is located at the right abutment and controlled by six drum gates. The elevation of the top of the gates is 3216 feet; the elevation of the spillway crest is 3210 feet. Spillway capacity is 40,000 cubic feet per second.

The outlet works include 2 tiers of 10 outlets each. Each outlet is controlled by a balanced valve. In addition, five conduits controlled by sluice gates are provided through the base of the dam. The combined capacity of the outlet works with Arrowrock Reservoir at water surface elevation 3210 is 9,890 cubic feet per second; only the upper tier of valves is operable at that water surface elevation.

Three of the outlets in the lower tier of 10 outlets were originally intended for later use as power conduits. It was found to be impractical to incorporate these conduits into the design of the new powerplant, however, because they are too small to serve the powerplant by themselves.

Arrowrock Reservoir

No new impoundments will be created as part of the proposed power project. Irrigation and flood control releases from the existing Arrowrock Reservoir will be used for power production at the new powerplant. The proposed power operation will be incidental to the operation of the reservoir for its other purposes.

The storage capacity of Arrowrock Reservoir totals 286,600 acre-feet (at normal water surface elevation 3216 feet). All storage space is usable; the reservoir contains no dead or inactive space. At full pool, the surface area of Arrowrock Reservoir is 3,100 acres.

Lucky Peak Lake

Releases from the new powerplant will discharge into a tailrace area and then into Lucky Peak Lake, a reservoir impounded by the Corps of Engineers' Lucky Peak Dam. The dam is an earthfill structure completed in 1954. When Lucky Peak Lake is full, it backs water about 90 feet high on the downstream face of Arrowrock Dam.

Lucky Peak Dam would not be affected or altered by the proposed Arrowrock Powerplant. When Lucky Peak Lake is at high levels, however, it would control the tailwater elevation of the proposed powerplant. Lucky Peak Lake could also reregulate releases from the proposed powerplant with only a minor amount of fluctuation during short-term load-following operations of the powerplant.

The total storage capacity of Lucky Peak Lake is 293,100 acre-feet (at normal full pool elevation 3055), as follows:

Lucky Peak Lake	Acre-feet
Active capacity (elevation 3055 feet)	
Irrigation space	111,950
Idaho Department of Fish and Game	50,000
Noncontracted space	102,350
Total active capacity	264,300[1/]
Dead and inactive capacity (elevation 2905 feet)	28,800
Total storage capacity	293,100

1/ Active capacity was formerly considered to be 278,200 acre-feet (at pool elevation 3060 feet). Under the current operation, however, the 13,900 acre-feet between elevations 3055 and 3060 feet is not filled except in unusual flood situations.

Lucky Peak Lake has a water surface area of 2740 acres at normal full pool elevation 3055.

Anderson Ranch Reservoir

In addition to the storage regulation provided by Arrowrock Reservoir, the proposed powerplant will receive incidental benefits from storage regulation provided by Anderson Ranch Reservoir, 48 miles upstream from Arrowrock Dam on the South Fork of the Boise River; the South Fork flows into Arrowrock Reservoir. Anderson Ranch Dam is a Bureau of Reclamation dam which was completed in 1950. Anderson Ranch Reservoir space totals 493,200 acre-feet as follows:

Anderson Ranch Reservoir	Acre-feet
Active storage capacity	423,000
Dead and inactive capacity	70,000
Total storage capacity	493,200

PROPOSED PROJECT

The proposed Arrowrock powerplant will have an installed generating capacity of 60 megawatts. The proposed powerplant and related features, proposed recreation developments, and other proposed measures are described in the following sections.

Arrowrock Powerplant

The proposed 60-megawatt powerplant will be constructed on a basalt bench near the base of Arrowrock Dam. The powerplant will be located on the left (south) side of the Boise River channel. The powerplant and appurtenant features would be constructed on a filled area 10 feet (elevation 3070 feet) above the high waterline of Lucky Peak Lake when all flood control space is filled (elevation 3060 feet).

The two 30-megawatt generating units will be housed in a powerhouse structure just downstream from Arrowrock Dam. The generating units will receive flows from two penstocks which will be placed through Arrowrock Dam; flows from the two units will discharge into a tailrace and on into Lucky Peak Lake. (The layout of the proposed Arrowrock Powerplant is shown in exhibit F.)

Alternative studies were made to analyze powerplant sizes ranging from 40 megawatts to 100 megawatts. The proposed 60-megawatt powerplant size was selected as the best size based on hydrology, economics, and other factors.

Future Pumped-storage Generating Potential

The Bureau of Reclamation recently evaluated the potential for a pumped-storage hydroelectric powerplant at Arrowrock Dam. The analysis, made as a part of Reclamation's Boise Project Power and Modification Study, concluded that the development of a pump-generation powerplant at that site (in addition to the proposed 60-megawatt conventional hydroplant) will probably be economically desirable at some time in the future and that it would cause a minimum of environmental impacts.

In a pumped-storage powerplant, electric power is generated during peak demand periods by using water previously pumped into an upper storage reservoir using the less valuable energy available during off-peak periods. The typical pumped-storage plant uses more energy than it produces because of energy losses in the plant during both the pumping phase and the generating phase.

A pump-generation plant at Arrowrock Dam would have a definite advantage over the typical pump-generation plant. A plant at Arrowrock Dam could use the existing Arrowrock Reservoir as its upper reservoir and Lucky Peak Lake as its lower reservoir. Because water must be released from Arrowrock Reservoir in excess of the hydraulic capacity of the proposed conventional powerplant during existing flood control operations, a pump-generation plant at that site could generate large amounts of power with little or no pumping requirement during several months of the year. This reduced pumping power requirement would represent a significant economic advantage for a pump-generation plant at the Arrowrock site as opposed to a plant using an offstream storage site.

Furthermore, a pump-generation powerplant would complement the conventional hydroplant at the Arrowrock site. The pump-generation plant could generate substantial amounts of power in the winter and spring periods when the conventional plant would be producing little or no power. As a result, a combined pump-generation and conventional powerplant installation would be able to generate power almost year-round.

The development of a pump-generation plant is not proposed at the Arrowrock site at the present time because the demand for peaking power is not now high enough to warrant development of a pump-generation plant. Changes in power supplies and demands may make a pump-generation plant justified in the not-too-distant future, however.

The generating units in the proposed 60-megawatt conventional powerplant would operate over different head ranges than the units in a potential pump-generating facility. That would prevent the economical conversion of the proposed conventional units to pump-generating units at a later date. In order to avoid precluding a future pump-generation development at the Arrowrock site, the final designs of the proposed conventional Arrowrock powerplant should therefore allow for the future construction of a pump-generation project to the extent feasible.

Cofferdam

A cofferdam will be required around the Arrowrock powerplant site to protect the construction area to a Lucky Peak Lake water surface elevation of 3050 feet, 5 feet below the normal water surface elevation. This would permit the filling of all the contracted storage space in Lucky Peak Lake, as well as nearly all the remaining storage space. The Boise River reservoirs would be operated to keep the Lucky Peak Lake water level from exceeding water surface elevation 3050 during the construction period if at all possible. In the unlikely event that Lucky Peak Lake would be filled above elevation 3050, the construction site would be flooded. The contractor would have advance warning of such an occurrence, however, and would be able to evacuate his equipment and take other protective measures before the reservoir overtops the cofferdam.

Penstocks

Two steel penstocks will be placed through Arrowrock Dam to serve the proposed Arrowrock powerplant. The penstocks will be 13 feet in diameter and have a negative slope of 14 degrees. There will be support anchors at the bends and at 20-foot intervals. Backfill will be placed around the penstocks between the downstream face of Arrowrock Dam and the powerhouse, a distance of about 180 feet.

Steel trashracks will be provided at the entrance of the penstocks.

Powerhouse

The twin 30-megawatt turbine and generator units will be housed in a powerhouse about 70 feet wide, 120 feet long, and 130 feet in height above the low point in the rock foundation. The powerhouse will be built on the rock bench on the left side of the river immediately downstream from Arrowrock Dam. Most of the bench is now submerged when Lucky Peak Lake is full, with a maximum water depth of about 25 feet. The powerhouse structure, the retaining walls around the switchyard and transformer areas, and the area to be filled behind the retaining walls would protect the new facilities to elevation 3070 feet, 10 feet above the maximum water surface elevation of Lucky Peak Lake.

Turbines and Generators

Twin vertical Francis turbines and synchronous generators will be installed. Based on estimates to date, the installed generating capacity of the two units will total 60 megawatts, with a rated head of 149 feet and a corresponding total flow of 5,470 cubic feet per second. These estimates are subject to modification during the preconstruction design phase of this project.

Based on current estimates, the two Francis turbines will have the following characteristics:

Rated discharge, each	2,735 cubic feet per second
Rated head	149 feet
Maximum head	186 feet
Maximum output, each	41,000 horsepower
Runner diameter	9.7 feet

The two generators will be three-phase synchronous machines, forced-air cooled, with static exciters.

Continuous rating, each	30 megawatts
Voltage, phase to phase	13.8 kilovolts
Power factor	.95
Frequency	60 hertz
Synchronous speed	200 revolutions per minute

Tailrace

A trough 90 feet wide and 50 feet long will be excavated in the rock bench to provide draft tube submergence. Releases from the powerplant will discharge into existing Lucky Peak Lake over a concrete-capped weir with a crest elevation of 3026 feet. The weir will maintain the tailwater elevation at approximately 3030 feet when Lucky Peak Lake is drawn down below that level. When Lucky Peak Lake is above 3030 feet, the level of the lake will control the tailwater elevation. The powerplant will be operable when Lucky Peak Lake is full.

Switchyard

The switchyard will be located adjacent to the powerhouse. The switchyard area will be rockfilled to an elevation of 3070 feet, and a retaining wall will be placed around the area.

Other Mechanical and Electrical Equipment

One or more electronic/hydraulic governors will control turbine speed and load according to the forebay water level. The governor will include a steel oil reservoir with an air-over-oil pressure tank accumulator, oil pumping equipment, an air compressor, and speed-sensing equipment with a speed signal generator.

Upstream and downstream bulkheads will be provided for isolating the units when necessary.

Power transformers will be provided to step-up the generator voltage from 13.8 kilovolts to 138 kilovolts primary and secondary. There will be four single-phase transformers in a three-phase bank with one spare. This arrangement is for the purpose of increased plant reliability. The transformers' high-voltage rating is based on an assumed voltage of 138 kilovolts.

High and low voltage switchgear will be provided as necessary to isolate and protect the generator units and electrical equipment.

Auxiliary equipment will include control switchboards, a station service transformer, a diesel-powered generator, and other auxiliary and control equipment. Heating and ventilation equipment, pumps, compressors, and other supporting items will be provided to properly maintain and operate the power project.

Road Improvements

A total of about 5 miles of road will be improved. The existing gravel road extending from the end of the paved road at the Spring Shores recreation area on Lucky Peak Lake to Arrowrock Dam will be upgraded using current State of Idaho standards for county secondary highways. Those standards call for a 26-foot-wide gravel-surfaced roadway, with a maximum curvature of 25 degrees and a maximum grade of 7 percent. Extensive work will not be required on the road except at

the Deer Creek curve just downstream from Arrowrock Dam, where the road must be realigned.

In addition, the road improvement will extend to a point about 1/4 mile upstream from Arrowrock Dam, where a turnaround will be provided. This improvement will facilitate construction activities. The hazards now associated with this narrow stretch of road, particularly that portion adjacent to the Arrowrock Dam spillway, will be reduced. Small parking areas will be provided near the dam to take care of existing fisherman parking, and an overlook will be provided along the road downstream from Arrowrock Dam.

It is anticipated that cuts and fills on this road improvement will approximately balance out. If additional material is needed, it will probably be obtained from nearby commercial sources rather than from potential borrow areas on Federal lands near the project site.

Since the existing steel trussbridge crossing the spillway channel has a capacity of only 10 tons, it will have to be replaced. Replacement will be with concrete prestressed girders and a deck located just upstream from the existing bridge. The new bridge will be skewed and built with curvature in order to tie in with the realigned road. The new bridge will be 22 feet wide and 130 feet long.

A bridge will also be constructed at the crest of the left abutment of Arrowrock Dam. It will connect the existing 15-foot-wide roadway across the dam with the existing access road leading to the powerplant site at the base of the dam. The bridge will be 16 feet wide and 80 feet long.

The existing access road from the crest of the dam to the powerplant site will be widened to 16 feet, and its gradient will be improved. The widening will be accomplished in part by constructing a retaining wall along 600 feet of the upper reach of the roadway. Total length of this improved access road will be about 3,700 feet.

Transmission Lines

The proposed transmission line would be a 138-kilovolt three-phase line about 15.2 miles long. It may be possible to use all or part of the route of the existing 11.8-mile-long 23-kilovolt Bureau of Reclamation line from Boise River Diversion Dam Powerplant to Arrowrock Dam. For this study, it was assumed that the new line would follow that route to the Boise River Diversion Dam, cross to the south side of the Boise River at that dam, and then continue for 3.4 miles to the existing Idaho Power Company Boise Bench Substation.

Detailed preconstruction studies may indicate a more economical route for that portion of the transmission line from near Lucky Peak Dam to the Boise Bench Substation. For example, it may be feasible to tie the new Arrowrock line in with the transmission facilities to be built at the applicants' Lucky Peak Powerplant, upon which construction began in 1984. The plans for the Lucky Peak transmission

line were not yet far enough advanced to incorporate that arrangement into this application. Other attractives may also prove to be available prior to construction.

The Arrowrock transmission line would generally be an H-pole type, with 14 feet between pole and an average splicing between structures of about 700 feet. Butt-treated wood poles would be used.

The line would have a minimum conductor clearance of 50 feet to pole ground wire or crossarm surface. Sag clearance would conform to the requirements of the National Electrical Safety Code.

The transmission line would be designed in accordance with current practice to prevent injury to raptors and other birds by electrocution or collision to the extent possible over its entire length.

Fishery Mitigation Measures

The installation of fish screens on the penstock intakes were considered, but the costs were found to be excessive in comparison to fish losses that might be prevented. As an alternative to structural measures, the Idaho Department of Fish and Game recommended an annual stocking program to replace fish lost in passing through the powerplant turbines. The stocking program has therefore been included in the plan.

Lands of the United States

All the lands within the "project boundary" identified for the proposed powerplant site are owned by the United States (see exhibit G for project boundary). The lands within the project boundary at the powerplant site total 3.2 acres, all of which are within section 13, T. 3 N., R. 4 E., Boise meridian. These are Reclamation withdrawn lands within the Boise National Forest.

In addition, the project boundary is located 40 feet each side of the 15-mile-long proposed transmission line from the Arrowrock Powerplant site downstream to the existing Boise Bench Substation of the Idaho Power Company. Most of this alignment follows the route of the existing Reclamation transmission line from Arrowrock Dam to Boise River Diversion Dam.

A total of 150.23 acres lie within the project boundary for the proposed project, including the 3.2 acres for the powerplant and adjacent features (table A-1 lists the lands within the project boundary by owner or administering Federal agency). It is anticipated that the right to use the state and private lands would be acquired through easement or lease.

Table A-1.--Lands Within Project Boundary

Township and Range (Boise Meridian)	Section	Area in Project Boundary	Owner[1/]
T. N., R. 3 E.	1	0.46	BLM
	2	3.86	BLM
	2	6.80	Private
	3	3.12	BLM (Under Reclamation withdrawal)
	3	7.35	Private
	4	4.41	BLM (Under Reclamation withdrawal)
	4	4.96	Private
T. 3 N., R. 2 E.	36	1.10	Private
T. 3 N., R. 3 E.	25	3.86	Private
	25	1.38	BLM
	31	9.46	Private
	32	10.74	Private
	33	6.43	Private
	36	11.39	State
T. 3 N., R. 4 E.	10	1.74	State
	10	2.57	Corps
	11	9.64	Corps
	12	6.34	FS
	13	3.12	FS
	13	1.84	FS (Under Reclamation withdrawal)
	13[2/]	3.2[2/]	FS (Under Reclamation withdrawal)
	15	0.92	Corps
	15	9.64	State
	16	7.71	Corps
	20	1.56	FS
	20	4.41	Private
	21	2.94	Corps
	21	7.07	FS
	29	1.74	Private
	30	10.10	Private
	30	0.37	BLM
Total acreage in project boundary		150.23	

1/ Federal administering agencies are: BLM (Bureau of Land Management), Corps (Corps of Engineers), and FS (Forest Service).

2/ This 3.2-acre tract is the land within the project boundary at the site of the proposed powerplant. The remaining lands are within the project boundary for the transmission line.

The United States lands within the project boundary total 60.51 acres as follows:

	Area in Project Boundary (acres)
United States	
Bureau of Land Management	(13.60)
Corps of Engineers	(23.78)
Forest Service	(23.13)
Subtotal	60.51
State of Idaho	22.77
Private	66.95
Total acreage in project boundary	150.23

The project boundaries for the powerplant site and the proposed transmission line were defined according to FERC regulations which state that the project boundary must enclose only those lands that are necessary for the safe and efficient operation and maintenance of the proposed project. Access during construction will be sought as needed on lands outside the project boundary. Recreation areas which would be affected by the current proposal were excluded from the project boundary because (1) they are remote from the powerplant site; (2) the applicant will make the modifications and improvements at the recreation sites during the construction of the project; and (3) the Federal and State agencies which now administer, operate, and maintain those recreation sites intend to continue the management of the sites after they are improved as a part of this project. The inclusion of those recreation areas, all of which are on United States lands, within the Arrowrock powerplant project boundary would therefore be inappropriate.

Most of the proposed road improvements were excluded from the project boundary for similar reasons: all the proposed road improvements are on United States lands, the road improvements will be made according to the standards of the administering entities in order to permit construction of the proposed project, and the responsibility for maintenance of the improved roads will remain with the present administering entities when construction is completed.

Exhibit B

Project Operation and Resource Utilization

EXHIBIT B

PROJECT OPERATION AND RESOURCE UTILIZATION

POWERPLANT OPERATION

Arrowrock Powerplant will be operated automatically. Close coordination will be required between the applicants and the Bureau of Reclamation's Central Snake Projects Office in Boise, which now operates the dam and makes all releases from Arrowrock Dam. If the proposed powerplant were to be developed as a cooperative endeavor by the applicants and the Bureau of Reclamation, Reclamation would operate the powerplant remotely from its control center at Black Canyon Dam near Emmett, Idaho.

The average annual plant factor (the ratio of average generation to installed capacity) of Arrowrock Powerplant will be about 32 percent.

The operation of the Boise River reservoirs is constrained by natural flow rights, storage rights, and flood control obligations. In addition, the operating agencies (Corps of Engineers and Bureau of Reclamation) attempt to manage the reservoirs to provide the best recreational opportunities and fish and wildlife habitat possible.

The production of hydropower at Arrowrock will be a byproduct of the present multipurpose Boise River system reservoir operations, with two exceptions. First, there will be opportunity for "shaping" of the releases from Arrowrock Reservoir to produce power in a pattern which more closely matches the hourly change in need for power. Arrowrock Reservoir and Lucky Peak Lake are large enough that they can effectively smooth hourly or daily fluctuations in discharge with very little impact on water surface elevations. Restrictions would be developed to insure that the impacts of such an operation, if it is adopted, would be negligible.

Secondly, there is an opportunity to increase the efficiency of the operation for power by slightly changing the location of stored water during the summer. Presently, Lucky Peak Lake is kept as full as possible throughout the summer to serve recreational demands. By allowing the level of Lucky Peak Lake to be slightly lower during the summer, generation can be substantially increased at Arrowrock Powerplant. Studies have shown that dropping the summer full pool level of Lucky Peak Lake about 5 feet can significantly increase generation at Arrowrock Powerplant with only a minor impact upon recreation at the lake. This impact can be mitigated by modifying certain recreational facilities at Lucky Peak Lake.

Power operations will be incidental to the existing reservoir operations for other purposes, and no special regulation is proposed for the purpose of power except as mentioned above. Generation in an adverse year may be as low as 57 million kilowatt-hours. In a high water year, generation may exceed 285 million kilowatt-hours.

AVERAGE ANNUAL GENERATION

Average generation at the proposed Arrowrock Powerplant is estimated to be 167.6 million kilowatt-hours per year. Firm energy, based on study of the critical period for energy in the Pacific Northwest (from mid-August 1928 through February 1932), would total 198.1 million kilowatt-hours during the critical period, an average of about 56 million kilowatt-hours annually during that period. Utilities in the Pacific Northwest use the generation in the critical period as a measure of the firm load-carrying capability of the resource. That 42-1/2-month period represents the critical streamflow conditions in the Pacific Northwest, an area which depends largely on hydropower for energy.

The Arrowrock Powerplant studies are based upon monthly flows and reservoir contents over a 50-year study period (1928 through 1977), adjusted to reflect operational changes in the Boise River system proposed by the Bureau of Reclamation as a result of its current Boise Project Power and Modification Study. The system operational changes include using water from the noncontracted storage space in Lucky Peak Lake to maintain improved minimum winter streamflows in the Boise River downstream, holding 28,700 acre-feet of minimum storage in Arrowrock Reservoir to protect the resident fishery resource whenever possible, and filling Lucky Peak Lake to elevation 3032 in the spring for recreation when flood control and conservation will permit it. In addition, it was assumed that the summer reservoir level of Lucky Peak Lake would be lowered (by not more than 5 feet) to increase hydropower generation in the Boise River system. Table B-1 shows the estimated discharge at Arrowrock Dam for this proposed operation of the Boise River system over the study period.

If the 5-foot reduction in Lucky Peak Lake summer reservoir level were not adopted, generation at Arrowrock Powerplant would average only 156.7 million kilowatt-hours annually. The gain in average annual generation at Arrowrock Powerplant resulting from the 5-foot reduction in the Lucky Peak Lake full pool level (10.9 million kilowatt-hours annually) would far exceed potential reductions in generation elsewhere in the Boise River system. Potential system generation would be increased an average of 9.5 million kilowatt-hours annually, from a total of 634.7 million kilowatt-hours annually to a total of 644.2 million kilowatt-hours annually. The significant gain in generation at Arrowrock Powerplant would be partially offset by relatively minor reductions in generation at the proposed Lucky Peak Powerplant, now under construction by the applicants (an average annual reduction of 0.8 million kilowatt-hours), and at Reclamation's Anderson Ranch Powerplant, assuming a proposed 30 megawatt enlargement to be in operation (an average annual reduction of 0.6 million kilowatt-hours). Generation would not be affected at Reclamation's potential 5 megawatt powerplant at Boise River Diversion Dam.

The minimum discharge at Arrowrock Dam is virtually zero cubic feet per second during the winter; all valves are frequently closed during the winter. The maximum monthly discharge of about 12,000 cubic feet per second could occur in May during the snowmelt

Table B-1.--Boise River Discharge at Arrowrock Dam

STUDY BS23. BOISE PROJECT POWER AND MODIFICATION STUDY - BOISE RIVER OPERATION
UNITS ARE MEAN CUBIC FEET PER SECOND (CFS)

YEAR	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	AVG
1928	562.	31.	0.	1540.	3910.	4303.	3707.	8700.	4252.	4668.	2794.	967.	2955.
1929	717.	0.	22.	80.	652.	0.	2673.	6049.	4310.	4426.	1196.	1819.	1831.
1930	1011.	36.	0.	80.	564.	316.	4599.	4846.	4354.	2427.	1873.	1278.	1780.
1931	686.	0.	0.	0.	0.	1062.	2498.	5306.	2188.	1307.	575.	498.	1182.
1932	210.	0.	0.	0.	0.	897.	3312.	4400.	5357.	4619.	3792.	723.	1949.
1933	510.	0.	184.	150.	422.	0.	3456.	5286.	4277.	4477.	3571.	627.	1920.
1934	458.	0.	303.	150.	422.	1280.	4278.	5128.	3359.	2013.	1853.	1168.	1703.
1935	420.	58.	61.	150.	304.	740.	3206.	5579.	4319.	4383.	1319.	2053.	1886.
1936	1014.	38.	44.	80.	28.	753.	4024.	5642.	4361.	4476.	3250.	1029.	2069.
1937	459.	0.	335.	150.	409.	0.	2687.	6053.	4433.	2499.	1864.	1533.	1704.
1938	597.	0.	0.	150.	1230.	688.	5120.	9145.	5392.	4479.	4526.	1196.	2716.
1939	319.	0.	0.	150.	369.	1992.	3450.	4429.	4380.	4337.	1148.	1353.	1830.
1940	965.	98.	62.	150.	1103.	695.	3710.	4625.	4617.	4460.	1383.	991.	1904.
1941	569.	0.	74.	80.	872.	67.	3967.	5601.	4074.	4226.	1492.	1774.	1899.
1942	998.	0.	0.	80.	1289.	39.	4139.	4018.	4001.	4660.	2259.	919.	1866.
1943	863.	0.	0.	5109.	3364.	3575.	7060.	10389.	5792.	4823.	4217.	1402.	3889.
1944	148.	271.	307.	720.	1100.	1174.	1899.	4214.	3794.	4518.	2381.	1331.	1825.
1945	505.	0.	0.	150.	386.	405.	3042.	4518.	4519.	4520.	4137.	606.	1906.
1946	598.	0.	2.	384.	448.	5712.	6638.	7123.	4658.	4433.	4172.	648.	2914.
1947	698.	0.	0.	48.	1195.	3119.	5055.	5863.	4223.	4675.	3199.	766.	2409.
1948	545.	0.	0.	150.	150.	653.	3176.	5756.	5434.	4376.	4175.	626.	2095.
1949	541.	0.	0.	150.	300.	1081.	6583.	5922.	4450.	4607.	2662.	1291.	2301.
1950	430.	0.	3.	150.	422.	1362.	6444.	6715.	5605.	4465.	4238.	1217.	2591.
1951	61.	172.	290.	1813.	2597.	4308.	6219.	8169.	4659.	4409.	4290.	998.	3170.
1952	90.	0.	0.	3638.	2971.	4837.	5255.	9854.	5025.	4262.	4247.	1091.	3448.
1953	109.	44.	9.	426.	1240.	3084.	4613.	5331.	5436.	4550.	4315.	1313.	2543.
1954	0.	0.	0.	570.	1722.	3635.	5145.	6829.	4407.	4239.	4320.	535.	2673.
1955	481.	0.	0.	150.	0.	844.	2356.	4410.	4797.	4775.	4033.	697.	1888.
1956	642.	0.	93.	6181.	5073.	3274.	5789.	8255.	4797.	4269.	4268.	1212.	3654.
1957	0.	130.	198.	283.	1297.	3742.	5067.	8748.	5620.	4164.	4353.	765.	2872.
1958	250.	0.	0.	130.	858.	3836.	3840.	11737.	5363.	4281.	4260.	825.	2965.
1959	322.	0.	0.	167.	1103.	1509.	4668.	4350.	4325.	4481.	2938.	1059.	2077.
1960	79.	0.	0.	150.	880.	2106.	3570.	4501.	4630.	4285.	3700.	1229.	2098.
1961	681.	0.	0.	150.	0.	622.	3255.	5067.	4415.	3218.	1302.	861.	1634.
1962	592.	22.	13.	150.	1230.	0.	4428.	4902.	4312.	4219.	4102.	924.	2075.
1963	552.	0.	0.	200.	1569.	1441.	2271.	5801.	5286.	3997.	4197.	1128.	2207.
1964	125.	0.	0.	118.	792.	1338.	4403.	5415.	4815.	4319.	4080.	635.	2174.
1965	397.	0.	624.	5815.	4984.	5129.	5139.	11156.	6134.	4727.	3740.	1521.	4119.
1966	368.	139.	895.	944.	1047.	1353.	3372.	4650.	4396.	4263.	1341.	1214.	2001.
1967	897.	32.	95.	150.	1208.	0.	2526.	6631.	3704.	4396.	4379.	880.	2083.
1968	433.	0.	0.	237.	571.	1731.	3050.	4800.	4449.	4182.	1487.	1016.	1833.
1969	640.	0.	0.	150.	3506.	4254.	5401.	8356.	4577.	4215.	4165.	819.	3008.
1970	598.	0.	0.	0.	1319.	2909.	3747.	7340.	5910.	4191.	4256.	998.	2612.
1971	0.	0.	888.	3154.	4930.	5344.	6958.	10872.	6239.	4604.	4087.	1415.	4040.
1972	42.	336.	401.	1970.	4504.	6557.	2839.	10256.	7375.	4263.	4287.	1110.	3665.
1973	25.	0.	153.	1668.	902.	1405.	2122.	4454.	4512.	4715.	1531.	1461.	1917.
1974	729.	0.	380.	394.	4224.	5003.	6971.	9515.	6257.	4427.	4364.	1496.	3643.
1975	147.	336.	150.	433.	975.	2928.	4825.	10071.	6183.	4563.	3899.	1488.	3009.
1976	405.	75.	917.	1796.	1432.	3285.	4881.	6831.	4281.	4470.	3675.	1075.	2761.
1977	222.	0.	0.	150.	0.	715.	2528.	4109.	3436.	1688.	1684.	1210.	1314.
AVG	454.	36.	128.	817.	1397.	2102.	4199.	6554.	4750.	4161.	3188.	1096.	2411.

season. Average monthly discharge over the 50-year study period is 2,400 cubic feet per second or about 1.75 million acre-feet per year. Figure B-1 is a flow duration curve for monthly discharge at Arrowrock Dam from 1928 through 1977.

The total storage capacity of Arrowrock Reservoir, all of which is usable, is 286,600 acre-feet at normal water surface elevation 3216 feet. The surface area of the reservoir at full pool is 3,100 acres. (Figure B-2 shows Arrowrock Reservoir area and capacity curves.)

Arrowrock Reservoir is operated by the Bureau of Reclamation to serve Boise Project irrigation demands and to provide protection from flooding in the Boise River Valley. The operation of Arrowrock Reservoir is coordinated with the other Boise River reservoirs--the Corps of Engineers' Lucky Peak Lake and Reclamation's Anderson Ranch Reservoir and Lake Lowell (an offstream reservoir in the Boise River Valley)--to provide the best use of water supplies for irrigation, recreation, fish and wildlife, and water quality while providing protection from spring and winter floods. The flood control operation of the system is coordinated between the Corps of Engineers and the Bureau of Reclamation under a basic 1953 agreement. The rule curves presently in use for flood control operations are shown in figures B-3 through B-6.

The powerplant will have a capacity of 60 megawatts at a rated head of 149 feet. Maximum hydraulic capacity will be 5,470 cubic feet per second. Figure B-7 shows powerplant capability versus head.

The tailwater elevation at the proposed Arrowrock Powerplant will be controlled by two different structures: (1) a weir with a crest elevation of 3026 feet in the powerplant's tailrace area and (2) Lucky Peak Dam, 11-1/2 miles downstream, with a full pool elevation of 3055 feet.

Figure B-8 illustrates the two regimes of tailwater control. When the water surface of Lucky Peak Lake is above elevation 3030 feet, as is typical in summer months, it will control the tailwater elevation. When Lucky Peak Lake is lower than 3030 feet, the new tailrace weir will control the tailwater elevation as a function of powerplant discharge. Figure B-9 is the rating curve for this condition.

POWER UTILIZATION

It has not yet been decided where the power which will be generated at the proposed Arrowrock Powerplant will be marketed. Power markets to be considered include the Idaho Power Company, other private and public power entities, and the Bonneville Power Administration.

Average annual generation at the powerplant is expected to be 167.6 million kilowatt-hours. Table B-2 shows generation estimates for the 50-year study period, 1928 through 1977. Much of the power production will coincide with the summer period of peak power demand

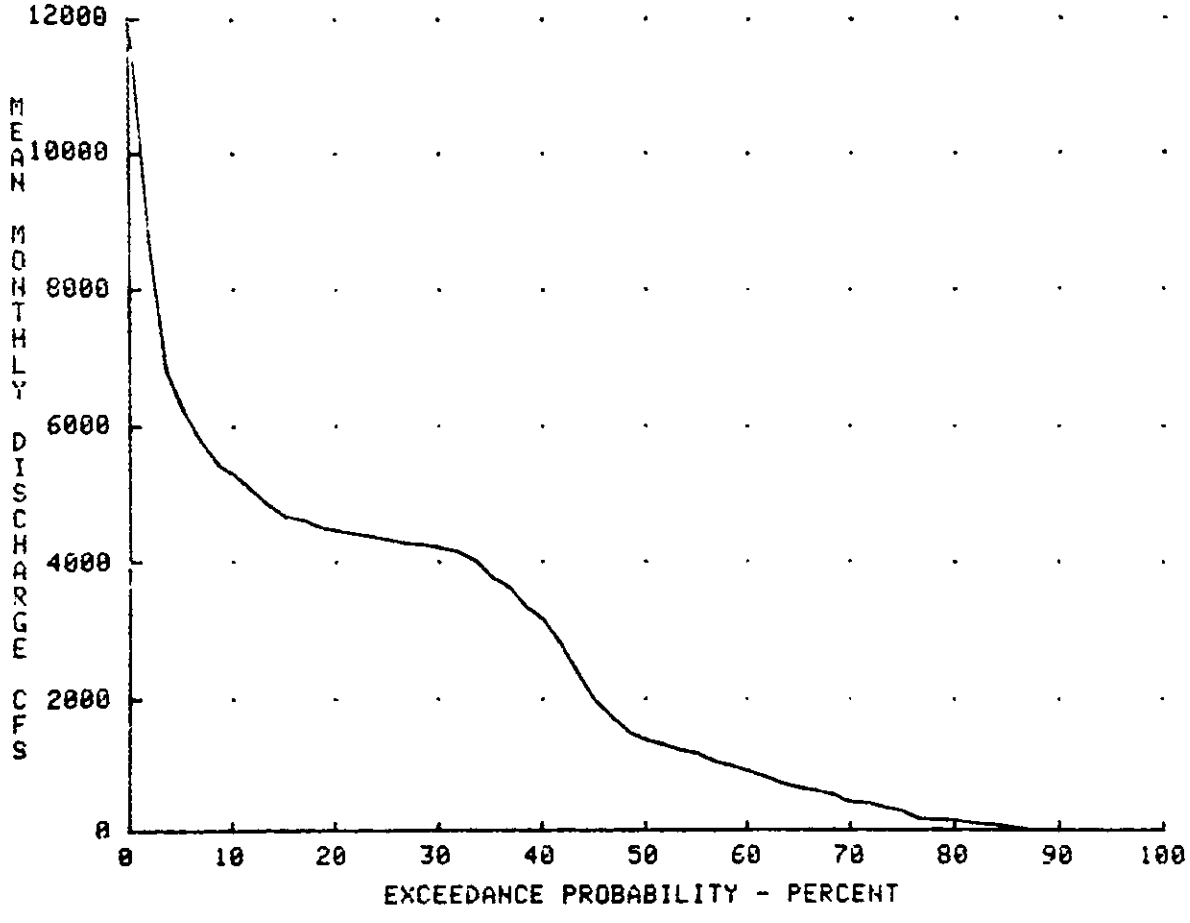


Figure B-1.--Flow duration curve, mean monthly discharge at Arrowrock Dam, in cubic feet per second (Study BS23, 1928 through 1977)

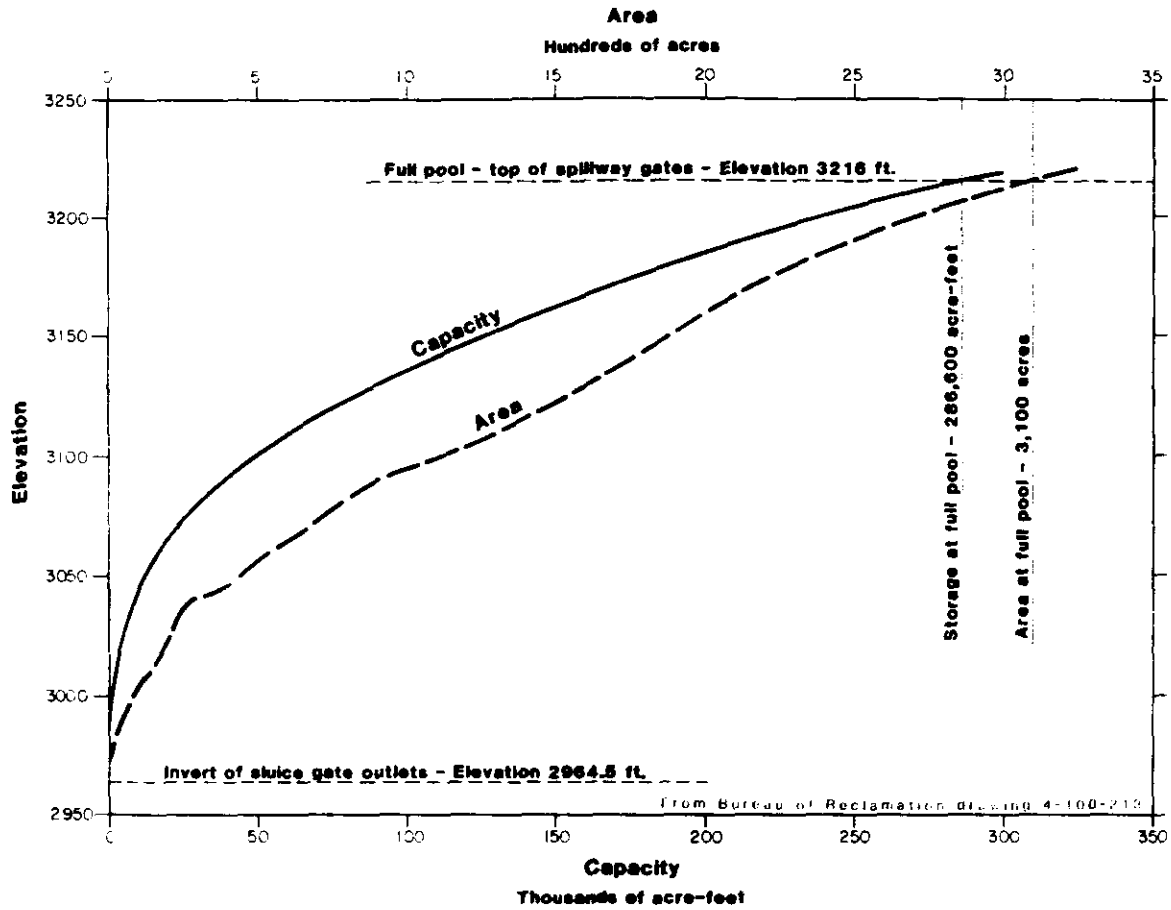
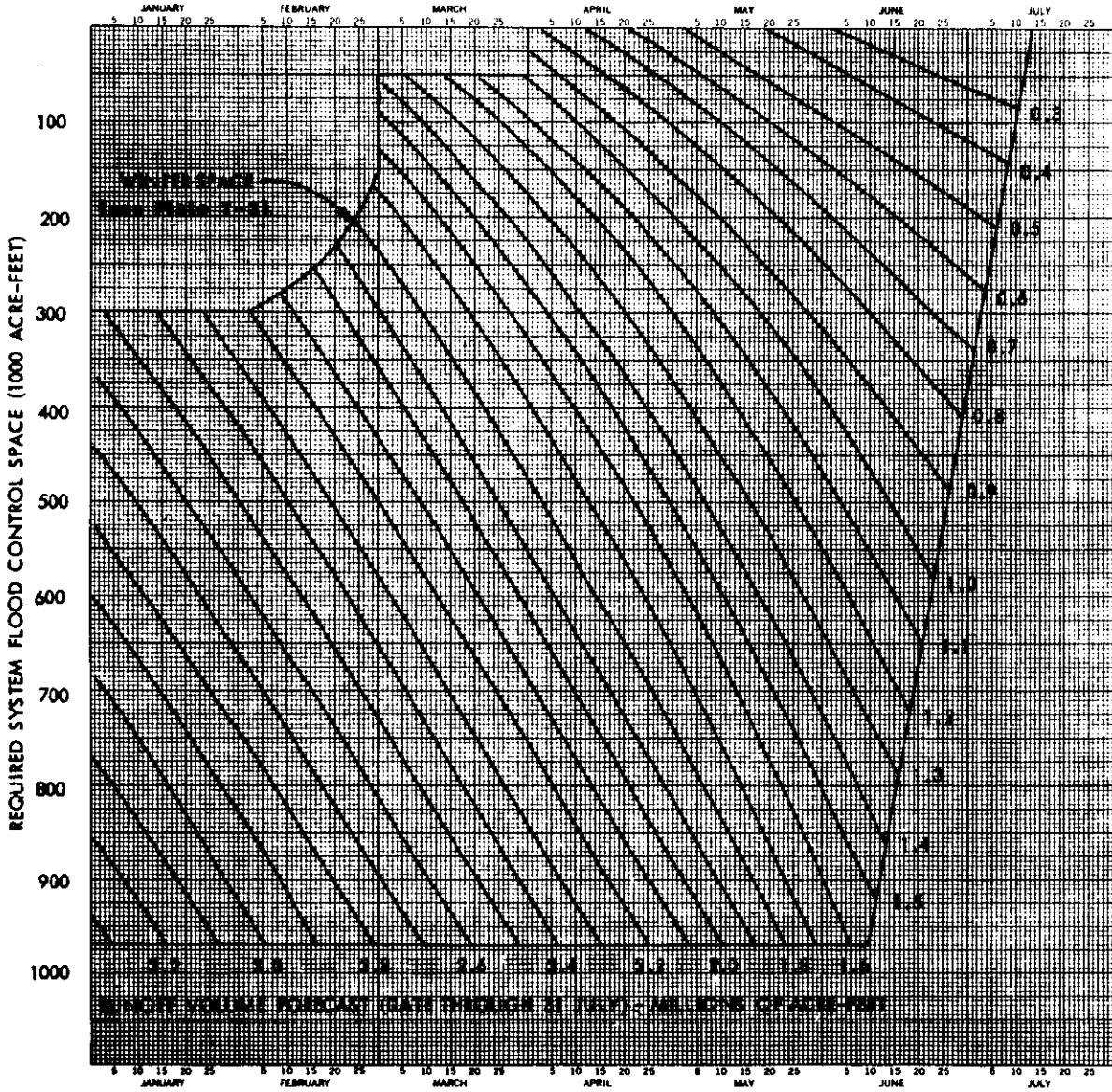


Figure B-2--Arrowrock Reservoir area and capacity curves



NOTES:

1. Parameters represent forecasted Lucky Peak Lake natural inflow volumes between the forecast date and 31 July. Operational rule curves were derived as follows:

a. Flood Control: For a given volume forecast, the flood control space required for a 1-percent forecast error risk and the space which could be refilled with a 99 percent assurance were determined. If the refillable space plus 100,000 acre-feet exceeded the flood control space, then the flood control space value was used. If the refillable space (99-percent assurance) plus 100,000 acre feet were less than the flood control space, then the value used was an arithmetic average of the refillable space plus 100,000 acre-feet and the flood control space.

b. Safety Factors - Operational Flood Control Curves:

FLOOD CONTROL ASSURANCES
(Control to 6,500 cfs at Glenwood Bridge)

Forecast Date (Thru 31 July)	Assumed Volume Forecast Error (Under Forecast) (Acre-Feet)	Percent Chance of Volume Error (Smaller Volume)	Less Critical Timing Sequence
1 January	800,000	99	98
16 January	780,000	99	98
1 February	700,000	99	98
15 February	640,000	99	98
1 March	580,000	99	98
16 March	490,000	99	98
1 April	400,000	99	98
16 April	380,000	99	98
1 May	370,000	99	98
16 May	360,000	99	98
1 June	350,000	99	80
16 June	310,000	98	50

REFILL ASSURANCES
(Total System - 974,149 Acre-Feet)

Forecast Date (Thru 31 July)	Assumed Volume Forecast Error (Over Forecast) (Acre-Feet)	Percent Chance of Volume Error (Larger Volume)	Less Critical Timing Sequence
1 January	610,000	95	98
16 January	550,000	95	98
1 February	490,000	95	98
15 February	450,000	95	98
1 March	410,000	95	98
16 March	350,000	95	98
1 April	260,000	95	98
16 April	220,000	95	98
1 May	140,000	80	50
16 May	110,000	75	50
1 June	40,000	60	50
16 June	10,000	52	50

2. To determine total vacant space required in all three reservoirs, select parameter corresponding to predicted runoff between that date and 31 July, then read the ordinate of this parameter corresponding to forecast date.

3. Minimum of 50,000 acre-feet of space required in Lucky Peak reservoir from 1 January through 31 March.

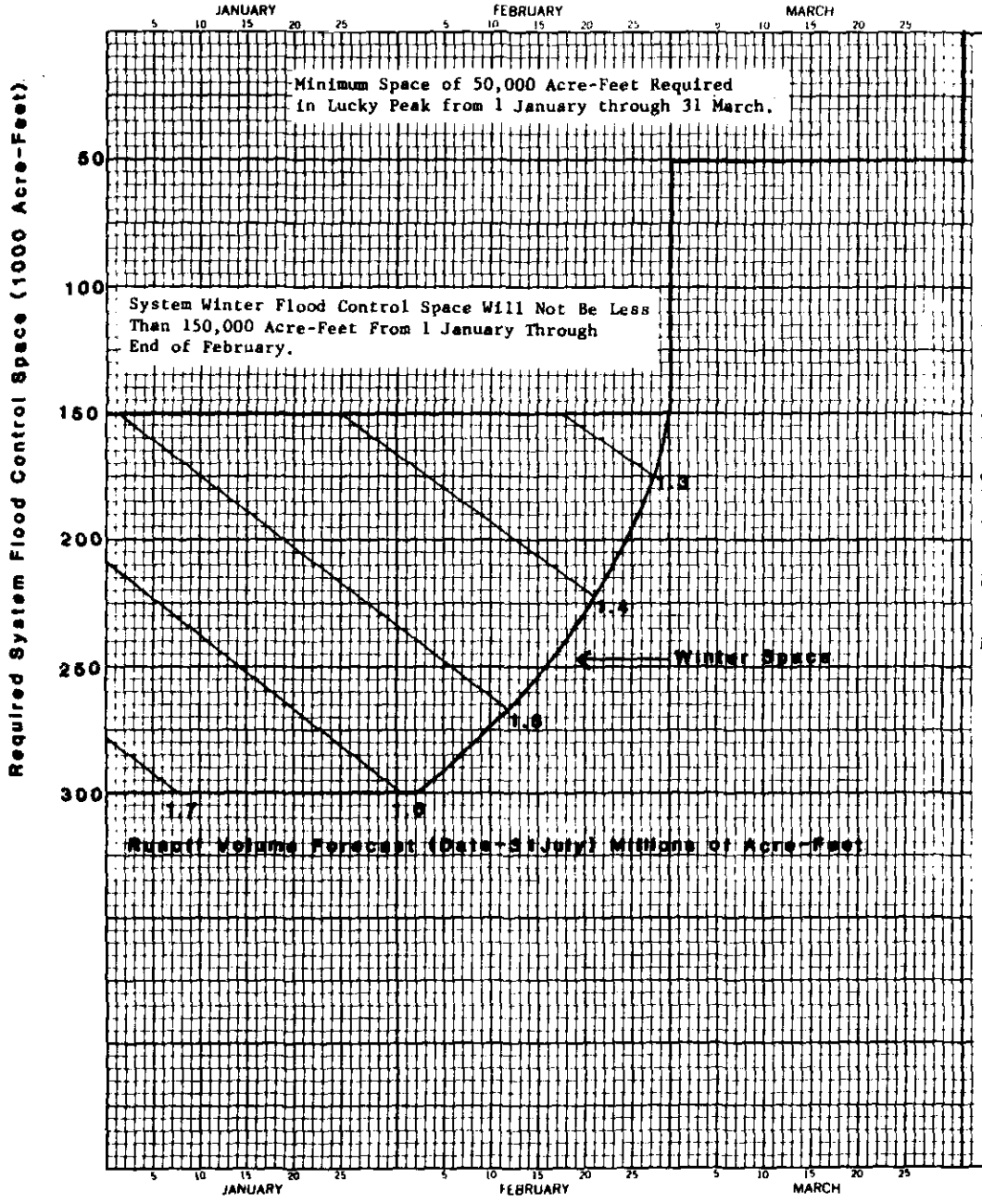
Boise River Reservoirs
Boise River Basin, Idaho

OPERATIONAL FLOOD CONTROL
RULE CURVES

U. S. Army Corps of Engineers
Walla Walla District
Hydrology Branch
December 1982

PLATE 7-1

Figure B-3--Rule curves for flood control operations--Boise River reservoirs
(sheet 1 of 4)



NOTES:

1. Curves define winter flood control space requirements when runoff volume forecasts are below normal during the 1 January through 1 March period.

2. Curves provide 100-year winter flood protection and a 95 percent refill assurance for 871,728 acre-feet of system space.

3. Parameters represent forecasted Lucky Peak Lake unregulated inflow volumes between the forecast date and 31 July.

4. To determine total vacant space required in all three reservoirs, select parameter corresponding to the predicted runoff between that date and 31 July, then read the ordinate of this parameter corresponding to the forecast date. For runoff volume forecasts not defined by these curves, use the space requirements of Plate 7-1. For example, a runoff volume forecast of 1.8 million acre-feet on 1 February is not defined, hence entering Plate 7-1, the space required on 1 February for a 1.8 million acre-feet forecast is defined by the winter space curve and is 300,000 acre-feet.

5. Minimum allowable system space is 150,000 acre-feet, January through February time period.

6. A minimum of 50,000 acre-feet of space must be maintained in Lucky-Peak reservoir from 1 January through 31 March.

Boise River Reservoirs
Boise River Basin, Idaho

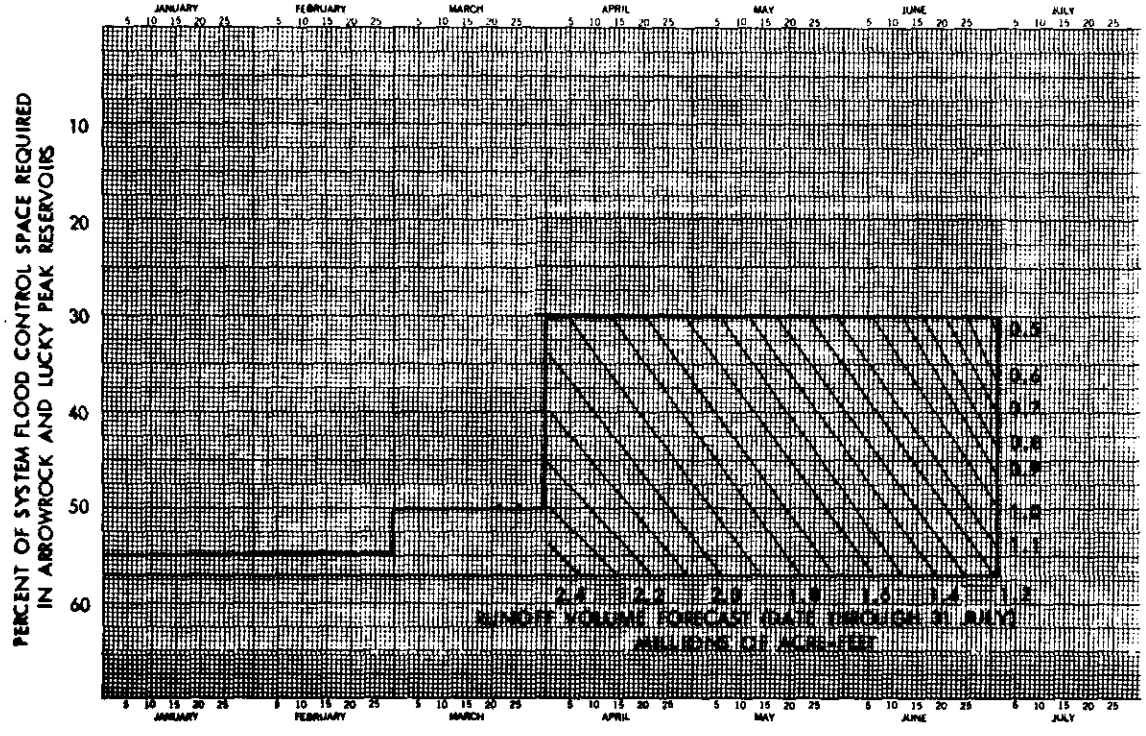
WINTER FLOOD CONTROL
RULE CURVES

For Below Normal Forecasts Occurring Between 1 January and 1 March

U.S. Army Corps of Engineers
Walla Walla District
Hydrology Branch
December 1982

PLATE 7-2

Figure B-4--Rule curves for flood control operations--Boise River reservoirs
(sheet 2 of 4)



NOTES:

1. Parameters represent forecasted Lucky Peak Lake natural inflow volumes between the forecast date and 31 July. Distribution curves were derived based on the following assumptions:

a. Arrowrock-Lucky Peak Release Schedule.

Date	Assumed Allowable Flow of Boise River at Glenwood Bridge (cfs)	Assumed Irrigation Diversions, Lucky Peak to Glenwood Bridge (cfs)	Total Assumed Maximum Allowable Lucky Peak Flood Control Releases (cfs)
1 Apr-30 Apr	6,500	1,600	8,100
1 May-31 May	6,500	3,700	10,200
1 Jun-31 Jul	6,500	3,800	10,300

b. Percentage values are based on (1) the 1-percent forecast error risk on the Arrowrock-Lucky Peak local volume forecast, (2) the 95-percent upper confidence limit timing sequence, and (3) a constant 300-cfs inflow (1 April - 31 July minimum Anderson Ranch release). Percentages were determined by dividing the Arrowrock-Lucky Peak local flood control space requirement by the Boise River system flood control space requirement for a given Lucky Peak Lake natural inflow volume forecast.

c. Arrowrock-Lucky Peak Local Volume Forecast and Standard Error. The Arrowrock-Lucky Peak local volume forecast is determined by multiplying the forecasted Lucky Peak Lake natural inflow volume by the appropriate contribution factor shown below:

Forecast Date	Contribution Factor	Standard Error (AF)	Forecast Error (2.3767)x(Standard Error)(AF)
1 April	0.6331	103,400	241,000
15 April	0.6270	86,950	202,000
1 May	0.6209	70,500	164,000
15 May	0.6196	70,500	164,000
1 June	0.6182	70,500	164,000
15 June	0.6200	70,500	164,000
1 July	0.6418	70,500	164,000

2. To determine the minimum percentage of system flood control space required in Arrowrock-Lucky Peak reservoirs, select the parameter corresponding to the predicted runoff between that date and 31 July. Then read the ordinate of this parameter corresponding to the forecast date. This ordinate is the minimum percent of the system flood control space required in Arrowrock-Lucky Peak reservoirs. The minimum space required is the minimum percent multiplied by the system flood control space requirement.

The following allocation has been made of the acre-feet of storage capacity available:

Reservoir	Flood Control	Dead	Total
Arrowrock	286,600	0	286,600
Lucky Peak	264,300	28,800	293,100
Total Space	550,900	28,800	579,700

Boise River Reservoirs
Boise River Basin, Idaho

FLOOD CONTROL SPACE DISTRIBUTION CURVES

Percent of system flood control space required in Arrowrock and Lucky Peak Reservoirs

U. S. Army Corps of Engineers
Walla Walla District
Hydrology Branch
December 1982

PLATE 7-3

Figure B-5--Rule curves of flood control operations--Boise River reservoirs
(sheet 3 of 4)

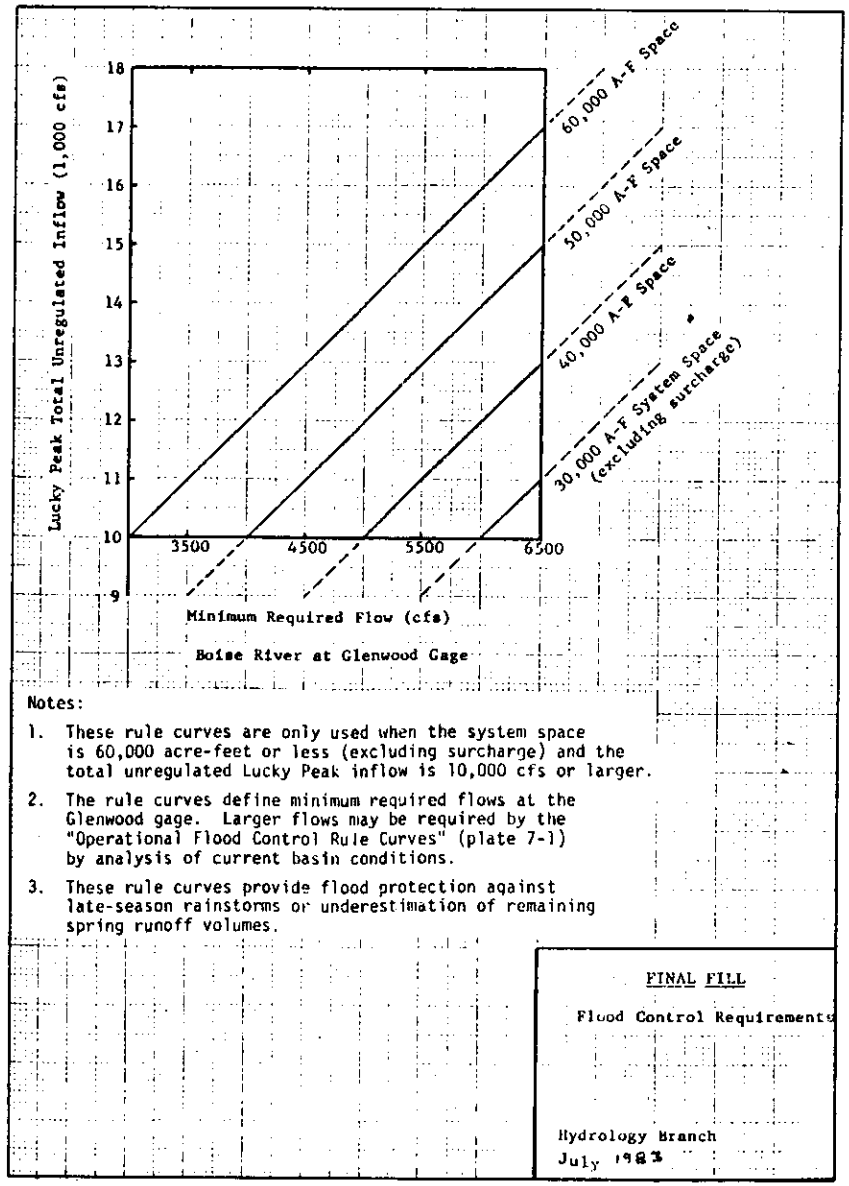


Figure B-6.--Rule curves for flood control operations--Boise River reservoirs (sheet 4 of 4)

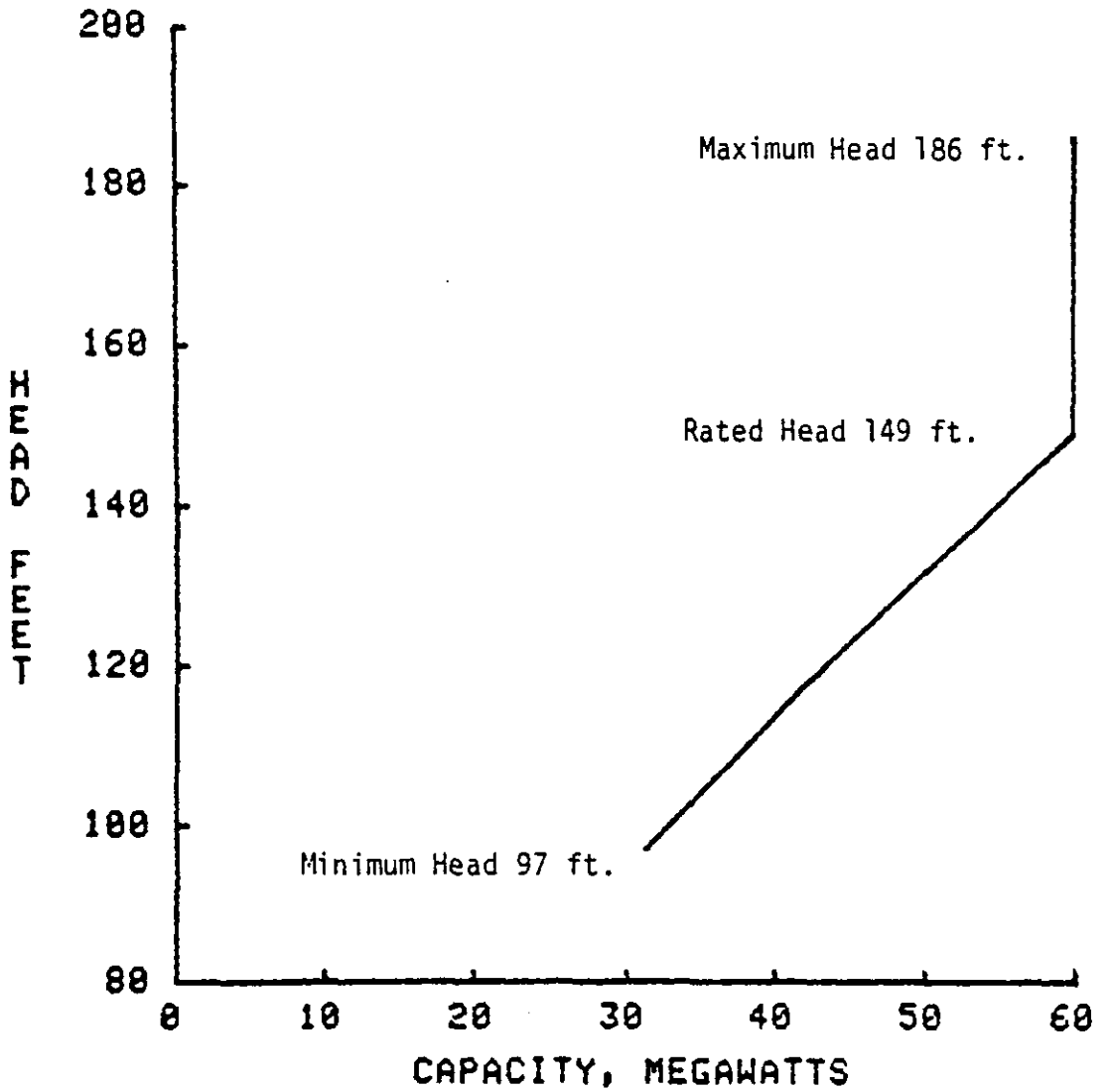


Figure B-7.--Arrowrock Powerplant Capability Versus Head

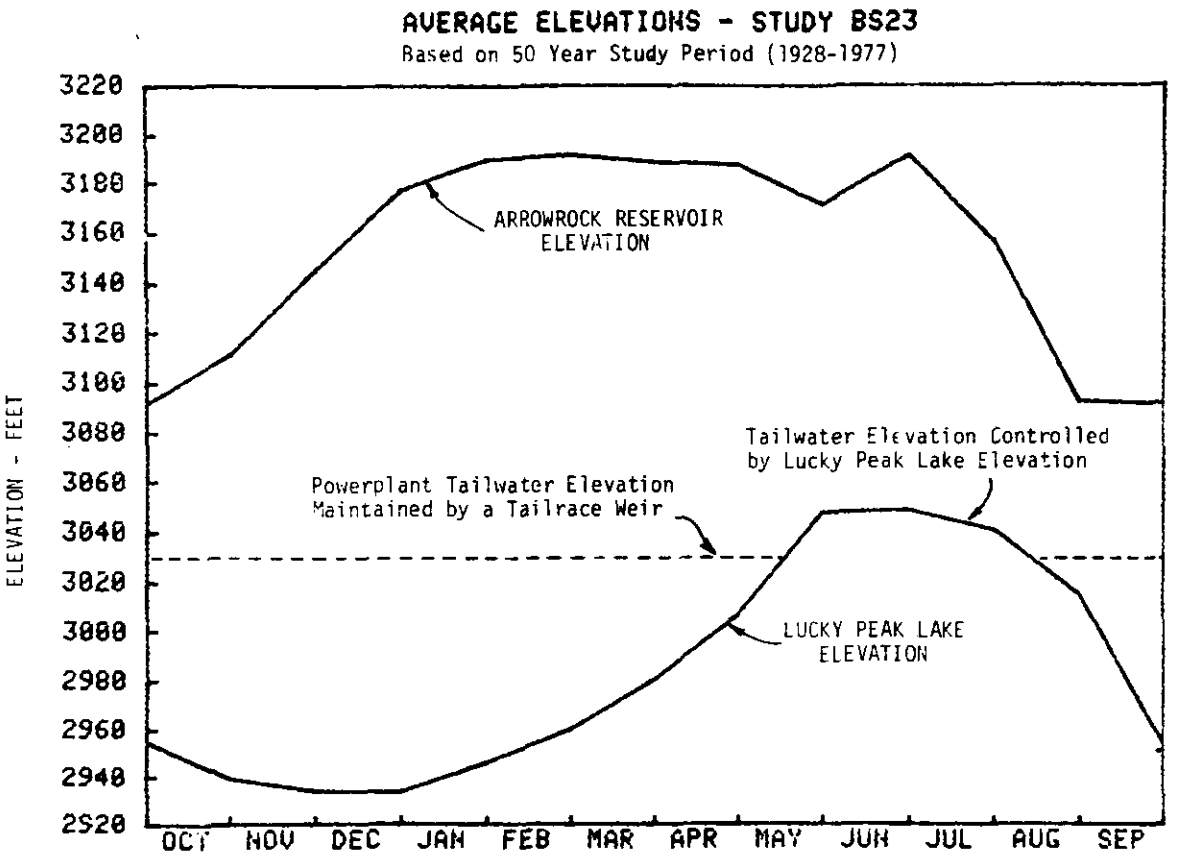


Figure B-8--Arrowrock Powerplant tailwater elevation control by tailrace weir or by Lucky Peak Lake

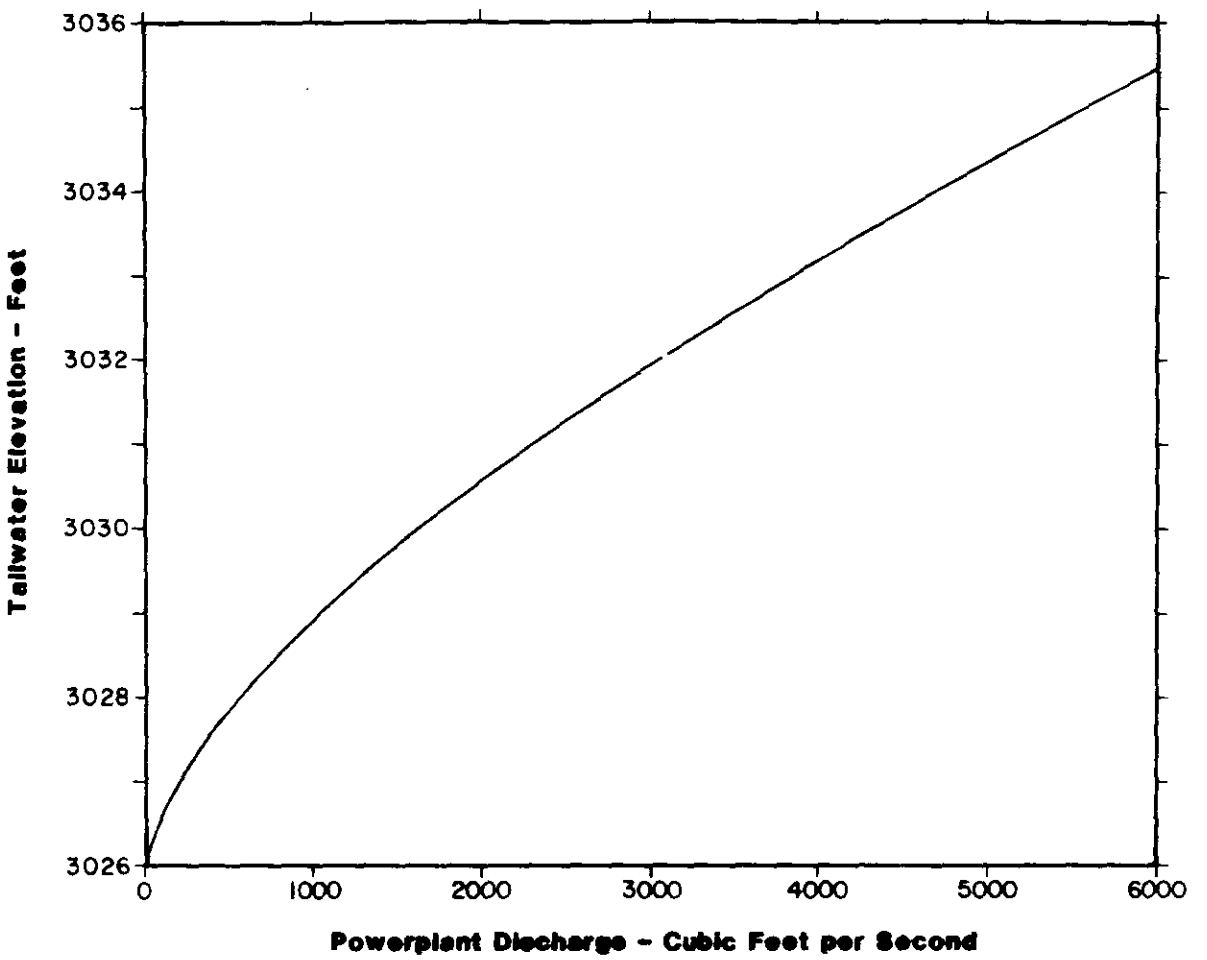


Figure B-9.--Arrowrock Powerplant tailwater rating curve for control by tailrace weir

Table B-2--Arrowrock Powerplant Estimated Generation

BOISE RIVER STUDY NO 13. ARROWROCK RESERVOIR
TOTAL ENERGY IN MILLION KW-HOURS

W-YR	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	TOTAL
28	0.0	0.2	0.0	14.5	32.7	35.8	28.6	44.6	34.1	32.5	0.0	0.0	223.0
29	0.0	0.0	0.1	0.6	4.8	0.0	24.3	40.3	0.0	0.0	0.0	0.0	70.1
30	0.0	0.0	0.0	0.6	4.1	2.8	36.9	27.0	0.0	0.0	0.0	0.0	71.3
31	0.0	0.0	0.0	0.0	0.0	8.7	19.5	28.5	0.0	0.0	0.0	0.0	56.7
32	0.0	0.0	0.0	0.0	0.0	7.1	26.3	36.0	43.2	35.2	0.0	0.0	147.8
33	0.0	0.0	1.1	1.1	3.1	0.0	30.7	39.2	29.0	33.7	0.0	0.0	138.0
34	0.0	0.0	1.9	1.2	3.3	12.0	39.4	35.8	0.0	0.0	0.0	0.0	93.7
35	0.0	0.0	0.3	1.0	2.2	6.3	26.2	37.2	21.7	0.0	0.0	0.0	94.9
36	0.0	0.0	0.2	0.5	0.2	6.2	35.6	44.6	36.5	32.7	0.0	0.0	156.5
37	0.0	0.0	2.0	1.1	2.9	0.0	24.1	39.9	0.0	0.0	0.0	0.0	70.0
38	0.0	0.0	0.0	1.2	9.5	6.3	43.2	44.6	42.0	38.0	28.2	0.0	213.0
39	0.0	0.0	0.0	1.3	3.1	19.4	30.5	38.0	32.8	0.0	0.0	0.0	125.2
40	0.0	0.0	0.3	1.0	8.1	6.3	35.0	40.0	35.1	24.5	0.0	0.0	150.4
41	0.0	0.0	0.5	0.6	6.6	0.6	33.4	29.0	0.0	0.0	0.0	0.0	70.7
42	0.0	0.0	0.0	0.7	10.2	0.4	37.2	30.7	27.9	29.7	0.0	0.0	136.7
43	0.0	0.0	0.0	30.9	0.0	0.0	25.2	34.4	34.8	41.7	30.5	8.3	205.8
44	1.0	2.1	2.8	7.0	10.1	11.4	16.7	34.7	28.8	29.1	0.0	0.0	143.8
45	0.0	0.0	0.0	1.1	2.9	3.8	27.6	38.6	36.1	35.7	0.0	0.0	145.8
46	0.0	0.0	0.0	3.2	3.8	44.6	43.2	44.6	38.3	34.2	0.0	0.0	212.0
47	0.0	0.0	0.0	0.4	10.4	30.2	43.2	44.6	34.9	34.6	0.0	0.0	198.4
48	0.0	0.0	0.0	1.2	1.3	6.3	29.3	44.6	43.2	34.2	0.0	0.0	160.1
49	0.0	0.0	0.0	1.2	2.3	10.1	43.2	44.6	36.3	31.3	0.0	0.0	169.0
50	0.0	0.0	0.0	1.2	3.4	12.9	43.2	44.6	43.2	39.3	30.6	6.7	225.2
51	0.4	1.2	2.6	17.4	21.5	37.8	43.2	44.6	38.5	36.9	25.3	0.0	269.3
52	0.0	0.0	0.0	31.8	22.9	29.5	0.0	40.3	39.9	35.8	25.8	0.0	226.0
53	0.0	0.2	0.1	3.8	10.8	29.6	41.4	43.1	41.6	40.1	30.5	6.7	248.0
54	0.0	0.0	0.0	5.4	15.0	34.3	43.2	44.6	35.9	34.5	23.4	0.0	236.4
55	0.0	0.0	0.0	1.2	0.0	8.2	21.5	37.5	37.7	36.3	0.0	0.0	142.5
56	0.0	0.0	0.7	41.0	0.0	0.0	0.0	0.0	33.1	36.0	26.5	0.0	137.3
57	0.0	0.8	1.6	2.6	11.4	35.9	43.2	44.6	43.2	34.5	24.1	0.0	242.0
58	0.0	0.0	0.0	1.1	7.3	36.3	33.7	44.6	43.2	34.7	22.6	0.0	223.5
59	0.0	0.0	0.0	1.5	9.7	14.7	43.0	36.4	33.1	31.6	0.0	0.0	170.1
60	0.0	0.0	0.0	1.4	3.0	20.8	31.8	39.2	38.7	32.3	0.0	0.0	172.0
61	0.0	0.0	0.0	1.2	0.0	5.9	29.3	35.4	0.0	0.0	0.0	0.0	71.8
62	0.0	0.0	0.1	1.1	9.1	0.0	40.2	41.1	34.1	34.1	21.5	0.0	181.4
63	0.0	0.0	0.0	1.8	13.5	14.0	20.0	44.6	43.2	33.2	24.2	0.0	194.4
64	0.0	0.0	0.0	1.0	7.1	13.0	40.8	44.6	39.1	33.8	0.0	0.0	179.5
65	0.0	0.0	5.1	42.8	0.0	0.0	0.0	0.0	32.5	41.0	28.4	10.9	160.7
66	2.9	1.2	8.5	9.2	9.3	13.3	30.3	39.8	32.2	0.0	0.0	0.0	146.7
67	0.0	0.0	0.5	1.1	8.7	0.0	21.9	35.7	23.8	36.6	24.3	0.0	152.5
68	0.0	0.0	0.0	2.0	5.0	16.9	28.1	35.7	24.0	0.0	0.0	0.0	111.5
69	0.0	0.0	0.0	1.3	28.4	30.9	40.3	44.6	37.6	33.7	21.7	0.0	238.7
70	0.0	0.0	0.0	0.0	11.4	28.2	33.7	44.6	43.2	36.6	29.8	5.4	233.1
71	0.0	0.0	8.2	30.3	39.8	38.8	0.0	0.0	34.1	40.2	29.7	8.6	229.8
72	0.3	2.6	3.6	18.8	37.7	43.4	22.1	43.6	39.5	37.2	30.1	6.1	285.1
73	0.2	0.0	1.4	16.0	7.9	13.7	18.9	38.1	33.8	24.6	0.0	0.0	154.6
74	0.0	0.0	2.6	3.4	34.1	35.2	0.0	0.0	32.7	38.9	31.4	8.1	186.4
75	0.9	2.2	1.2	4.0	8.5	28.2	39.0	27.3	32.2	39.4	28.7	9.3	220.8
76	2.8	0.6	7.6	17.3	12.7	30.5	43.1	44.6	35.3	34.2	0.0	0.0	228.6
77	0.0	0.0	0.0	1.2	0.0	6.9	22.3	26.4	0.0	0.0	0.0	0.0	56.9
AVG	0.2	0.2	1.1	6.6	9.3	15.9	29.5	36.2	30.0	26.4	10.7	1.4	167.6

in southern Idaho. A duration curve for average monthly loads (generation) over the same 50-year period is shown in figure B-10.

This site has potential for a power peaking operation since the powerplant is located between two large reservoirs which can smooth the fluctuations in powerplant discharge with minor or negligible impact to the reservoir water surfaces and no impact on water users below Lucky Peak Dam. Suitable restrictions in the peak operation will be formulated to insure that impacts will be negligible.

All of the power generated at Arrowrock Powerplant will be sold except for a minor amount which will be used at the site for station service.

OTHER HYDROELECTRIC DEVELOPMENTS

No future hydroelectric development at Arrowrock Dam, beyond this 60-megawatt proposal, is being considered by the applicants at this time. The pumped-storage generating potential at the Arrowrock site (in addition to the proposed conventional powerplant) is recognized as a future development possibility, however.

The Bureau of Reclamation owns two powerplants in the Boise River basin:

	Generating Capacity megawatts	Location
Anderson Ranch Powerplant	40	South Fork Boise River
Boise River Diversion Dam Powerplant	1.5	Boise River, 2.6 miles downstream from Lucky Peak Dam

The Bureau of Reclamation has proposed the enlargement of Anderson Ranch Powerplant to a total generating capacity of 70 megawatts by installing a third generating unit with a capacity of 30-megawatts. Reclamation has completed its feasibility study, and the proposed installation of the third generating unit is now being considered by Congress.

At Boise River Diversion Dam, Reclamation is studying a new 5-megawatt powerplant to replace the existing powerplant, which was constructed in 1912.

The applicants hold a FERC license (Project No. 2832) to construct a powerplant at Lucky Peak Dam on the Boise River. The licensed generating capacity is about 87.5 megawatts. Construction was begun in 1984.

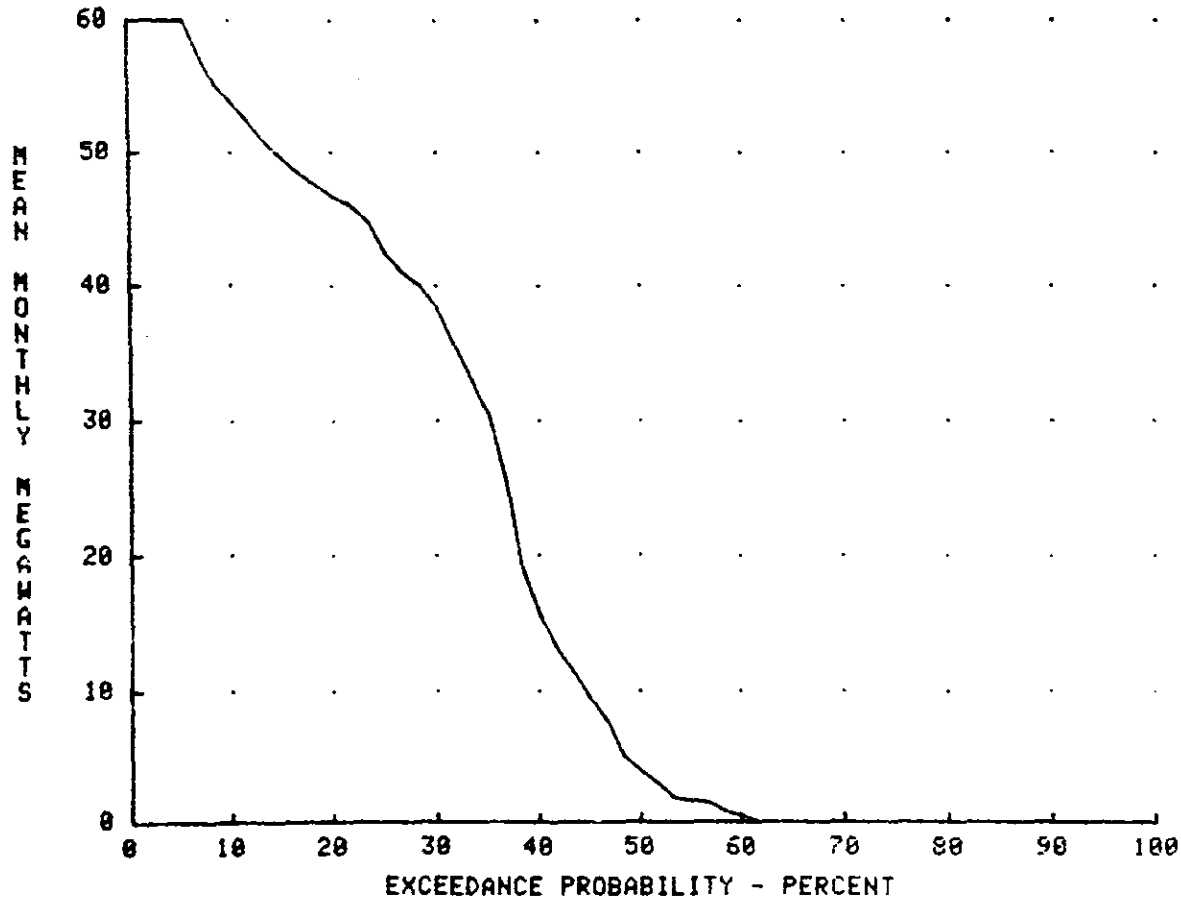


Figure B-10--Duration curve of estimated mean monthly generation at Arrowrock Powerplant (Study BS23, 1928 through 1977)

In addition, the applicants have considered or are considering the Hydroelectric potential at many sites within the Federal irrigation project in the Boise Valley south of the Boise River as indicated below. The development of these sites would have no impact on the proposed project.

FERC No.	Site	Capacity megawatts
4858	Arena Drop	0.5
5056	Lowline No. 8	0.4
5039	Golden Gate	0.7
5042	Fargo No. 1	0.6
5043	Waldvogel Bluff	0.3
3403	Mora Canal Drop	1.9
5038	Main Canal No. 6	1.1
5040	Fargo Drop No. 2	0.2
5041	Main Canal No. 10	0.5

Exhibit C

Construction History and Proposed Construction Schedule

EXHIBIT C

CONSTRUCTION HISTORY AND PROPOSED CONSTRUCTION SCHEDULE

PROJECT CONSTRUCTION HISTORY

Arrowrock Dam would be used in the development of the proposed Arrowrock Powerplant. The powerplant would discharge water into Lucky Peak Lake, the reservoir immediately downstream, but the powerplant would not have a direct impact on Lucky Peak Dam.

The Secretary of the Interior authorized the construction of Arrowrock Dam on January 6, 1911. The Bureau of Reclamation began construction work in 1911, and construction of the concrete thick-arch dam was completed in 1915. At that time, the dam was recorded as being the highest in the world.

Water was first stored in Arrowrock Reservoir in the fall of 1914, and storage water was first used to irrigate some Boise Project lands in the 1915 irrigation season. The first full season of irrigation using Arrowrock Reservoir storage water was 1916.

Arrowrock Dam was subsequently repaired and raised 5 feet, increasing the storage capacity of the reservoir by 9,000 acre-feet to its present capacity of 286,600 acre-feet. That work was carried out from 1935 through 1937. The dam was raised by adding a 5-foot concrete capping along the dam crest, thus placing the crown of the roadway at the new normal water surface elevation. Repairs were required because climatic conditions had caused some deterioration of the concrete on the downstream face of the dam and on other surfaces. Repairs included the 18-inch-thick resurfacing of the downstream face of the dam and the resurfacing of the spillway channel.

Arrowrock Dam is one of a few Boise Project "reserved works" where the Bureau of Reclamation retains the responsibility for operation and maintenance of the facility. Most of the rest of the facilities of the Boise Project's Arrowrock Division (the service area south of the Boise River) are operated by the Boise Project Board of Control.

PROPOSED CONSTRUCTION SCHEDULE

The applicants plan to undertake construction of the Arrowrock Powerplant in accordance with the proposed construction schedule following issuance of a FERC license (figure C-1). Work would begin as soon as funds are available for preconstruction and construction activities.

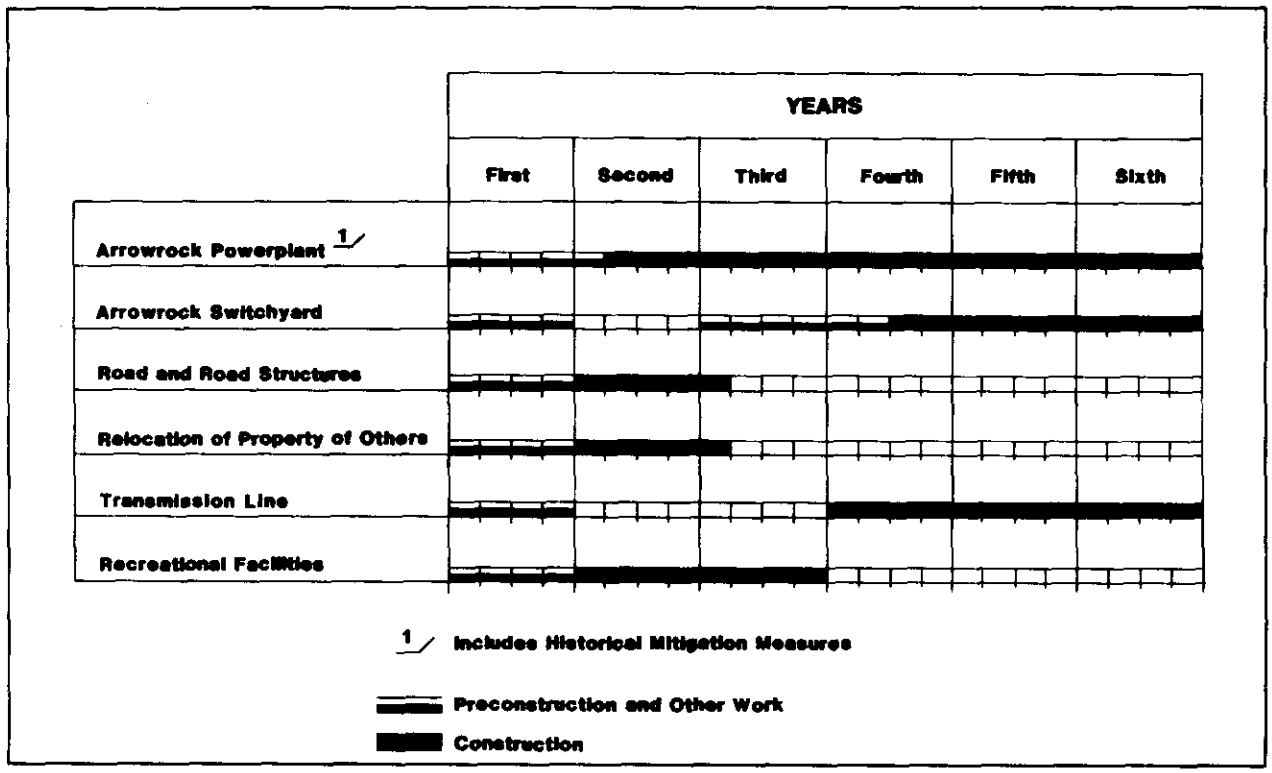


Figure C-1--Proposed construction schedule for Arrowrock Powerplant

Exhibit D

Costs and Financing

EXHIBIT D

COSTS AND FINANCING

COST OF PREVIOUSLY CONSTRUCTED FACILITIES

Arrowrock Dam is a Bureau of Reclamation facility constructed by the United States in 1911-15. The dam was repaired and raised 5 feet in 1935-37. The original cost of the dam and reservoir, including the 1935-37 construction work, totaled $5,321,644.

Since Arrowrock Dam and Reservoir are without hydroelectric facilities, are part of a Federal reclamation project, and are not currently licensed by FERC, section 14 of the Federal Power Act does not apply; and an estimate of project takeover value is not applicable.

ESTIMATED PROJECT COST OF NEW DEVELOPMENT

The estimated project cost for the proposed 60-megawatt powerplant, including all corollary costs, is $83,212,195, based on October 1983 price levels (table D-1). Total project costs include construction costs, interest during construction, and the water right cost. The total capital cost requirement is $83,204,000--the total project cost less the water right cost.

Table D-1.--Estimated Project Capital Cost--Arrowrock Powerplant--60 Megawatts

Costs	Total Costs[1/]
Construction costs	
Relocation of property	$ 1,500,000
Roads and road structures	810,000
Powerplant	58,740,000[2/]
Switchyard	2,000,000
Transmission line	3,800,000
Recreation facilities	1,150,000[3/]
Total construction cost	$68,000,000
Interest during construction	$15,204,000
Total capital cost requirement	$83,204,000
Waterflow right (from State of Idaho)	8,195
Total project cost	$83,212,195

1/ October 1983 price levels
2/ Includes historical measures for Arrowrock Dam totaling $20,000
3/ Facility additions and modifications at Lucky Peak Lake for mitigation and enhancement

Construction Costs

Construction costs include the actual field costs of construction, service facility costs, and indirect costs. Indirect costs include investigation cost, construction engineering and supervision costs, design and specification costs, and other costs. Total construction costs were estimated at $68,000,000.

Interest During Construction

Interest during construction (or interim financing) represents the cost of securing the necessary capital during the construction period and prior to the plant online date. Interest during construction was computed at 10 percent simple interest based on the proposed construction schedule (exhibit C). Interest during construction was estimated at $15,204,000, or approximately 22 percent of the project capital construction cost.

Waterflow Right

The cost of the water permit for the proposed powerplant is payable to the State of Idaho in the amount of $8,195. The cost of the permit is based on a 5470 cubic-foot-per-second flow. This is a one-time charge which is assumed to be financed internally by the applicants. The Bureau of Reclamation, the owner of Arrowrock Dam, recently applied for a power permit at the Arrowrock site. Reclamation has agreed to transfer the permit to the applicants if they decide to pursue a wholly non-Federal development. Such a transfer can be made with the payment of a minor assignment fee to the State of Idaho.

Annual Operating Cost

Annual operation, maintenance, and interim replacement costs are estimated at $485,500. Operating costs include $457,700 for the powerplant, switchyard, and related facilities; $2,000 for transmission lines; $13,300 for recreation facilities at Lucky Peak Lake; $12,000 for annual fish stocking (mitigation); and $500 for historical measures associated with Arrowrock Dam. Operating costs were estimated at October 1983 prices.

TOTAL ANNUAL COSTS OF PROJECT DEVELOPMENT

The total estimated annual costs associated with the project are shown in table D-2. Annual costs include debt service cost, operating costs, insurance costs, and a financing cost that was annualized. The total annual levelized cost (annual equivalent cost) for the project is estimated at $9,563,000. Table D-2 also shows the estimated cost of producing energy in mills per kilowatt-hour during an average water year

over the 50-year study period (1928-77). Average annual generation over the study period is estimated at 167.6 million kilowatt-hours.[1/]

Table D-2.--Annual Project Cost--Arrowrock Powerplant

Capital Cost Requirement	Cost	Mills per kilowatt-hour[2/]
Construction (October 1983 prices)	$68,000,000	
Interest during construction	15,204,000	
Total capital cost requirement	$83,204,000	
Annualized cost		
Annual debt service (levelized)	$ 8,826,200	52.7
Annual operating costs	485,500[1/]	
Insurance	74,800	
Debt-issuing cost	176,500	
Total estimated annual cost	$ 9,563,000	57.1

1/ Powerplant and related facilities $457,700
Transmission lines 2,000
Recreation 13,300
Fish stocking 12,000
Historical 500
Total $485,500

2/ Based on average annual generation of 167.6 million kilowatt-hours

Debt Service

The annual debt service or capital recovery is the major portion of the annual cost. Annual debt service is a function of the capital investment, the interest rate used to amortize the capital debt, and the number of years over which the capital is recovered. In this analysis, the financing for the project was assumed to be through tax exempt long-term debt. The interest rate and repayment period assumed were 10 percent and 30 years, respectively. Accordingly, the capital recovery factor would be .1060792, and the annual debt service would be $8,826,200. This amount would be constant over the 30-year period.

1/ Annual Arrowrock Powerplant generation simulated over the study period ranged from a high of 285.1 million kWh to a low of 56.7 million kwh, with a standard deviation of 59.7 million kWh, and a skew coefficient of -.22.

Operating Costs

Annual operating costs are estimated at $485,500. Annual operating costs would fluctuate as dictated by general economic conditions and local and regional economic trends.

Insurance Cost

Annual insurance cost was estimated at 0.15 percent of the electric plant in service. Accordingly, the annual insurance cost was estimated at $74,800.

Debt-issuing Cost

The debt-issuing cost includes costs for financial advisors, the underwriting of the debt, salesmen's takedown, and the handling and processing of the debt issue. Financing costs were estimated at 2 percent of the capital cost requirement and then annualized at 10 percent over the 30-year financing period. The annual financing cost would total $176,500.

Annual Charge for Use of Government Facilities

Licensees are required to pay a reasonable annual charge for the use of dams and reservoirs owned by the United States. Revised methods for determining the annual charge have been under study by FERC and the Department of the Interior, and Congress has been considering legislation to establish annual charges. Because of the uncertainty over the amount of annual charge, it has been omitted from this analysis.

VALUE OF POWER

The applicant does not at this time have an agreement or contract with any entity to purchase the power from the proposed Arrowrock Powerplant. It is expected that a power purchase agreement will be obtained prior to final project design and construction. Such an agreement would cover the period of debt amortization.

Potential purchasers of the Arrowrock Powerplant power could be public and private utilities in Idaho and the Pacific Northwest, as well as the Bonneville Power Administration. The applicants have negotiated a power purchase agreement with the Seattle City Light for power that will be developed at the existing Lucky Peak Dam under a June 10, 1980, FERC license (FERC Project No. 2832).

Under terms of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Public Law 96-501), Bonneville Power Administration is authorized to acquire resources that are cost effective and consistent with the Regional Conservation and Electric Power Plan as developed by the Northwest Power Planning Council. The proposed Arrowrock power development could fit into Bonneville Power Administration's resource acquisition policy in terms of timing (on-line date) and cost effectiveness.

The applicant could also sell the power to private utilities in Idaho and the Pacific Northwest under either a private two-party agreement or under terms established by the Public Utility Regulatory Policies Act of 1978 (PURPA) as administered in Idaho by the Idaho Public Utilities Commission. Under PURPA, a utility must buy power from a qualifying producer at the utility's avoided cost. The applicants would be a qualifying producer in that the Arrowrock Powerplant would have a generating capacity of less than 80 megawatts and it would employ water, a renewable resource. The value to be paid to the seller (the applicants) by the utility would be based on guidelines established by FERC and implemented in Idaho by the Idaho Public Utilities Commission; it would basically reflect the utility's "fully avoided costs."

Based on power values established by the Idaho Public Utilities Commission (78 mills per kilowatt hour for energy delivered in the seasonal periods of December-February and June-August, and 52.1 mills per kilowatt hour for energy delivered in the months of September-November and March-May), the total revenue in year one of the proposed Arrowrock project would be $10,912,740, or a weighted value of 65.1 mills per kilowatt hour.[1/] This compares favorably with the cost of power of about 57 mills per kilowatt hour developed above in "Total Annual Costs of Project Development."

Furthermore, the rates established by the Public Utilities Commission are subject to future year adjustment to account for increases in the fuel cost component of the avoided cost of power to the utility. Conversely, of the total annual cost of power from Arrowrock Powerplant, only the operation and maintenance costs are subject to future cost escalation since the debt service portion is fixed over the repayment period. Being a capital intensive investment, the debt service portion comprises the bulk of the total annual cost of power. This fact enhances the financial attractiveness of the Arrowrock project over the repayment period, as well as over the life of the project.

Annual Cost of Obtaining Equivalent Power from Alternative Sources

Other sources of energy potentially available to southern Idaho and the region are thermal generation using oil, gas, coal, or nuclear fuels; conservation; and renewable resources including wind, hydro, solar, geothermal, and biomass fuels.

Due to the nature of the proposed project, it is unlikely that any one thermal plant would operate exactly like the Arrowrock Powerplant. The Arrowrock plant would have daily load-following capability during the generating season. Lucky Peak Lake, located directly below Arrowrock Dam, would serve as an effective regulating reservoir and preserve the integrity of irrigation release requirements. Therefore, the Arrowrock Powerplant would have characteristics of both a peaking and a baseload plant.

1/ Rates established by the Idaho Public Utilities Commission for the Idaho Power Company pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, based on 35 year contract.

The cost of power from likely thermal alternative plants that could supply capacity and energy equivalent to the proposed Arrowrock Powerplant were identified. Accordingly, generic costs for a coal-fired plant (a baseload plant) and a combined cycle oil-fired plant (a peaking plant with some elements of a baseload plant) are shown in table D-3.

Table D-3.--Annual Costs of Thermal Alternative Powerplants

Type of Plant	Estimated Annual Cost Range (Mills per kWh)
Combined Cycle	90-110
Coal	70-90

The estimated cost of power from the proposed Arrowrock plant is well below the cost of power from either an alternative combined cycle plant or a coal-fired thermal plant.

SOURCES OF FINANCING

Sources of financing to the applicants for the Arrowrock power development would be hydroelectric term revenue bonds or private financing. The financing requirement was identified above under "Estimated Project Cost of New Development." Internal financing by the applicants would not be a viable alternative.

COOPERATIVE DEVELOPMENT WITH RECLAMATION

As an alternative to the above analysis which assumes development of the proposed powerplant solely by the applicants, the applicants have stated their interest in considering the development of the proposed powerplant as a cooperative endeavor with the Bureau of Reclamation, the owner of Arrowrock Dam. Under such an approach, the applicants would obtain all or part of the funds for the construction of the powerplant by Reclamation. In return, the applicants would derive revenue by marketing the power from the new powerplant.

A cooperative endeavor would depend upon negotiation and mutual agreement by the applicants and Reclamation on the terms of the endeavor. Specific terms have not yet been defined. The potential for a cooperative approach to the development of Arrowrock Powerplant is described in a February 1984 memorandum of understanding between Reclamation and the applicants.

Exhibit E

Environmental Report

1.--GENERAL DESCRIPTION OF THE LOCALE

Location

The Arrowrock Powerplant site is located at Arrowrock Dam in the Boise River basin in southwest Idaho. The dam lies about 12 air miles east of Boise, the largest city in the area (figure E-1).

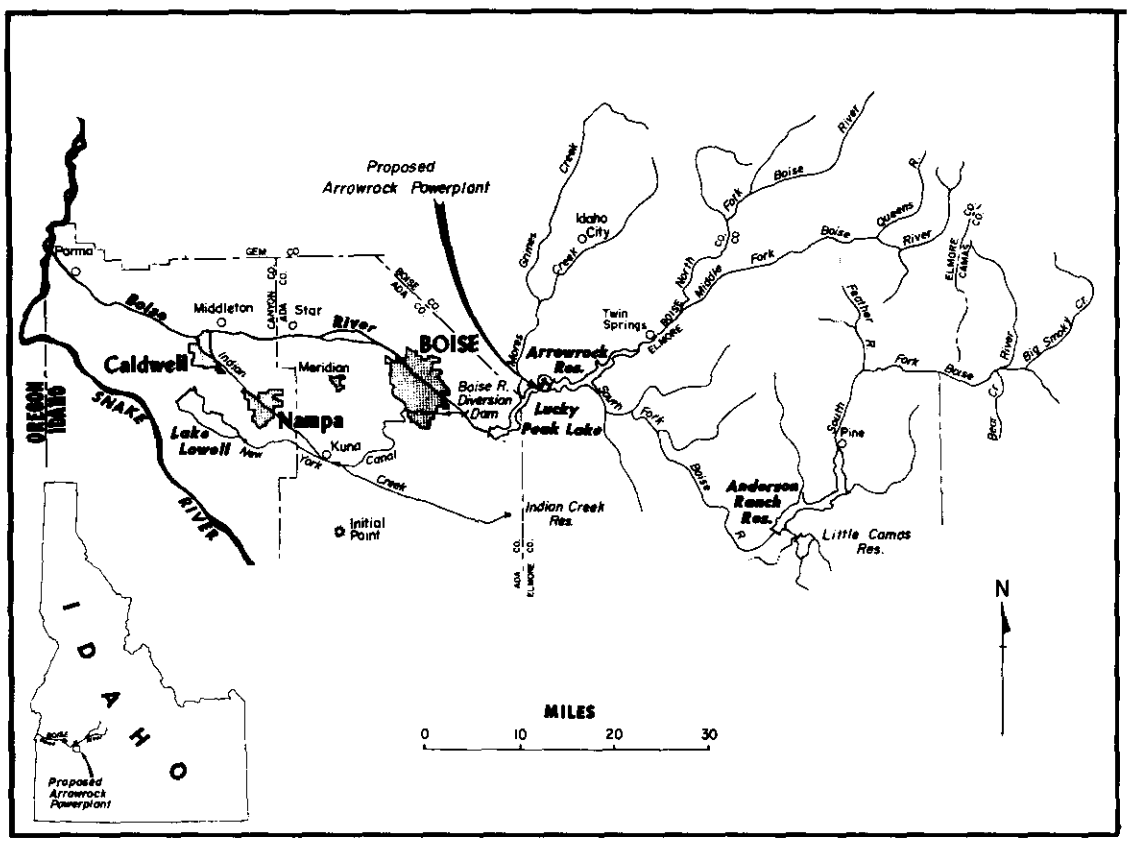


Figure E-1--Boise River basin

Climate

The climate of the project vicinity is generally semiarid, with warm summers and moderately cold winters (1, 2).[1/] Average annual precipitation varies from 11.5 inches in Boise to about 20 inches at Arrowrock

1/ A number in parentheses refers to the number of the reference in the List of Literature at the end of exhibit E.

Dam. July, August, and September are the driest months, while November, December, and January tend to be the wettest months.

Average monthly temperatures at both Boise and Arrowrock Dam range from a maximum of about 73 °F in July to a minimum of about 29 °F in January. Temperature extremes have ranged from highs of 111 °F at Boise and 109 °F at Arrowrock Dam to lows of -23 °F at Boise and -20 °F at Arrowrock Dam. The mean annual temperature is about 50 °F at both locations.

Topography, Floodplains, and Wetlands

Arrowrock Reservoir and Lucky Peak Lake are located in the relatively steep-walled canyons of the Boise River at the southern edge of the Sawtooth Mountain Range. The surrounding mountains range in elevation from 5000 to 6000 feet, or up to about 3000 feet above the reservoirs (3, 4). In some areas bordering the reservoirs, nearly vertical basalt cliffs extend up to 750 feet above the pool surfaces.

Numerous permanent and intermittently flowing small streams have cut deep V-shaped draws into the mountain slopes bordering the reservoirs. These draws provide good wildlife habitat, and some are popular stopping places for recreational water users. Slope wash has locally modified some of the lower slopes, providing infrequent beach areas of limited extent along the reservoir shorelines.

The proposed powerplant and switchyard would lie within the 100-year floodplain of the Boise River. However, no natural beneficial floodplain values remain at the proposed site because the site was highly disturbed during construction of Arrowrock Dam and because many project features would be constructed within the high water mark of Lucky Peak Lake.

The only wetlands within the study area that would be affected by the construction and operation of the proposed project are Arrowrock Reservoir and Lucky Peak Lake. Under the U.S. Fish and Wildlife Service's classification system for wetland and deep water habitats in the United States (5), the reservoirs would be classified as follows: System--Lacustrine; Subsystem--Limnetic and Littoral; Class--Unconsolidated Bottom and Unconsolidated Shore; Subclass--Sand and Cobble-Gravel; Water Regime--Permanently Flooded and Semipermanently Flooded; Water Chemistry--Fresh; Special Modifer--Impounded.

Population

There are no residences near Arrowrock Dam except for the caretaker's house, which is located on a small notched bench near the left dam abutment. The closest population center is Boise. Some scattered farms and homes are located near the Mores Creek arm of Lucky Peak Lake a few miles west of the powerplant site.

The lower Boise Valley contains the largest concentration of people in Idaho. Boise, the State capital, had a 1980 population of 102,000 (6). The farmlands and towns in the Boise Valley between Boise and the Snake River supported an additional 153,000 persons. In all, about 27 percent of Idaho's 1980 population of 944,000 people lived in Ada and Canyon Counties, which encompass the lower Boise River Valley.

2.--REPORT ON WATER USE AND QUALITY[1/]

Water Resources and Use

Affected Environment.--The major river in the study area is the Boise River. The annual runoff of the Boise River at Boise is about 2 million acre-feet per year. Boise River flows at Arrowrock Dam averaged about 1.75 million acre-feet annually over a 1928-77 study period, ranging from a maximum of more than 3 million acre-feet in 1965 to a minimum of less than 1 million acre-feet in 1977.

Most of the runoff comes from melting snow. The natural runoff pattern consists of low flows from August through February, increasing flows in March and April, high flows in May and June, and declining flows in July. This normal pattern is interrupted periodically by winter rain floods.

Much of the runoff in the Boise River system is regulated by reservoirs. The major storage features in the basin are the Federal dams and reservoirs on the Boise River and the offstream reservoir at Lake Lowell near Nampa (see table E-1).

Table E-1.--Major Reservoirs in the Boise River Basin

Reservoir	Stream	Total Storage	Active Storage	Surface Area	Construction Agency	Year Completed
		- - - acre-feet - - -		acres		
Anderson Ranch	South Fork Boise River	493,200	423,200	4,740	Reclamation	1950
Arrowrock	Boise River	286,600	286,600	3,100	Reclamation	1915
Lucky Peak	Boise River	293,100	264,300	2,740	Corps	1954
Lake Lowell	Boise river (offstream)	190,100	169,000	9,840	Reclamation	1908
Total		1,263,000	1,143,100			

1/ An additional 13,900 acre-feet of space may be filled in unusual flood situations

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1/ Appendix A includes correspondence covering the required consultations with interested agencies on the proposed project, particularly on its environmental aspects. All comments and recommendations were considered and incorporated into the plan wherever possible. Specific agency comments are discussed as necessary in the remaining sections of this exhibit.

Boise River natural flow is fully appropriated under existing water rights, and winter and spring runoff is stored under permits and licenses. In years of high runoff, flood control releases may be made. However, Boise River reservoir releases are largely committed to irrigation uses.

Most of the active storage capacity of the Boise River reservoirs is under contract to irrigation organizations (see table E-2). Even though Arrowrock Reservoir, for example, is entirely allocated to irrigation, the storage capacity of Lucky Peak, Anderson Ranch, and Arrowrock Reservoirs is used jointly for flood control under the terms of an agreement between the Secretaries of the Interior and the Army. The agreement was developed as a result of the congressional authorization for development of Lucky Peak Dam, with the objective of achieving a coordinated reservoir system operation for multiple purposes which is agreeable to the Federal agencies and to the local water users.

Table E-2.--Allocation of Storage Space--Arrowrock, Lucky Peak, and Anderson Ranch Reservoirs

Reservoir	Storage Space
	acre-feet
1--Arrowrock Reservoir	
Irrigation space	286,600
Active capacity	286,000
Dead and inactive capacity	0
Total capacity	286,000
2--Lucky Peak Lake	
Irrigation contracts	111,950
Idaho Department of Fish and Game	50,000
Noncontracted space	102,350
Active capacity	264,300
Dead and inactive capacity	28,800
Total capacity	293,100 1/
3--Anderson Ranch Reservoir	
Irrigation contracts	418,000
Power space	5,200
Active capacity	423,200
Dead and inactive capacity	70,000
Total capacity	493,200

1/ An additional 13,900 acre-feet of space may be filled in unusual flood situations

The Boise River reservoirs are operated as a system to meet irrigation, flood control, electric power, recreation, minimum streamflow, and other needs to the extent possible. During the irrigation season, which begins in April, releases are made from the upstream storage reservoirs to satisfy irrigation demands at the New York Canal (which diverts at the Boise River Diversion Dam) and at other irrigation diversions downstream. The normal maximum irrigation release from Lucky Peak Lake is about 4,500 cubic feet per second. In addition, releases are often made from Lucky Peak Lake before April to convey irrigation water to offstream storage at Lake Lowell via the New York Canal. Irrigation diversions totaled about 1.7 million acre-feet annually from 1967-81.

Irrigation diversions are curtailed by the middle of October. Flood control and refill of the reservoirs then become the major considerations of the reservoir system operation. Rule curves are used to determine reservoir space needs for flood control. The flood control operation extends from November 1 to July 31.

During the early part of that period (until significant water releases must be made for flood control), minimum flow releases may be made from Lucky Peak Lake. Water is released from the 50,000 acre-feet controlled by the Idaho Department of Fish and Game or from the noncontracted storage space in Lucky Peak Lake to help maintain a recommended 150-cubic-foot-per-second streamflow for fish and aquatic life in the Boise River (24). Releases from Lucky Peak Lake during winter are significantly greater than 150 cubic feet per second only when forecasted stream runoff is high and early flood control space is required in the storage system.

During the spring period of highest runoff, flood control releases from Lucky Peak Lake may be 10,000 cubic feet per second or more. As much as 3,800 cubic feet per second of these releases can be diverted into the New York Canal, the Ridenbaugh Canal, and other canals above the Glenwood bridge near Boise. The safe channel capacity of the Boise River downstream from the Glenwood bridge is considered to be 6,500 cubic feet per second.

The objective of reservoir system operation by the Bureau of Reclamation and the Corps of Engineers is to prevent flood damages while filling the reservoirs each year for irrigation and other purposes. A general rule in reservoir system operation is to fill the upstream reservoirs first in order to improve the probability of total system refill. In the Boise River system, an important additional consideration is the need to fill Lucky Peak Lake for boating and recreation without jeopardizing the legally mandated flood control and irrigation storage purposes of all three Boise River reservoirs.

The illustrations on the next page show the water surface elevations of Arrowrock Reservoir and Lucky Peak Lake in a typical year (figure E-2). The upper chart reflects the operation of Arrowrock

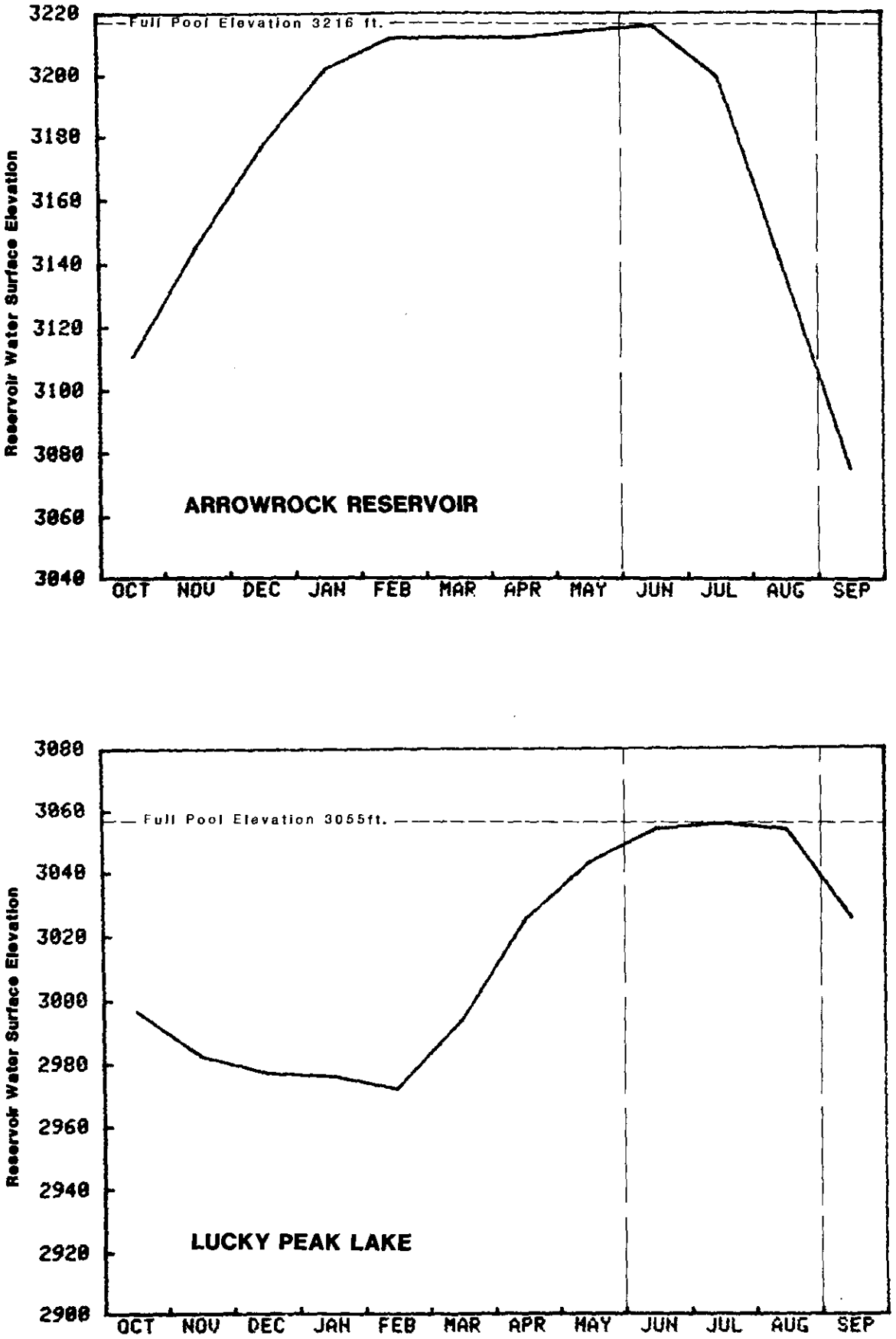


Figure E-2--Water surface elevations of Arrowrock Reservoir (top) and Lucky Peak Lake during a typical year. Lucky Peak Lake is held at higher levels than Arrowrock Reservoir during the summer.

Reservoir mainly for irrigation and also for flood control. The reservoir generally fills or nearly fills in the spring; it is then rapidly emptied during the summer to meet downstream irrigation demands and to maintain a good recreation pool in Lucky Peak Lake. Lucky Peak Lake, on the other hand, is held at low levels during the winter for flood control and other purposes. The reservoir is then filled during the spring (as permitted by needs for flood control space) as a part of the objective of filling the reservoir system for irrigation and filling Lucky Peak Lake for recreation.

As the illustrations show, Lucky Peak Lake is kept much more nearly full than Arrowrock Reservoir during the primary recreation season (June through August). When the irrigation storage water in the other reservoirs is depleted, Lucky Peak Lake is drafted late in the summer for irrigation and to lower the reservoir to permit maintenance on the Lucky Peak Dam outlet works.

Current Federal studies have resulted in some changes in the existing Boise River reservoir system operations. The Arrowrock Powerplant studies have taken those changes into account.

The Corps of Engineers, in cooperation with the Bureau of Reclamation, has essentially completed the revision of the Boise River storage regulation manual as it relates to flood control, and revised rule curves were recently adopted by those agencies for the flood control operation of the reservoir system. The operational changes did not affect the sizing of the proposed Arrowrock Powerplant at 60 megawatts, and the estimate of average annual generation from the proposed powerplant has been revised to reflect the operational changes.

A second study now being completed for the Boise River basin is the Boise Project Power and Modification Study, a study being conducted by the Bureau of Reclamation in cooperation with State and other Federal agencies. As a part of that study, some changes in system operations have been adopted, and new uses for the noncontracted space in Lucky Peak Lake have been identified. The following changes in the existing Boise River reservoir system operation have been adopted.

1. An Arrowrock Reservoir minimum pool of 28,700 acre-feet will be maintained for resident fishery habitat as long as the Boise River reservoir system irrigation and flood control commitments are met. The reservoir is now drained or nearly drained in some years.

2. Lucky Peak Lake recreation will be enhanced whenever possible by filling the reservoir earlier in the spring to improve the boating season, by maintaining as stable a recreation pool as possible during the summer, and through other potential operational measures.

3. Lucky Peak Lake noncontracted space will be used to maintain improved streamflows in the Boise River downstream.

These changes were recommended as a part of Reclamation's study and are now a part of the Boise River system operation. They are not related to this proposal to develop a powerplant at Arrowrock Dam. The sizing studies for Arrowrock Powerplant have taken these operational changes into account, and estimates of the average annual generation of the powerplant reflect the operational changes.

Impacts of the Proposed Project.--The operation of the proposed Arrowrock Powerplant would be incidental to the overall operation of the Boise River storage system for its existing purposes, and no storage water would be assigned to the new powerplant. The Bureau of Reclamation holds the existing State of Idaho storage rights for Arrowrock Reservoir, with the purposes of irrigation and domestic use specified. The Idaho Department of Water Resources requested that a new water permit with a new priority date be filed for hydropower purposes (Idaho Department of Water Resources letter of March 9, 1983, in Appendix A). The application for the hydropower permit has been submitted and has been assigned application number 63-10240. The proposed hydropower use would not affect any existing water rights.

Two minor operational modifications could be made to enhance power production at the proposed powerplant, however. The first modification would permit Arrowrock Powerplant to better respond to peak power demands. Instead of making steady releases of Arrowrock Reservoir water into Lucky Peak Lake, as is now done, releases through the powerplant could be varied as needed over a 24-hour daily period to coincide with daily peaks in electrical demands--high demand during the day and low demand at night. This load-following power operation would be constrained by the available water supply, downstream water requirements, and other criteria to minimize impacts.

Since the total amount of water released from Arrowrock Reservoir during a given time period would be the same as under present conditions, the total amount of water available for downstream use would not be affected. If such a water release regime were followed, the effects on Lucky Peak Lake water surface elevations would be minimal. Assuming a daily load-following or peaking operation, the Lucky Peak water surface would increase a maximum of 0.75 feet during the day in the spring and summer seasons. Maximum daily fluctuations during fall and winter could be as much as a foot. There would be corresponding daily fluctuations at Arrowrock Reservoir. At the end of each 24-hour period, the water surface elevation of Lucky Peak Lake would be the same as it is now under the existing operation with constant releases from Arrowrock Reservoir. Any effect on recreation use would be offset by planned mitigation measures, and the effects on other resources at either reservoir would be insignificant.

A second modification would be to reduce the water surface elevation of the summer maximum full pool at Lucky Peak Lake by 5 feet to increase the power head available at the new powerplant. Estimates of electrical energy based upon a 5-foot reduction in the Lucky Peak Lake normal summer

water surface elevation from 3055 feet (current summer operation) to 3050 feet show that a significant gain in Arrowrock Powerplant generation would result, although there would be a relatively minor reduction in generation at the applicants' proposed Lucky Peak Powerplant. The operational modifications would adversely affect recreation at some Lucky Peak Lake sites, but those effects would be offset by the implementation of proposed mitigation measures.

Mitigating Measures.--Recreation would be affected by the proposed operational modifications; impacts on recreation from a 5-foot reduction in the summer maximum pool at Lucky Peak Lake and the mitigating measures proposed to offset those impacts are discussed in detail in the Report on Recreational Resources later in this exhibit.

Water Quality

Affected Environment.--The quality of water in Arrowrock Reservoir and Lucky Peak Lake is good (see Appendix B for water quality data). Nutrients and mineral levels are low. The watershed above these reservoirs has few activities which degrade water quality. Sediment from road building and logging operations is the largest problem, but very little space has been lost to sedimentation in Arrowrock Reservoir, which is about 70 years old.

There is some thermal stratification in Arrowrock Reservoir during the summer. The Bureau of Reclamation placed a continuous water temperature recorder at the 200-foot depth in the reservoir (200 feet below the water surface elevation at full pool of 3216 feet) near the dam from June 7 to October 6, 1982. The water temperature ranged from 8 °C (47 °F) to 11 °C (52 °F). A water temperature profile taken on July 26, 1982, showed a surface water temperature of 22 °C (72 °F) and a 9 °C (49 °F) temperature at 210 feet, with the majority of the profile less than 12 °C (54 °F).

A comparison of the temperature profiles for Arrowrock Reservoir and Lucky Peak Lake (figures E-3 and E-4) indicates that profiles in both reservoirs are somewhat similar. However, Lucky Peak Lake bottom temperatures are warmer, and surface temperatures are cooler than corresponding temperatures in Arrowrock Reservoir. Differences in summer temperature patterns of Arrowrock Reservoir and Lucky Peak Lake probably result from the fact that Lucky Peak summer inflows are dominated by uniformly cool releases from Arrowrock Reservoir, while Arrowrock inflows are subject to seasonal warming.

During low flow years, there is apparently some oxygen depletion in the lower depths of Arrowrock Reservoir. The Bureau of Reclamation took dissolved oxygen profiles in 1979, 1981, 1982, and 1983. The 1979, 1982, and 1983 profiles showed no problems related to oxygen depletion. In 1981, a low flow year (with flows only two-thirds of normal), a profile taken on July 9 showed dissolved oxygen concentrations as low as 4.5 milligrams per liter (mg/L) between 26 and 43 feet below the water

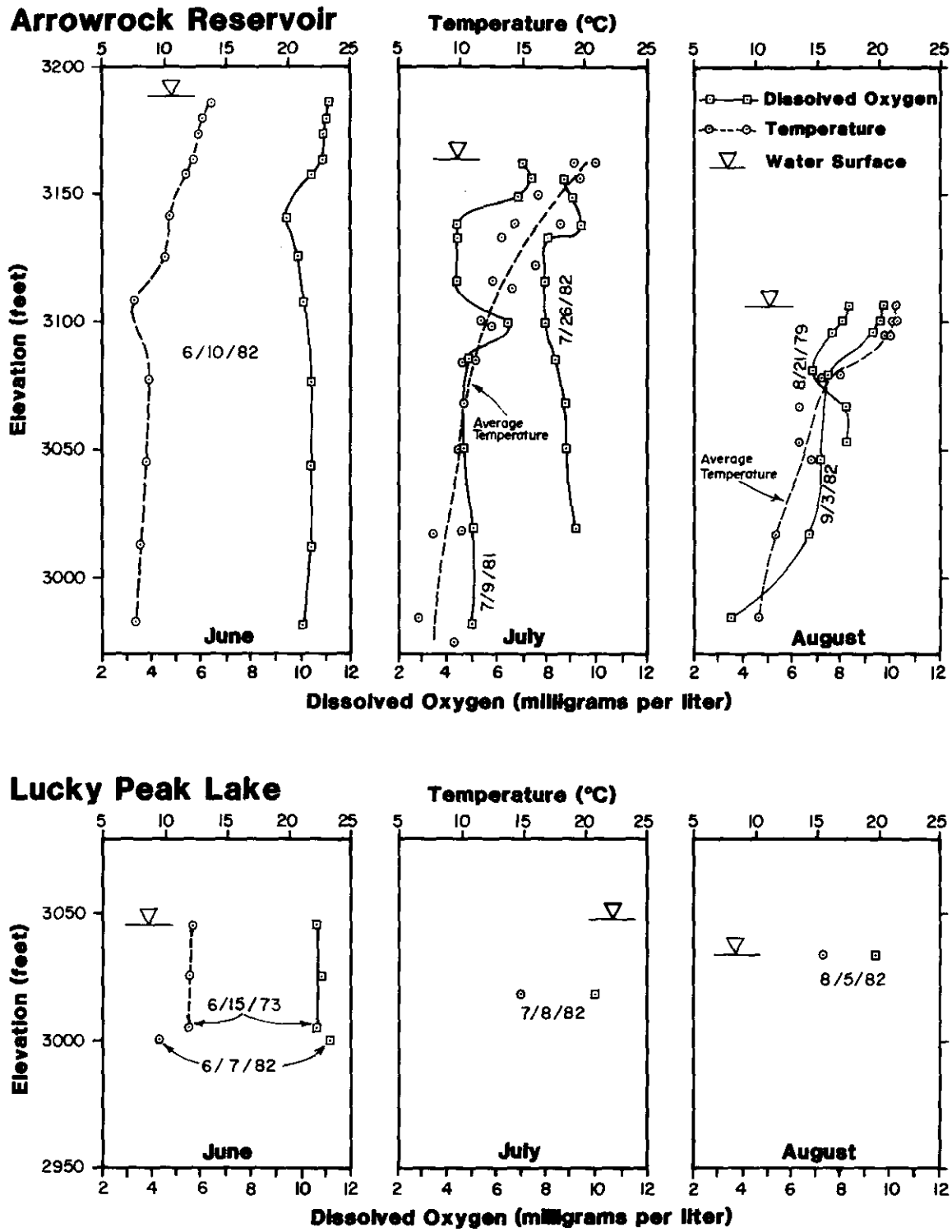


Figure E-3--Water temperatures and dissolved oxygen profiles for Arrowrock Reservoir and Lucky Peak Lake

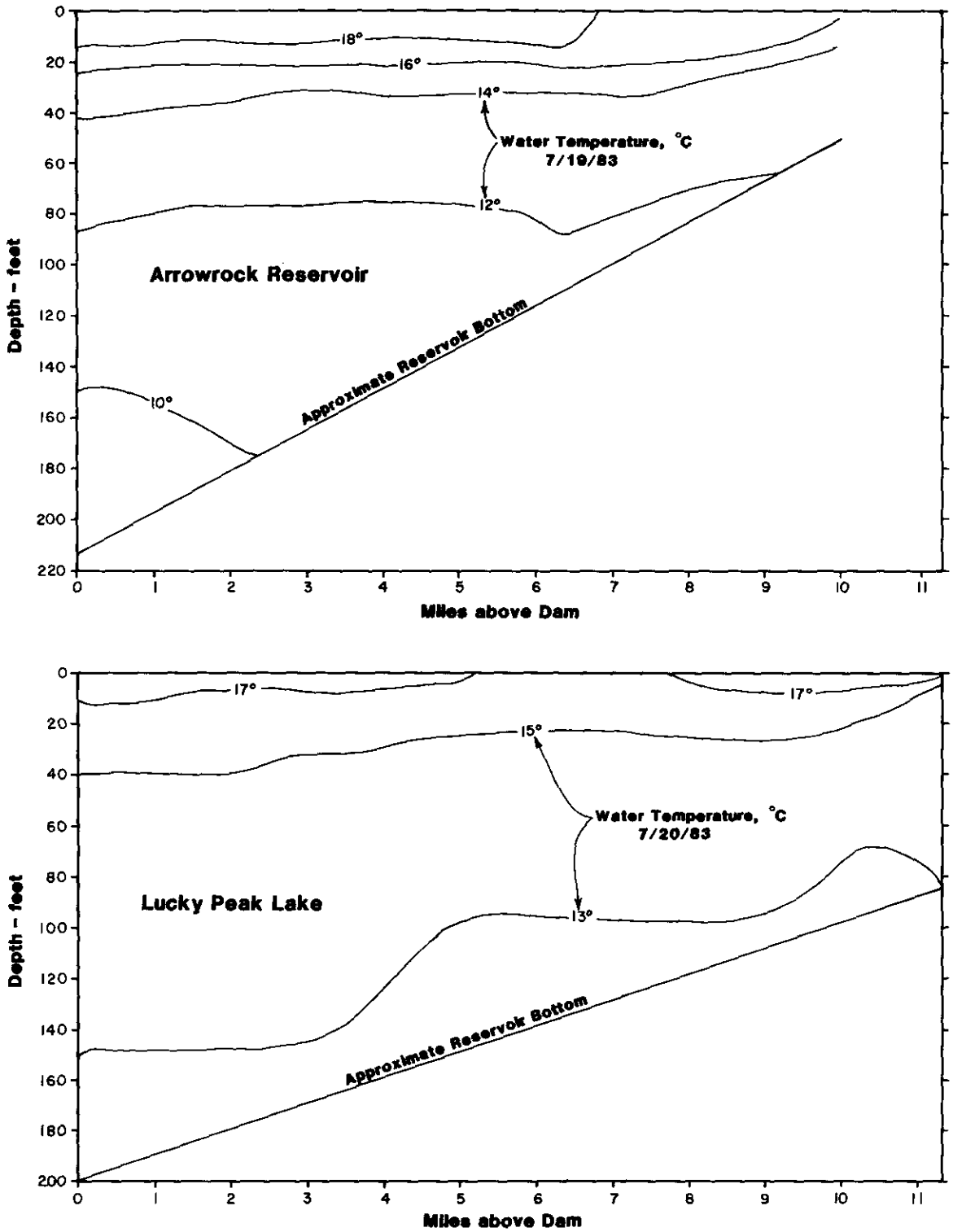


Figure E-4--Temperature profiles--Arrowrock Reservoir and Lucky Peak Lake, July 1983. Dissolved oxygen levels in the entire profile in both reservoirs were at or near saturation.

surface. This may have been caused by the low 1981 runoff. A profile in Lucky Peak Lake taken September 3, 1982 (a year with high runoff), near where water discharges from Arrowrock Dam, measured greater than 6.0 mg/L dissolved oxygen throughout the profile, with the exception of a 3.3 mg/L reading 3.2 feet above the reservoir bottom.

On July 19 and 20, 1983, water temperature and dissolved oxygen profiles were taken in Arrowrock Reservoir and Lucky Peak Lake. The lowest dissolved oxygen concentration measured was 7.6 mg/L at a depth of 213 feet in Arrowrock Reservoir near the dam (the water surface was at elevation 3210 feet, 6 feet below full pool). In general, dissolved oxygen data suggest that oxygen depletion in the lower depths of Arrowrock Reservoir is not a common occurrence, except at the bottom of the reservoir near the mud-water interface. It should be noted that the proposed power penstocks (centerline elevation 3080 feet at the upstream face of Arrowrock Dam) would draw water from Arrowrock Reservoir at a level more than 100 feet above the reservoir bottom (streambed elevation at Arrowrock Dam is 2959 feet).

Impacts of the Proposed Project.--The development and operation of Arrowrock Powerplant, as proposed, would have no effect on the amount of water released from Lucky Peak Lake or on the amount of minimum flows in the Boise River downstream from Lucky Peak Dam.

There should be little change in the water temperature of releases from Arrowrock Reservoir into Lucky Peak Lake with the proposed project because the water intake for the new power penstocks would be only about 25 feet lower than the existing upper outlets in Arrowrock Dam (at elevation 3105 feet). Since the penstocks would draw water from slightly deeper in Arrowrock Reservoir, there could be a slight drop in the temperature of the releases with the operation of the Arrowrock Powerplant.

The proposed powerplant would physically change the releases from Arrowrock Reservoir into Lucky Peak Lake. Water is now released most of the time from the row of upper outlets at elevation 3105 feet. No power would be generated when the Arrowrock Reservoir water surface drops below elevation 3127; therefore, all water released for power production would have been released through the upper outlets under existing conditions. At present, the water released from the upper outlets plunges into Lucky Peak Lake (which has a water surface elevation of 3055 at full pool), a drop of about 50 feet (see figure E-5).

With the addition of a powerplant, the discharge from Arrowrock Reservoir (when its water surface elevation is between elevations 3216 and 3127 feet) would be lowered to a minimum tailwater elevation of 3030 feet, 25 feet below the full pool elevation at Lucky Peak Lake. This would eliminate the reaeration that now occurs as Arrowrock releases fall into Lucky Peak Lake, and it could result in the occasional release of water containing less then 5 mg/L of dissolved oxygen into Lucky Peak Lake, based on reservoir profile data.



Figure E-5--Arrowrock Powerplant site (large arrow). Lucky Peak Lake is drawn down in this view. When full, Lucky Peak Lake backs water onto the face of Arrowrock Dam (small arrow shows Lucky Peak Lake high water line).

The Bureau of Reclamation has monitored several damsites to evaluate the influence of outlet structures on dissolved gas transfer characteristics (20, 21). From those field observations, Reclamation has developed a model which can be used to predict gas transfer in hydraulic structures (22). Since the proposed powerplant at Arrowrock Dam would result in changes in the general reaeration of releases, an analysis was made to evaluate what these changes would be and to determine their probable influences on dissolved oxygen levels in Lucky Peak Lake.

Water withdrawn from Arrowrock Reservoir passes through the release structures and into the upper end of Lucky Peak Lake. The dissolved oxygen level in the releases depends on seasonal conditions and withdrawal elevations. The releases from Arrowrock Reservoir mix with the head waters of Lucky Peak Lake before flowing into the main body of the Lucky Peak Lake hypolimnion (the hypolimnion is the deepest, coldest zone in a thermally stratified reservoir). During its residence in Lucky Peak Lake, the water in the hypolimnion, which is isolated from surface aeration, undergoes a steady dissolved oxygen decline due to oxygen demand. The minimum dissolved oxygen levels in Lucky Peak Lake result under those conditions.

Available temperature and dissolved oxygen profile data for both Arrowrock Reservoir and Lucky Peak Lake were gathered (1) to define the initial quality of the water as it is released from Arrowrock Reservoir and (2) to establish the level at which the inflows would settle in Lucky Peak Lake. Assumptions used in the analysis were:

1. Both reservoirs have a homogeneous water temperature of 4 °C and are saturated with dissolved oxygen from midwinter to midspring.

2. Thermal stratification develops in May, and fall turnover occurs in October.

3. The oxygen demand in the system is 0.05 mg/L per day. This estimate was based on observations of deep Arrowrock Reservoir oxygen data.

The analysis was based on average discharge and water surface elevation data under existing conditions and under conditions with the proposed powerplant. The dissolved oxygen analysis was started in January and run through fall turnover in October. Monthly temperature and dissolved oxygen levels of Arrowrock Reservoir releases were estimated from reservoir temperatures and dissolved oxygen levels at the elevation of the outlets. Gas transfer and release temperatures were evaluated on a monthly basis for each operating condition and release structure through the use of the analysis developed by Johnson (22). It was assumed that submerged power releases would not result in any reaeration.

Heavy mixing of all the Arrowrock Reservoir releases occurs in Lucky Peak Lake near Arrowrock Dam. With no power releases, it appears that a volume of Lucky Peak Lake water equal to approximately 25 percent of the Arrowrock release volume is entrained into this mixing flow. During the proposed power releases, the mixing intensity in the upper end of Lucky Peak Lake would be reduced. An entrainment of Lucky Peak Lake water equal to 10 percent of the release volume was assumed for the with-powerplant analysis.

The temperature patterns of the reservoir and inflows were considered; the interflow of the mixed discharge into Lucky Peak Lake was assumed to be at the bottom of the thermocline, about 45 feet below the Lucky Peak Lake water surface. (The thermocline is the reservoir layer with an abrupt temperature change between the warmer epilimnion above and the cooler hypolimnion below.) Since withdrawals from Lucky Peak Lake are from the very bottom of the reservoir, and Lucky Peak Lake inflows enter the lake at the bottom of the thermocline, there would be a continuous withdrawal of the oldest hypolimnion water from Lucky Peak Lake, with replacement from above. Typically, hypolimnion retention times in Lucky Peak Lake are estimated to be from 15 to 35 days. The retention time was multiplied by the assumed oxygen demand rate of 0.05 mg/L per day to obtain an oxygen decline while the flow is retained in Lucky Peak Lake.

Predicted dissolved oxygen levels in the hypolimnion of Lucky Peak Lake near Lucky Peak Dam with the existing Arrowrock release structures and with the proposed Arrowrock power operation are shown in figure E-6. Simulated dissolved oxygen levels in Arrowrock Reservoir releases subsequent to the entrainment of Lucky Peak Lake water but prior to the retention of those releases in the Lucky Peak Lake hypolimnion would be approximately 0.7 mg/L higher than the dissolved oxygen values shown in the illustration. For example, the September dissolved oxygen value of 6.0 mg/L shown at the lower end of Lucky Peak Lake would correspond to a dissolved oxygen level of 6.7 mg/L in Arrowrock Reservoir releases below the zone of mixing with Lucky Peak Lake water.

Note that during the nonstratified period of late fall, winter, and early spring, dissolved oxygen levels would be similar for both the existing operations and the proposed power operations. During this period, releases from the existing Arrowrock structures would yield initially supersaturated dissolved oxygen levels in the Lucky Peak Lake inflow. It was assumed that through oxygen demand and surface degasing in the homogeneous reservoir, dissolved oxygen levels would be typically slightly supersaturated. On the other hand, with releases from the proposed powerplant, the inflow during this period would be saturated. Some oxygen demand might occur in Lucky Peak Lake. However, Lucky Peak Lake would be in a mixed state, which would likely result in dissolved oxygen levels near saturation.

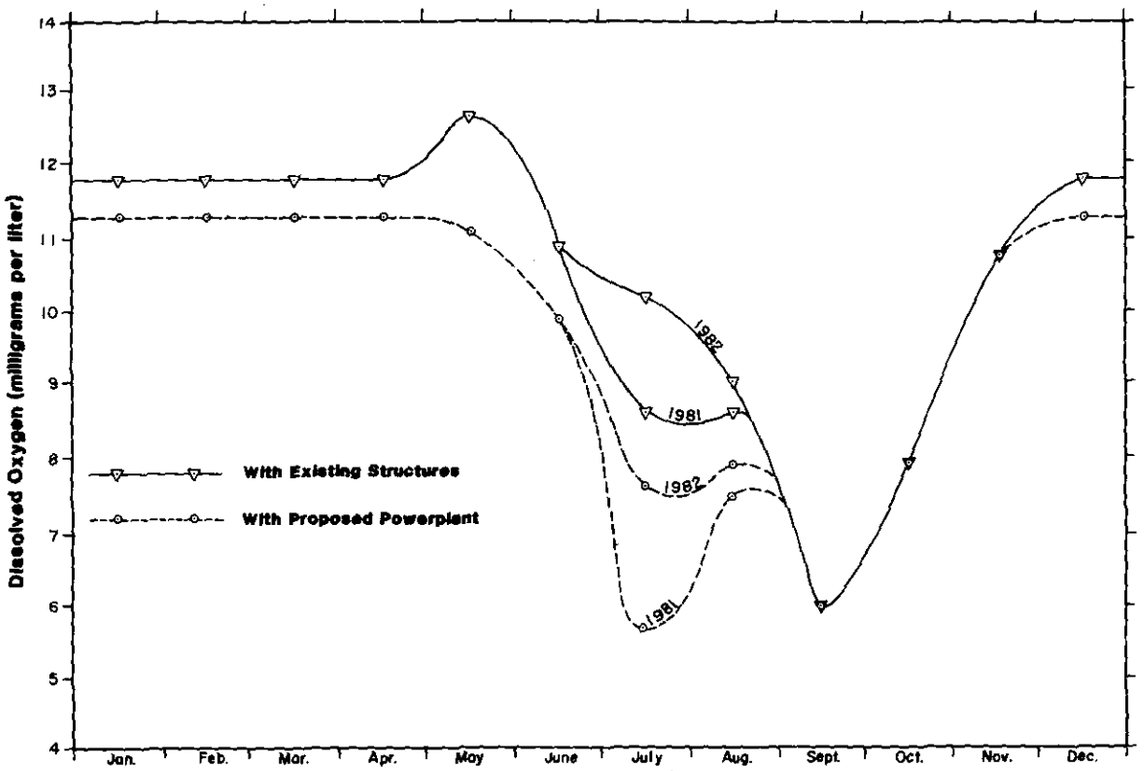


Figure E-6--Predicted dissolved oxygen levels in the Lucky Peak Lake hypolimnion near Lucky Peak Dam. Predicted dissolved oxygen levels in Arrowrock Reservoir releases below the zone of mixing with Lucky Peak Lake water would be about 0.7 mg/L higher than levels shown in this illustration.

For typical years through the stratified spring season of May and June, it appears that, for the existing situation, releases through the upper outlets in Arrowrock Dam yield supersaturated dissolved oxygen levels. These levels, however, are diluted by Arrowrock spillway releases which are likely to have dissolved oxygen levels at or near saturation. The result is reduced but still somewhat supersaturated dissolved oxgyen inflows. With power releases, most of the flow would undergo no reaeration, and thus the dissolved oxygen levels would be equal to those in Arrowrock Reservoir at the penstock elevation, which at that time of the year are near saturation. The power releases would generally be augmented by releases through the upper outlets in Arrowrock Dam, which would increase the dissolved oxygen level in the total mixed inflow to Lucky Peak. The analysis indicates that for the May-June period with typical conditions, dissolved oxygen levels in Lucky Peak Lake under existing operations are approximately 1 mg/L higher than would occur with the proposed power releases.

A more pronounced difference can occur in midsummer when dissolved oxygen levels in Arrowrock Reservoir become depleted. Under those conditions, releases through existing outlets in Arrowrock Dam cause substantial reaeration of the flow. Power releases, however, would pass the depleted dissolved oxygen water on into Lucky Peak Lake with no reaeration. The result appears to be that, for the situation considered, the existing structures would yield approximately 3 mg/L higher dissolved oxygen levels than those that would occur with power releases.

Later in the summer, there appear to be some dissolved oxygen increases under either operating mode because of the drawdown of the Arrowrock Reservoir water surface and the withdrawal of water from higher dissolved oxygen levels near the reservoir surface. Beginning in September, power generation would be greatly reduced, and releases would be generally the same as under current operations. Reservoir dissolved oxygen improves as the reservoir mixes in the late fall, which would preclude dissolved oxygen problems in powerplant releases during that time of the year.

In summary, simulated dissolved oxygen in Arrowrock Powerplant releases downstream of the zone where mixing with Lucky Peak Lake water occurs remained well above 6.0 mg/L during the critical summer period. The Idaho Water Quality Standards provide, in Section 1-2276, that releases from dams, reservoirs, and hydroelectric facilities are required to contain not less than 5 mg/L of dissolved oxygen from May 15 through October 15 (23). The standards further state that

> ...the dissolved oxygen shall be measured at a single location in the river downstream from the hydroelectric facilities. Such location shall be as close to the facilities as practical to obtain a representative measurement, but in all cases shall be sufficient distance downstream to allow thorough mixing of reaerated waters, spilled by-pass waters, and other waters that have passed through the facility.

It therefore appears that the proposed Arrowrock power project would be in compliance with Idaho Water Quality Standards. Dissolved oxygen levels in Arrowrock Reservoir releases would be monitored in the proposed power penstocks, and portable equipment would be available as needed to monitor the dissolved oxygen levels of Arrowrock releases downstream from the zone where mixing with Lucky Peak Lake water takes place.

The Idaho Department of Water Resources, in its letter of March 9, 1983 (see Appendix A), stated that discharges from the proposed powerplant should contain at least 6 mg/L of dissolved oxygen, even though the state standard is only 5 mg/L. The analysis of predicted dissolved oxygen levels in Arrowrock Reservoir releases downstream from the zone of mixing with Lucky Peak Lake water indicates that the desired level of 6 mg/L or more of dissolved oxygen would be met.

Construction activities related to the proposed powerplant would have a temporary effect on water quality in the backwaters of Lucky Peak Lake. A cofferdam will probably be constructed at the powerplant site during construction. In addition, the upgrading of the road between Spring Shores and Arrowrock Dam may cause some sloughing to occur at the edge of the reservoir below the road. If beach grading or related work is required at selected Lucky Peak Lake recreation sites, some sedimentation would occur. Sediment loading around those areas would be controlled to the extent possible. Any effects on water quality from these proposed actions would be localized and short term and would therefore be considered insignificant.

Shoreline erosion control measures, such as vegetative plantings, were considered in conjunction with the proposed 5-foot reduction of the maximum summer pool level at Lucky Peak Lake. However, the proposed reduction would cause only limited changes in the amount of erosion of the shoreline around the lake because the soils associated with the shoreline have stabilized during the 30 years Lucky Peak Lake and its fluctuating pool levels have been in existence. It was therefore determined that shoreline erosion control measures would not be necessary.

Mitigating Measures.--Construction specifications would require that construction activities be performed by methods that would prevent entrance or accidental spillage of solid matter, contaminants, debris, or other objectionable pollutants and wastes into flowing or dry water courses or into the reservoirs. The contractors would be required to comply with all State and Federal laws and regulations regarding the control and abatement of water pollution. All waste materials and sewage resulting from the construction or operation of the proposed project would be disposed of as specified by State, local, and Federal health and pollution control regulations.

Water quality certification as described under section 401 of the Federal Water Pollution Control Act (the Clean Water Act) will be obtained for the proposed project from the Idaho Department of Health and Welfare prior to construction. The letter from the applicants to the Idaho Department of Health and Welfare requesting the water quality certification is included in Appendix C.

As outlined in the previous section of this water quality discussion, the dissolved oxygen levels in Arrowrock Reservoir releases would be monitored in the proposed power penstocks, and portable equipment would be available as needed to monitor the dissolved oxygen levels of Arrowrock releases downstream from the zone where mixing with Lucky Peak Lake water takes place.

Prior to project construction, the applicants would apply for permits through the established joint permit program of the State of Idaho and the Corps of Engineers under section 404 of the Clean Water Act and section 10 of the River and Harbor Act of 1899, as well as the Idaho

Stream Channel Protection Act and the Idaho Lake Protection Act. That joint application will insure that the proposed project meets the applicable requirements of the Idaho Department of Water Resources, the Idaho Department of Lands, and the Corps of Engineers for work in the waters and wetlands of Idaho.

3.--REPORT ON FISH, WILDLIFE, AND BOTANICAL RESOURCES

Vegetation

Affected Environment.--One basic vegetative community dominates the study area--a shrub-steppe community which is present on most of the semiarid lands around Arrowrock Reservoir and Lucky Peak Lake (3, 4, 7). However, variations in microclimate, elevation, and soils have allowed the establishment of representatives of other kinds of communities at various locations within the study area.

The most common shrubs in the widespread shrub-steppe community are big sagebrush,[1/] three-tip sagebrush, and antelope bitterbrush, although gray and green rabbitbrush are also common. Common forbs include arrowleaf balsamroot, lupine, phlox, and larkspur. The grass understory is predominantly bluebunch wheatgrass associated with Sandberg's bluegrass and Idaho fescue; however, cheatgrass and annual forbs dominate in areas where fires or heavy grazing have disturbed the native vegetation.

Representatives of other plant communities also occur in the study area. Most draws and creeks tributary to Arrowrock Reservoir and Lucky Peak Lake contain a shrubby growth of willows, mountain alder, elderberry, and quaking aspen, along with sagebrush, bitterbrush, wild rose, and shrub-steppe grasses. In addition, ponderosa pine and Douglas-fir grow at the higher elevations around Arrowrock Reservoir as the mountains begin the transition from shrub-steppe to coniferous vegetation.

Neither reservoir has many shallow areas suitable for the growth of rooted aquatic flora. In addition, annual reservoir drawdowns expose such littoral zones and discourage the growth of aquatic macrophytes. Thus, phytoplankton are the dominant plants in the aquatic ecosystem, and they are not abundant.

The proposed transmission line would traverse shrub-steppe vegetation almost exclusively. The line would cross the Boise River near the Boise River Diversion Dam, but the river's riparian zone in this area is weakly defined because of the high degree of disturbance from the construction and operation of the diversion dam. No riparian or wetland values would be effected by construction and operation of the transmission line.

Impacts of the Proposed Project.--Some existing shrub-steppe vegetation would be disturbed by construction work on the access road. Little or no vegetation exists at the powerplant and switchyard site; therefore, no vegetative loss would be associated with the construction of these facilities (see figure E-7). At the present time, it appears that needed borrow material could be obtained from excavations for the powerplant and road. If additional borrow is needed, it would probably

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1/ Vegetative names used in this exhibit follow those in Hitchcock and Conquist (8).



Figure E-7--Proposed powerplant construction area as seen from the top of Arrowrock Dam. The trucks are at the powerplant site.

be obtained from commercial sources. The proposed transmission line would cause the permanent loss of a small amount of shrub-steppe vegetation at the base of each pole. In addition, some shrub-steppe vegetation would be temporarily disturbed during construction of the line and during periodic maintenance. Overall, it is estimated that less than 5 acres of shrub-steppe vegetation would be permanently lost due to construction of the proposed powerplant and associated features, including the proposed transmission line. This impact would be insignificant.

Mitigating Measures.--Areas disturbed during construction and not needed for permanent facilities would be revegetated as soon as possible with a mixture of grasses, forbs, and shrubs that naturally occur in the study area and are beneficial to wildlife.

Fish Resources

Affected Environment.--Under current operating procedures, Arrowrock Reservoir and Lucky Peak Lake provide fair to good habitat for cold water fish (7, 9). When full, the reservoirs inundate a steep, rocky canyon with a varied topography that produces numerous feeding and shelter areas for fish. However, food production is low because annual drawdowns discourage the growth and reproduction of aquatic invertebrates and plants. Zooplankton and small fish are the most abundant food items found in the reservoirs, and there are a few aquatic insects.

A variety of cold water fish occurs in both Arrowrock Reservoir and Luck Peak Lake (7, 10). Game fish include rainbow trout,[1/] Dolly Varden, cutthroat trout, kokanee, mountain whitefish, and yellow perch. From 10,000 to 20,000 catchable size rainbow trout are stocked in Arrowrock Reservoir annually by the Idaho Department of Fish and Game, but about half of the rainbows in Arrowrock Reservoir are wild fish produced in various tributaries (7). Most kokanee present in Arrowrock Reservoir were introduced from Anderson Ranch Reservoir via the South Fork of the Boise River; however, some kokanee spawning also occurs. Smallmouth bass have not been stocked in Arrowrock Reservoir because early summer drawdowns would limit spawning success. Some smallmouth bass may eventually be introduced into Arrowrock from Anderson Ranch Reservoir via the South Fork of the Boise River.

Substantial improvements in the fishery at Lucky Peak Lake have taken place in recent years as a result of introductions of kokanee and smallmouth bass by the Idaho Department of Fish and Game. In addition, the Department of Fish and Game stocks 50,000 catchable rainbow trout in Lucky Peak Lake each year. About 2,000 adult kokanee spawn in streams tributary to Lucky Peak Lake annually, mostly in the Mores Creek drainage, but little natural reproduction of reservoir trout occurs because of the generally unfavorable spawning conditions in the tributary streams.

1/ Common names for fish used in this exhibit follow those in Bailey, et al. (11).

Among the most common nongame fish present in both reservoirs are largescale sucker, bridgelip sucker, mountain sucker, northern squawfish, longnose dace, redside shiner, chiselmouth, and mottled and shorthead sculpins. Although no recent population or biomass data are available, suckers and squawfish probably dominate the fish biomass of both reservoirs, while shiners are the most numerous.

Of the three reservoirs in the study area, Arrowrock is drawn down the earliest to meet irrigation demands while maintaining recreation at Lucky Peak Lake and Anderson Ranch Reservoir. In addition, Arrowrock Reservoir is at times almost completely emptied in dry years. This operation has been detrimental to Arrowrock Reservoir's fishery because the reservoir has several tributaries conducive to natural salmonid spawning. The trout fishery in Lucky Peak Lake, on the other hand, has been maintained largely by stocking because of the lack of good spawning habitat (except for a small amount of trout reproduction in Mores Creek).

No surveys have been conducted recently at either reservoir to accurately determine annual angler use. However, the Idaho Department of Fish and Game estimates that about 8,000 angler-days are currently expended per year at Arrowrock Reservoir (12), and the Corps of Engineers estimated that about 135,000 angler-days were spent at Lucky Peak Lake in 1980 (13).

Impacts of the Proposed Project.--The proposed powerplant would be operated largely using the release schedule from Arrowrock Dam associated with the reservoir system operation. One proposed operational change associated with the powerplant would be a slight reduction (5 feet) in Lucky Peak Lake's normal summer water surface after the reservoir fills in the spring or early summer to increase power head for Arrowrock Powerplant. This slight lowering of Lucky Peak Lake's maximum water level would not adversely affect the fishery in that reservoir. The resulting slightly improved water level in Arrowrock Reservoir might benefit the fishery there, but the improvement, if any, would be small.

Arrowrock Reservoir would continue to be drawn down annually for irrigation and flood control, and some fish would pass from Arrowrock Reservoir into Lucky Peak Lake--as they do now. With the powerplant in place, some of those fish would pass through the powerplant's turbines, and some would be killed either by the turbine blades or by the large pressure changes associated with water moving through the power penstocks. The amount of turbine mortality that would occur is unknown, but it would likely be a substantial percentage of the fish which would pass through the turbines.

The chances of fish being entrained in the penstock intakes would not be large when Arrowrock Reservoir is at the higher water levels. Based on current design data, the top of the penstock intakes would be at about elevation 3086 feet, while the normal full pool water surface elevation is 3216 feet--a difference of 130 feet. The probability of fish being present at that depth, and hence their chance of entrainment, would be relatively small. However, the chance of entrainment would increase as Arrowrock Reservoir is drawn down. At minimum power

operating head, the Arrowrock Reservoir water surface would be about 40 feet above the top of the penstock intakes, and the probability of fish being present at that depth would be higher.

Proposed Arrowrock Powerplant operations and reservoir levels have been analyzed assuming a repetition of the runoff conditions over a 50-year period (1928-77). The study shows that the powerplant would be operating at the lower water levels (from 40 to 70 feet above the penstock intakes) at some time during 31 years of the 50-year period. However, the powerplant would usually be operating in that range for only a month or less in each of the 31 years. Powerplant operations in the 40- to 70-foot range would be most common in December (10 of 50 years) and September (8 of 50 years).

The potential for entrainment of fish would vary by species. Trout and smallmouth bass are largely solitary, and only individual fish swimming near a penstock intake would be entrained. Kokanee, on the other hand, are a schooling fish, and the potential would exist for the occasional entrainment of large numbers of kokanee at the same time.

Overall, it is believed that the impact of the powerplant on the fishery at Arrowrock Reservoir would be minor. The fishery at Lucky Peak Lake would be impacted somewhat because some fish now passing out of Arrowrock Reservoir and contributing to the Lucky Peak fishery would instead be killed while passing through the new power facilities.

Mitigating Measures.--To compensate for the increased fish mortality which would be caused by the new power facilities, it has been mutually agreed that the applicants will provide $12,000 annually (at October 1983 price levels),indexed to current year price levels, to the Idaho Department of Fish and Game to produce rainbow trout and kokanee for planting in Arrowrock Reservoir and Lucky Peak Lake. This measure would result in no net loss to the present fishery resources of these two reservoirs from the construction and operation of the proposed Arrowrock Powerplant. The need for mitigating measures was suggested in letters from the Idaho Department of Fish and Game (March 16, 1983) and the U.S. Fish and Wildlife Service (April 6, 1983). The selection of the proposed fishery mitigation measure described above is covered by the applicants' February 8, 1984, letter to the Idaho Department of Fish and Game and that agency's response dated March 6, 1984 (all letters are included in Appendix A).

The possibility of installing fish screens on the powerplant's penstock intakes was previously considered by the Bureau of Reclamation and the U.S. Fish and Wildlife Service, but the costs were found to be excessive in comparison to fish loses that might be prevented (14).

Wildlife Resources

Affected Environment.--The shrub-steppe and other vegetative communities in the study area support a variety of wildlife. Commercial and residential development near Lucky Peak Lake is becoming an increasing threat to wildlife populations, but development near Arrowrock Reservoir has been minimal so far.

Big game species common to the shrub-steppe habitat of the general study area are mule deer[1/] and elk (7, 9). Mule deer are widely distributed over the area in summer and concentrate at lower elevations in winter. Elk summer at higher elevations north of Arrowrock Reservoir and move into the lower elevations of the study area only during the winter. Black bear and mountain lions occur in the area but generally frequent the higher elevations.

The Boise River deer herd has a population of 13,000 to 18,000 animals and, from a hunting standpoint, is probably the most important herd in the State. Because of the importance of the general study area as winter range, the Idaho Department of Fish and Game manages 8,000 acres of shrub-steppe habitat near the upper end of Arrowrock Reservoir and about 17,300 acres of land near Lucky Peak Lake for winter range. About 60 percent of this land is owned by the department, and the rest is leased.

Waterfowl are not abundant within the study area due to the presence of better wetland habitat in the lower Boise Valley. However, a few waterbirds such as common mergansers, eared grebes, ring-billed and California gulls, and others do visit the reservoirs.

Upland game using the shrub-steppe habitat near Arrowrock and Lucky Peak include chuckar, gray (Hungarian) partridge, California quail, mountain quail, wild turkey, mourning dove, ruffed grouse, black-tailed jackrabbit, mountain cottontail, and pygmy rabbit; blue grouse and snowshoe hare occur at some of the higher elevations. Chuckar are common on the talus slopes around both reservoirs and are the most abundant game bird in the study area.

Raptors which breed in the general study area include prairie falcon, red-tailed hawk, golden eagle, sparrow hawk, and osprey. The goshawk, sharp-shinned hawk, Cooper's hawk, rough-legged hawk, bald eagle, and peregrine falcon occur in the area during fall, winter, and spring but do not nest near the reservoirs.

Of the furbearing mammals, a few raccoon and mink find suitable habitat near both reservoirs. Beaver and muskrat are rare due to a scarcity of food for these animals. Bobcats, striped and spotted skunks, long-tailed weasels, badgers, coyotes, and red fox are occasionally found in the nearby hills.

Small mammals which commonly occur in the vicinity of Arrowrock Reservoir and Lucky Peak Lake include bushy-tailed woodrat, least and yellow pine chipmunk, deer mouse, western harvest mouse, northern grasshopper mouse, Richardson's and Townsend's ground squirrel, vagrant shrew, yellow-bellied marmot, northern pocket gopher, and porcupine. These small mammals provide an important food supply for predators.

1/ Common names used are taken from Burt and Grossenheider (15) for mammals; Robbins, et al. (16) for birds; and Stebbins (17) for reptiles and amphibians.

Nongame birds prominent near the reservoirs during the nesting season include cliff, violet-green, and bank swallows; canyon and rock wrens; Say's phoebe; black-billed magpie; western and eastern kingbirds; rufoussided towhee; sage thrasher; lazula bunting; lark and chipping sparrows; western tanager; black-capped chickadee; crow; and raven.

Amphibians and reptiles occurring in the area include western toad, leopard frog, western spotted frog, Pacific treefrog, sagebrush lizard, short-horned lizard, rubber boa, western garter snake, gopher snake, racer, and western rattlesnake.

No hunting surveys have been conducted for the study area; however, the area lies within Game Management Unit 39, which has a current harvest of about 2,000 mule deer annually. Many of the deer in that unit winter near Arrowrock Reservoir and Lucky Peak Lake. The general area is also heavily used by bird and coyote hunters.

Impacts of the Proposed Project.--Construction and operation of the proposed powerplant would only have minor impacts on wildlife. During construction, a few small animals unable to escape the path of construction equipment would be killed. The increased noise and human presence at Arrowrock Dam during construction may cause some species shy of human activity to avoid the construction area. These impacts would be short term and insignificant.

The long-term loss of an estimated 5 acres of shrub-steppe habitat, most of it alongside the existing reservoir road or in small patches at the base of new transmission towers, would not have a noticeable effect on area wildlife populations.

The proposed transmission line would represent an increased collision and electrocution hazard to birds, but careful design and alignment of the line would minimize any impacts.

Mitigating Measures.--Vegetation disturbed in areas not needed for permanent facilities would be revegetated with grasses, forbs, and shrubs beneficial to wildlife as soon as possible after construction. The transmission line would be designed and constructed in accordance with current practice for minimizing electrocution and collision hazards to raptors and other birds.

Threatened or Endangered Species

The Fish and Wildlife Service has reviewed the proposed project plan with regard to the Endangered Species Act. That agency concluded that the proposed project would not affect any listed or proposed threatened or endangered species (18) (see Fish and Wildlife Service letter of April 6, 1983, in Appendix A).

Northwest Power Planning Council's Fish and Wildlife Program

The Northwest Power Planning Council's 1982 Fish and Wildlife Program (19) did not establish specific goals for resident fish and wildlife. However, the Arrowrock Powerplant project would be in

conformance with the intent of the program, which is to protect, mitigate, and enhance fish and wildlife on the Columbia River and its tributaries.

Wildlife would not be significantly impacted by the proposed project. During preliminary project studies, an alternative location for a construction access road through the Grouse Creek drainage upstream from Arrowrock Dam was considered. That road would have had much greater impact on wildlife than the selected plan. The Grouse Creek access road was dropped in favor of the proposed access due, in part, to the wildlife values associated with the Grouse Creek drainage. In addition, the project mitigation plans call for the revegetation of disturbed areas not needed for permanent facilities as soon as possible after construction with grasses, forbs, and shrubs beneficial to wildlife.

In regard to resident fish, the powerplant penstock intakes were designed to be deep enough to avoid entrainment of fish during most of the time that the proposed powerplant would be operating. In addition, the applicants have proposed a mitigation plan that should fully compensate for any losses of resident fish that may result from the new power facilities. Moreover, the operating plan for the proposed powerplant was coordinated closely with the Bureau of Reclamation and is designed to be fully compatible with the current operating plans for the Boise River reservoir system. That current operating plan contains recent improvements designed to enhance the resident fishery in Arrowrock Reservoir and in the Boise River downstream from Lucky Peak Dam.

4.--REPORT ON HISTORICAL AND ARCHEOLOGICAL RESOURCES

Study Area

The geographic scope of the proposed power project is limited with regard to historical and archeological resources because an existing dam would be involved and no new lands would be inundated. To analyze the effects of the project on cultural resources, the study area is defined as those places subject to the direct impacts of construction and powerplant operation.

1. Arrowrock Dam.

2. The basalt bench and the slopes below the left abutment of the dam where the powerplant, switchyard, and an access road would be located.

3. The road from the Lucky Peak Spring Shores recreation area to Arrowrock Dam, which would be improved.

4. Possible borrow, spoil, or construction yard areas that have not yet been identified.

5. The shoreline of Lucky Peak Lake, which may be maintained at a level 5 feet lower than the existing full pool level during the summer to increase power production at the proposed powerplant. This area may also be subject to minor daily fluctuations of the water surface resulting from the operation of the proposed powerplant.

6. The proposed transmission line route from Arrowrock Dam to the existing Boise Bench substation at the Idaho Power Company.

Affected Environment

The National Register of Historic Places, statewide inventories, publications, and Bureau of Reclamation documents were consulted to locate cultural resources in the area of direct impact (25,26). The regional archeologist for the Bureau of Reclamation also made a site visit to evaluate the potential for the presence of unrecorded sites. These activities identified only one significant site that would be affected by the proposed hydroelectric development. This site is Arrowrock Dam itself, which is listed on the National Register of Historic Places.

Boise State University conducted a survey of most of the bed of the drought-emptied Lucky Peak Lake in 1979 (27). The survey identified three historic sites within the pool of the reservoir. One of those sites is at the mouth of Deer Creek near Arrowrock Dam; it is undoubtedly the remains of the Arrowrock Dam construction camp. The other two sites are located 1 and 5 miles, respectively, downstream from Arrowrock Dam.

No prehistoric sites were found, but this may be because of a layer of fine sediment which coats most of the lakebed and could have covered some sites. Boise State University reported that an earlier

(unidentified) survey of the hillside above the reservoir failed to find any sites.

The Bureau of Reclamation recently contracted for a survey of the portion of the Lucky Peak Lake shoreline not surveyed by Boise State University (28). This survey recorded two additonal historical sites and evaluated the three sites found in the earlier survey.

Both of the newly recorded sites are historic dumps which are located on the north side of the reservoir far beneath the full pool level. One site (10-BO-301) is located 2 miles downstream from Arrowrock Dam; the other (10-BO-302) is located about 1 mile downstream from the dam. The cultural resources consultant felt that both sites could have potential significance with regard to the development of industry in Idaho. He consulted with the staff of the Idaho State Historical Society, but the sites could not be associated with any regional research problems or significant events such as the construction of Arrowrock Dam. It was concluded that the artifacts exposed on the lakebed provided insufficient information to determine the significance of the sites under National Register criteria.

The cultural resources consultant also reevaluated the sites recorded in the 1977 survey. Based on that reevaluation, it was concluded that those sites could not be considered significant.

Very little remains of the workers' camp, shops, mills, and the railroad that served the Arrowrock Dam construction site from 1911 to 1916. The Bureau of Reclamation disposed of all salvageable materials immediately after the dam was finished. Seasonal inundation by Lucky Peak Lake and high velocity discharges from Arrowrock Dam have essentially obliterated the remaining evidence from the construction period. The basalt bench on which the powerplant would be located is entirely devoid of soil. All that remains of the concrete batching plant, derrick, hoist house, and railroad that stood there are a few concrete footings and a scattering of scrap metal.

Arrowrock Dam was listed in the National Register of Historic Places in 1972 for its significance in engineering and regional agricultural growth. The dam was the first large, concrete arch dam (highest in the world when completed in 1915), and it served as a prototype for many later developments (29). Arrowrock assured the success of the Boise Project, one of the most successful early Federal Reclamation ventures, thereby securing the economic base of southwest Idaho. More than a quarter of a million acres of productive farmland receive storage water from Arrowrock Reservoir. Much of the rapid agricultural growth in the Boise Valley in the early 20th century is attributed to the reliable water supply from Arrowrock Reservoir (30).

The irrigators of the Boise Valley realized the need for a large, upstream reservoir in the 1890's when irrigated farmland increased five-fold to nearly 100,000 acres (30). Only about half that land had water supplies in an average year. Junior water right holders usually did not receive sufficient irrigation supplies after the June flood to mature their crops. Private developers did not have the organization, capital,

or expertise to build the necessary facilities. In 1902 a group of energetic community leaders convinced the local populace to petition the Federal Government's newly created Reclamation Service (the former name of the Bureau of Reclamation) to build the project.

Federal construction of an offstream reservoir at Deer Flat and the distribution system began in 1906. Upriver storage, however, proved to be more costly than anticipated. Many of the potential storage basins were small and required high, expensive dams (30, 31, 32, 33).

The construction of Arrowrock Dam was authorized by the Secretary of the Interior on January 6, 1911. The size of Arrowrock Dam (350 feet in height above the deepest point in the foundation, 636,000 cubic yards of material) and the degree of curvature were unprecedented and required innovative design and construction methods (34). The Reclamation Service made one of the first applications of the trial-load method when designing Arrowrock Dam (35). The design featured a gravity section with an upstream curve for extra safety and a 400-foot-long side channel spillway on the right abutment (36).

Building Arrowrock Dam entailed solving significant construction, engineering, and logistical problems. The Arrowrock site was in a remote, rugged canyon, and Idaho was far from major sources of equipment and materials. Transportation to the construction site was the first concern. Although only 20 miles from Idaho's capital, Arrowrock was extremely isolated by the topography and poor roads. The Reclamation Service immediately began laying track for a 17-mile-long railroad from Barberton at the nearest commercial rail depot. The Boise and Arrowrock Railroad, as it was known, proved to be very economical; the freight savings on cement alone very nearly paid for the entire cost of the railroad (38).

The isolation of the construction site also necessitated the building of a camp for 1,000 workers and their familes and a complete manufacturing complex at the foot of the dam. The camp embodied the latest ideas in camp construction and maintenance (39). The population of over 1,500 lived in a community that contained more amenities and better fire protection and sanitation than many permanent towns in the region. Largely because of the camp, the Reclamation Service was able to attract a highly productive work force.

The major engineering innovations associated with Arrowrock Dam, in addition to the use of the trial-load method, include the development of new and unusual excavation equipment (38), special foundation preparations (36, 37); development of an economical blended cement using granite from the spillway excavation (38, 39, 40, 41, 42), and highly efficient methods of concrete production and placement (42, 43).

The construction engineer, Charles H. Paul, systematically gathered data on temperature variations and the resultant shrinkage of the mass concrete structure as it cooled (44, 45). These data led to important conclusions that influenced the design of larger dams such as Grand Coulee and Hoover.

The project also saw the development of meticulous costkeeping methods to monitor the progress and efficiency of construction. The efficiency of the operation was illustrated by the fact the actual cost of the dam was significantly less than the amount budgeted for the job (30, 38).

Between 1935 and 1937, Arrowrock Dam was repaired and raised 5 feet. The surfaces of blended cement exposed to the weather deteriorated because of the frequent freeze-thaw cycle of the Idaho climate. An 18-inch-thick layer of conrete was placed over the downstream face of the dam and the spillway. Raising the dam increased the reservoir capacity by 9,000 acre-feet.

In summary, Arrowrock Dam demonstrated the feasibility of very large construction projects in remote locales--a necessity for water resources development in the arid west. Arrowrock Reservoir allowed a major expansion of irrigation and secured the economic base of southwest Idaho. The engineering advances in design and construction associated with Arrowrock Dam provided basic information and experience needed to build later, larger concrete structures.

Impacts of the Proposed Project

The principal elements of the proposed modifications at Arrowrock Dam would include the 60 megawatt capacity powerplant immediately downstream of the dam, a nearby switchyard, two 13-foot-diameter power penstocks through the dam, the probable removal and replacement of the steel truss bridge spanning the spillway, realining the roadway on the left and right abutments of the dam, and upgrading the road from Spring Shores to the dam and the road from the dam down to the powerplant site. Realinement of the left abutment would entail removal of the upper portion of the unused log conveyor.

All of the above plan elements, except the upgrading of the Spring Shores road, meet the criteria of "adverse effect" under the regulations of the Advisory Council on Historic Preservation. The dam will be noticeably altered, and the powerplant will change the existing setting. The visual and engineering changes will affect the historical significance of Arrowrock Dam. Alternatives to these plan elements are infeasible on engineering or cost grounds. The road realinements and upgrading, spillway bridge replacement, and abutment modifications are necessary to accommodate heavy construction equipment and powerplant maintenance requirements (although there is a possibility that the existing spillway bridge may be left in place when the new bridge is built).

An alternative plan to upgrade the Grouse Creek road on the south side of Arrowrock Reservoir for construction access would have required, in the immediate vicinity of the dam, realining only the left abutment and upgrading the short reach of road down to the powerplant site. This alternative was rejected primarily because of environmental impacts it would have caused along Grouse Creek and because its estimated costs were significantly greater than those of the selected route.

The placement of the proposed powerplant on the basalt bench is unavoidable because of the high summer levels of Lucky Peak Lake. The existing power penstocks which were installed when Arrowrock Dam was built cannot be used since they were positioned for a powerplant at river level.

The proposed project has a very low probability of affecting presently unrecorded cultural resources in the identified impact areas. Construction activities during the 1911-15 period would have completely obliterated archeological sites in the vicinity of the dam. The few undisturbed surfaces are on very steep, inaccesible terrain unsuited for habitation.

The proposed powerplant and switchyard and the access road to those sites would be situated on extremely disturbed surfaces. During the construction of Arrowrock Dam, a railroad yard, shops, and construction yards were located on the basalt bench where the powerplant is to be built. Slopes above the bench were cut and filled to provide a bed for the existing access road from the top of the dam. Since then, some 30 years of seasonal inundation by Lucky Peak Lake has nearly destroyed all remnants of the early construction activity.

The second direct impact area where there is virtually no potential for encountering intact cultural resources is the road improvement from Spring Shores to Arrowrock Dam. The existing road is incised into the very steep, 50- to 60-percent slopes of the Boise River canyon. The proposed upgrading would follow the existing road alinement except at Deer Creek just downstream from Arrowrock Dam.

Impacts on currently unrecorded sites could occur in borrow, spoil, or construction yard areas that may be located outside of presently identified area of direct construction impact. Based on current plans, only a very small acreage of relatively undisturbed land would be affected, however.

An examination of the proposed reservoir operations at Lucky Peak Lake indicates that the two possibly significant historic dumps which were recently located (10-BO-301 and 10-BO-302) would not be affected by the changes. The proposed 5 foot reduction in the normal water surface elevation would occur only during the summer. The elevation of the Lucky Peak Lake water surface would then be 3050 feet. The sites would still lie 75 feet or more beneath the surface of the reservoir. Superimposed on the new full pool level would be the possibility of daily pool fluctuations of up to 3/4 foot associated with the power operation. As is now the case, the dump sites will be exposed during the fall each year when the reservoir is nearly emptied; this operation is independent of the operation of Arrowrock Powerplant. Since Arowrock Powerplant would usually be inoperable in the fall because of low head, a peaking operation would not usually occur when the sites are exposed in the fall. Although minor daily pool fluctuations could occur as a result of power operations as the reservoir is drawn down, the fluctuations would be slow and would not increase the present effects of erosion or other adverse impacts at the sites.

In summary, the proposed powerplant at Arrowrock Dam would affect one known cultural resource--Arrowrock Dam itself, a property listed in the National Register of Historic Places. Arrowrock Dam is significant in agriculture as a key feature of Reclamation's Boise Project, and is an important engineering accomplishment. No other presently known historic or archeological sites would be affected. The proposed project would not affect the agricultural significance of Arrowrock Dam since irrigation water deliveries would continue. The construction of the powerplant would, however, alter the design and appearance of the dam. The changes would constitute an adverse effect under the regulations of the Advisory Council on Historic Preservation (36 CFR 800).

Mitigation Measures

All preconstruction cultural resource studies have been completed. The applicants initially consulted with the Idaho State Historic Preservation Officer in January 1983 via their Consultation Report of that date. The State Historic Preservation Officer's letter of February 18, 1983, indicated that a major concern would be the replacement of the bridge over the spillway (see Appendix A). The National Park Service also pointed out the need to consider the significance of the spillway bridge (see March 9, 1983, letter from San Francisco office of National Park Service in Appendix A).

As a result of those comments, the possible significance of the spillway bridge was considered. The bridge is simple steel truss design with a span of 100 feet. It was manufactured in 1914 by the Midland Bridge Company of Kansas City, Missouri. The Idaho Bridge Inventory does not list the Arrowrock bridge, but bridges of the same type are very well represented (46). The inventory placed most of the steel truss bridges in "Category III," which signifies those bridges considered ineligible for the National Register of Historic Places. Also, a file maintained by the Idaho State Historical Library on bridges of the Boise River does not include a reference to the Arrowrock Dam spillway bridge. It therefore appears that the spillway bridge is a common type with no special engineering significance. Although not significant on its own merits, the spillway bridge has importance as an original component of Arrowrock Dam.

The other comments of the National Park Service on the January 1983 Consultation Report were also considered. The National Park Service stated its general agreement with the study findings to that date and made suggestions for the remainder of the cultural resources studies. Those suggestions have been followed in developing the mitigation plan outlined below.

In accordance with the Advisory Council on Historic Preservation regulations for the "Protection of Historic and Cultural Properties" (36 CFR 800), the applicants sought the comments of the Idaho State Historic Preservation Officer on the anticipated effects on cultural resources which would result from construction of the project and on the proposed plans to mitigate those impacts (see letter of April 17, 1984, in Appendix A). The applicants requested the comments of the State Historic Preservation Officer in order to include them in the preliminary

case report which they will send to the Advisory Council on Historic Preservation to fulfill their responsibilities under Section 106 of the National Historic Preservation Act.

The Idaho State Historic Preservation Officer stated on June 18, 1984 (see Appendix A) his concurrence that, "...aside from Arrowrock (a National Register property) itself, such a plant [Arrowrock Powerplant] would not modify those qualities which make any property eligible for registration. Your report provides information appropriate for a preliminary case report for Advisory Council consideration and project review."

The State Historic Preservation Officer also pointed out that since the proposed bridge across the spillway would be adjacent to the existing spillway bridge, the existing bridge "...might as well be retained, avoiding an adverse impact there." Accordingly, the applicants intend to consider, during the final design stage on the project, the possibility of retaining the existing spillway bridge. Although there is not much room in the general spillway location, it may be possible to retain the existing bridge when the new one is built.

In conclusion, the State Historic Preservation Officer stated" "Aside from the proximity of your powerplant--a visual consideration--this project would appear to have no other effects subject to Advisory Council concern."

Mitigation measures were included in the project plans based upon the following effects on cultural resources (as defined in 36 CFR 800) which would occur if the Arrowrock Powerplant project is built:

1. Arrowrock Dam, a National Register property, would be "adversely affected" by the construction of the powerplant and the associated modifications. The impacts are unavoidable because of the physical constraints imposed by the location of the dam.

2. The historical period sites located on the bed of Lucky Peak Lake would not be affected by the proposed construction or by water surface fluctuations resulting from the operation of the proposed powerplant.

3. Analysis of the history of Arrowrock Dam indicates that any historical or archeological sites that may have existed in the vicinity of the dam have in all likelihood been destroyed by the construction in 1911-15 and 1935-37 and by the water releases from Arrowrock Dam and the inundation by Lucky Peak Lake in the intervening years.

The proposed mitigation plan is intended to compensate for the effects of the proposed project. The level of mitigation recommended is believed to be reasonable, given the significance of Arrowrock Dam.

First, the applicants would contract with a qualified educational institution or firm to complete an engineering recording of Arrowrock Dam, the spillway bridge, and associated features to the standards of the

Historic American Engineering Record. Included would be detailed drawings, photographs, and a historical narrative.

Some of that information would be used in an interpretative exhibit overlooking the dam. The exhibit would explain the historic and engineering significance of Arrowrock Dam; it would include drawings or photographs of the dam before powerplant construction. The proposed interpretative overlook would be developed along the existing county road at a point 1/4-mile directly downstream from the dam and just downstream from Deer Creek.

Funds are included in the plan, and adequate time is scheduled for completion of the proposed mitigation items. It is anticipated that the Historic American Engineering Record documentation of the dam would be completed prior to the construction of the powerplant. The interpretive overlook would probably be built during the last year of construction. The overall project cost estimate includes $20,000 (at October 1983 price levels) for the above mitigation work at Arrowrock Dam. An estimated $500 per year would be required to maintain the overlook. These mitigation costs would be the responsibility of the applicants.

As soon as FERC grants the license for Arrowrock Powerplant, the applicants intend to consult with the Historic American Engineering Record to confirm the adequacy of the proposed mitigation and to make changes as appropriate. The applicants would then enter into a memorandum of agreement with the Idaho State Historic Preservation Officer and the Advisory Council on Historic Preservation as stipulated in 36 CFR 800.6(b)(5).

In addition to the above mitigation measures, the new powerplant, penstocks, and dam abutment modifications will be designed to be architecturally compatible with the existing dam to the extent possible. Furthermore, if any construction areas, borrow areas, access roads, or other lands are found to be needed on undisturbed lands outside the areas already investigated, the applicants will contract for professional cultural resource surveys in the areas to be disturbed. The regulations of the Advisory Council on Historic Preservation (36 CFR 800) would be followed if cultural resources were found.

A check of the State Archeologist's records showed that the proposed transmission line route contains no known cultural resource sites; however, the route has not been adequately surveyed for cultural resources. The applicant will contract with a qualified archeological entity to locate, identify, and evaluate any cultural resources along the proposed transmission line route. The State Historic Preservation Officer will be consulted regarding the results of the survey, and the regulations of the Advisory Council on Historic Preservation will be followed for any identified sites. It is judged that the current project cost estimate includes adequate funds to provide for these measures.

5.--REPORT ON RECREATIONAL RESOURCES

Affected Environment

Arrowrock Reservoir.--Arrowrock Reservoir and the surrounding lands are used by recreationists who engage in boating, fishing, camping, picnicking, biking, nature study, hunting, and other activities. This use occurs at the developed sites and at undeveloped areas. While public use is heavy, it is significantly lower than it would be if access to the reservoir were better.

Annual recreational use at Arrowrock Reservoir was estimated in 1981 to be 25,000 visits. There are numerous developed and undeveloped recreation areas at Arrowrock Reservoir (table E-3). These resources are administered by the Forest Service.

Table E-3.--Developed and Undeveloped Recreation Sites at Arrowrock Reservoir

Site Name	Road Miles from Dam	Comments
Unknown	0.7	Undeveloped access to shoreline. No development potential.
Unknown	1.7	Undeveloped access to shoreline. No development potential.
Arrowrock Boat Launch	2.2	2-lane boat launch ramp, 3-section dock, and two-unit vault toilet
Irish Point	7.2	Two-unit vault toilet. Could be developed as a 25-unit campground. Some limited boat launching use.
Cottonwood Creek Campground	9.0	3-unit campground with single pit toilet. No further development potential.
Unknown	13.8	Undeveloped access to shoreline. No development potential.
Unknown	14.3	Undeveloped access to shoreline. No development potential. A bench across the reservoir from this site could be used as a boat-access campground. However, the normal summer reservoir drawdown would severely restrict the site's use.
Willow Creek Campground	15.0	10-unit campground, one 2-unit toilet, one 1-unit toilet, and a pitcher pump. Fully developed site. No additional development potential.
South Fork	N/A	Potential for float boat take-out point. Not acceptable to some people because it might encourage jet boat use on the South Fork of the Boise River.

The county road traversing the north side of Lucky Peak Lake (upper end only) and Arrowrock Reservoir is narrow, rough, and has sharp blind curves located on steep slopes. Still, the Arrowrock road serves as a transportation corridor for access to headwater areas in the Boise River drainage for recreational and other purposes.

Early in the current Bureau of Reclamation Boise Project Power and Modification Study, the construction of recreation facilities at Arrowrock Reservoir was considered and then rejected because of (1) the judgment of recreation planners from the Forest Service and Reclamation that development of additional facilities at Arrowrock Reservoir would encourage more recreationists to travel the hazardous road alongside the reservoir (a safety hazard) and (2) the feelings of fish and wildlife interests that improving boat access (particularly in the vicinity of the mouth of the South Fork of the Boise River) would lead to power boating on the South Fork thus detracting from the stream's quality trout fishing and rafting.

Since the potential for the development of additional recreation opportunities at Arrowrock Reservoir seems to be primarily tied to the hazardous nature of the road access, Reclamation evaluated the possibility of rehabilitating the Arrowrock road. A brief analysis of the limited recreation benefits associated with the road rehabilitation and the very high costs of rehabilitation led to the conclusion that the costs of road rehabilitation would far exceed its recreational benefits. It was also concluded that any environmental benefits from the road rehabilitation would be equaled or exceeded by the environmental losses related to increased public access to sensitive fish and wildlife resources.

The possibility of rehabilitating the Arrowrock Reservoir road was subsequently reconsidered as a safety improvement. That analysis showed that upgrading the road was unjustified even when both safety and recreation benefits were considered, in part because of the environmental losses which an improved road would cause. As a result, the Bureau of Reclamation dropped further consideration of recreation development and road improvement around Arrowrock Reservoir. Based on those studies, the applicants have similarly concluded that road improvements and additional recreational development at Arrowrock Reservoir would be unwarranted and should not be included in the proposed Arrowrock Powerplant plans.

Lucky Peak Lake.--Lucky Peak Lake, immediately downstream from Arrowrock Reservoir, is the most important single recreation resource for the Boise metropolitan area. Lucky Peak Lake offers a variety of day-use recreational opportunities within a 10 mile drive from Boise. Lucky Peak Lake is a Corps of Engineers reservoir that is partly administered by the Idaho Department of Parks and Recreation under a lease agreement (the Spring Shores Unit of Lucky Peak State Park), partly administered by the Forest Service (on the upstream portion of the Boise River arm of the reservoir) and the remainder (the other developed sites, the dispersed use sites, the sun shelter sites, and the use of the water surface) by the Corps of Engineers. The Corps of Engineers reports a total use of approximately 895,000 recreation days in 1981 at Lucky Peak Lake.

While the weekends receive the heaviest concentration of use at Lucky Peak, significant numbers of recreationists, many of them boaters, travel to the reservoir in the late afternoons and early evenings of mid-summer weekdays to enjoy a brief recreational experience and to find relief from the heat.

The major developed facility on Lucky Peak Lake is the Spring Shores Unit. This area, administered by the Idaho Department of Parks and Recreation, includes a marina that is operated by a concessionaire. This recreation area offers dock moorage for approximately 280 boats (fully usable with 23 feet of reservoir drawdown---to water surface elevation 3032 feet); as many as 23 mooring buoys; a day use area which includes a swimming area, picnic sites, and a restaurant/store/office for the marina; and parking areas.

The marina's operations are susceptible to two factors. First, the parking at the marina is limited. Although an additional parking lot was added during 1982, there is still a problem with parking limitations. Second, the facility is totally inoperative when the reservoir is drawn down 50 feet or more. Since the Lucky Peak Lake operations normally require the pool to be drawn down from shortly after Labor Day until sometime after flood control operations in the spring or early summer, the season for marina operations can be relatively short.

The Robie Creek picnic area offers a small day-use facility that is very attractive for family and group use. It has a nice swimming and wading area that allows younger children to safely become acquainted with the water. The boat launch ramp at Robie Creek is operational with as much as 10 feet of drawdown.

The swimming area at Robie Creek is somewhat more sensitive to drawdown; as the water level drops, the beach is rapidly exposed. At 5 feet of drawdown, the beach is still usable but has a slightly steeper gradient and rougher bottom texture than is the case at full pool. With 10 feet of drawdown, the shoreline is a considerable distance from the full pool shoreline location. At that level of drawdown, the beach would not be suitable for use by small children because the water depth increases rapidly as one moves out from the shoreline.

Other recreation resources on Lucky Peak Lake shoreline include the Chimney Rock, Macks Creek, Barclay Bay, Turner Point, and Deer Flat recreation sites. Numerous less developed sites are also found along the lake's shores.

Many of these latter sites consist of a sun shelter and a two- or three-segment floating dock.

While there are some sites at Lucky Peak Lake that have potential for recreational development and the use of the existing facilities is heavy, there are no firm plans for such construction. This reflects the fact that none of the public agencies involved have funding to accomplish any development at this time. In addition, a major update of the Corps of Engineers Lucky Peak Lake master plan is underway. Until the master plan has been completed, no significant recreational development is anticipated.

Recreation Needs.--Several factors have greatly affected the outdoor recreation picture in Idaho and more specifically in Southwest Idaho.[1/] One of the most important of these factors is the rapidly increasing population which is expected to continue its growth in the future. Approximately 50 percent of southwest Idaho's population lives in Ada County. Increased mobility, more leisure time, and greater affluence also contribute to the increase in outdoor recreation demand.

Through the use of standards devised by the Idaho Department of State Parks and Recreation for use in the Statewide Comprehensive Outdoor Recreation Plan (SCORP) recreation facility needs have been identified. The facility needs analysis indicates a need for additional camping facilities, picnic units, and boat launch lanes. Estimated facility needs for Southwest Idaho are as follows:

	Number of facilities needed		
	1980	1985	2000
Camping Units	2,028	2,566	4,119
Picnic Units	1,226	1,507	2,320
Boat Launch Lanes	158	208	366

The Idaho SCORP has also identified the perceived recreation needs of Southwest Idaho's residents. This is a nonstatistical approach used to determine the recreational needs of an area based on personal contacts. The rankings represent overall regional priorities and indicate the greatest present deficits by facility type within the region. According to this list, a need for additional picnicking units ranks second, a need for camp units is third, and a need for increased boat access is fourth.

Recreation development on Boise River reservoirs could help satisfy the recreation needs of Southwest Idaho. Recreation capacity is limited, however, due to the development constraints unique to each reservoir.

Impacts of the Proposed Project

Potential impacts on recreation from the project include those which would be caused by the proposed 5-foot reduction in the full pool level at Lucky Peak Lake and by the potential minor (up to 3/4-foot) daily fluctuations in the Lucky Peak pool level. Other potential impacts on recreation are also discussed.

1/ "Southwest Idaho" in this section of the report refers to the "Trails Region" as defined in the Idaho SCORP. This region includes ten counties that are roughly centered around Arrowrock Dam. In general, the recreation facility supply has not kept pace with the increased recreation demand of this region. As a result, some popular recreation areas are becoming crowded to the point of diminished enjoyment, and management problems are becoming more complex.

Lucky Peak Lake Drawdown.--As a part of the Arrowrock Powerplant plan, a proposed modification could be made in the existing reservoir operations. Under the modified operation, some water would be held in Arrowrock Reservoir rather than in Lucky Peak Lake during part of the season. This operation would significantly increase generation at Arrowrock Powerplant by increasing the hydropower head available at Arrowrock Dam, while only slightly decreasing generation at the proposed Lucky Peak Powerplant.

Under the proposal, Lucky Peak Lake would be filled to the present full pool level (water surface elevation 3055 feet), as in the current operation. The reservoir would then be drawn down 5 feet (to elevation 3050 feet); the pool level would be maintained at that elevation (3050 feet) for recreation as long as permitted by water supply or other conditions as in the present operation.

Under the plan, a 5-foot reduction in the full-pool level of Lucky Peak Lake (to elevation 3050 feet) in the mid-July to Labor Day period would occur in most years. This reduction would impact recreation at Lucky Peak Lake by reducing the quantity of dock space at (1) the developed launch sites, (2) the other developed sites, and (3) the sun shelters scattered along the reservoir shoreline.

As a result, the existing recreational facilities at Spring Shores, Robie Creek, and Chimney Rock and most floating docks would have to be modified.

The 5-foot reduction in the Lucky Peak Lake full pool elevation would, by itself, have little or no net impact on the Spring Shores recreation area because the Spring Shores area will enjoy the benefits of the improved recreation operations that the Bureau of Reclamation proposes to implement whether or not a powerplant is developed.

At the Robie Creek area under a 5-foot reduction of the Lucky Peak Lake full pool elevation, the ground surface within the swimming and wading area would be uneven with some minor dropoffs.

The Chimney Rock area is frequently used by some of the larger boats on Lucky Peak Lake. Boating in these larger boats at Chimney Rock is presently restricted by shallow waters near the shoreline. As the reservoir drops below full pool, this becomes a problem even for smaller craft. A 5-foot recreation season reduction in full pool elevation would make this problem intolerable at this well maintained recreation site if modifications were not made.

Daily Power Operations.--The operation of Arrowrock Powerplant could cause pool level fluctuations in Lucky Peak Lake of as much as 3/4 foot in a 24-hour period during the recreation season. With the Arrowrock Powerplant project, it is proposed that the Lucky Peak Lake water surface remain at elevation 3050 feet--5 feet below the present full pool level. In addition, the Lucky Peak Lake water surface might be allowed to rise by a maximum of 3/4 foot during the day, returning to the original water level (elevation 3050 feet) by the end of that 24-hour period. The water level fluctuations would result if it were found to be advantageous

to vary the amount of generation (and water releases) from Arrowrock Powerplant during the day to match varying levels of demand for electricity during the day.

These minor fluctuations would not have significant impacts on recreation facilities or recreation use at Lucky Peak Lake, except at the Spring Shores Marina. The present dock arrangement at Spring Shores Marina is sensitive to pool fluctuations, and the proposed power operations would worsen this problem (see figure E-8). As presently rigged, the Spring Shores mooring docks must be moved into the pool as the pool is drawn down, or the boats on the shoreward end of each dock will go aground. Moving these docks is not a simple process; the operator of the marina now moves them with his pickup truck.

A 3/4-foot drop in the water level translates to the shoreline moving horizontally by about 5 1/4 feet at Spring Shores. Daily fluctuations in July and August would therefore aggravate an already difficult situation.

Other Recreation Considerations.--In connection with powerplant construction, the road from Spring Shores to Arrowrock Dam would be upgraded. This would slightly improve recreationist access to Arrowrock Reservoir, which from a safety standpoint would not be advantageous. Some increase in use at Arrowrock Reservoir would be expected. The magnitude of that increase is not known, but it would probably be small.

The addition of a powerplant at Arrowrock Dam could have some minor impact on the accessibility of the structure for sightseeing. Since the present operation of the structure and the physical layout of the site do not encourage sightseeing access, there would probably be little perceptible change in public access except where electrical equipment safety considerations would prevail.

The main stem of the Boise River above Arrowrock Reservoir and the South Fork of the Boise River were both identified as "inventory rivers" under the Heritage Conservation and Recreation Service's Nationwide Rivers Inventory. That program, now administered by the National Park Service, was intended to identify river segments that might eventually be determined eligible for inclusion in the National Wild and Scenic River System. The proposed powerplant construction and operational changes would have no impact on the values of these river segments which might qualify them for eventual inclusion in the National Wild and Scenic River System.

Mitigating Measures

The applicants intend to mitigate recreation impacts which might occur as a result of the proposed power project. The proposed mitigation includes (1) making some modifications at the Spring Shores Marina, (2) adding dock segments, and (3) modifying the beach at Robie Creek and the boating zone at Chimney Rock.

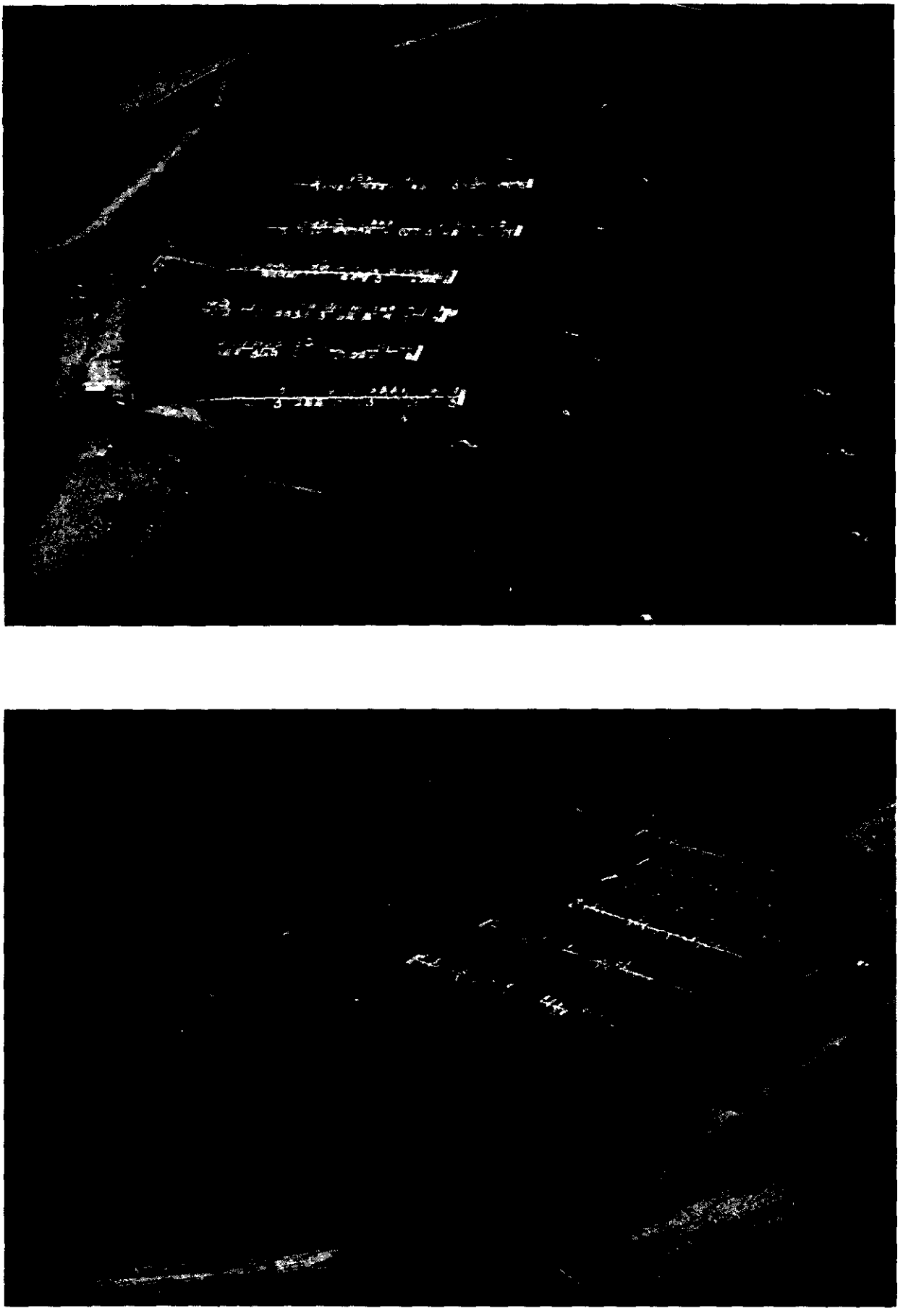


Figure E-8--Spring Shores Recreation Area with Lucky Peak Lake at full pool (top) and with 5-foot drawdown (lower photo).

Dock Segments.--Approximately 280 dock segments would be added to fully replace the dock capacity lost with a 5-foot reduction in Lucky Peak Lake full pool level during the peak recreation season. The majority of the dock segments would be required to support the dispersed sun shelter sites.

Spring Shores Marina.--The preferred means of mitigating impacts at Spring Shores Marina from the daily fluctuations caused by the power operation of the proposed Arrowrock Powerplant would be to add length to each of the six existing docks. Because this would move the shoreward slips away from the shoreline, the minor daily fluctuations would not affect their usability. However, the docks would still have to be moved in and out with major changes in water elevation even with the proposed modifications.

The dock modifications would require the installation of 18 dock segments. Three segments would be placed end to end at the shoreward end of each of the six existing docks. These docks would be permanently anchored in place. It would be necessary to develop a system to allow the marina's operator to use his truck to move the docks in and out without being hindered by the new anchored docks.

Robie Creek.--With a 5-foot reduction in the full pool level of Lucky Peak Lake, the Robie Creek Picnic Area would be slightly less suitable for use by young children for wading. This would be remedied by grading the beach area to make the beach slope more gentle and smoother. An average of 1 foot of material would be removed from an area 60 feet by 60 feet. To remove this material, the existing beach sand would be stripped off, stockpiled, and redistributed after the shaping has been completed.

The existing swimmer buoy line would also have to be moved. The objective at Robie Creek would be to smooth out the beach terrain to provide approximately the same opportunity as is presently available for safe swimming and wading, particularly for family groups with small children.

Chimney Rock.--The Chimney Rock Recreation Area would be less accessible by boat with the proposed 5-foot reduction in full pool level than at the present full pool level because of shallow water. Part of the impact of a 5-foot drawdown would be mitigated by the addition of dock segments (as discussed above). The remaining impact would be mitigated by excavating channels between the full pool waterline and a 10-foot drawdown line, which would provide unobstructed boat access to the floating docks by large and small boats alike. These channels would make boat access better at the proposed 5-foot drawdown than it is presently with a full pool.

The channels would be an average of 70 feet long and 20 feet wide. The depth of the excavation required would vary. Six of these channels should be built adjacent to the existing floating docks. The excavated materials would have to be disposed of at or near the site (probably in the sagebrush area uphill from the recreation area).

Recreation Enhancement

As a result of the review of the applicants' preliminary plans during the consultation process, several agencies commented that recreation enhancement measures should be considered for inclusion in the proposed project, in addition to proposed mitigation measures (see Appendix A for March 9, 1983, letter from Seattle office of National Park Service; March 29, 1983, letter from Corps of Engineers; and April 14, 1983, letter from Idaho Department of Parks and Recreation).

The Bureau of Reclamation, in its current study of potential Boise Project modifications, determined that there were no feasible or acceptable recreation enhancement opportunities at Arrowrock Reservoir. That conclusion was supported by the other agencies with resource management responsibilities at Arrowrock Reservoir and the adjacent lands--the Forest Service and the Idaho Department of Fish and Game.

The applicants agreed with that conclusion regarding Arrowrock Reservoir. However, the comments received during the consultation process urged the consideration of recreation enhancement measures at Lucky Peak Lake. The applicants therefore requested a list of potential recreation enhancement measures from the Corps of Engineers (see applicants' June 24, 1983, letter in Appendix A). The Corps response of October 3, 1983, suggested a number of potential enhancement measures (see Appendix A).

Enhancement Measures Included.--The applicants evaluated the suggested enhancement measures from the standpoint of their potential environmental impacts, public acceptability, ability to meet demonstrated recreation needs, and cost. It was concluded that two of the suggested recreation measures could be added to the proposed Arrowrock Powerplant plan. The inclusion of these enhancement measures (in addition to the mitigation measures described previously) is proposed in order to fully comply with 18 CFR 4.51 and FERC Order 313.

The enhancement measures included in the plan are (1) the enlargement of the existing Barclay Bay boat launch ramp and (2) the provision of additional parking to serve that launch ramp. Those improvements at the Corps existing Barclay Bay recreation area near Lucky Peak Dam would enhance recreation opportunities and values in the project area. There would be no significant negative impacts associated with these improvements.

The Barclay Bay boat launch ramp would be widened from its existing 40 feet to 50 feet, and it would be lengthened from 170 feet to 320 feet. This would increase the ramp's capacity from two wide lanes to three wide lanes, and it would lengthen the season that the ramp would be usable.

A paved parking lot with 28 pull-through car/trailer spaces would be constructed in conjunction with the Barclay Bay ramp enlargement. This would reduce existing safety hazards. In some peak use situations, this parking area could also provide overflow parking for the existing Turner Gulch boat launch ramp.

Potential Improvements Excluded.--Other potential improvements mentioned by the Corps but excluded from the Arrowrock Powerplant proposal are listed below, along with some of the factors which led to their exclusion. In several cases, it was felt that it would be more appropriate and efficient for a particular managing agency or other responsible entity to make certain of the improvements at specific sites.

1. Provide bicycle trail to Sandy Point recreation area--Portions of this trail have already been provided by other agencies. The trail would be difficult to construct, and there could be public concern about impacts on the Sandy Point swimming area just downstream from Lucky Peak Dam.

2. Develop interpretive facilities at Lucky Peak overlook--It would appear to be more appropriate for the various federal and state agencies involved in resource management at Lucky Peak Lake and nearby areas to consider this development.

3. Relocate county road at Spring Shores--The relocation of the county road uphill from and around the Spring Shores recreation area has been suggested. This road relocation would be a substantial undertaking, and it could cause wildlife impacts. It has been suggested that the road relocation would be desirable to handle construction vehicle traffic while the proposed powerplant is under construction. It was judged, however, that the problems related to construction traffic can be minimized by taking proper safety precautions, by providing traffic control personnel as needed at Spring Shores, and by scheduling construction traffic to avoid time periods of peak recreational use.

The Spring Shores area and the entire segment of the county road which would be upgraded for use during construction are located in Boise County. The remainder of the county road which would be used, extending west to join Idaho Highway 21, is in Ada County. The Boise County Commissioners and the Ada County Highway District were contacted during the studies on road improvements and other measures needed for Arrowrock Powerplant construction access and the handling of construction traffic, and those entities have indicated their agreement with the proposed plan.

4. Expand parking at Spring Shores--Additional parking capacity is needed during peak use periods. Because of site limitations, however, the county road would have been relocated before the additional parking could be developed. This development could also cause wildlife impacts.

5. Increase boat moorage facilities at Spring Shores--The need for moorage facilities at Lucky Peak Lake is high because it is a day-use area and it is near Idaho's population center. Moorage facilities also reduce traffic congestion and reduce the need for trailer parking areas. It is assumed that increased moorage will be provided as needed by the private concessionaire at Spring Shores, as approved by the Idaho Department of Parks and Recreation (which administer the Spring Shores area) and the Corps of Engineers.

6. Develop overnight facilities at Spring Shores--Recreationists have expressed a need for overnight parking and sanitary facilities at

Spring Shores for those who wish to remain at the area overnight in recreational vehicles. Cooperative studies on this possibility are needed by the Idaho Department of Parks and Recreation and the Corps of Engineers, and the resulting plans should be compatible with the activities of the concessionaire who operates the Spring Shores Marina. It is possible that it will be concluded that overnight visitor use cannot be accommodated at the site. For these reasons, this potential project is not appropriate for inclusion in the proposed Arrowrock Powerplant plan.

Implementation of Recreation Measures

The recommended measures to mitigate recreation impacts and to enhance recreation at Lucky Peak Lake have been incorporated into the Arrowrock Powerplant plan. The construction cost of those measures, which totals $1,150,000 (at October 1983 price levels), would be the responsibility of the applicants. It is proposed that these measures be implemented in the early years of project construction (see construction schedule in Exhibit C).

The operation and maintenance costs associated with the above recreation measures would be $13,300 annually (October 1983 price levels). These costs would be the responsibility of the applicants. The administration of the recreation areas where the recreation measures would be implemented would remain with the agency or entity now managing each of those areas.

6.--REPORT ON LAND MANAGEMENT AND ESTHETICS

Land Management

Affected Environment.--The lands in the immediate vicinity of Arrowrock Dam are Federal lands administered by the Bureau of Reclamation for project purposes. Most of the rest of the lands adjacent to Arrowrock Reservoir are Federal lands administered by the Forest Service, while the State of Idaho owns a few tracts. Except for the lands near the dam, which are needed for project operations, the major use of the lands adjacent to the reservoir is for public recreation. The Idaho Department of Fish and Game manages about 8,000 acres near the upper end of the reservoir for big game winter range.

Lands in the general area around Arrowrock Reservoir are largely Federal lands lying within the Boise National Forest, but scattered parcels of State and private lands are also present. These lands are used for a variety of purposes including grazing, timber, wildlife habitat, and recreation.

The lands adjacent to Lucky Peak Lake are Federal lands administered by the Corps of Engineers, the Forest Service, and the Idaho Department of Parks and Recreation. Except for the land near the dam, which is needed for project operations, the major use of the lands adjacent to Lucky Peak Lake is for public recreation. The Idaho Department of Fish and Game manages about 17,300 acres near the reservoir as big game winter range.

The lands in the general area surrounding Lucky Peak Lake are a mixture of Federal lands administered by the Bureau of Land Management, private lands, State lands, and some Federal lands administered by the Forest Service near the upper end of the reservoir. These lands are used for a variety of purposes including grazing, wildlife habitat, and recreation. In addition, some recreational and residential development is occurring on some of the private lands.

Impacts of the Proposed Project.--Construction of the powerplant, switchyard, and access road should not significantly affect existing land ownership or use because the project site near the dam is already used for project operations. Existing land uses along the proposed transmission line route are primarily livestock grazing and wildlife habitat. The transmission line would not adversely affect these existing uses.

Floodplains and Wetlands

There are no reasonable alternatives to the powerplant site which lie outside the Boise River floodplain. All facilities that would lie within the floodplain would be designed to be floodproof to the extent feasible. Because of the already highly disturbed nature of the powerplant site, no natural beneficial floodplain values would be adversely affected by the proposed project.

The powerplant would be constructed on a rock bench within the littoral zone of Lucky Peak Lake, and the powerplant tailrace would be

under water during periods when Lucky Peak Lake is full. No reasonable siting locations outside the reservoir's littoral zone were identified. Since both Lucky Peak Lake and Arrowrock Reservoir are subject to large annual fluctuations, their littoral zones produce little aquatic life, and few if any natural wetland values would be affected by the project. The proposed project would be in conformance with Federal, State, and local floodplain and wetland protection standards.

Esthetics

Affected Environment.--Arrowrock and Lucky Peak Dams are located in foothill terrain on the southern slopes of the Sawtooth Mountain Range, and the reservoirs are surrounded by relatively high hills. The main stem of the Boise River enters the north end of Arrowrock Reservoir through a forested canyon, and the South Fork of the Boise River enters the south side of the reservoir through a moderately deep gorge with nearly vertical walls of lichencovered basalt. The entrance of Mores Creek into the west side of Lucky Peak Lake is similar to that of the South Fork into Arrowrock. The varied nature of the landscape of the study area is enhanced by the general vegetative cover, which is a mosaic of small forested areas, brushy draws, and large open areas of sagebrush-grassland.

Roads, day-use recreation areas, and a few other manmade developments are present near both dams and along the north and west sides of both reservoirs, but they do not detract greatly from the high quality visual setting. The largest detraction from the high visual quality at both reservoirs is the annual drawdown. The drawdown exposes large areas of mud and rock flats, bare earth, and the stumps of trees, thereby adversely affecting the visual quality of the reservoirs.

Ambient noise levels near the reservoirs are those typical of a rural mountain environment. Minor adverse noise levels are caused primarily by human activity such as vehicular traffic on the roads, motorboats on the reservoirs, and radios or other noises near occupied recreation areas. Birds, ground squirrels, and other wildlife add a desirable sound quality to the area. Background noise levels are generally determined by meteorological or other natural conditions, but even loud noises such as waves, thunder, or the sound of water going over a spillway are pleasing to most persons.

Impacts of the Proposed Project.--Construction of the proposed powerplant at Arrowrock Dam would cause the short-term and minor esthetic impacts that are usually associated with construction activity. There would be localized lowering of air quality near construction activity from dust and exhaust emissions. Minor increases in turbidity of waters near disturbed areas could occur during construction. Visual and sound quality near construction sites would be temporarily degraded by the sights and sounds associated with construction equipment. None of these short-term effects would be considered significant.

Over the long term, the addition of another manmade feature, the powerplant and related facilities, in an area already dominated by Arrowrock Dam and its associated features, would have little if any

negative esthetic effect. If the normal summer pool operating level of Lucky Peak Lake is reduced by 5 feet or less, there would be minor esthetic impacts. The transmission line would have a long-term minor impact on visual quality, being a notable manmade feature on the natural environment. However, the impact would be minimal because the new line would follow the existing transmission line route from Arrowrock Dam to Boise River Diversion Dam.

Mitigating Measures.--Construction specifications would require contractors to comply with applicable Federal, State, and local air and water quality, emission, and noise control standards. Construction specifications would also require contractors to exercise care to preserve the natural landscape. Contractors would be required to conduct their operations in a manner that would prevent any unnecessary destruction, scarring, or defacing of the natural surroundings in areas not directly involved in the construction process. Following construction, all work areas would be landscaped and revegetated wherever possible with naturally occurring plants representative of the study area and beneficial to wildlife.

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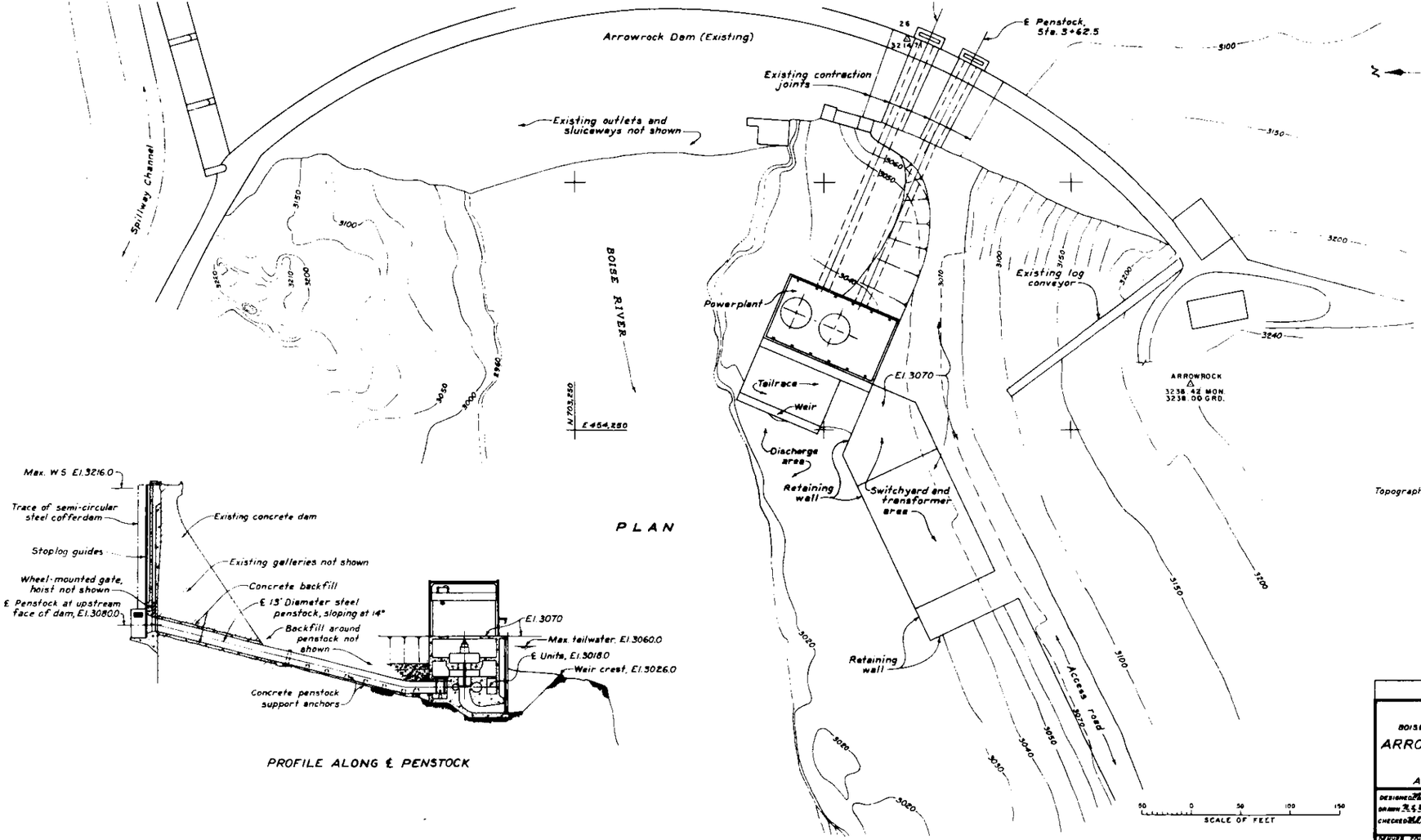
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Exhibit F

Design Drawing



GUARDS THEIR SAFETY

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
BOISE PROJECT - ARROWROCK DIVISION - IDAHO

ARROWROCK DAM POWERPLANT

TWO 30-MW UNITS

APPRAISAL DESIGN LAYOUT

DESIGNED M.E. Smith — TECHNICAL APPROVAL T. R. Engleman
DRAWN R.L. Bradford — SUBMITTED James D. Eggers
CHECKED M.E. Smith — APPROVED A. N. W. Walker
ASST COMM - ENGINEERING AND RESEARCH

DENVER, COLORADO APR. 29, 1985

4-D-2060

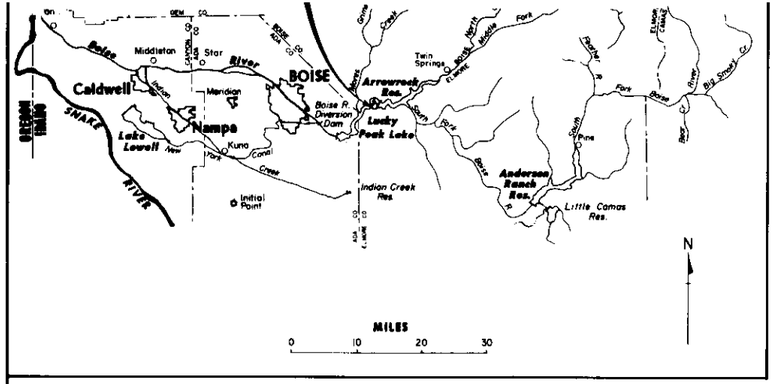
EXHIBIT F — DESIGN DRAWING

ARROWROCK DAM
HYDROELECTRIC PROJECT

July 1984

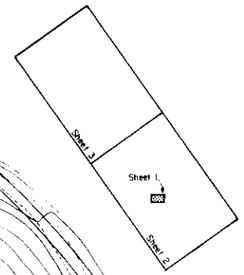
Exhibit G

Project Map



BOISE RIVER BASIN





ARROWROCK DAM (EXISTING)

Proposed Road Improvement

Existing Spillway

Spillway Channel

Proposed Arrowrock Powerplant

Existing offices and shops

Existing Reservoir Superintendents House

Bench Mark
El Mon 3238.40
Grid 3236.00

Project Boundary

Existing Access Road

Proposed Access Road Improvement

Proposed Spillway Bridge

Lucky Peak Lake
(Normal Winter Surface Elevation 3055)

Proposed 138 Kv Transmission Line

Existing Bridge

Project Boundary
40 feet each side of proposed 138 Kv transmission line.

Existing 23 Kv Transmission Line

Boise River

Proposed Road Improvement

Proposed Overlook and Parking Area

Existing Road

Deer Creek

Existing House & Garage

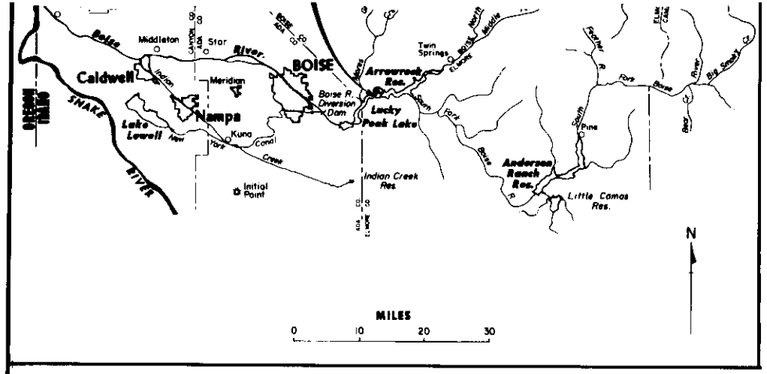
EXHIBIT G — PROJECT MAP

ARROWROCK DAM HYDROELECTRIC PROJECT

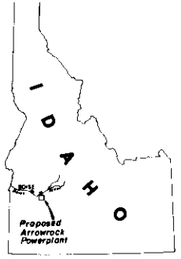
0 100 200 300
Scale in feet

July 1984

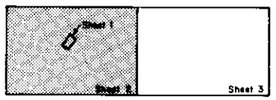
Sheet 1 of 3



BOISE RIVER BASIN



INDEX MAP



Project Boundary
40 feet each side of proposed 138 Kv transmission line -- Arrowrock Powerplant to existing substation.

Proposed 138 kv Transmission Line

Proposed Road Improvement

Proposed Arrowrock Powerplant

Robie Creek
Macks Creek
Arrowrock Boat Launch
Spring Shores Unit
Chimney Rock
Placer Point
Deer Flat
Sandy Point
Charcoal Creek
Barclay Bay
Turner Gulch

ARROWROCK DAM
ARROWROCK RES.
Normal Pool Elev. 5216
LUCKY PEAK DAM
Normal Pool Elev. 3055
BOISE RIVER DIVERSION DAM and POWERPLANT
DISCOVERY STATE PARK (P&R)
EXISTING BOISE BENCH SUBSTATION (Idaho Power Co.)
BARBER DAM
BOISE NATIONAL FOREST
BOISE
NATIONAL FOREST
BOISE ADA COUNTY
Existing 23 kv Line
Bridge
Pipeline Gulch
Deer Creek
Cinch Creek
Dutch Creek
Grouse Creek
Birch Creek
Little Charcoal Creek
Charcoal Creek
Sheep Creek
Boise River
New York Canal
LUCKY PEAK LAKE
T4N 31
T3N 6
T3N 36 31
T2N
R2E
R3E
25 30
36 31

Boise National Forest lands under Reclamation withdrawal
Reclamation withdrawn lands
Reclamation flowage easement

BR Bureau of Reclamation (owned in fee title)
CE Corps of Engineers
BNF Boise National Forest
BLM Bureau of Land Management
F&G Idaho Department of Fish and Game
S State lands

N MN 18°30'

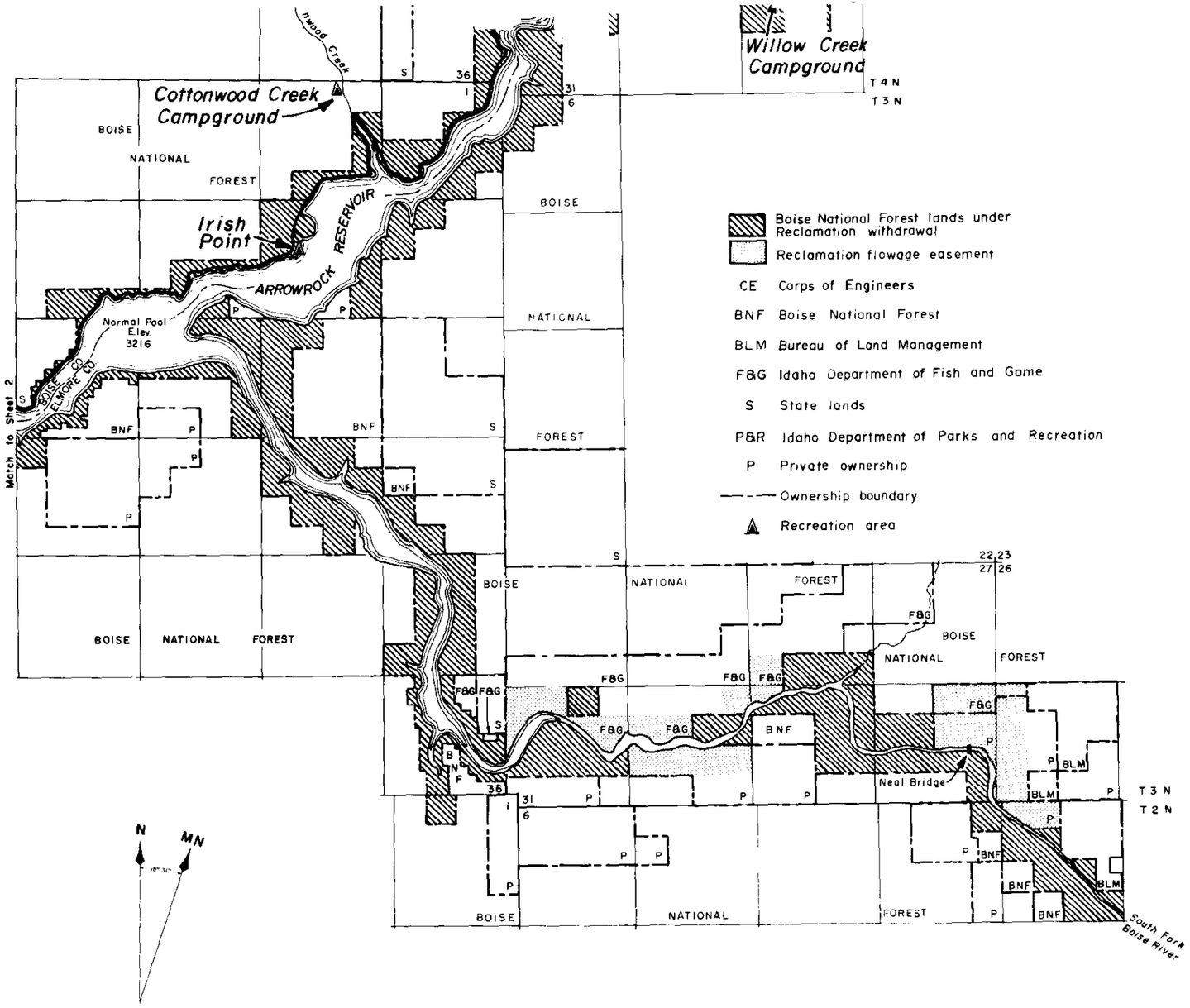
EXHIBIT G — PROJECT MAP

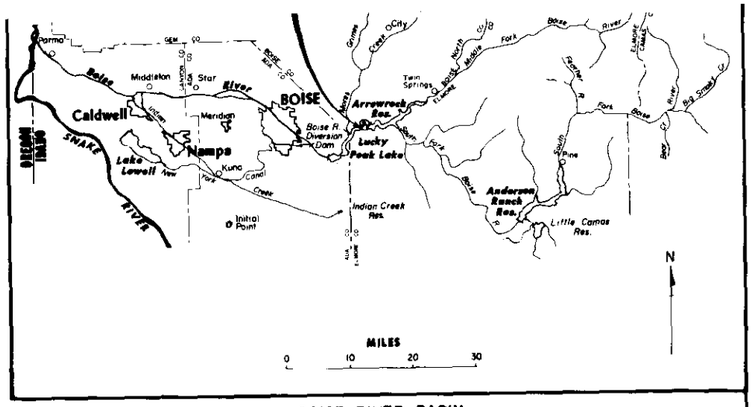
ARROWROCK DAM HYDROELECTRIC PROJECT

0 2
Scale in miles

July 1984

Sheet 2 of 3





BOISE RIVER BASIN



INDEX MAP

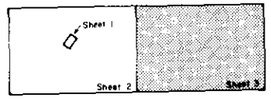


EXHIBIT G — PROJECT MAP

ARROWROCK DAM HYDROELECTRIC PROJECT

0 2

July 1984 Scale in miles Sheet 3 of 3

Appendix A

Consultation and Correspondence

APPENDIX A

CONSULTATION AND CORRESPONDENCE

The applicants distributed a "Consultation Report" in January 1983 to facilitate the formal consultation process. The Consultation Report included a description of the proposed Arrowrock Powerplant project and all Exhibit E (Environmental Report) information which was available at that time.

The Consultation Report was distributed to all State, Federal, and local agencies with an interest in the study, plus all applicable agencies suggested for consultation in Appendix A of the FERC publication "Application Procedures for Hydropower Licenses, Exemptions, and Preliminary Permits."[1/] In addition, appropriate contacts were made with other agencies and interests as required during the study.

Most of the agencies which received the Consultation Report submitted letters of comment which are included in this appendix. In addition, informal contacts with the Regional Environmental Officer of the Department of the Interior, the Bureau of Land Management, the Idaho Public Utilities Commission, and the Director of Public Works for the City of Boise confirmed that they had received the Consultation Report but did not plan to submit letters of comments on it.

All the comments received were carefully considered, and comments and recommendations were incorporated into the Arrowrock Powerplant plan and Exhibit E wherever possible.

1/ See January 31, 1983, letter of Boise Project Board of Control which transmitted the Consultation Report to cooperating agencies, along with a list of the agencies receiving the report, later in this appendix.

Appendix A includes the following:

Date	Letter From	Page
1-31-83	Boise Project Board of Control--transmitted Consultation Report	A3
2-18-83	Idaho State Historic Preservation Officer	A6
2-28-83	Idaho Department of Health and Welfare, Division of Environment	A7
3-9-83	National Park Service, Seattle	A8
3-9-83	National Park Service, San Francisco	A10
3-9-83	Idaho Department of Water Resources	A12
3-16-83	Idaho Department of Fish and Game	A13
3-29-83	Bonneville Power Administration	A15
3-29-83	Corps of Engineers, Portland	A17
3-30-83	Boise National Forest	A21
3-30-83	Bureau of Reclamation	A22
4-6-83	U.S. Fish and Wildlife Service, Boise	A23
4-7-83	Boise National Forest	A24
4-12-83	Environmental Protection Agency	A37
4-14-83	Idaho Department of Parks and Recreation	A38
6-24-83	Boise Project Board of Control to Corps of Engineers	A40
10-3-83	Corps of Engineers	A41
12-7-83	Boise Project Board of Control to Corps of Engineers	A48
2-8-84	Boise Project Board of Control to Idaho Department of Fish and Game	A49
3-6-84	Idaho Department of Fish and Game	A50
4-17-84	Boise Project Board of Control to Idaho State Historic Preservation Officer	A51
6-18-84	Idaho State Historic Preservation Officer	A53

LOU L. MURGOITIO
CHAIRMAN OF THE BOARD
GERALD GUENTZ
VICE CHAIRMAN OF THE BOARD
ROYSE VAN CUREN
PROJECT MANAGER
CARL PADOUR
ASSISTANT PROJECT MANAGER
NORLYN F. POPE
SECRETARY-TREASURER
PHEBE HILDEBRANDT
ASSISTANT SECRETARY-TREASURER

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

January 31, 1983

(See attached mailing list)

Dear Sir:

The Federal Energy Regulatory Commission (FERC) has granted the Boise Project Board of Control the preliminary permit for Project No. 4656 to study and prepare an application for a FERC license to construct a powerplant at the Bureau of Reclamation's existing Arrowrock Dam. The site is located on the Boise River in Idaho.

The enclosed report on the proposed Arrowrock Powerplant has been prepared to meet the FERC requirement for formal consultation with Federal, State, and local resource agencies prior to the submittal of the application for the FERC license. This Consultation Report has been prepared to give each agency a summary of the overall project plan and to obtain their comments early enough in the study process to insure that the comments can be considered in the final project plans.

The formal portion of the consultation process requires that the resource agencies be given at least 60 days in which to comment on the project proposal. The consultation process is directed, in particular, at the environmental aspects of the proposed project. If an agency fails to consult or fails to provide documentation of the consultation process within 60 days, FERC regulations state that the applicant may include in its application for license a summary of its attempts to consult with that agency.

We would appreciate receiving any comments you may have at your earliest convenience in order to fully consider all comments as the project plans are being completed. In any case, we will need your comments before March 31, 1983, the end of the 60-day review period.

Sincerely yours,

Lou L. Murgoitio

Lou Murgoitio, Chairman
Boise Project Board of Control

LM:ph

Enclosures:

Recipients of Consultation Report
sent by Boise Project Board of
Control letter of January 31, 1983

The Boise Project Board of Control sent the Consultation Report to all agencies with an interest in the study, plus all applicable agencies suggested for consultation in Appendix A of the FERC publication "Application Procedures for Hydropower Licenses, Exemption, and Preliminary Permits." The agencies receiving the Consultation Report were:

Federal

Bonneville Power Administration
Environmental Manager, Portland, Oregon

Bureau of Land Management[1/]
Idaho State Director, Boise, Idaho

Bureau of Reclamation
Regional Director, Boise, Idaho

Corps of Engineers
Division Engineer, Portland, Oregon
District Engineer, Walla Walla, Washington
Project Engineer, Boise, Idaho

Department of the Interior[1/]
Regional Environmental Officer, Portland, Oregon

Environmental Protection Agency
Environmental Impact Review Officer, Seattle, Washington
Director, Boise, Idaho

U.S. Fish and Wildlife Service
Regional Director, Portland, Oregon
Endangered Species Specialist, Portland, Oregon
Field Supervisor, Boise, Idaho

Forest Service
Forest Supervisor, Boise, Idaho
District Ranger, Boise, Idaho

National Park Service
Regional Director, Seattle, Washington
Regional Environmental Coordinator, Seattle, Washington

1/ These agencies informally confirmed that they had received the Consultation Report but did not plan to submit formal comments. The rest of the above agencies all submitted letters of comment.

Recipients of Consultation Report
sent by Boise Project Board of
Control letter of January 31, 1983

State

Idaho Department of Fish and Game
Director, Boise, Idaho
Region III Director, Boise, Idaho

Idaho Department of Health and Welfare
Division of Environment, Water Quality Bureau, Boise, Idaho

Idaho Department of Parks and Recreation
Director, Boise, Idaho

Idaho Department of Water Resources
Director, Boise, Idaho

Idaho Public Utilities Commission[1/]
Chairman, Boise, Idaho

Idaho State Historic Society
State Historic Preservation Officer, Boise, Idaho

Local

City of Boise[1/]
Director of Public Works

1/ These agencies informally confirmed that they had received the Consultration Report but did not plan to submit formal comments. The rest of the above agencies all submitted letters of comment.

IDAHO STATE HISTORICAL SOCIETY
610 NORTH JULIA DAVIS DRIVE BOISE, 83702

February 18, 1983

Mr. Lou Murgoitio, Chairman
Boise Project Board of Control
214 Broadway
Boise, ID 83702

Dear Mr. Murgoitio:

Thank you for sending us a copy of your Arrowrock hydroelectric report (Project 4656), which deals with historic preservation considerations there. Your major concern will be with bridge replacement--an item that will require Advisory Council review. That segment of your report needs to be reviewed by

Louis S. Wall
Advisory Council on Historic Preservation
730 Simms Street, Room 450
Golden, CO 80401

and if you wish, I could arrange to get that to him. This could save you time later.

Sincerely,

Merle Wells

Merle W. Wells
State Historic Preservation Officer

STATE OF IDAHO
DEPARTMENT OF HEALTH AND WELFARE
DIVISION OF ENVIRONMENT
Statehouse
Boise, Idaho 83720
Division of Environment - 801 Reserve Street, Boise, Idaho 83702

February 28, 1983

Mr. Lou L. Murgoitio, Chairman
Boise Project Board of Control
214 Broadway Avenue
Boise, Idaho 83702

Dear Mr. Murgoitio:

This office has reviewed the Consultation Report for the Arrowrock Hydroelectric Project. We have no comments at this time.

However, we will consider water quality certification after we have received and reviewed the exhibit E portion of the Federal Energy Regulatory Commission application.

Sincerely,

George Varin
Sr. Environmental Specialist

GV/bg

cc: Craig Shepard, IDHW/DOE
Jerry Yoder, IDHW/DOE

EQUAL OPPORTUNITY EMPLOYER

United States Department of the Interior

NATIONAL PARK SERVICE

Pacific Northwest Region
Westin Building, Room 1920
2001 Sixth Avenue
Seattle, Washington 98121

IN REPLY REFER TO:
L7619(PNR-RE)
FERC No. 4656

March 9, 1983

Mr. Lou Murgoitio, Chairman
Boise Project Board of Control
214 Broadway
Boise, Idaho 83702

Dear Mr. Murgoitio:

We have reviewed the report on the proposed Arrowrock Powerplant (FERC No. 4656) as you requested in your letter of January 31. Comments on the archeological and historic elements of the report will be sent to you from our cultural review staff in San Francisco.

The recreation resources element of the report is deficient in that it does not commit the applicant to provide for full public utilization of project waters and adjacent land for recreational purposes. Furthermore, there is no commitment to mitigate recreation losses at the adjoining Lucky Peak project. It is essential, given the demonstrated recreation need in the area, that these two separate issues of recreation enhancement at the project in question and recreation mitigation at Lucky Peak be given greater consideration. The only reasons for not providing recreation facilities at a project of this size (60 MW) are: a lack of need, a lack of opportunity, or a lack of economic justification. Since FERC has asserted in Order 313 that the provision of recreation development is a normal project cost, it is the responsibility of the applicant to demonstrate that upgrading Arrowrock Road is indeed uneconomical. Not being provided with the Bureau of Reclamation (BOR) data which indicate road reconstruction is uneconomical, we can only speculate that the potential power revenues to be derived from this project were not factored into the BOR calculations.

If indeed the provision of on-site recreation facilities proves infeasible, then the applicant should consider the provision of these facilities at the immediately adjacent Lucky Peak project. These facilities would be in addition to those which would be provided to mitigate any loss of recreation which would occur at Lucky Peak as a result of the generation of power at Arrowrock Reservoir.

When the National Park Service (NPS) is called upon to review an Application for Major License we look for essentially four points of information:

1. A description of recreation need in the project area, generally based on, or in accordance with, the Statewide Comprehensive Outdoor Recreation Plan

2. A description of the recreation facilities the applicant will provide in accordance with the requirements of the Federal Power Act and relevant FERC orders

3. A timetable of recreation facility development

4. An agreement to operate and maintain those facilities either by the applicant or some other Federal, state, or local agency

NPS comments are provided at this time as coordinative technical assistance. NPS concerns will be formally addressed in a Department of the Interior letter to be prepared in response to a request from FERC to review an Application for License. Should you decide to expand your environmental report as we have suggested, we would be pleased to review it prior to submission to FERC.

Sincerely,

Richard L Winters

Richard L. Winters
Associate Regional Director
Recreation Resources and
Professional Services

cc:
Regional Director
Western Region
National Park Service
Attention: Ms. Pepin-Donat
P.O. Box 36063
San Francisco, California 94102

United States Department of the Interior
NATIONAL PARK SERVICE
WESTERN REGION
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIFORNIA 94102

IN REPLY REFER TO:

WR (RCI)

March 9, 1983

Lou Murgoitio, Chairman
Boise Project Board of Control
214 Broadway
Boise, ID 83702

Dear Mr. Murgoitio:

Our Pacific Northwest Regional Office in Seattle has forwarded to us your request for comments by March 31 on the consultation report for Arrowrock Dam, Boise River, Idaho. This relates to Federal Energy Regulatory Commission Project No. 4656. The section of the report on history and archeology indicates careful consideration of cultural resource needs.

We agree that previous disturbance eliminates the need for cultural resource survey in most areas of planned construction. Neither the powerplant construction and road, nor the improvement of the Spring Shores road is likely to threaten historical and archeological resources. However, as the report states the borrow and spoil areas, depending on their final location, may require field survey. This need can be determined with the State Historic Preservation Officer.

Because Arrowrock Dam is already on the National Register of Historic Places, any action affecting it will require additional consultation with the Advisory Council on Historic Preservation under section 106. This includes consideration of the planned replacement of the steel truss bridge across the dam spillway. We suggest that you consult with the State Historic Preservation Officer for a specific assessment of the bridge's significance, especially in terms of the Department of Transportation bridge inventory for Idaho. We assume that the Bureau of Reclamation's ongoing followup study of the specific engineering significance of Arrowrock Dam will also include consideration of the steel truss bridge. Please send us a copy of this study when it is completed. If borrow and spoil areas are surveyed archeolog ically later, please send a copy of that report also.

The report states that an option being considered in connection with the Arrowrock Dam powerplant construction is the lowering of Lucky Peak Reservoir downstream no more than 5 feet to enhance

power generation. A factor to consider is that this could have the effect of exposing cultural resources to damage by relic hunting and erosion.

We hope that our comments have been of assistance. Please contact us if you have any questions (A.C. 415, 556-7741).

Sincerely,

Garland J. Gordon, Chief
Interagency Archeological Services, Western Region
Office of Cultural Resources

cc:
PNRO-Seattle (Attn: Gerard Bentryn, Environmental Review)
SHPO-Idaho (Attn: Tom Green, State Archeologist)
BR-Boise
ACHP-Denver

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 9, 1983

Lou Murgoitio, Chairman
Boise Project Board of Control
214 Broadway
Boise, ID 83702

Dear Mr. Murgoitio:

We have completed review of the Arrow Rock Hydroelectric Project No. 4657 as requested in your letter of January 31, 1983 and have the following comments:

1. The project would not be in conflict with the State Water Plan.

2. Water rights on record at the IDWR include license No. 63-3613 and decreed right No. 63-0303. The rights are for irrigation and domestic uses only. As opposed to adding to the old license, a new water permit with a new priority date should be filed for hydropower purposes.

3. Information on water rights should be mentioned in the section of the report entitled, "Water Resources and Use".

4. Design plans and cost specifications for the proposed project must be filed with the IDWR.

5. The discharge from the proposed power plant will be colder than the existing discharge and lacks the benefit of aeration. Although the state standard for dissolved oxygen is 5 mg/l, at least 6 mg/l is needed to maintain the existing fishery in Lucky Peak Reservoir just below Arrow Rock Dam.

We appreciate the opportunity to review the project proposal.

Sincerely,

A. KENNETH DUNN
Director

AKD:alw

IDAHO DEPARTMENT OF FISH AND GAME
600 South Walnut • Box 25
Boise • Idaho • 83707

March 16, 1983

Mr. Lou Murgoitio, Chairman
Boise Project Board of Control
214 Broadway
Boise, ID 83702

Dear Mr. Murgoitio:

The Department has reviewed the January, 1983 consultation report for the proposed Arrowrock Dam Hydroelectric Project, FERC No. 4656.

The report appears to be comprehensive in scope, and well written. I do have some specific comments which should be addressed in your consultation report. These comments are attached, and are part of this letter.

Please contact me if you have any questions regarding our comments.

Sincerely,

for Jerry M. Conley
Director

Attachment

cc: Region 3
Bur. Wildlife

• EQUAL OPPORTUNITY EMPLOYER •

Specific Comments - Arrowrock Dam Hydro Project (FERC No. 4656)

Page 21, paragraph 2 - The Idaho Department of Fish and Game coordinates with the Bureau of Reclamation the amount of water released from Fish and Game space and the amount released from uncontracted space.

Page 33, Fish Resources, paragraph 3 - Lucky Peak, and especially Arrorwrock reservoir, provide good to excellent habitat.

Paragraph 4 - We have not conducted fish population work at Arrowrock Reservoir and do not have data which shows one-half of the rainbow trout in Arrowrock are wild fish.

Page 34, paragraph 1 - Mores Creek and Grimes Creek both have excellent populations of wild rainbow trout.

Paragraph 3 - Stocking of rainbow trout in Lucky Peak and Arrowrock will continue due to the high demand placed on those fisheries, not necessarily due to the lack of natural reproduction.

Paragraph 4 - Angler day estimates of fishing use are best-guess estimates only and could be highly inaccurate.

Page 35, paragraph 1 - Raising the water level at Arrowrock Reservoir with an established minimum pool would provide a substantial improvement in the Arrowrock fishery.

Page 36, paragraph 3 - The impacts of fish entrainment at Arrowrock are unknown at this time and we should not discount the possible mitigation measures.

Wildlife Resources

Page 37, paragraph 2 - Elk will winter at lower elevations during most winters, not just severe winters. Mountain lion also occur in the area in addition to black bear.

Paragraph 3 - The Boise River deer herd had a population of 13,000 to 18,000 animals.

Paragraph 5 - Upland game should include wild turkey, mountain quail and ruffed grouse.

Page 38, paragraph 2 - Raptors mentioned are not known to nest in the area, but the possibility remains open that they could.

Paragraph 3 - Mountain lion is a game animal.

Paragraph 6 - Add rubber boa.

Page 39, paragraph 1 - Harvest in Unit 39 is about 2,000 animals.

Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

In reply refer to: SJ

MAR 2 9 1983

Mr. Lou Murgoitio, Chairman
Boise Project Board of Control
214 Broadway
Boise, Idaho 83702

Dear Mr. Murgoitio:

We have reviewed the consultation report on the Arrowrock Dam Hydroelectric Project No. 4656. Our comments are as follows:

1. When selecting means of dewatering the power plant site, we suggest that you identify and evaluate impacts of materials which might be released into the environment during flooding.

2. The consultation report adequately describes the interrelationship of projects on the Boise River and reservoir system. You might also address long-range constraints on the proposed project, specifically those associated with irrigation demands, projected hydroelectric generation projects in the area, and flood control.

3. Because of the dependence of dissolved oxygen (D.O.) levels on temperature, your report should quantify the prediction of insignificant change in water temperatures of releases from Arrowrock Reservoir. Since dissolved oxygen levels tend to fluctuate, you should describe a worst-case scenario based on flow records and determine whether the State D.O. standard might be violated. It appears that D.O. levels below the dam are high enough to avoid serious impact but may be affected by logging, road construction, agricultural runoff, etc. The report appears cognizant of all factors affecting water quality, but your conclusions should be supported with modeling and available monitoring data in the final report.

4. The consultation report provides little discussion of floodplains. The environmental report should identify any hazards to the floodplains from operating the dam for power generation.

5. On page 35 it is stated that a lowering of Lucky Peak Reservoir would not adversely affect the fishery. We suggest that you substantiate this statement with a reference; i.e., this conclusion is based on findings of . . . (agency or report). The statement should address impacts of the timing of reservoir drawdown to shoreline spawning Kokanee and other fish populations in Lucky Peak Reservoir.

Sincerely,

for Nicholas J Stoa
Anthony R. Morrell
Environmental Manager

DEPARTMENT OF THE ARMY
NORTH PACIFIC DIVISION, CORPS OF ENGINEERS
P.O. BOX 2870
PORTLAND, OREGON 97208

REPLY TO
Water Management Branch
Power Sect.

March 29, 1983

Mr. Lou Murgoitio, Chairman
Boise Project Board of Control
214 Broadway
Boise, ID 83702

Dear Mr. Murgoitio:

Thank you for the opportunity to review and comment on the consultation report for adding a powerplant to the Bureau of Reclamation's Arrowrock Dam, FERC Project No. 4656.

Basically, we see no insurmountable obstacles, and it appears power at Arrowrock can be installed with a lot less impact than would be expected for similar generation at other locations. However, we are concerned about the impacts that would occur from reducing the level of Lucky Peak Lake early in the recreation season and fluctuations from a peaking operation at Arrowrock. Those impacts need to be evaluated and mitigated. This reduced level would also reduce the power generation potential at Lucky Peak Project.

Specific comments on the report are as follows:

Recreation

Page a, last para. We are concerned about the impact on the Spring Shores Unit that would result from increased traffic during construction. At the present time there is considerable traffic congestion due to visitors parking along the main road when parking areas are full. The increased traffic generated by Arrowrock construction would greatly compound the congested situation and result in a major safety hazard if adequate measures are not taken. We would like the opportunity to review and discuss the situation following your study.

Page b, para. 4. Holding the Lucky Peak pool down five feet would impact recreation. This impact may be offset by the additional beach area that would be exposed. We would like to review and discuss the effects of the reduction on Lucky Peak Lake's recreation sites as soon as that portion of the study is completed.

Page 8, para. 1. An explanation of Lucky Peak Lake Reservoir operating limits is needed. The report notes that the minimum tailwater elevation will be 25 ft. below Lucky Peak Lake full pool elevation. The minimum Lucky Peak Lake reservoir is actually 150 ft. below full pool. How

would the tailwater elevation be held up?

Page 9, para. 3. We suggest this realignment include the portion of road at the Spring Shores Unit (see above comment for page a, last paragraph).

Page 13, last para. The report should state the magnitude of the fluctuation.

Page 19, para. 2. The reference to "three upstream reservoirs" is confusing to the reader. It sounds like there are three reservoirs upstream from Arrowrock.

Page 24. Daily fluctuations of 1.5 ft could be detrimental to boaters who beach their boats and are unfamiliar with the operation of the project.

Page 44, para. 3. It is assumed that the term "biking" refers to the use of motorbikes.

Page 45, para. 1. We support the views of the Forest Service regarding detrimental effects of increased traffic on Arrowrock Road.

Page 46, para. 2. The official name of the project, by authorization, is Lucky Peak Lake, Idaho. We suggest that in written documents it be referred to as Lucky Peak Lake.

Page 47, map. There are no recreation facilities existing at the areas labeled Deer Creek and Sheep Creek. Turner Point is referred to as Turner Gulch. It is suggested that Sandy Point be added to the map.

Page 49, para. 3 The official name of Spring Shores is Spring Shores Unit of Lucky Peak State Park.

Page 50, para. 2. Lucky Peak Lake does have potential for future recreation develoment. Specific future development plans include expansion of facilities at Spring Shores and Barclay Bay and development of additional sites on Mores Creek.

Flood Control.

As you are well aware, Lucky Peak was authorized and constructed totally as a flood control project. The project is now operated in conjunction with Arrowrock and Anderson Ranch projects according to a Memorandum of Agreement for the benefit of flood control, irrigation, and power. Regarding flood control, it must be demonstrated that any proposed change in the system operation would not reduce the system's ability to control flooding in the Boise River Valley.

Page 13, para. 3. Definite limits for fluctuation of Lucky Peak that would result from Arrowrock power operation should be established. Limits should be according to seasons such as spring runoff and recreation.

Page 22, para. 2. Graphs appear to represent an average of computation of mid-month points for a 50-year period. Representing the pool elevations in this manner tends to distort the normal patterns. For instance, Lucky Peak pool is normally (more than 50 percent of years) held at El. 3055 during July and most of August for recreation. The graph indicates otherwise. Likewise, Arrowrock is normally at, or near, El. 3216 in June. A better indicator of average or normal water surface elevations may be to use a typical pattern representation from an average runoff volume and storage carryover year.

Environmental and Cultural Resources.

The Walla Walla District wishes to be a cooperating agency should this project require preparation of an Environmental Impact Statement. There appears to be no cultural resource concerns associated with the project. Comments regarding environmental concerns not covered elsewhere are as follows:

Page c, para. 1. Consideration of the impacts of the powerline on wildlife must include design and location considerations for bald eagles which are an endangered species in Idaho.

Page 9, para. 3. If the bridge were replaced with a bridge located downstream from the dam, there would be environmental impacts to identify.

Page 10, para. 3. Transmission Line. Although the responsibility of the line placement may lie with the purchasing "entity," the line construction may have a decided environmental effect on the area. Bald eagles (an endangered species), waterfowl, and other wildlife may be significantly affected by transmission line placement. (See para. 3 under Impacts, page 39).

Page 43, para. 1. Improving road access to Arrowrock Dam may increase winter use and impact wintering mule deer that use the area above and below the road.

Page 46, para. 1. Over half the project lands are licensed to the Idaho Dept. of Fish and Game (mule deer) management.

I have requested the Walla Walla District Commander be the point of contact for further discussions on review concerning this project. Please

contact him at the following address:

District Commander
Walla Walla District, Corps of Engineers
Bldg. 602, City-County Airport
Walla Walla, WA 99362

Sincerely

HERBERT H. KENNON, P.E.
Chief, Engineering Division

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
Boise National Forest
1750 Front Street
Boise, ID 83702

2720
March 30, 1983

Lou Murgoitio, Chairman
Boise Project Board of Control
214 Broadway
Boise, ID 83702

Dear Mr. Murgoitio:

Thank you for the opportunity to comment on Project No. 4657 -Arrowrock Dam. Here are some of our thoughts and concerns.

- Boise County has a USDA easement over the National Forest Land between State Highway 21 and Arrowrock Dam. The county should be contacted.

- Has the future life expectancy of the Dam been analyzed in regard to the installation of the proposed power structure? Can future repair of the dam be economically done without detriment to the power generating facilities?

- The access road as discussed on page 9 of the report says, "the road would be widened where needed to maintain a 26 foot width, and it would be realigned to improve the sharp curve at Deer Creek just down stream from Arrowrock Dam."

- There is a lack of discussion and clarification as to what will happen to the narrow road, through the area paralleling the spillway and the ledge rock. This will be a potentially dangerous situation if this 200 yard section of road is not widened as part of the project. The map shows it as being a section of the upgraded road, but the description does not include it as part of the road improvement. (See attached map). This will be a costly section to widen and may be the reason why it has not been included in the project.

- The access road adjacent to the lower end of the spillway is presently narrow. This section even though narrow has a lot of fisherman parking. Consideration is needed to widen the road at this location to provide fisherman parking (see attached map for approximate location).

Sincerely,

JOHN J. LAVIN
Forest Supervisor

[NOTE: Enclosures were not included with this letter but were sent with Boise National Forest letter of 4-7-83.]

Enclosures

6200-11 (1/69)

United States Department of the Interior

BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
FEDERAL BUILDING & U.S. COURTHOUSE
BOX 043 - 550 WEST FORT STREET
BOISE, IDAHO 83724 - 0430

IN REPLY REFER TO: PN 704
500.2

MAR 30 1983

Mr. Lou Murgoitio, Chairman
Boise Project Board of Control
214 Broadway
Boise, Idaho 83702

Dear Mr. Murgoitio:

We have no comments on the Consultation Report covering the proposal to construct a powerplant at the Bureau of Reclamation's Arrowrock Dam.

The close working relationship between the Boise Project Board of Control and the Bureau of Reclamation in analyzing the potential for constructing a powerplant at Arrowrock Dam has resulted in a powerplant sizing analysis that will fit any anticipated changes that may be made to the Boise system operation. It has also resulted in the optimization of hydropower development at Arrowrock Dam as well as the Boise system powerplants.

The decision on a final recommended Boise River system operation depends upon (1) deciding on whether to lower the Lucky Peak Reservoir water surface elevation 5 feet (3055 to 3050 feet) during the summer months to increase Arrowrock powerplant and Boise system power generation and (2) incorporating the Boise River system proposed flood control operation from the revised regulation manual into the recommended operation. A decision on the 5 foot lowering of the Lucky Peak Reservoir water surface should be made shortly, but the incorporation of the flood control operation may not be accomplished in time for the Board to include the recommended operation in the FERC license application which is due for submittal in July 1983. Study findings to date show that the incorporation of the flood control operation should have only a slight effect upon the present proposed Arrowrock powerplant average annual generation value.

The continued cooperative approach between the Board and Bureau should result in a publicly supported Arrowrock powerplant proposal.

Sincerely yours,

(Sgd) L. W. Lloyd

Regional Director

United States Department of the Interior

FISH AND WILDLIFE SERVICE

ECOLOGICAL SERVICES
4620 Overland Road, Room 209
Boise, Idaho 83705

April 6, 1983

Mr. Lou Murgoitio, Chairman
Boise Project Board of Control
214 Broadway
Boise, Idaho 83702

Dear Mr. Murgoitio:

We have reviewed the consultation report on the Arrowrock Dam Hydroelectric Project, FERC No. 4656, enclosed with your January 31 letter. Generally the report is well done, and we have only one specific comment.

On page 36, the third and fourth paragraphs tend to minimize the loss of fish through the powerplant turbines. The extent of these losses are not known, but with the Arrowrock Reservoir minimum pool proposed under the Boise Project Power and Modification Study, the fish population could be increased and losses through the turbines could be significant. In any event, mitigation or compensation measures, other than fish screens, should be investigated and evaluated, and no license should be issued until adequate measures are assured.

To the best of our knowledge, no listed or proposed threatened or endangered species would be affected by your project.

We appreciate the opportunity to review your report.

Sincerely yours,

James F. Gore
Acting Field Supervisor

cc: IDFG, Hdqtrs., Boise
IDFG, Region 3, Boise
FWS, SE, Boise (1-4-83-SP-117)

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
Boise National Forest
1750 Front Street
Boise, Idaho 83702

2720
April 7, 1983

Mr. Lou Murgoitio, Chairman
Boise Project Board of Control
214 Broadway
Boise, ID 83702

Dear Mr. Murgoitio:

As referenced in my March 30 letter, enclosed is a map showing the location of the parking area and the section of upgraded road.

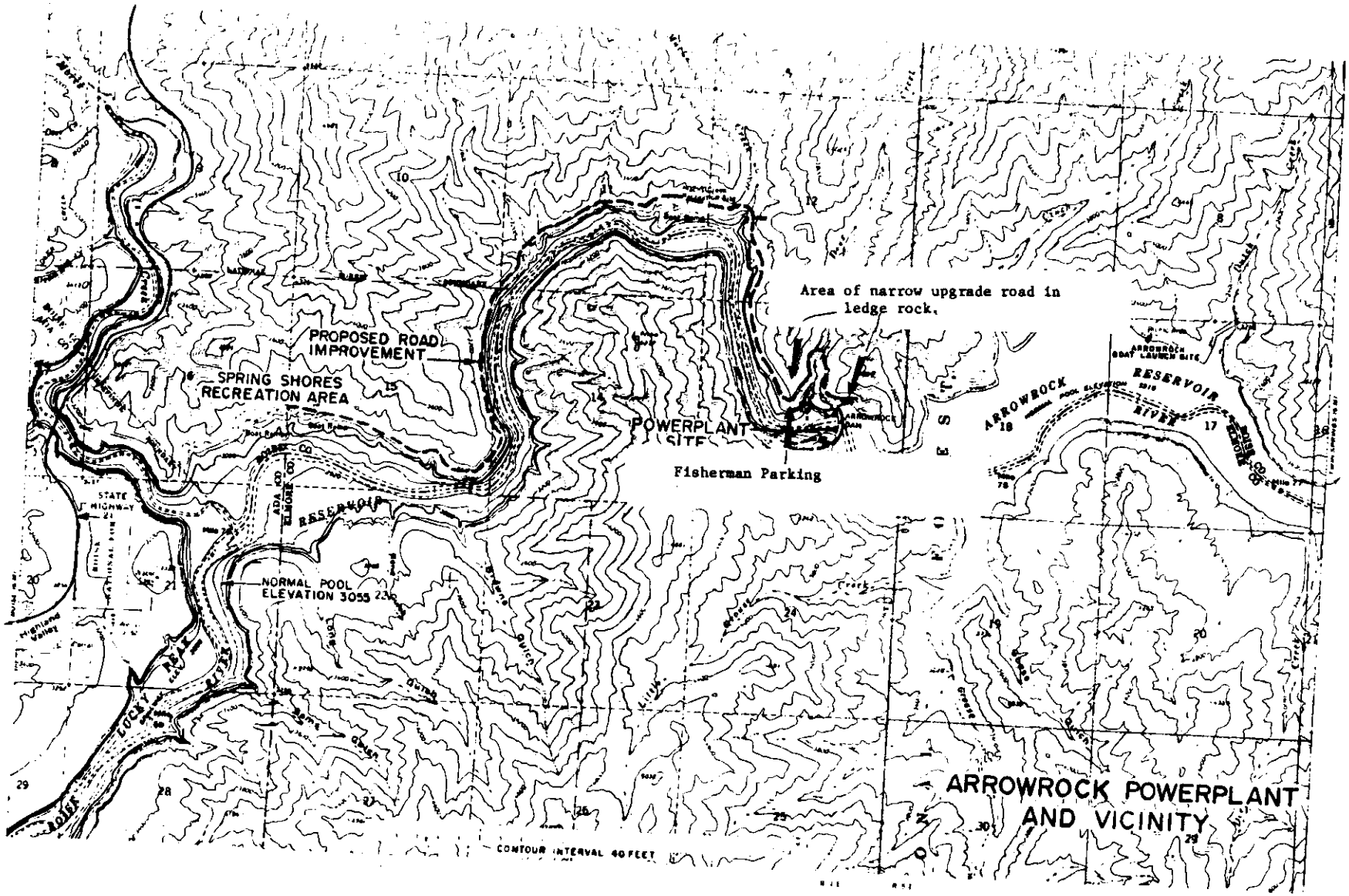
Also enclosed for your information is a copy of the USDA easement issued to Boise County. The easement provides for reconstruction of a road by concurrence of Boise County and approval of the road specifications by the Forest Service (ref. item 3, page 3). Item 4, pages 3, 4, 5 and 6, provides for resource protection in the operation, maintenance, and reconstruction of a road. These limiting conditions may be of help to you in preparing road designs and specifications.

Sincerely,

JOHN J. LAVIN
Forest Supervisor

Enclosures

6200-11 (1/69)


Area of narrow upgrade road in ledge rock.
PROPOSED ROAD IMPROVEMENT
SPRING SHORES RECREATION AREA
POWERPLANT SITE
Fisherman Parking
ARROWROCK RESERVOIR
RESERVOIR
NORMAL POOL ELEVATION 3055 FEET
STATE HIGHWAY
ARROWROCK POWERPLANT AND VICINITY
CONTOUR INTERVAL 40 FEET

EASEMENT

THIS EASEMENT, dated this 27th day of August, 1982, from the UNITED STATES OF AMERICA, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to COUNTY OF BOISE, State of Idaho, hereinafter called Grantee.

WITNESSETH:

WHEREAS, the Grantee has applied for a grant of an easement under the Act of October 13, 1964 (78 Stat. 1089, 16 U.S.C. 532-538), for a road over certain lands or assignable easements owned by the United States in the County of Boise, State of Idaho, and administered by the Forest Service, Department of Agriculture.

NOW THEREFORE, Grantor does hereby grant to Grantee an easement for a public road and highway along and across a strip of land, hereinafter defined as the right-of-way over and across the lands in the County of Boise, State of Idaho, as described on Exhibit A attached hereto.

The word "right-of-way" when used herein means said strip of land whether or not there is an existing road or highway located thereon. Except where it is defined more specifically, the word "highway" shall mean roads or highways now existing or hereafter constructed on the right-of-way or any segment of such roads or highways.

The right-of-way is shown and specifically described on the plats attached hereto as Exhibit B and made a part hereof.

The said strip being 33 feet in width on each side of the centerline as located and constructed on the ground, with as much additional width as required for adequate protection of cuts and fills except the portion crossing the following described land cannot exceed 66 feet in width:

T. 5 N., R. 4 E.,
  sec. 24, lot 5;
  sec. 25, lots 1,2.
T. 5 N., R. 5 E.,
  sec. 19, lot 4;
  sec. 30, lot 1, N½NE¼, NE¼NW¼.

This grant is made subject to the following terms, provisions, and conditions:

1. Outstanding valid claims, if any, existing on the date of this grant.

2. The easement herein granted is limited to use of the described right-of-way for the purpose of construction, operation, and maintenance of a highway and does not include the grant of any rights for nonhighway purposes or facilities; Provided, That the right of the Forest Service to use or authorize the use of any portion of the right-of-way for nonhighway purposes shall not be exercised when such use would interfere with the free flow of traffic or impair the full use and safety of the highway; and Provided further, That nothing herein shall preclude the Forest Service from locating National Forest and other Department of Agriculture information signs on the portions of the right-of-way outside of construction limits.

3. Any reconstruction of the highway situated on this right-of-way will be in accordance with plans, specifications, and written stipulations approved by the Regional Forester prior to beginning such reconstruction.

4. Consistent with highway safety standards, the Grantee shall:

   (a) Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.

   (b) Provide for the prevention and control of soil erosion within the right-of-way and adjacent land that might be affected by the construction, operation, or maintenance of the highway, and shall vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed where it is deemed necessary during a joint review between the Regional Forester and Grantee prior to completion of the highway and the Grantee shall maintain all terracing, water bars, leadoff ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction.

5. The Grantee shall:

Establish no borrow, sand, or gravel pits; stone quarry; permanent storage areas; sites for highway-operation and maintenance facilities; camps, supply depots; or disposal areas within the right-of-way, unless shown on approved construction plans, without first obtaining approval of the Regional Forester.

6. The Grantee shall maintain the right-of-way clearing by means of chemicals only after specific written approval has been given by the Regional Forester. Application for such approval must be in writing and specify the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.

7. The Grantee does by acceptance of this document covenant and agree for itself, its assigns, and its successors in interest to the property here, granted or any part thereof, that the covenant set forth below shall attach to and run with the land:

(a) That the described property and its appurtenant areas and its building and facilities whether or not on the land therein granted will be operated as a public road, in full compliance with Title VI of the Civil Rights Act of 1964 and all

requirements imposed by or pursuant to the regulations issued thereunder by the Department of Agriculture and in effect on the date of this document to the end that no person in the United States shall, on ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs or activities provided thereon; and

(b) That the United States shall have rights to judicial enforcement of these covenants not only as to the Grantee, its successors and assigns, but also as to lessees and licensees doing business or extending services under contractual or other arrangements on the land herein conveyed. In the event of a breach of any of the conditions set forth above, all right, title, and interest in and to the above described property shall, at the option of the Grantor, revert to and become the property of the United States of America, which shall have an immediate right of entry thereon, and the Grantee, its successors or assigns, shall forfeit all right, title and interest in and to the above described property

and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Grantor to assist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the Grantee with respect to future performance shall continue in full force and effect.

The Chief, Forest Service, may terminate this easement, or any segment thereof, (1) by consent of the Grantee, (2) by condemnation, or (3) after a five (5) year period of nonuse, by a determination to cancel after notification and opportunity for hearing as prescribed by law.

IN WITNESS WHEREOF, the Grantor, by its Deputy Regional Forester, Forest Service, has executed this easement pursuant to the delegation of authority to the Chief, Forest Service, 7 CFR 2.60, and the delegation of authority by the Chief, Forest Service, dated December 14, 1979 (44 FR 75690), on the day and year first above written.

UNITED STATES OF AMERICA

By David R. Karling
for L. KENT MAYS, JR.
Deputy Regional Forester
Forest Service
Department of Agriculture

ACKNOWLEDGMENT

STATE OF Utah)
) ss
COUNTY OF Weber)

On this 27th day of August, 1982, before me personally appeared David R. Karling, authorized to sign for the Deputy Regional Forester, Resources, Region 4, Forest Service, United States Department of Agriculture, and the person who executed the foregoing instrument, and he acknowledged to me that he executed the same in the free act and deed of the United States of America, for the uses and purposes therein mentioned.

Susan Bybee
Notary Public for the State of Utah
Residing in Ogden, Utah
My commission expires 1-1-1984

Instrument # 106459
Boise County Idaho ss
Request of
Boise County Commissioners
Time 3:01 P.M.
Date Sept 13, 1982
Book 25
Page 281
Arlene C. Kolar
By _____ Deputy
Fee N/C

EXHIBIT A

FEDERALLY OWNED LANDS
Boise Meridian

Township 3 North, Range 4 East,
sec. 11, lots 1, 2, 3, and 4, NW¼SW¼;
sec. 12, lots 1 and 3, SE¼SW¼;
sec. 13, lots 1, 4, 5, NW¼NE¼;
sec. 14, lots 2 and 5.

Township 4 North, Range 3 East,
sec. 13, E½NW¼, NE¼SW¼.

Township 4 North, Range 4 East,
sec. 6, lots 5, 6, and 7, SE¼NW¼;
sec. 15, SW¼SW¼;
sec. 21, SE¼SE¼;
sec. 22, NE¼NW¼;
sec. 28, N½NE¼NE¼;
sec. 31, NW¼NE¼.

Township 5 North, Range 3 East,
sec. 21, E½W½;
sec. 28, lots 1 and 2, NE¼NW¼;
sec. 29, NE¼SW¼, S½SW¼, N½SE¼, SW¼SE¼;
sec. 31, lot 2, NE¼NE¼, S½NE¼, NE¼NW¼, SE¼NW¼;
sec. 32, N½NW¼.

Township 5 North, Range 4 East,
sec. 9, NE¼SE¼, S½SE¼;
sec. 10, lot 3, N½SW¼;
sec. 21, E½NE¼, NE¼SE¼, W½SE¼;
sec. 22, lots 3, 5, 6, 7, and 8;
sec. 24, lot 5;
sec. 25, lots 1 and 2;
sec. 27, S½NE¼, E½NW¼;
sec. 35, W½NW¼.

Township 5 North, Range 5 East,
sec. 19, lot 4;
sec. 27, SW¼SW¼;
sec. 28, SW¼NE¼, SE¼NW¼, NW¼SE¼;
sec. 29, N½N½;
sec. 30, lot 1, N½NE¼, NE¼NW¼.

Township 6 North, Range 3 East,
sec. 1, SE¼SW¼, NE¼SE¼, SW¼SE¼;
sec. 10, SW¼NW¼;
sec. 12, N½NW¼.

Township 6 North, Range 5 East,
sec. 17, E½;
sec. 22, W½NW¼, N½SW¼, N½SE¼, SE¼SE¼;
sec. 26, W½NW¼NW¼;
sec. 27, NE¼NE¼.

FEDERALLY OWNED LANDS
Boise Meridian
Continued

Township 7 North, Range 4 East,
sec. 2, lot 2, SW¼NE¼, W½SE¼;
sec. 11, lot 1, NW¼NE¼;
sec. 13, SW¼SW¼;
sec. 15, W½NW¼, N½SW¼;
sec. 16, lot 5, NE¼NE¼, S½NE¼, SE¼NW¼;
sec. 17, lot 3, N½SW¼, NW¼SE¼;
sec. 23, lots 2, 8;
sec. 24, S½NE¼, NW¼NW¼, SE¼NW¼;
sec. 32, lot 4, S½SW¼, SW¼SE¼.

Township 7 North, Range 5 East,
sec. 10, lots 11, 13, and 16;
sec. 19, SW¼NW¼;
sec. 21, lots 13 and 14;
sec. 30, NW¼NE¼NE¼;
sec. 32, lots 4, 20, 21, 22, and 23.

Township 8 North, Range 4 East,
sec. 1, lots 3, 4, 5, and 6, SE¼NW¼;
sec. 11, W½SW¼;
sec. 22, NE¼, N½SE¼, SE¼SE¼;
sec. 23, SW¼SW¼;
sec. 26, N½NW¼, SE¼NW¼, NE¼SW¼, W½SE¼;
sec. 35, NE¼NE¼, W½E½ less MS 2905.

Township 8 North, Range 5 East,
sec. 2, lots 7, 8;
sec. 6, lots 9 and 13;
sec. 7, NE¼NE¼;
sec. 8, lot 6;
sec. 9, lots 7, 8, 13, and 14;
sec. 10, SW¼SW¼;
sec. 11, lots 5, 7, 8, NW¼SW¼;
sec. 15, SE¼NW¼, N½SE¼, SE¼SE¼;
sec. 22, lots 1, 3, and 4;
sec. 23, lots 8 and 9;
sec. 26, lots 8 and 10, N½N½NW¼, MS 3306, less MS 3307;
sec. 35, lots 10 and 11.

Township 9 North, Range 3 East,
sec. 28, lot 4;
sec. 29, lot 1;
sec. 31, lot 4, SE¼SW¼, S½SE¼SE¼;
sec. 32, SE¼SW¼.

Township 9 North, Range 5 East,
sec. 36, lots 2 and 8.

EXHIBIT B

Plats to be attached to Department of Agriculture Easement issued, August 27, 1982 to County of Boise, State of Idaho.

These plats are based on the following procedures:

1.

Produced by the Geological Survey
in cooperation with the U.S. Forest Service

Orthophotograph prepared from 1:80,000-scale
aerial photographs taken Sept. 18, 1975

Projection and 10,000-foot grid ticks: Idaho coordinate
system, west zone (transverse Mercator)
1000-metre Universal Transverse Mercator grid,
zone 11. 1927 North American datum

Photoimagery transformed by scanning techniques
which may produce double or mismatched images;
use the mean of image positions for map point.

2. All section line bearings were taken from G.L.O. plats.

3. All the bearings are office measured using the G.L.O. section line bearings as the base lines.

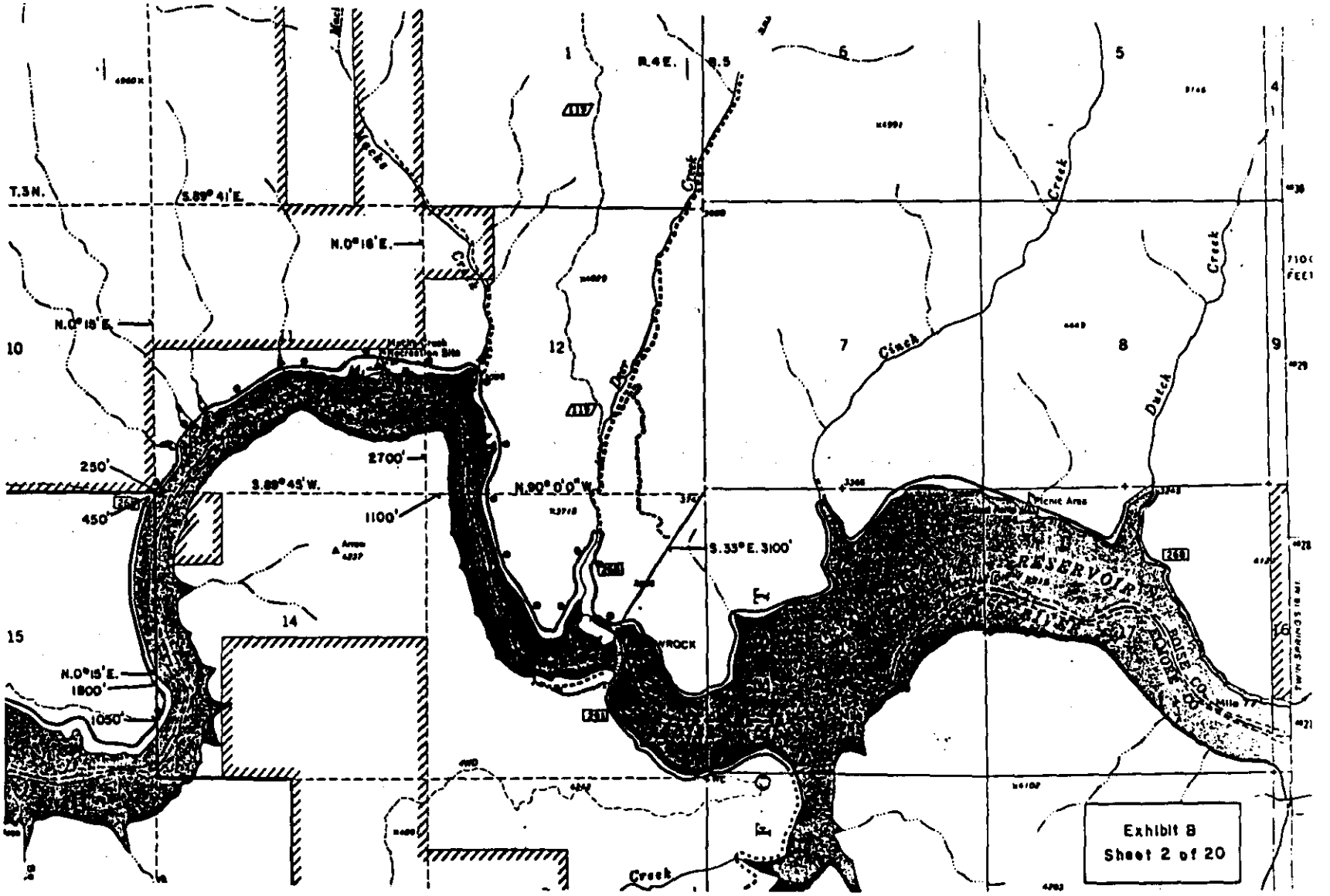
4. All tie distances are office measured.

5. All roads are in place and readily identified on orthophotoquad maps on file with the Forest Supervisor, Boise National Forest, Boise, Idaho. The attached plats have had the aerial photo background removed for ease in reading termini tie information.

6. Legend

Easement across N.F. land —•— —— —•—

EXHIBIT B
Sheet 1 of 20


T.3N.
R.4E.
S.89° 41' E.
N.0° 18' E.
N.0° 15' E.
10
11
12
7
8
9
15
14
250'
450'
2700'
1100'
S.88° 45' W.
N.90° 0' 0" W.
S.33° E. 3100'
N.0° 15' E.
1800'
1050'
Creek
Dutch
Picnic Area
RESERVOIR
BOISE CO.
Exhibit B
Sheet 2 of 20

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION X
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

REPLY TO ATTN OF: M/S 443

12 APR 1983

Boise Project Board of Control
214 Broadway
Boise, Idaho 83702

ATTN: Lou Murgoitio, Chairman

Dear Mr. Murgoitio:

The Environmental Protection Agency (EPA) has reviewed the consultation report for the subject project. We foresee no major adverse environmental water quality impacts resulting from the proposed addition of power generating units to the existing Arrowrock Dam.

We suggest that precautionary measures be developed during construction of the power plant to protect the existing water quality condition of Lucky Peak reservoir. Additional construction planning may indicate that sedimentation and detention ponds are necessary for the protection of water quality in Lucky Peak reservoir.

There should also be an erosion control plan to protect the reservoir during road construction and any reservoir shoreline stabilization or enhancement.

We would appreciate being kept informed of the status of your project and any significant changes that may occur. If you wish to discuss any environmental concerns related to your project, you may contact me at (206) 442-1728.

Sincerely,

Richard R. Thiel, P.E., Chief
Environmental Evaluation Branch

cc: FERC, OEPR

IDAHO DEPARTMENT of PARKS & RECREATION

Statehouse Mail, 2177 Warm Springs Ave., Boise, Idaho 83720 (208) 334-2154

Christiansen, Director
Robert L. Meinen, Deputy Director

John V. Evans, Governor

April 14, 1983

Lou Murgoitio
Boise Project Board of Control
214 Broadway
Boise, ID 83702

Dear Mr. Murgoitio:

We appreciate the opportunity to comment on the consultation report for the Arrowrock Dam hydroelectric project. Please accept our apologies for this late response. Our comments will separately address the two zones identified in the report.

Zone I: Arrowrock Reservoir and Nearby Lands.

Regardless of development activities and other measures occurring along Arrowrock Reservoir, recreational use of the Arrowrock Road will increase. Lucky Peak is nearing its capacity to provide a safe boating experience. People are looking for other places to boat. In addition, as population increase in the Treasure Valley, the numbers of recreationists also increases. The North and Middle Fork of the Boise River are highly desirable destination areas for these recreationists. Further analysis of the use of Arrowrock and nearby lands for recreation must be considered.

Zone II: Lucky Peak Reservoir Area.

Increased drawdown is potentially the most extensive impact of the Arrowrock Project. Additional analysis needs to be done on these impacts and the associated costs. There are a number of development potentials at Lucky Peak which are quite logical. These should be further explored with the Corps of Engineers and the Department of Parks and Recreation.

EQUAL OPPORTUNITY EMPLOYER

In summary, the conclusion stated on Page 50 that "no facilities to enhance recreation . . . should be included in the proposed powerplant project" is unacceptable and unwarranted at this time. A recreation impact analysis must include a comprehensive study of available supply, future demand, and expected needs. A forum for public comment and participation in the planning process should also be established. There is much work yet to be done before a project planning process should be fully initiated. The Department of Parks and Recreation encourages the use of our technical assistance program and looks forward to working with the Boise Project Board of Control as the Arrowrock Project progresses.

Sincerely,

DALE R. CHRISTIANSEN
DIRECTOR

John Barnes

John Barnes
Outdoor Recreation Planner

mm

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

LOU L. MURGOITIO
CHAIRMAN OF THE BOARD
GERALD GUENTZ
VICE CHAIRMAN OF THE BOARD
ROYSE VAN CUREN
PROJECT MANAGER
CARL PADOUR
ASSISTANT PROJECT MANAGER
NORLYN F. POPE
SECRETARY-TREASURER
PHEBE HILDEBRANDT
ASSISTANT SECRETARY-TREASURER

BOISE PROJECT BOARD OF CONTROL

(FORMERLY BOISE U. S. RECLAMATION PROJECT)

214 BROADWAY
BOISE, IDAHO 83702

June 24, 1983

Colonel Robert Williams, District Engineer
Walla Walla District, Corps of Engineers
Building 602, City-County Airport
Walla Walla, Washington 99362

Dear Colonel Williams:

In our Federal Energy Regulatory Commission (FERC) study for determining the hydropower potential at Arrowrock Dam, Idaho, we have a requirement to consider the need for water and related land recreation development. While it might seem to justify development of additional recreation facilities at Arrowrock Reservoir, the conditions of the Arrowrock road make it undesirable and infeasible to accomplish such development. A possible alternative would be to consider the development of recreation sites at Lucky Peak Lake, as satisfying any recreational development at Arrowrock.

As you know, the Lucky Peak Lake FERC license held by the five irrigation districts comprising the Board of Control require the Districts to prepare a recreational development plan at Lucky Peak. The Corps pointed out that it already was in charge of and wished to retain control of the recreational development at Lucky Peak. Based upon this assertion FERC granted a deferment regarding recreational development until the Corps had completed its study of recreational development at Lucky Peak. In connection with the Arrowrock study and the Lucky Peak license, we would appreciate it if you would provide us with a listing of the Lucky Peak recreational development proposed by the Corps of Engineers.

It would be helpful if you could include in your transmittal any designs and cost estimate information you may have developed for the listed recreation proposals.

If you have any questions, please contact Royse Van Curen (telephone number 208-344-1141).

Sincerely yours,

Lou L. Murgoitio

Lou Murgoitio, Chairman
Boise Project Board of Control

LM:lw

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

REPLY TO
ATTENTION OF:

October 3, 1983

NPWEN-DB

Mr. Lou L. Murgoito, Chairman
Boise Project Board of Control
214 Broadway
Boise, Idaho 83702

Dear Mr. Murgoito:

In response to your request for a listing of proposed recreational development at our Lucky Peak project, we are enclosing a summary chart and location map of existing recreation developments at the project. We are also including an excerpt from our forthcoming Project Master Plan which describes future proposed recreational developments. These proposals are not yet scheduled and are not expected to be funded for some time. We are unable to provide design details or cost estimates for the master plan proposals since that submittal is intended to show only conceptual proposals.

You should note that there are no new recreation sites proposed by our master plan due to strong objections to the negative impact that would occur on mule deer wintering habitat. Our current regulations and policies limit further expansion of recreation development unless specifically authorized by the Federal Congress or unless accomplished with a 50-50 cost sharing agreement with a non-federal sponsor. We will, however, be able to provide design guidance for any such work within project lands.

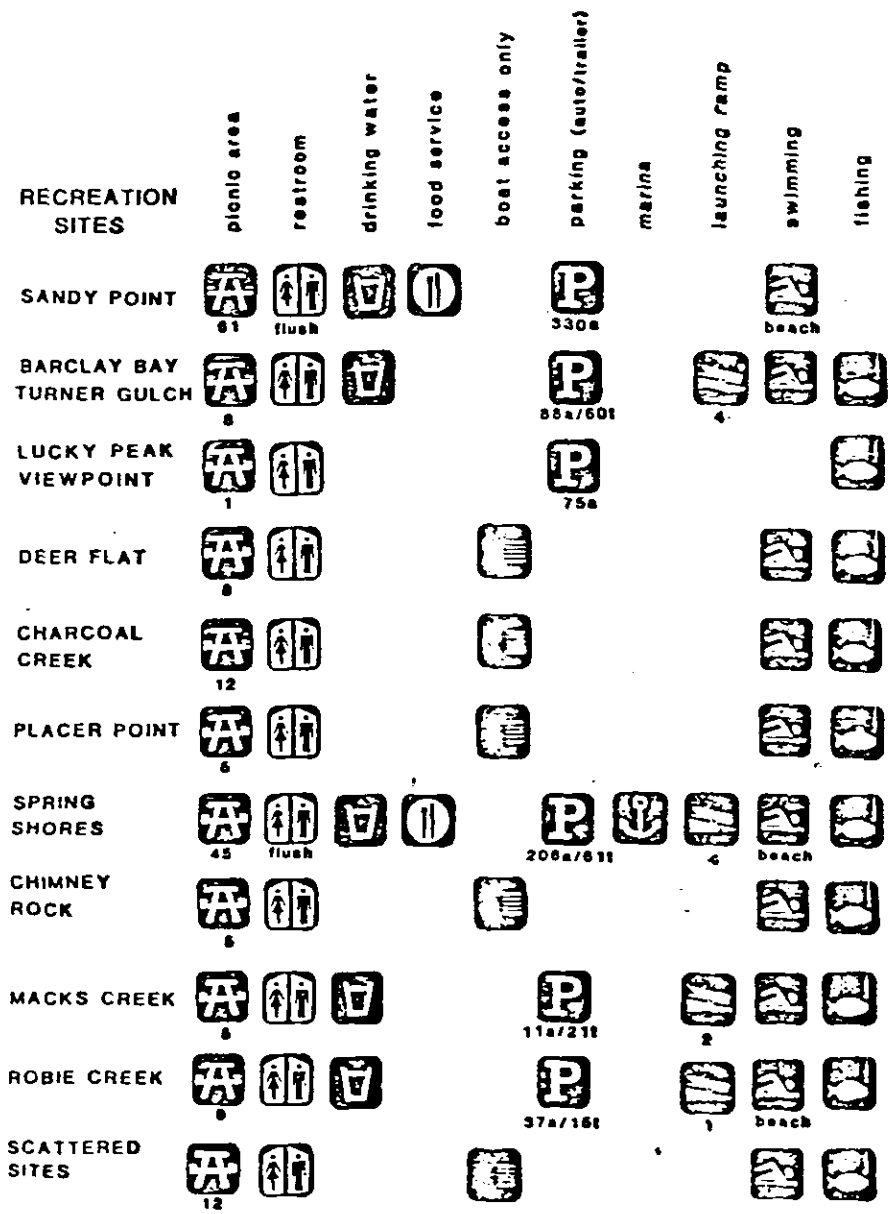
Should you have any further questions regarding recreation development at the Lucky Peak project, please contact Mr. Blaise Grden, our master plan developer and landscape architect. His Walla Walla office telephone number is 509-525-5500, extension 371.

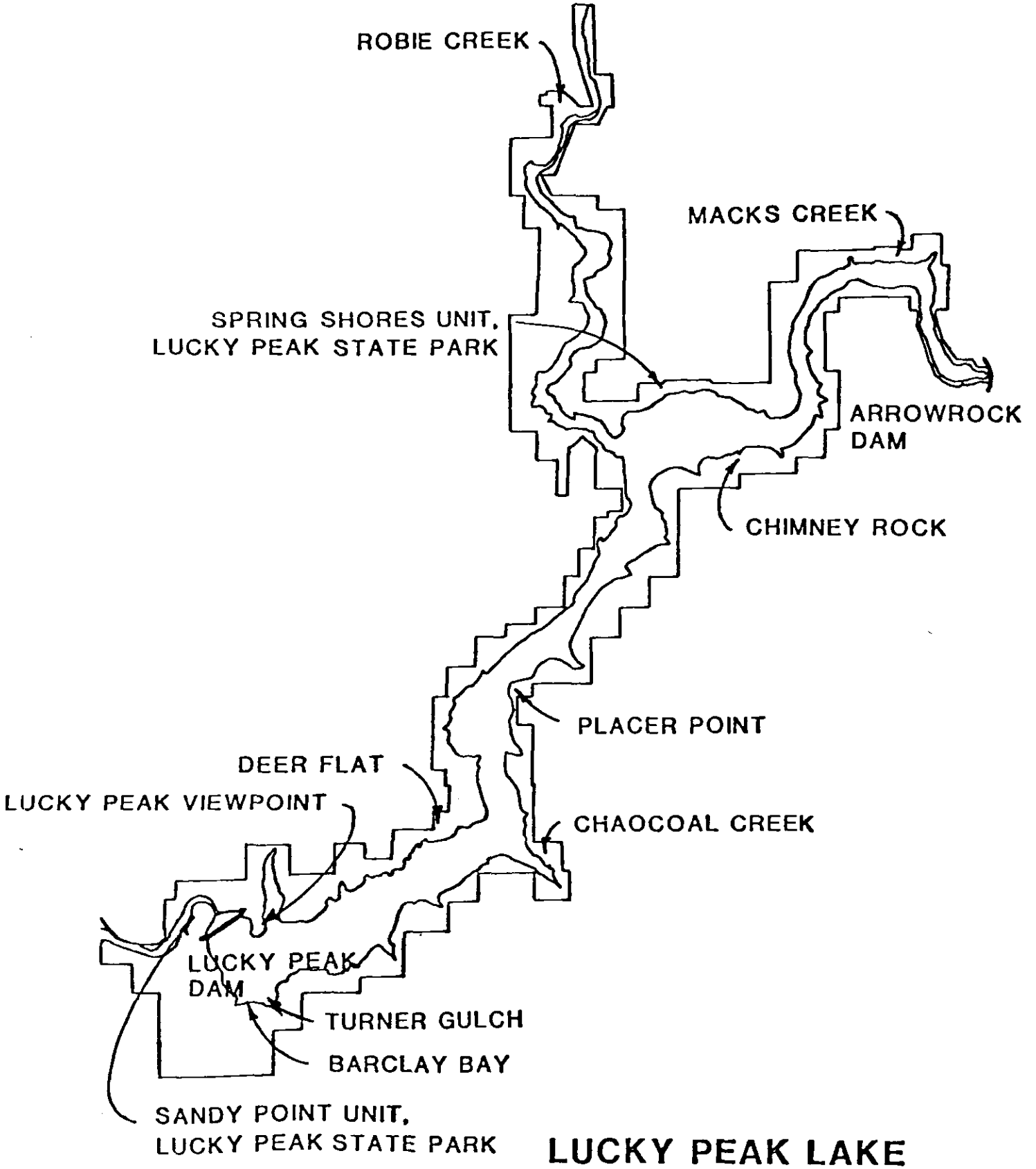
Sincerely,

M. G. Brammer, P.E.
Chief, Engineering Division

Enclosures

EXISTING FACILITIES





LUCKY PEAK LAKE RECREATION SITES

(1) Bicycle Trail to Sandy Point.

(a) To provide bicycle access on project lands to Sandy Point unit, Lucky Peak State Park.

(b) The City of Boise, Ada County, the Department of Parks and Recreation, and the Department of Highways have coordinated in providing a bicycle route to Lucky Peak. The route is currently completed from the diversion dam to the Sandy Point access road, a length of about 2 miles. Significant use of the bicycle trail occurs; however, bicyclists going to Sandy Point must use the narrow and potentially dangerous entrance road. Establishment of a bicycle lane with a portion on the entrance road and a portion as a separate bicycle trail is included in the initial development priorities. Possibilities for other bicycle access routes on project lands should also be investigated and implemented where practical.

(c) A plan for bicycle access on project lands to Sandy Point will be included in the Master Plan and will be closely coordinated with concerned agencies. Development which will require cost-sharing will be programmed for earliest possible implementation.

(2) Develop Interpretive Information Facilities at Lucky Peak Overlook.

(a) The facilities would be a joint venture of the Idaho Departments of Fish and Game, Parks and Recreation, and Commerce. Federal participation would be from the Corps of Engineers, Bureau of Reclamation, Forest Service, and U.. S. Fish and Wildlife Service; also other groups such as Boise Chamber of Commerce and the "Keep Idaho Green" Committee.

(b) The location is excellent with access just off State Highway 21. It is also the scenic gateway to the Boise Mountains.

(3) Increase Parking at Barclay Bay.

Increased parking facilities at Barclay Bay will eliminate congestion and safety hazards. After the parking lot is filled, vehicles are parking along the access road between Barclay and Turner Gulch creating a one lane road. Also, at times, parking will occur at the head of the launching ramp.

(4) Increase Launching Ramp at Barclay Bay.

Barclay Bay is the only site that has room for one more ramp. Also the site is an area for the additional parking. The existing ramp is a full pool ramp so expansion would be a minimal cost for the amount of use. The additional lane would save time in launching the boats and increase capacity.

(5) Relocate County Road at Spring Shores.

(a) Relocation of the county road uphill and around Spring Shores would serve two purposes. First, it would consolidate activities at Spring Shores eliminating the hazard of crossing the road. Second, it would provide additional space for day use, parking, and overnight facilities.

(b) The relocation was first proposed in the 1964 Master Plan. The State of Idaho has held off development at Spring Shores until the site plan can be finalized including the relocated road. Therefore, the relocation should be completed as soon as possible.

(6) Increase Parking at Spring Shores.

During recent years, the use of Spring Shores has increased far beyond the parking capacity. On the majority of weekends during the recreational season, vehicles are parked along the county road. This creates a safety hazard and congestion. The county road needs to be relocated before this can be done.

(7) Increase Moorage at Spring Shores.

The need for moorage facilities is high primarily due to Lucky Peak being a day-use area and the close proximity to a large population. Moorage facilities encourage use, save time, and are convenient to the public. They also eliminate congestion and reduce parking facilities for trailers. The increased moorage will be provided by a private concessionaire at Spring Shores as approved by the Idaho Department of Parks and Recreation and the Corps.

(8) Overnight Facilities at Spring Shores.

(a) Provide overnight parking and basic sanitary facilities at Spring Shores for visitors wishing to remain on the project overnight in recreational vehicles.

(b) In a public planning workshop in Boise in July 1975, the main item of discussion was the need for overnight parking at certain locations on the lake. The site that was discussed at length was Spring Shores Marina. Visitors boating on the lake desired to have a place to park their recreational vehicles and remain overnight at the project rather than load their boats and trailer them back to their homes. Participants at the workshop indicated that they did not require a campground or any elaborate facilities, but mainly an area where they could park and have some surveillance of their boats left at the marina. Studies should be conducted to determine the area that would be required for development of this nature and the most suitable location at the Spring Shores site. Since the site is leased to the State of Idaho Parks and Recreation Department, this item should be a mutual effort both in design and in construction. The facility is currently leased to a concessionaire who operates and maintains the marina and related facilities. If such use cannot be accommodated on project lands, local planning agencies should be so notified so they can encourage development of such facilities off-project.

(c) Approximately eight sites have been designated for overnight parking at present. Adjacent parking areas are unofficially used for this purpose; however, feasibility of increased facilities for this activity and potential locations and total area required will be studied. This, like several other objectives, will require cost-sharing with a local sponsor. The proposed site layout will be coordinated with the State of Idaho Parks and Recreation Department and scheduled accordingly.

LOU L. MURGOITIO
CHAIRMAN OF THE BOARD
GERALD GUENTZ
VICE CHAIRMAN OF THE BOARD
ROYSE VAN CUREN
PROJECT MANAGER
CARL PADOUR
ASSISTANT PROJECT MANAGER
NORLYN F. POPE
SECRETARY-TREASURER
PHEBE HILDEBRANDT
ASSISTANT SECRETARY-TREASURER

BOISE PROJECT BOARD OF CONTROL

(FORMERLY BOISE U. S. RECLAMATION PROJECT)

214 BROADWAY
BOISE, IDAHO 83702

CONTRACTING AGENCY FOR 167,000 ACRES FOR THE FOLLOWING IRRIGATION DISTRICTS

NAMPA-MERIDIAN DISTRICT
BOISE-KUNA DISTRICT
WILDER DISTRICT
NEW YORK DISTRICT
BIG BEND DISTRICT

December 7, 1983

Colonel Robert Williams, District Engineer
Walla Walla District, Corps of Engineers
Building 602, City-County Airport
Walla Walla, Washington 99362

Dear Colonel Williams:

We appreciated receiving Mr. M.G. Brammer's October 3, 1983, letter that included information we requested on proposed recreation development at your Lucky Peak project.

We have reviewed the list of proposed recreation developments and we propose to accomplish widening and lengthening of the Barclay Bay Launch Ramp and the provision of additional parking in conjunction with this expansion.

Specifically, we propose to enhance the Barclay Bay site by (1) lengthening the ramp by 150 feet (it is currently about 170 feet long), (2) adding 10 feet of width to the ramp for its entire length, and (3) developing a paved parking area (accommodating approximately 30 car/trailers) on the second small bench located above and to the north of the Barclay Bay ramp.

We intend to proceed with obtaining information at Barclay Bay for preliminary design and estimating purposes for our Arrowrock project study. We do not believe it is necessary for our preliminary report to FERC to include information on the details of accomplishing this proposed construction task. We will work with Dave Brownell, Lucky Peak Dam Project Engineer, unless you should designate another member of your staff to work with us.

Should you have any questions about what we are proposing to do, please contact Royse Van Curen (telephone number (208) 344-1141).

Sincerely,

Lou L. Murgoitio

Lou L. Murgoitio, Chairman
Boise Project Board of Control

LLM/jf

cc: Dave Brownell, Project Engineer, Corps of Engineers, Lucky Peak Dam, Idaho City Stage, Boise, Idaho 83706

Regional Director, Bureau of Reclamation, Attention: Ron Golus, Box 043 - 550 West Fort Street, Boise, Idaho 83724-0430

GERALD GUENTZ
CHAIRMAN OF THE BOARD
JOHN J. GALE
VICE CHAIRMAN OF THE BOARD
ROYSE VAN CUREN
PROJECT MANAGER
CARL PADOUR
ASSISTANT PROJECT MANAGER
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ASSISTANT SECRETARY TREASURER

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

February 8, 1984

Mr. Jerry M. Conley, Director
Idaho Department of Fish and Game
600 South Walnut
Boise, Idaho 83706

Dear Mr. Conley:

The Federal Energy Regulatory Commission (FERC) has granted the Boise Project Board of Control the preliminary permit for Project No. 4656 to study and prepare an application for a FERC license to construct a powerplant at the Bureau of Reclamation's existing Arrowrock Dam.

In our FERC study, we transmitted a Consultation Report during January 1983, which contained a summary of the overall Arrowrock powerplant project plan, to your agency, U.S. Fish and Wildlife Service, and others for the purpose of obtaining comments to be considered in the final project plans.

Both your agency and the U.S. Fish and Wildlife Service commented that it may be necessary to provide compensation for fish losses through the proposed Arrowrock powerplant turbines.

We are aware that for the Bureau of Reclamation's Boise Project Power and Modification Study, a $12,000 per year mitigation figure for fish losses through the Arrowrock powerplant turbines has been recommended by the Fish and Wildlife Service in its Fish and Wildlife Coordination Act report studies.

We would appreciate it if you would confirm whether we should use the $12,000 per year or some other estimate to compensate for the fish losses. We would also like to receive information on what mitigation measures would be undertaken with the estimated funds to compensate for the possible fish losses.

Sincerely yours,

Gerald Guentz, Chairman
Boise Project Board of Control

GG:ph

cc: John Wolfin, Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 4620 Overland Road, Room 290, Boise, Idaho 83705
Will Reid, Idaho Department of Fish and Game, Region III, 109 West 44th, Boise, Idaho 83704
Regional Director, Bureau of Reclamation, Attention: Code 704, Boise, Idaho 83724

IDAHO DEPARTMENT OF FISH AND GAME
600 South Walnut • Box 25
Boise • Idaho • 83707

March 6, 1984

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

Dear Mr. Guentz:

Thank you for your recent inquiry concerning mitigation for the Arrowrock powerplant project plan. The Department has estimated that $12,000 per year is a reasonable estimate of the compensation for turbine losses. We therefore concur with the U.S. Fish and Wildlife Service in this matter.

The Department would utilize these funds to produce rainbow trout and kokanee to be planted into the reservoir.

It is possible that our estimate of fish losses will change when you present your proposed designs, including penstock elevation. We will be glad to work with you at that time. Please let me know if you have any additional questions.

Sincerely,

Jerry M. Conley
Director

• EQUAL OPPORTUNITY EMPLOYER •

GERALD GUENTZ
CHAIRMAN OF THE BOARD
JOHN J. GALE
VICE CHAIRMAN OF THE BOARD
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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

April 17, 1984

Dr. Merle Wells
State Historic Preservation Officer
Idaho State Historical Society
610 North Julia Davis Drive
Boise, Idaho 83702

Dear Dr. Wells:

The Boise Project Board of Control is preparing a license application, to be submitted to the Federal Energy Regulatory Commission (FERC), to build a hydroelectric powerplant at Arrowrock Dam, a property listed in the National Register of Historic Places. In brief, the proposed project would entail the construction of a 60 megawatt powerplant, switchyard, modification of the dam to install power penstocks, and upgrading the county road from Lucky Peak Spring Shores marina to Arrowrock Dam and the access road to the construction site to accommodate modern construction vehicles. An attachment (No. 2) to this correspondence describes the project in greater detail.

In accordance with the Advisory Council on Historic Preservation (ACHP) regulations for the "Protection of Historic and Cultural Properties" (36 CFR 800) and the FERC regulations for "Application for License, Permit, and Exemption from Licensing for Water Power Projects" (18 CFR 4) we are seeking your comments regarding the anticipated effects on, and the proposed mitigation of cultural resources which would result from construction of the projects. We would appreciate your comments within 30 days so that we may include them in the preliminary case report we will send to the ACHP to fulfill our responsibilities under Section 106 of the National Historic Preservation Act.

We initially consulted with you in January of 1983 via the FERC required consultation report. Your letter response to us (dated February 18, 1983) stated that our main concern would be the replacement of the spillway bridge. This letter addresses that concern, summarizes a cultural resources survey of the bed of Lucky Peak Lake, analyzes the effects of the proposed project, and presents a proposed mitigation plan. All preconstruction cultural resources studies have been completed.

In our opinion the following affects, as defined in 36 CFR 800.4, on cultural resources would occur should the Arrowrock Powerplant be built:

1. Arrowrock Dam would be "adversely affected" by the construction of the powerplant and the associated modifications. The impacts are unavoidable because of the physical contraints imposed by the location of the dam.

2. Three historical period sites on the bed of Lucky Peak Lake--10-BO-301, 10-BO-302, and 10-BO-303--would not be affected by construction or by water surface fluctuations resulting from the operation of the proposed powerplant.

Analysis of the history of Arrowrock Dam indicates that any historical or archeological sites that may have existed in the vicinity of the dam have probably been destroyed by construction in 1911-1915 and 1935-1937, and by the high velocity water releases of the past 70 years. If any construction areas, borrow sources, access roads, etc., will be needed outside of this area, we will contract for professional archeological inventories in said areas. The full report on archeological and historical resources is contained in attachment Number 1.

We feel that the level of effort for mitigative data collection recommended in the proposed plan is reasonable given the significance of Arrowrock Dam. We will allocate funds and negotiate a contract with a qualified educational institution or firm to complete engineering recording to the standards of the Historic American Engineering Record (HAER). The information will then be used in an interpretive exhibit overlooking the dam. Adequate time is scheduled for completion of the proposed study and the overlook. If FERC grants the license, the Board of Control will immediately consult with the Historic American Engineering Record to confirm the adequacy of the proposed mitigation and make changes as appropriate. The Board of Control will then enter into a memorandum of agreement with you and the ACHP as stipulated in 36 CFR 800.6(b)(5).

Gerald Guentz, Chairman
Boise Project Board of Control

Enclosures[1/]

cc: Regional Director, Bureau of Reclamation
Pacific Northwest Region, Attention: 704
Box 043-550 West Fort Street, Boise, Idaho 83724

1/ *Enclosures not reproduced here:*
Attachment 1--Report on Archeological and Historical Resources
Attachment 2--Description of proposed project from applicant's Consultation Report of January 1983
Attachment 3--The Upper Lucky Peak Reservoir Inventory, by J.G. Gallagher

IDAHO STATE HISTORICAL SOCIETY
610 NORTH JULIA DAVIS DRIVE BOISE, 83702

June 18, 1984

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

Dear Mr. Guentz:

Thank you for providing us a copy of your cultural resource survey of sites and areas that might be affected by an Arrowrock power plant. I concur that, aside from Arrowrock (a National Register property) itself, such a plant would not modify those qualities which make any property eligible for registration. Your report provides information appropriate for a preliminary case report for Advisory Council consideration and project review. From your Exhibit G I gather that your new access bridge is on a site adjacent to your existing spillway bridge, so it might as well be retained, avoiding an adverse impact there. Aside from proximity of your power plant--a visual consideration--this project would appear to have no other effects subject to Advisory Council concern.

Sincerely,

Merle Wells

Merle W. Wells
State Historic Preservation Officer

MWW:dac

Appendix B

Water Quality Data for Arrowrock Reservoir and Lucky Peak Lake

STORET RETRIEVAL DATE 84/06/11

ARR001
43 35 31.0 115 55 00.0 2
ARROWCK RES 500 FT ABV DAM
16039 IDAHO ELMORE
PACIFIC NORTHWEST 130800
MIDDLE SNAKE RIVER
1119USBR 791020
0000 FEET DEPTH CLASS 00 CSN-RSP 0528761-0173981

/TYPA/AMBNT/LAKE

DATE FROM TO	TIME OF DAY	DEPTH FEET	00010 1/ WATER TEMP CENT	00025 BAROMTRC PRESSURE MM OF HG	00068 MAX SAMP DEPTH FEET	00076 TURB TRBIDMTR HACH FTU	00078 TRANSP SECCHI METERS	00090 REDOX ORP MV	00094 CNDUCTVY FIELD MICROMHO	00095 CNDUCTVY AT 25C MICROMHO	00300 DO MG/L	00301 DO SATUR PERCENT
79/08/21	10 43		21.5	659	3.3	3.0	1.50			77	8.2	107.4
	10 45	0009	21.1	659	9.0						8.0	103.9
	10 49	0015	20.7	659	15.0						7.6	97.9
	10 51	0030	15.4		30.0						6.8	
	10 53	0045	13.3	659	45.0						8.2	90.5
	10 53	0060	13.3	659	60.0	9.0				88	8.2	
81/07/09	10 25	0003	19.5	661	3.3		5.80	170	52		7.2	90.3
	10 27	0009	19.5		9.9			190	55		7.5	
	10 30	0016	19.4		16.5			192	55		7.1	
	10 32	0026	18.7		26.4			200	55		4.5	
	10 35	0033	17.5		33.0			200	55		4.5	
	10 37	0043	16.2		43.0			202	55		4.5	
	10 40	0050	14.6		50.0			220	55		6.6	
	10 42	0066	12.8		66.0			232	75		5.2	
	10 45	0082	10.3		82.0			240	62		4.7	
	10 47	0099	10.6		99.0			240	60		5.1	
	10 50	0116	10.0		116.0			245	60		5.1	
	10 52	0149	8.0		149.0			255	70		4.2	
	10 55	0182	6.7		182.0			260	85		4.2	
	10 57	0224	6.5		224.0			140	100		4.2	
82/06/10	10 30	0003	14.5	676	3.2		2.50	220	61	68	11.2	123.8
	10 32	0009	13.9		9.8			218	58		11.2	
	10 34	0016	13.6		16.4			220	61		11.1	
	10 36	0026	13.2		26.2			228	61		11.0	
	10 38	0032	12.4		32.8				61		10.6	
	10 40	0049	11.0		49.2			240	61		9.6	
	10 42	0065	10.4		65.6			160	58		9.9	
	10 45	0082	7.9		82.0			140	49		10.2	
	10 47	0114	9.2		114.8			132	53		10.5	
	10 50	0147	8.9		147.6			128	53		10.5	
	10 52	0180	8.2		180.4			130	53		10.4	
	10 54	0203	8.0		203.0			125	54	53	10.2	
82/07/26	00 00	0180	9.9		180.4			245	38		6.8	
	10 25	0003	21.3	678	3.2		4.30	210	58	51	8.8	111.3
	10 27	0009	20.0		9.8			210	58		9.2	
	10 30	0016	16.4		16.4			200	46		9.5	

1/ Explanation of column headings on page B10

STORET RETRIEVAL DATE 84/06/11

ARR001
43 35 31.0 115 55 00.0 2
ARROWCK RES 500 FT ABV DAM
16039 IDAHO ELMORE
PACIFIC NORTHWEST 130800
MIDDLE SNAKE RIVER
1119USBR 791020
0000 FEET DEPTH CLASS 00 CSN-RSP 0528761-0173981

/TYPA/AMBNT/LAKE

DATE FROM TU	TIME OF DAY	DEPTH FEET	00335 1/ COD LOWLEVEL MG/L	00400 PH SU	00403 LAB PH SU	00440 HCO3 ION HCO3 MG/L	00445 CO3 ION CO3 MG/L	00530 RESIDUE TOT NFLT MG/L	00610 NH3+NH4- N TOTAL MG/L	00615 NO2-N TOTAL MG/L	00620 NO3-N TOTAL MG/L	00629 TOT ORG KJELDL N MG/L
79/08/21	10 43		7.0		7.3			3	0.010	0.010K	0.050	0.19
	10 53	0060	7.0		7.4			12	0.010	0.010K	0.140	0.13
81/07/09	10 25	0003	7.0	7.70		31	0		0.010K	0.010K	0.150	0.12
	10 27	0009		7.70								
	10 30	0016		7.70								
	10 32	0026		7.70								
	10 35	0033		7.80								
	10 37	0043		8.00								
	10 40	0050		7.80								
	10 42	0066		7.40								
	10 45	0082	8.0	7.20		35	0		0.010K	0.010K	0.030	0.07
	10 47	0099		7.20								
	10 50	0116		7.10								
	10 52	0149		7.00								
	10 55	0182		6.90								
	10 57	0224	7.0	6.90		45	0		0.010K	0.010K	0.010K	0.11
82/06/10	10 30	0003	17.0	8.00	7.9				0.030			
	10 32	0009		8.10								
	10 34	0016		8.10								
	10 36	0026		8.00								
	10 38	0032		7.50								
	10 40	0049		7.90								
	10 42	0065		7.90								
	10 45	0082		8.10								
	10 47	0114		7.60								
	10 50	0147		7.20								
	10 52	0180		7.20								
	10 54	0203	7.0	7.40	7.4				0.010			0.10
82/07/26	00 00	0180		6.80								
	10 25	0003	6.0	7.60	7.6				0.020			0.16
	10 27	0009		7.80								
	10 30	0016		7.60								
	10 32	0026		7.10								
	10 35	0032		7.10								
	10 37	0049		7.00								
	10 40	0065		7.00								

1/ Explanation of column headings on page B10

STORET RETRIEVAL DATE 84/06/11

ARR001
43 35 31.0 115 55 00.0 2
ARROWCK RES 500 FT ABV DAM
16039 IDAHO ELMORE
PACIFIC NORTHWEST 130800
MIDDLE SNAKE RIVER
1119USBR 791020
0000 FEET DEPTH CLASS 00 CSN-RSP 0528761-0173981

/TYPA/AMBNT/LAKE

DATE FROM TO	TIME OF DAY	DEPTH FEET	00010 1/ WATER TEMP CENT	00025 BAROMTRC PRESSURE MM OF HG	00068 MAX SAMP DEPTH FEET	00076 TURB TRBIDMTR HACH FTU	00078 TRANSP SECCHI METERS	00090 REDOX ORP MV	00094 CNDUCTVY FIELD MICROMHO	00095 CNDUCTVY AT 25C MICROMHO	00300 DO MG/L	00301 DO SATUR PERCENT
82/07/26	10 32	0026	14.8		26.2			220	46		8.1	
	10 35	0032	13.6		32.0			220	46		8.0	
	10 37	0049	12.9		49.2			230	49		8.0	
	10 40	0065	12.0		65.6			230	43		8.4	
	10 42	0082	11.4		82.0			235	38		8.8	
	10 45	0114	10.6		114.8			238	31		9.2	
	10 47	0147	10.3		147.6			242	36		10.4	
	10 52	0210	9.6		210.0			205	40	43	5.2	
82/09/03	10 45	0003	21.2	677	3.3		2.80	125	60	64	9.7	122.9
	10 50	0009	21.2		9.8			130	60		9.6	
	10 55	0016	21.0		16.4			130	60		9.4	
	11 00	0032	17.0		32.8			150	70		7.4	
	11 05	0065	14.5		65.6			160	60		7.1	
	11 07	0098	11.5		98.4			170	55		6.6	
	11 09	0131	10.0		131.0			170	55	64	3.3	

1/ Explanation of column headings on page B10

STORET RETRIEVAL DATE 84/06/11

ARR001
43 35 31.0 115 55 00.0 2
ARROWCK RES 500 FT ABV DAM
16039 IDAHO ELMORE
PACIFIC NORTHWEST 130800
MIDDLE SNAKE RIVER
1119058R 791020
0000 FEET DEPTH CLASS 00 CSN-RSP 0528761-0173981

/TYPA/AMBNT/LAKE

DATE FROM TO	TIME OF DAY	DEPTH FEET	00335 [1/] COD LOWLEVEL MG/L	00400 PH SU	00403 LAB PH SU	00440 HCO3 ION HCO3 MG/L	00445 CO3 ION CO3 MG/L	00530 RESIDUE TOT NFLT MG/L	00610 NH3+NH4- N TOTAL MG/L	00615 NO2-N TOTAL MG/L	00620 NO3-N TOTAL MG/L	00629 TOT ORG KJELDL N MG/L
82/07/26	10 42	0082		7.00								
	10 45	0114		7.00								
	10 47	0147		6.90								
	10 52	0210	8.0	6.60	7.4				0.140			0.18
82/09/03	10 45	0003	7.0	7.20	7.5				0.050			0.44
	10 50	0009		7.10								
	10 55	0016		6.90								
	11 00	0032		6.30								
	11 05	0065		6.30								
	11 07	0098		6.20								
	11 09	0131	6.0	6.00	7.2				0.010K			0.09

1/ Explanation of column headings on page B10

STORET RETRIEVAL DATE 84/06/11

ARR001
43 35 31.0 115 55 00.0 2
ARROWCK RES 500 FT ABV DAM
16039 IDAHO ELMORE
PACIFIC NORTHWEST 130800
MIDDLE SNAKE RIVER
1119USBR 791020
/TYPA/AMBNT/LAKE 0000 FEET DEPTH CLASS 00 CSN-RSP 0528761-0173981

DATE FROM TO	TIME OF DAY	DEPTH FEET	00631 1/ NO2&NO3 N-DISS MG/L	00665 PHOS-TOT MG/L P	00671 PHOS-DIS ORTHO MG/L P	00915 CALCIUM CA,DISS MG/L	00925 MGNSIUM MG,DISS MG/L	00930 SODIUM NA,DISS MG/L	00935 PTSSIUM K,DISS MG/L	00940 CHLORIDE TOTAL MG/L	00946 SULFATE SO4-DISS MG/L	00955 SILICA DISOLVED MG/L
79/08/21	10 43			0.035	0.008							13.8
	10 53	0060		0.045	0.006							12.6
81/07/09	10 25	0003		0.002	0.002	6.8	0.6	2.76	0.39	0.4K	1.0	7.7
	10 45	0082		0.002	0.002	8.0	0.9	3.22	0.39	0.4K	1.4	9.2
	10 57	0224		0.027	0.012	9.4	1.1	4.37	0.39	0.4K	2.4	11.3
82/06/10	10 30	0003	0.1K	0.040	0.002							
	10 54	0203	0.1K	0.019	0.003							
82/07/26	10 25	0003	0.1K	0.011	0.002							
	10 52	0210	0.1K	0.065	0.023							
82/09/03	10 45	0003	0.1K	0.021	0.002							
	11 09	0131	0.2	0.025	0.014							

1/ Explanation of column headings on page B10

STORET RETRIEVAL DATE 84/06/11

ARR001
43 35 31.0 115 55 00.0 2
ARROWCK RES 500 FT ABV DAM
16039 IDAHO ELMORE
PACIFIC NORTHWEST 130800
MIDDLE SNAKE RIVER
1119USBR 791020
0000 FEET DEPTH CLASS 00 CSN-RSP 0528761-0173981

/TYPA/AMBNT/LAKE

DATE FROM TO	TIME OF DAY	DEPTH FEET	31503 1/ TOT COLI MFOLENDO /100ML	31616 FEC COLI MFM-FCBR /100ML	32210 CHLRPHYL A UG/L	00625 TOT KJEL N MG/L
79/08/21	10	43			5.78	
81/07/09	10	25 0003	2K	2K	0.86	
	10	57 0224	10	2		
82/06/10	10	30 0003			3.96	0.190
	10	54 0203				0.110
82/07/26	10	25 0003			1.17	
82/09/03	10	45 0003			3.76	

1/ Explanation of column headings on page B10

STORET RETRIEVAL DATE 84/06/11

/TYPA/AMBNT/STREAM

BOI031
43 35 23.0 115 56 01.0 3
HEADWATERS LUCKY-PEAK RESERVOIR
16039 IDAHO ELMORE
PACIFIC NORTHWEST 130800
MIDDLE SNAKE RIVER
1119USBR 820612
0000 FEET DEPTH CLASS 00 CSN-RSP 0655650-0683341

DATE FROM TO	TIME OF DAY	DEPTH FEET	00010 1/ WATER TEMP CENT	00025 BAROMTRC PRESSURE MM OF HG	00061 STREAM FLOW, INST-CFS	00095 CNDUCTVY AT 25C MICROMHO	00300 DO MG/L	00301 DO SATUR PERCENT	00403 LAB PH SU	00631 NO2&NO3 N-DISS MG/L	00665 PHOS-TOT MG/L P	00671 PHOS-DIS ORTHO MG/L P
82/05/19	14 30		9.0	678	4996	67	11.4	110.6	7.5	0.1	0.008	0.001K
82/06/07	14 45		10.0	676	8811	60	11.2	111.8	7.5	0.1	0.019	0.007
82/07/08	14 30		15.0	676	3673	45	10.0	111.7	7.4	0.1K	0.013	0.002
82/08/05	14 00		20.0	678	3800	64	7.4	91.4	7.6	0.1K	0.015	0.002
82/09/08	00 00		21.5			67	9.6		7.2	0.1K	0.015	0.003
82/10/26	12 15		11.0	674		54	11.4	116.7	7.4	0.1K	0.030	0.002

1/ Explanation of column headings on page B10

STORET RETRIEVAL DATE 84/06/11

BOI151
43 35 32.0 115 44 30.0 3
MID FORK BOISE RIVER AT BRIDGE ABOVE ARROWROCK
16039 IDAHO ELMORE
PACIFIC NORTHWEST 130800
MIDDLE SNAKE RIVER
11190SBR 820612
0000 FEET DEPTH CLASS 00 CSN-RSP 0655651-0683342

/TYPA/AMBNT/STREAM

DATE FROM TO	TIME OF DAY	DEPTH FEET	00010 1/ WATER TEMP CENT	00025 BAROMTRC PRESSURE MM OF HG	00061 STREAM FLOW, INST-CFS	00095 CNDUCTVY AT 25C MICROMHO	00300 DO MG/L	00301 DO SATUR PERCENT	00403 LAB PH SU	00631 NO2&NO3 N-DISS MG/L	00665 PHOS-TOT MG/L P	00671 PHOS-DIS ORTHO MG/L P
82/05/19	13 30			673	6729						0.027	0.001
82/06/07	14 00		8.0	672	3536	48	11.6	110.9	7.3	0.1K	0.022	0.002
82/07/08	13 30		10.0	676	3366	32	10.8	107.8	7.5	0.1K	0.002	0.002
82/08/05	13 00		16.5	677	1137	64	8.2	94.4	7.6	0.1K	0.002	0.001K
82/09/08	12 30		17.0		467	74	8.5		7.3	0.1K	0.008	0.001
82/10/06	12 30		11.5	674	528	79	9.7	100.4	7.4	0.1K	0.031	0.001
82/10/26	11 00		12.0	672	850	48	10.4	109.3	7.3	0.1K	0.008	0.002

1/ Explanation of column headings on page 810

STORET RETRIEVAL DATE 84/06/11

BOI152
43 32 48.0 115 44 54.0 3
SOUTH FK BOISE R AT BRIDGE ABOVE ARROWROCK
16039 IDAHO ELMORE
PACIFIC NORTHWEST 130800
MIDDLE SNAKE RIVER
11190SBR 820612
0000 FEET DEPTH CLASS 00 CSN-RSP 0655652-0683343

/TYPA/AMBNT/STREAM

DATE FROM TO	TIME OF DAY	DEPTH FEET	00010 1/ WATER TEMP CENT	00025 BAROMTRC PRESSURE MM OF HG	00061 STREAM FLOW, INST-CFS	00095 CNDUCTVY AT 25C MICROMHO	00300 DO MG/L	00301 DO SATUR PERCENT	00403 LAB PH SU	00631 NO2&NO3 N-DISS MG/L	00665 PHOS-TOT MG/L P	00671 PHOS-DIS ORTHO MG/L P
82/05/19	10 00		5.4	674	4996	81	11.3	99.7	7.4	0.1K	0.013	0.001K
82/06/07	10 30		9.5	671	2738	73	10.5	104.3	7.3	0.2	0.036	0.007
82/07/08	10 30		14.0	676	3660	56	9.4	102.6	7.4	0.1K	0.008	0.001
82/08/05	10 00		8.0	676	607	88	11.1	105.5	7.6	0.2	0.007	0.001
82/09/08	10 30		10.0		293	85	10.8		7.3	0.2	0.021	0.003
82/10/06	10 30		8.5	673	302	97	12.5	120.7	7.6	0.2	0.068	0.002
82/10/26	14 00		8.5	672	552	53	12.4	120.0	7.5	0.1	0.010	0.001K

1/ Explanation of column headings on page 810

1/ Explanation of column headings

00010	TEMPERATURE, WATER (DEGREES CENTIGRADE)
00025	BAROMETRIC PRESSURE (MM OF MERCURY)
00061	FLOW, STREAM, INSTANTANEOUS (CUBIC FEET PER SECOND)
00068	DEPTH, MAXIMUM, OF SAMPLE (FEET)
00076	TURBIDITY, HACH TURBIDIMETER (FORMAZIN TURBIDITY UNIT)
00078	TRANSPARENCY, SECCHI DISC (INCHES)
00090	OXIDATION REDUCTION POTENTIAL (MILLIVOLTS)
00094	SPECIFIC CONDUCTANCE, FIELD (MICROMHOS PER CM AT 25 °C)
00095	SPECIFIC CONDUCTANCE (MICROMHOS PER CM AT 25 °C)
00300	OXYGEN, DISSOLVED (MG/L)
00301	OXYGEN, DISSOLVED (PERCENT OF SATURATION)
00335	CHEMICAL OXYGEN DEMAND, LOW LEVEL (MG/L)
00400	PH (STANDARD UNITS)
00403	PH (STANDARD UNITS) LAB
00440	BICARBONATE ION (MG/L AS HCO3)
00445	CARBONATE ION (MG/L AS CO3)
00530	RESIDUE, TOTAL NONFILTRABLE (MG/L)
00610	NITROGEN, AMMONIA, TOTAL (MG/L AS N)
00615	NITRITE NITROGEN, TOTAL (MG/L AS N)
00620	NITRATE NITROGEN, TOTAL (MG/L AS N)
00625	NITROGEN, KJELDAHL, TOTAL, (MG/L AS N)
00629	NITROGEN, ORGANIC KJELDAHL, TOTAL (MG/L AS N)
00631	NITRITE PLUS NITRATE, DISSOLVED, 1 DETERMINATION (MG/L AS N)
00665	PHOSPHORUS, TOTAL (MG/L AS P)
00671	PHOSPHORUS, DISSOLVED ORTHOPHOSPHATE (MG/L AS P)
00915	CALCIUM, DISSOLVED (MG/L AS CA)
00925	MAGNESIUM, DISSOLVED (MG/L AS MG)
00930	SODIUM, DISSOLVED (MG/L AS NA)
00935	POTASSIUM, DISSOLVED (MG/L AS K)
00940	CHLORIDE (MG/L AS CL)
00946	SULFATE, DISSOLVED (MG/L AS SO4)
00955	SILICA, DISSOLVED (MG/L AS SIO2)
31503	COLIFORM, TOTAL, MEMBRANE FILTER, DELAYED, M-ENDO MED, 35 °C
31616	FECAL COLIFORM, MEMBRANE FILTER, M-FC BROTH, 44.5 °C
32210	CHLOROPHYLL-A MICROGRAMS/L TRICHROMATIC UNCORRECTED

Appendix C

Application for Water Quality Certificate

GERALD GUENTZ
CHAIRMAN OF THE BOARD
JOHN J. GALE
VICE CHAIRMAN OF THE BOARD
ROYSE VAN CUREN
PROJECT MANAGER
CARL PADOUR
ASSISTANT PROJECT MANAGER
NORLYN F. POPE
SECRETARY-TREASURER
PHEBE HILDEBRANDT
ASSISTANT SECRETARY-TREASURER

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
YORK DISTRICT
BIG BEND DISTRICT

6-29-84

Mr. Al Murrey
Chief, Bureau of Water Quality
Division of Environment
Idaho Department of Health and Welfare
Statehouse Mail
Boise, Idaho 83720

Dear Mr. Murrey:

The irrigation districts which comprise the Boise Project Board of Control (the Applicants) propose to construct a new hydroelectric facility at the existing Arrowrock Dam. In the near future, we plan to submit an application to the Federal Energy Regulatory Commission (FERC) for a license to construct Arrowrock powerplant.

We hereby request that a water quality certificate be issued for the purposed Arrowrock powerplant, pursuant to Section 401 of the Federal Water Pollution Control Act (the Clean Water Act). FERC regulations require that applicants include in their license application a copy of the water quality certificate, an agency statement that certification is waived, or a copy of the applicants' letter requesting certification from you.

We sent you our Consultation Report on this proposed project in January 1983. Your letter of February 28, 1983, stated that you had reviewed the Consultation Report and that you would consider water quality certification after you had reviewed the Exhibit E (environmental report) portion of our FERC application for license. Exhibit E of our proposed application is therefore enclosed.

Exhibit E includes considerable water quality information which was not available for the Consultation Report. It contains an assessment of existing water quality, potential project impacts, and proposed monitoring systems. Based on the analysis, we do not anticipate any water quality problems that would preclude issuance of the certificate.

bcc: Ron Golus

If you have any questions or need further information, please contact Royse Van Curen.

Sincerely,

Gerald Guentz, Chairman
Boise Project Board of Control

GG:ph

Enclosure: Exhibit E

~~63-10120~~
63-10240

Peter J. Boyd
Robert M. Tyler, Jr.
Scott L. Campbell
ELAM, BURKE AND BOYD
1010 First Interstate Building
P.O. Box 1559
Boise, Idaho 83701
(208) 343-5454

Attorneys for Plaintiffs

U. S. DISTRICT COURT
DISTRICT OF IDAHO
Filed at 2:46 M
DEC 24 1986
JERRY L. CLAPP, Clerk
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

SETTLERS IRRIGATION DISTRICT, an Idaho irrigation district; and PIONEER IRRIGATION DISTRICT, an Idaho irrigation district,

Plaintiffs,

v.

UNITED STATES OF AMERICA; DONALD P. HODEL, in his official capacity as Secretary of the Interior, U.S. Department of the Interior; C. DALE DEVALL, in his official capacity as Commissioner of Reclamation, Bureau of Reclamation; JOHN W. KEYS III, in his official capacity as Director of the Pacific Northwest Region, Bureau of Reclamation; NEIL STESSMAN, in his official capacity as Central Snake Projects Superintendent, Pacific Northwest Region, Bureau of Reclamation; JOHN O. MARSH JR. in his official capacity as Secretary of the Army, U.S. Department of Defense; LT. GENERAL E.R. HEIBERG III, in his official capacity as Chief of Engineers, U.S. Army, Corps of Engineers; BRIGADIER GENERAL GEORGE R. ROBERTSON, in his official capacity as Division Engineer, U.S. Army, Corps of Engineers, North Pacific Division; and COLONEL JAMES B. ROYCE, in his official

No. 86-1455

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

MICROFILMED
2002

RECEIVED
JAN 15 1987
Department of Water Resources
Western Regional Office

capacity as District Engineer, U.S. Army, Corps of Engineers, Walla Walla District,

Defendants.

COMES NOW Settlers Irrigation District and Pioneer Irrigation District, by and through their counsel, and for cause of action allege as follows:

JURISDICTION

1.

Settlers Irrigation District (hereinafter "Settlers") is a duly constituted irrigation district, which was organized in 1904, pursuant to the laws of the state of Idaho. Settlers is located in Ada County, Idaho.

2.

Pioneer Irrigation District (hereinafter "Pioneer") is a duly constituted irrigation district, which was organized in 1902, pursuant to the laws of the state of Idaho. Pioneer is located in Ada and Canyon Counties, Idaho.

3.

The United States of America, acting through the Secretary of the Interior, or his authorized agents, entered into various contracts with Settlers, pursuant to the Reclamation laws of the United States, involving water storage rights in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs. These contracts bear dates of execution from July 13, 1918, through June 18, 1954, and continue in full force and effect.

4.

The United States of America, acting through the Secretary of the Interior, or his authorized agents, entered into various contracts with Pioneer, pursuant to the Reclamation laws of the United States, involving water storage rights in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs. These contracts bear dates of execution ranging from February 27, 1913, through August 24, 1966, and continue in full force and effect.

5.

Defendant Donald P. Hodel is sued in his official capacity as Secretary of the Interior, U.S. Department of the Interior. Under 43 U.S.C. section 1457, defendant Hodel is charged with the supervision of public business relating to the Bureau of Reclamation. Under the Reclamation Act of 1902 and acts amendatory thereof and supplementary thereto, generally 43 U.S.C. sections 371, et. seq., and particularly 43 U.S.C. section 373, defendant Hodel has the authority to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of the Reclamation Act into full force and effect. In addition, defendant Hodel, under 16 U.S.C. section 590(z)-11, is authorized to delegate his powers and duties under the reclamation laws to the Commissioner of Reclamation or the officer in charge of any office, division, district, or project of the Bureau of Reclamation.

6.

Defendant C. Dale Devall is sued in his official capacity as Commissioner of Reclamation, Bureau of Reclamation. Under the Reclamation Act of 1902 and acts amendatory thereof and supplementary thereto, generally 43 U.S.C. sections 371, et seq., and particularly 43 U.S.C. section 373(a), and delegation of powers under 16 U.S.C. section 590(a)-11, defendant Devall is authorized to administer the reclamation of arid land, under the Reclamation Act of 1902, and acts amendatory thereof and supplementary thereto, under the supervision and direction of the Secretary of Interior.

7.

Defendant John W. Keys III is sued in his official capacity as the Director of the Pacific Northwest Region, Bureau of Reclamation. As such, he is the chief regional official of the Bureau of Reclamation authorized and directed to administer the federal reclamation laws, pursuant to the Reclamation Act of 1902 and acts amendatory thereof and supplementary thereto, generally 43 U.S.C. sections 371, et seq., and under the delegation of powers and duties by the Secretary of the Interior pursuant to 16 U.S.C. section 590(z)-11, as they pertain to Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs.

8.

Defendant Neil Stessman is sued in his official capacity as Project Superintendent for the Central Snake Projects, Pacific Northwest Region, Bureau of Reclamation. As such, he is the local official of the Bureau of Reclamation authorized to

administer the federal reclamation laws, pursuant to the Reclamation Act of 1902 and acts amendatory thereof and supplementary thereto, generally 43 U.S.C. sections 371, et seq., and under a delegation of powers and duties by the Secretary of the Interior pursuant to 16 U.S.C. section 590(z)-11, as they pertain to Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs.

9.

Defendant John O. Marsh Jr. is sued in his official capacity as Secretary of the Army, U.S. Department of Defense. Under the Reclamation Act of 1902 and acts amendatory thereof and supplementary thereto, generally 43 U.S.C. sections 371, et seq., and particularly 43 U.S.C. section 390 and the Flood Control Act of 1946, Public L. No. 526, 60 Stat. 641 (1946), and the Flood Control Acts, generally 33 U.S.C. sections 701-709(a), the defendant Marsh is authorized to direct federal investigations and improvements of rivers and other waterways for flood control. The Lucky Peak Dam and Reservoir was authorized for construction and was constructed pursuant to said provisions of federal law under the direction of the Secretary of the Army. The Lucky Peak Dam and Reservoir is currently operated under the direction of the Secretary of the Army, pursuant to said provisions of federal law.

10.

Defendant Lt. General E. R. Heiberg III is sued in his official capacity as Chief of Engineers, U.S. Army, Corps of Engineers. Under the Reclamation Act of 1902 and acts amendatory

thereof and supplementary thereto, generally 43 U.S.C. sections 371, et seq.; the Flood Control Acts, generally 33 U.S.C. sections 701-709(a); and the Flood Control Act of 1946, Public L. No. 526, 60 Stat. 641 (1946), defendant Heiberg is authorized to supervise federal investigations and improvements of rivers and other waterways for flood control. The Lucky Peak Dam and Reservoir was authorized for construction and was constructed pursuant to said provisions of federal law under the supervision of the Chief of Engineers. The Lucky Peak Dam and Reservoir is currently operated under the supervision of the Chief of Engineers, pursuant to said provisions of federal law.

11.

Defendant Brigadier General George R. Robertson is sued in his official capacity as Division Engineer, U.S. Army, Corps of Engineers for the North Pacific Division. Under the Reclamation Act of 1902 and acts amendatory thereof and supplementary thereto, generally 43 U.S.C. sections 371, et seq.; the Flood Control Acts, generally 33 U.S.C. sections 701-709(a); and the Flood Control Act of 1946, Public L. No. 526, 60 Stat. 641 (1946), defendant Robertson is authorized to supervise federal investigations and improvements of rivers and other waterways for flood control. Defendant Robertson, as the Division Engineer of the U.S. Army, Corps of Engineers for the North Pacific Division, has jurisdiction and authority over the Lucky Peak Dam and Reservoir, constructed by the Corps of Engineers pursuant to the Flood Control Act of 1946, Public L. No. 526, 60 Stat. 641 (1946).

12.

Defendant Colonel James B. Royce is sued in his official capacity as District Engineer of the U.S. Army, Corps of Engineers for the Walla Walla district. Under the Reclamation Act of 1902 and acts amendatory thereof and supplementary thereto, generally 43 U.S.C. sections 371-616, et seq.; the Flood Control Act of 1946, Public L. No. 526, 60 Stat. 641 (1946); and the Flood Control Acts, generally 33 U.S.C. sections 701-709(a), defendant Royce, as the District Engineer of the U.S. Army, Corps of Engineers for the Walla Walla district, has jurisdiction and authority over the Lucky Peak Dam and Reservoir, constructed by the Corps of Engineers pursuant to the Flood Control Act of 1946, Public L. No. 526, 60 Stat. 641 (1946).

13.

Jurisdiction is conferred on this court by 43 U.S.C. section 390uu, and 28 U.S.C. section 1331.

14.

Jurisdiction is also conferred on this court by 28 U.S.C. section 2201, because this action involves a case of actual controversy between plaintiffs and the United States of America concerning the contractual rights created by the contracts described in paragraphs 3 and 4 above, and plaintiffs seek a declaration from this court clarifying their rights under those contracts.

FIRST CAUSE OF ACTION

15.

Plaintiffs hereby reallege and incorporate by reference all of the allegations contained in paragraphs 1 through 14 hereof.

16.

Plaintiffs possess water rights to a portion of the natural flow of the Boise River, as established by state court decrees. Plaintiffs also possess rights to stored water held in Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs. These stored water rights were created by the contracts described in paragraphs 3 and 4 above. The natural flow water and stored water is carried within the banks of the Boise River to diversion points, whereupon the water is distributed by the irrigation canals, ditches, and structures of plaintiffs for irrigation of the lands within the districts.

17.

On or about February 27, 1913, the United States of America, acting through the Secretary of the Interior, entered into a contract (Exhibit A hereto) with Pioneer to provide it with a quantity of stored water in Arrowrock Reservoir, which was at that time under construction on the Boise River. Pioneer agreed to pay Five Hundred Sixty Thousand and No/100 Dollars ($560,000.00) to the United States of America in exchange for the stored water, which amount was to be applied against the construction cost of Arrowrock Dam and Reservoir. The United States of America agreed to provide for Pioneer that portion of the total storage capacity of Arrowrock Reservoir which $560,000 was

of the total cost of the reservoir. Construction of Arrowrock Dam and Reservoir was completed in 1915, and Pioneer commenced making annual installment payments in accordance with the contract terms. Pioneer has likewise received a quantity of stored water each irrigation season, pursuant to the contract.

18.

On or about June 15, 1915, the United States of America, acting through the Secretary of the Interior, entered into a contract (Exhibit B hereto) with Pioneer, which modified the repayment provisions of the 1913 contract (Exhibit A hereto), reducing the amount of funds to be repaid by Pioneer for the water storage rights in Arrowrock Reservoir.

19.

On or about July 13, 1918, the United States of America, acting through the Assistant Secretary of the Interior, entered into a contract (Exhibit C hereto) with Settlers to provide it with a quantity of stored water in Arrowrock Reservoir. Settlers agreed to pay Thirty Thousand and No/100 Dollars ($30,000.00) to the United States of America in exchange for the stored water, which amount was to be applied against the construction cost of Arrowrock Dam and Reservoir. The United States of America agreed to provide for Settlers that portion of the total storage capacity of Arrowrock Reservoir which $30,000 was of the total cost of the reservoir. Settlers commenced making annual installment payments in accordance with the contract terms and has

completed the repayment obligations of the contract. Settlers has received a quantity of stored water from Arrowrock Reservoir each irrigation season, pursuant to the contract.

20.

On or about November 30, 1926, the United States of America, acting through the Secretary of the Interior, or his designee, entered into a contract (Exhibit D hereto) with Pioneer, which modified the repayment provisions of the 1913 contract (Exhibit A hereto) and the 1915 contract (Exhibit B hereto), to provide for semi-annual installment payments instead of annual installment payments from Pioneer to the United States of America. All payment obligations required of Pioneer under the Arrowrock contracts have been satisfied.

21.

On or about July 26, 1943, the United States of America, acting through the Secretary of the Interior or his designee, entered into a contract (Exhibit E hereto) with Settlers to provide it with a quantity of stored water in Anderson Ranch Reservoir, a reservoir to be created by the proposed construction of Anderson Ranch Dam on the South Fork of the Boise River by the United States of America. Settlers agreed to pay a portion of the construction cost of Anderson Ranch Dam in an amount not less than Fifty-two Thousand Eighty and No/100 Dollars ($52,080.00), but not more than Sixty-five Thousand One Hundred and No/100 Dollars ($65,100.00); the final figure depending upon the actual cost of construction. Settlers commenced making annual installment payments in accordance with the contract terms. In exchange

for these payments, the United States of America agreed to provide to Settlers a quantity of stored water from Anderson Ranch Reservoir equal to one and twelve hundredths percent (1.12%) of the stored water actually available from the reservoir. Stored water from Anderson Ranch Reservoir has been delivered to Settlers since the construction of Anderson Ranch Dam, pursuant to the contract.

22.

On or about November 10, 1943, the United States of America, acting through the Acting Secretary of the Interior, entered into a contract (Exhibit F hereto) with Pioneer to provide it with a quantity of stored water in Anderson Ranch Reservoir, a reservoir to be created by the proposed construction of Anderson Ranch Dam on the South Fork of the Boise River by the United States of America. Pioneer's contract (Exhibit F hereto) was substantially similar to Settler's contract (Exhibit E hereto). Under the contract terms, Pioneer agreed to pay a portion of the construction cost of Anderson Ranch Dam in an amount not less than Two Hundred Eighty-four Thousand Five Hundred Eighty and No/100 Dollars ($284,580.00), but not more than Three Hundred Thirteen Thousand Thirty-eight and No/100 Dollars ($313,038.00); the final figure depending upon the actual cost of construction. Pioneer commenced making annual installment payments in accordance with the contract terms. In exchange for these payments the United States of America agreed to provide to Pioneer a quantity of stored water from Anderson Ranch Reservoir equal to six and twelve hundredths percent (6.12%) of the stored water actually

available from the reservoir. Stored water from Anderson Ranch Reservoir has been delivered to Pioneer since the construction of Anderson Ranch Dam, pursuant to the contract.

23.

In addition to the seasonal water storage rights granted to plaintiffs under the 1943 contracts (Exhibits E and F hereto), the United States of America granted plaintiffs certain "holdover rights" in Anderson Ranch Reservoir. Paragraph 16 of the 1943 contracts (Exhibits E and F hereto) permits plaintiffs "to hold over in Anderson Ranch Reservoir from year to year stored water to which it may be entitled in any irrigation season but does not use during such season." These "holdover rights" were subject to certain limitations, which are specifically set forth in paragraph 16 of the contracts. Plaintiffs have accrued "holdover rights" to stored water in Anderson Ranch Reservoir on an annual basis, depending upon irrigation demand and reservoir capacity, since the completion of Anderson Ranch Dam and Reservoir.

24.

On or about July 24, 1946, the Seventy-Ninth United States Congress, Second Session, authorized the construction of Lucky Peak Dam on the Boise River by the adoption of Public Law 526. The project was authorized substantially in accordance with the recommendations of the Chief of Engineers of Rivers and Harbors in his report, dated May 13, 1946 (Exhibit G hereto). This report recommended the integrated operation of Arrowrock, Anderson Ranch and the proposed Lucky Peak Reservoirs in the

combined interest of flood control, irrigation, and power. The project was to be constructed and operated by the U.S. Army, Corps of Engineers.

25.

During October 1949, construction commenced on the Lucky Peak Dam Project. Project construction was completed in December 1957. While construction was nearing completion, on or about August 3, 1954, the United States of America, acting through the Commissioner of the Bureau of Reclamation, entered into a contract (Exhibit H hereto) with Pioneer. On or about December 7, 1954, the United States of America, again acting through the Commissioner of the Bureau of Reclamation, entered into a substantially similar contract (Exhibit I hereto) with Settlers. The contracts provided for the coordinated operation of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs in the interest, jointly, of flood control, irrigation, and power production. Under paragraph 6(a) of the contracts, plaintiffs assented to the operating plan set forth in the November 20, 1953, Memorandum of Agreement between the departments of the Army and the Interior (Exhibit A to Exhibits H and I hereto). This operating plan, which was incorporated into the 1954 contracts (Exhibits H and I hereto), established the procedures for the coordinated operation of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs by the U.S. Army, Corps of Engineers and the Bureau of Reclamation during the "flood control period" of the system. Prior to this contract, Arrowrock Dam and Reservoir had been operated primarily for the storage of irrigation water,

and Anderson Ranch Dam had been operated partially for irrigation storage purposes, partially for flood control purposes, and partially for hydroelectric power purposes.

26.

By assenting to the operating plan set forth in the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto), plaintiffs agreed to modify certain contract storage rights in the reservoir system as established in the prior Government-District contracts (Exhibits A through F hereto). The United States of America contracted to guarantee to plaintiffs, under paragraph 7 of the 1954 contracts (Exhibits H and I hereto), that at the end of each "storage season" (a defined term under the 1954 contracts), a determination would be made of the amount of water to which plaintiffs would have been entitled under the prior Government-District contracts (Exhibits A through F hereto) had Anderson Ranch and Arrowrock Dams and Reservoirs been operated in accordance with those contracts. (Exhibits A through F, H, and I hereto.) Likewise, a determination would be made of the amount of water which should be credited to plaintiff's storage rights, taking account of actual operations under the flood control operating plan set forth in the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto). If the first amount exceeded the second amount, an amount of water equal to the difference was to be credited and made available to plaintiffs out of water accrued to storage rights in Lucky Peak Reservoir. These determinations have not been made, and the United States of

America has failed to perform the obligations required of it under paragraph 7 of the 1954 contracts (Exhibits H and I hereto) and is, therefore, in breach of said contracts, thereby violating plaintiffs' rights therein.

27.

Plaintiffs seek a declaration of their contract rights under paragraph 7 of the 1954 contracts (Exhibits H and I hereto) and a determination that those rights have been violated by the actions of the United States of America. Plaintiffs also seek an injunction requiring the United States of America to properly conduct the annual determinations required by paragraph 7 of the 1954 contracts (Exhibits H and I hereto).

SECOND CAUSE OF ACTION

28.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 27 hereof.

29.

Paragraph 6(a) of the 1954 contracts (Exhibits H and I hereto) provided for the coordinated operation of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs during the "flood control period" of each year for irrigation and flood control storage in accordance with the operating plan set forth in the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto). "Flood control period" was defined in paragraph 5 of the 1954 contracts (Exhibits H and I hereto) as:

> [T]he period from January 1 through July 31 of each year beginning with the first full calendar year after this contract becomes effective.

At some point subsequent to execution of plaintiffs' 1954 contracts, the United States of America, acting through the U.S. Army, Corps of Engineers and the U.S. Department of the Interior, Bureau of Reclamation, began coordinating operation of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs jointly for irrigation and flood control storage commencing prior to January 1, and as early as November 1, of each year, thereby violating the provisions of paragraphs 5 and 6 of the 1954 contracts (Exhibits H and I hereto), and is, therefore, in breach of said contracts, thereby violating plaintiffs' rights therein.

30.

The commencement of the coordinated flood control and irrigation storage operation of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs by the United States of America before January 1 of each year, as described in paragraph 29 above, interferes with the accrual of plaintiffs' "holdover storage" rights in Anderson Ranch Reservoir. These "holdover storage" rights were granted to plaintiffs by the United States of America in paragraph 16 of the 1943 contracts (Exhibits E and F hereto). By commencing the coordinated flood control and irrigation storage before January 1 of each year, the United States of America deprives plaintiffs of their rights under the 1943 contracts (Exhibits E and F hereto) regarding the accrual of "holdover storage" water in the reservoir for plaintiffs' benefit, and the United States of America is, therefore, in breach of said contracts.

31.

Plaintiffs seek a declaration of their contract rights under paragraphs 5 and 6 of the 1954 contracts (Exhibits H and I hereto), and their rights under paragraph 16 of the 1943 contracts (Exhibits E and F hereto), and a determination that those rights have been violated by the actions of the United States of America. Plaintiffs also seek an injunction, prohibiting the United States of America from operating Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs for combined flood control and irrigation storage purposes except for the period from January 1 through July 31 of each year, and further prohibiting the United States of America from continuing to violate paragraph 16 of the 1943 contracts.

THIRD CAUSE OF ACTION

32.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 31 hereof.

33.

The commencement of the coordinated flood control and irrigation storage operation of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs by the United States of America before January 1 of each year, as described in paragraph 29 above, interferes with the total refill of the reservoirs and thereby adversely affects plaintiffs' storage rights under the Government-District contracts (Exhibits A through F, H, and I hereto) and the United States of America is, therefore, in breach of said contracts.

34.

Plaintiffs seek a declaration of their contract rights with respect to refill of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs for irrigation purposes under the Government-District contracts (Exhibits A through F, H, and I hereto). Plaintiffs seek a determination that those rights have been violated by the actions of the United States of America in commencing the coordinated flood control and irrigation storage operation of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs before January 1 of each year. Plaintiffs also seek an injunction prohibiting the United States of America from commencing the coordinated flood control and irrigation storage operation of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs before January 1 of each year.

FOURTH CAUSE OF ACTION

35.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 34 hereof.

36.

On or about September 25, 1985, Mr. L. W. Lloyd, Director of the Pacific Northwest Region, Bureau of Reclamation, acting on behalf of the Secretary of the Interior, executed a Memorandum of Understanding for Confirmation, Ratification, and Adoption of Water Control Manual Boise River Reservoirs, Boise, Idaho (Exhibit J hereto), which had been executed on June 21, 1985, by Brigadier General George R. Robertson, Division Engineer, U.S. Army, Corps of Engineers, North Pacific Division, acting on

behalf of the Chief of Engineers of the U.S. Army, Corps of Engineers. The Memorandum of Understanding (Exhibit J hereto) provided for the confirmation, ratification, and adoption of a document entitled "Water Control Manual, Boise River Reservoirs, Boise, Idaho," dated April 1985, as an integral part of the Memorandum of Agreement for Flood Control Operation of Boise River Reservoirs, Boise, Idaho, dated November 20, 1953 (Exhibit A to Exhibits H and I hereto), which was incorporated by reference in the 1954 contracts (Exhibits H and I hereto).

37.

Paragraph 7 of the Memorandum of Agreement for Flood Control Operation of Boise River Reservoirs, dated November 20, 1953 (Exhibit A to Exhibits H and I hereto), permitted the Chief of Engineers and the Commissioner of Reclamation, or their authorized representatives, to modify, within the general objectives of the Memorandum of Agreement, the flood control operating plan therein described with respect to allowable releases and the amount of space allocated each year to flood control on the basis of advanced forecasts of runoff. However, paragraph 7 mandated that no such modification, which would affect in any substantial way any storage rights in the reservoir system, was permitted without the concurrence of all entities possessing such rights. The plaintiffs possess such rights by virtue of the Government-District contracts (Exhibits A through F, H, and I hereto). The plaintiffs were not given notice of, and did not concur in the modifications set forth in the Water Control Manual, Boise River Reservoirs, Boise, Idaho, dated April 1985.

38.

The Memorandum of Understanding (Exhibit J hereto) relies upon paragraph 7 of the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) as authority for modifying the flood control operation plan set forth in the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) and substituting therefor the Water Control Manual for Boise River Reservoirs, Boise, Idaho, dated April 1985.

39.

The Water Control Manual for the Boise River Reservoirs, dated April 1985, exceeds the permissible scope of modification permitted by paragraph 7 of the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto), thereby violating the terms of the agreement and the 1954 contracts (Exhibits H and I hereto), which incorporated the agreement by reference. Such actions thereby constitute a breach of the agreement and the 1954 contracts (Exhibits H and I hereto) thereby violating plaintiffs' rights created therein.

40.

Plaintiffs seek a declaration of their rights under the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) and the 1954 contracts (Exhibits H and I hereto) and a determination that their rights have been violated by the actions of the United States of America in its unilateral adoption of the Water Control Manual for the Boise River Reservoirs, Boise, Idaho, dated April 1985, without obtaining the concurrence of the plaintiffs. Plaintiffs also seek an injunction prohibiting the United

States of America from using the Water Control Manual for the Boise River Reservoirs, Boise, Idaho, dated April 1985 for the operation of the dams and reservoirs on the Boise River.

FIFTH CAUSE OF ACTION

41.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 40 hereof.

42.

The Water Control Manual for Boise River Reservoirs, Boise, Idaho, dated April 1985, violates the express terms of the 1954 contracts (Exhibits H and I hereto) between plaintiffs and the United States Department of the Interior, Bureau of Reclamation by expanding the "flood control period," defined in paragraph 5 of the contract, from January 1 through July 31 of each year, to November 1 through July 31. The unilateral expansion of the "flood control period" substantially affects plaintiffs' storage rights in the reservoir system, including, but not limited to, the potential to diminish plaintiffs' "holdover storage" as granted by paragraph 16 of the 1943 contracts. (Exhibits E and F hereto.) This modification was made without plaintiffs' concurrence, thereby violating paragraph 7 of the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto). Many other aspects of the Water Control Manual for Boise River Reservoirs, Boise, Idaho, dated April 1985, may substantially affect plaintiffs' storage rights in the reservoir system under the Government-District contracts (Exhibits A through F, H, and I hereto), and constitute modifications of the flood control

operating plan, contained in the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto), which, upon information and belief, will substantially and adversely affect plaintiffs' storage rights in the reservoir system and were made without plaintiffs' concurrence, thereby violating paragraph 7 of the Memorandum of Agreement. Due to these violations of the express terms of the 1954 contracts (Exhibits H and I hereto) and the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto), which was specifically made a part of the 1954 contracts, the United States of America is in breach of said contracts.

43.

Plaintiffs seek a declaration of their rights under the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) and the 1954 contracts (Exhibits H and I hereto) and a determination that their rights have been violated by the actions of the United States of America in its unilateral adoption of the Water Control Manual for the Boise River Reservoirs, Boise, Idaho, dated April 1985, without obtaining the concurrence of the plaintiffs. Plaintiffs also seek an injunction prohibiting the United States of America from using the Water Control Manual for the Boise River Reservoirs, Boise, Idaho, dated April 1985, for the operation of the dams and reservoirs on the Boise River.

SIXTH CAUSE OF ACTION

44.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 43 hereof.

45.

On or about May 25, 1984, the Nampa and Meridian, Boise-Kuna, Wilder, and Big Bend irrigation districts, commenced construction of the Lucky Peak Hydroelectric Project, at the Lucky Peak Dam on the Boise River, under the putative authority of Federal Energy Regulatory Commission License No. 2832. The project is being constructed under the supervision of the Seattle City Light Department, which also will operate the project when it becomes operational, pursuant to contract with the above-named irrigation districts.

46.

On or about August 4, 1986, the United States of America, acting through the U.S. Army, Corps of Engineers and the U.S. Department of the Interior, Bureau of Reclamation, commenced the reduction of the level of the Lucky Peak Reservoir pool and the consequent discharge of stored water from the reservoir into the natural channel of the Boise River to accommodate the construction needs of the Lucky Peak Hydroelectric Project. The reduction of the pool level was completed on or about August 31, 1986, when the pool level reached elevation 2960 feet above sea level.

47.

The United States of America, acting through the U.S. Army, Corps of Engineers and the U.S. Department of the Interior, Bureau of Reclamation, has agreed with the Boise Project Board of Control to maintain the pool level at Lucky Peak Reservoir at elevation 2960 feet above sea level from August 31, 1986, until January 10, 1987, to accommodate the construction needs of the

Lucky Peak Hydroelectric Project. In order to maintain the pool level at that elevation for the specified time period, the United States of America must permit discharges of water from the outlet works of Lucky Peak Dam to exceed the 150 cubic feet per second (cfs) flow volume, which is normally permitted after October 15, the end of the irrigation season. This constitutes a departure from, and an improper modification of the operating plan set forth in the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto).

48.

These actions violate the plaintiffs' rights under the 1954 contracts (Exhibits H and I hereto) by interfering with the "guarantee," provided to plaintiffs under paragraph 7 of the contract and by ignoring the "storage season" established in paragraph 5 of the contract. Therefore, the United States of America is in breach of said contracts.

49.

Plaintiffs seek a declaration of their rights under paragraphs 5 and 7 of the 1954 contracts (Exhibits H and I hereto) and a determination that their rights have been violated by the actions of the United States of America in its reduction of the Lucky Peak Reservoir pool level as described in paragraphs 46 and 47 above. Plaintiffs further seek an injunction prohibiting the United States of America from reducing the pool level in the future, except in accordance with the provisions of the Government-District contracts (Exhibits A through F, H, and I hereto).

SEVENTH CAUSE OF ACTION

(Pendent State Claim)

50.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 49 above.

51.

In order to accomplish the reduction of the pool level in Lucky Peak Reservoir, as described in paragraphs 46 and 47 above, the United States of America, acting through the U.S. Army, Corps of Engineers and the U.S. Department of the Interior, Bureau of Reclamation, has and will permit the release of stored water and natural flow water through the outlet works of the Lucky Peak Dam. The sole and exclusive purpose for these water releases, to the extent they occur after October 15, 1986, or to the extent the releases exceed necessary irrigation releases before that date, is to accommodate the construction requirements of the Lucky Peak Hydroelectric Project. The United States of America does not possess a valid water permit, license, or decree, creating a water right under Idaho state law, which authorizes these releases. The United States of America is therefore in violation of Idaho state law (Idaho Code sections 42-101, 42-201, et. seq.).

52.

Plaintiffs seek a declaration that the United States of America has violated Idaho state law by its actions to reduce the Lucky Peak Reservoir pool level, as described above. Plaintiffs

further seek an injunction prohibiting the United States of America from any additional violations of Idaho state law by such actions in the future.

EIGHTH CAUSE OF ACTION

53.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 52 above.

54.

On or about May 24, 1984, the United States of America, acting through the U.S. Army, Corps of Engineers, entered into a contract entitled Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto), with the New York, Nampa and Meridian, Boise-Kuna, Wilder, and Big Bend irrigation districts. This agreement established the rights and responsibilities of the parties with respect to the construction activities associated with the Lucky Peak Hydroelectric Project. In addition, the agreement established the framework for regulation of water releases from Lucky Peak Reservoir after the hydroelectric project has been constructed. In this regard, Article 7a of the agreement provides:

> All water releases from Lucky Peak will be determined, controlled, and directed by the Corps in accordance with the "Memorandum of Agreement" for "Flood Control Operation of Boise River Reservoirs, Idaho" and the "Water Control Manual for Boise River Reservoir" and any amendments thereto between the Department of the Army and the Department of the Interior. The Corps will transmit to the BPC, dam flow release schedules at the Lucky Peak Dam in units of cubic feet per second. The BPC, after receiving the flow release schedules, shall provide an operations program for that period. The operation program will include the flow

> distribution through all discharge valves and the powerplant necessary to comply with the Corps release schedules. The Corps will be notified immediately of any revisions to this program. Such revisions may be necessary to increase power plant efficiency or improve valve operation. In no case will such revisions affect the Corps release schedules.

The Water Control Manual for Boise River Reservoirs, Boise, Idaho, dated April 1985, was not properly adopted by the U.S. Army, Corps of Engineers and the U.S. Department of the Interior, Bureau of Reclamation, and is, consequently, invalid. Accordingly, any water releases contemplated and intended by Article 7a of the Memorandum of Agreement (Exhibit K hereto) would likewise be invalid. Article 7a of the agreement (Exhibit K hereto) would be, therefore, invalid. Said releases also would violate the terms of the 1954 contracts (Exhibits H and I hereto) and the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto), which was incorporated into the 1954 contracts, and therefore, would constitute a breach thereof by the United States of America, inasmuch as the Water Control Manual for Boise River Reservoirs, Boise, Idaho, April 1985, was not properly adopted and conflicts with the provisions of those agreements. Upon information and belief, the United States of America intends to perform the acts described in Article 7a of the agreement (Exhibit K hereto) as agreed.

55.

Plaintiffs seek a declaration of their rights under the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) and the 1954 contracts (Exhibits H and I hereto) and a determination that these rights will be violated by the United States of

America in its performance of the acts agreed upon in the Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto), with respect to Lucky Peak water releases, in accordance with the Water Control Manual for Boise River Reservoirs, Boise, Idaho, dated April 1985. Plaintiffs also seek an injunction prohibiting the United States of America from performing the acts agreed to in the Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto), with respect to Lucky Peak water releases in accordance with the Water Control Manual for Boise River Reservoirs, Boise, Idaho, dated April 1985. Plaintiffs also seek a determination that the Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto) is invalid, null, void, and of no effect with respect to Lucky Peak water releases in accordance with the Water Control Manual for Boise River Reservoirs, Boise, Idaho, dated April 1985.

NINTH CAUSE OF ACTION

56.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 55 hereof.

57.

Plaintiffs possess decreed water rights to a portion of the natural flow of the Boise River and rights to stored water in the Boise River reservoirs created by the Government-District contracts (Exhibits A through F, H, and I hereto).

58.

Paragraph 8 of the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) provides:

> If and when a power plant is installed at Lucky Peak Dam, it shall be operated in a manner consistent with this operating plan and in subordination to any water rights validly established under law.

The United States of America cannot permit water releases from Lucky Peak Reservoir which do not conform with the above provision. Any actions taken by the United States of America, either through the U.S. Army, Corps of Engineers or the U.S. Department of the Interior, Bureau of Reclamation, with respect to the operation of the Lucky Peak Hydroelectric Project, must conform with this provision. This includes, but is not limited to, regulation and transfer of stored and natural flow water of the Boise River from Anderson Ranch and Arrowrock Reservoirs to Lucky Peak Reservoir to maximize the pool level, thereby increasing the hydroelectric power potential at the Lucky Peak Hydroelectric Project, in any manner which is not consistent with the above provision.

It also includes any fluctuations in Lucky Peak water releases to increase power plant efficiency or improve valve operation, permitted by Article 7 of the Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto). Upon information and belief, the United States of America intends to perform the obligations set forth in

said agreement (Exhibit K hereto). Any such actions would constitute a breach of the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) and the 1954 contracts (Exhibits H and I hereto), thereby violating plaintiffs' rights under those agreements.

59.

Plaintiffs seek a declaration of their rights under the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) and a determination that their rights will be violated by the actions of the United States of America in performance of the provisions of paragraph 7a of the Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto). Plaintiffs seek a declaration that the United States of America may take no action to accommodate or assist the operation of, or increase the efficiency or power potential of, the Lucky Peak Hydroelectric Project if such action conflicts with the operating plan set forth in the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto), or interferes with any existing water rights. Plaintiffs seek an injunction prohibiting the United States of America from performing the obligations of paragraph 7a of the Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto). Plaintiffs also seek an injunction prohibiting the United States of America from taking any other actions contrary to the requirements of paragraph 8 of the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto).

TENTH CAUSE OF ACTION

60.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 59 hereof.

61.

On or about August 24, 1966, the United States of America, acting through the U.S. Department of the Interior, Bureau of Reclamation, entered into a contract (Exhibit L hereto) with Pioneer to provide it with a quantity of stored water in Lucky Peak Reservoir. Pioneer agreed to pay for the water at the rate of fifty cents ($.50) per acre-foot, initially, with the rate being subject to upward revision based upon the construction, operation, and maintenance costs of Lucky Peak Dam and Reservoir, as allocated to the water supply available for irrigation purposes. The United States of America agreed to provide Pioneer with stored water accruing to approximately 16,000 acre-feet of active capacity of Lucky Peak Reservoir.

62.

Under paragraph 10(a) of the August 24, 1966, contract (Exhibit L hereto), the United States of America agreed to operate Lucky Peak Dam and Reservoir for the primary purpose of flood control, in accordance with the flood control operating plan contained in the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibit F hereto). Subject to such flood control operation, the United States of America agreed to operate Lucky Peak Dam and Reservoir so as to store under existing storage rights all available water. The United States of America also

granted Pioneer certain "hold over" rights, subject to restrictions, to any stored water that may be carried over in Pioneer's share of the reservoir's active capacity from prior water years.

63.

The actions of the United States of America, described in paragraphs 46 and 47 above, violate the provisions of paragraph 10(a) of the August 24, 1966, contract (Exhibit L hereto) because the water releases to accommodate the construction requirements of the Lucky Peak Hydroelectric Project conflict directly with the promise of the United States of America to operate Lucky Peak Dam and Reservoir so as to store under existing storage rights all available water. Pioneer's storage and "hold over" rights to water in Lucky Peak Reservoir also may have been adversely affected by these actions. The United States of America breached the August 24, 1966, contract (Exhibit L hereto) by these actions and thereby violated Pioneer's rights.

64.

Pioneer seeks a declaration of its rights under the August 24, 1966, contract (Exhibit L hereto) and a determination that its rights were violated by the actions of the United States of America described in paragraphs 46 and 47 above. Pioneer also seeks an injunction prohibiting the United States of America from making any other water releases to accommodate the requirements of the Lucky Peak Hydroelectric Project.

ELEVENTH CAUSE OF ACTION

65.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 64 hereof.

66.

The United States of America, acting through the U.S. Army, Corps of Engineers and the U.S. Department of the Interior, Bureau of Reclamation, contracted to operate the Lucky Peak Dam and Reservoir in the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto), in the 1954 contract (Exhibits H and I hereto), and in the August 24, 1966, contract (Exhibit L hereto).

67.

The United States of America, acting through the U.S. Army, Corps of Engineers, has conducted preliminary negotiations with the Seattle City Light Department, regarding the assumption of responsibility for operation of the Lucky Peak Dam outlet works, including the assumption of responsibility for all regulated water releases from Lucky Peak Reservoir. These responsibilities presently lie with the U.S. Army, Corps of Engineers, acting on behalf of the United States of America. The United States of America, acting through the U.S. Army, Corps of Engineers, and the Seattle City Light Department intend to execute a formal operating agreement, which specifically memorializes the modification of these responsibilities. If the United States of America transfers any of the operational responsibilities for Lucky Peak Dam and Reservoir to the Seattle City Light Department

or any other nonfederal entity, it will breach the above-referenced contracts and violate the plaintiffs' rights therein. This intent is expressed in correspondence, copies of which are attached (Exhibits M and N hereto). This modification would violate plaintiffs' rights under the Government-District contracts (Exhibits A through F, H, I, and L hereto), by granting a nonfederal entity control of the outlet works of Lucky Peak Dam. Plaintiffs have no contractual relationship with the Seattle City Light Department and the United States of America has made no effort to involve plaintiffs in the negotiation process involving this change in responsibilities so that plaintiffs can attempt to protect their rights under the Government-District contracts (Exhibits A through F, H, I, and L hereto). Pioneer has formally requested the U.S. Army, Corps of Engineers to permit Pioneer to participate in these negotiations, but the request has been denied. Plaintiffs have a right to participate in the negotiations to ensure that their contract storage rights in the Arrowrock, Anderson Ranch, and Lucky Peak Reservoirs and their natural flow water rights in the Boise River are fully protected.

68.

Transfer of operational responsibilities for Lucky Peak Dam and Reservoir to the Seattle City Light Department or any other nonfederal entity constitutes a violation of the above-referenced contracts and will violate the plaintiffs' rights therein.

69.

Plaintiffs seek a declaration that their rights under the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto), the 1954 contract (Exhibits H and I hereto), and the 1966 contracts (Exhibit L hereto) will be violated by the transfer of control over the Lucky Peak outlet works to the Seattle City Light Department or any other nonfederal entity by the United States of America. Plaintiffs seek an injunction prohibiting the United States of America from transferring control over the Lucky Peak outlet works to the Seattle City Light Department or any other nonfederal entity. In the alternative, plaintiffs seek an injunction requiring the full and complete participation of the plaintiffs, or their authorized representatives, in the negotiations for the transfer of control of the Lucky Peak outlet works between the United States of America and the Seattle City Light Department and the inclusion of plaintiffs as parties to any agreement, with full rights to enforce the provisions thereof.

TWELFTH CAUSE OF ACTION

70.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 69 thereof.

71.

During the course of 1926, the United States of America, acting through the Secretary of the Interior or his authorized agent, entered into five separate but substantially similar and

interconnected contracts with the New York, Boise-Kuna, Nampa and Meridian, Wilder, and Big Bend irrigation districts. Among other things, four of the contracts contained the following provision, or a substantially similar provision:

> Profits Under Subsections I and J of the Act of December 5, 1924.
>
> 34. Should any net profits be realized by the United States from the power privilege at Arrowrock Dam or from power developed at said dam, or from drops on any of the canals included among the transferred works herein described, or from any of the various sources named in Subsections I and J of said Act of Congress of December 5, 1924, the same will be announced and determined each year by the Secretary in a written statement to be sent to the District over the signature of the Secretary. The portion of such net profit, if any, as determined by the Secretary and set out in such annual statement as applicable to the District, shall be credited each year as follows:
>
> (a) On the annual installment of project construction charges (including the construction charges payable by nonconsenting landowners) of the District beginning with the installment first coming due and continuing with succeeding construction installments as far as such credit will go until the entire construction indebtedness of the District has been paid;
>
> (b) Thereafter upon operation and maintenance charges (including operation and maintenance charges on non-consenting land) as the same come due to the United States;
>
> (c) As the District may direct;
>
> but no distribution to individual water users shall be made out of any such profits until all obligations to the United States have been fully paid. Any such net profit (as determined by the Secretary) as may be derived from power or power privileges at the Arrowrock Dam shall be divided among the several districts and companies which are paying for an interest or share in said reservoir, in proportion to

> the respective shares or interests of such districts and companies. The Secretary shall determine the proportion of net profits, if any, under said Subsections I and J from other sources, equitably to be credited to the District, as well as the amount of such net profit. The decision of the Secretary of the Interior shall be conclusive as to the amount of net profits derived under Subsections I and J of said Act and the equitable proportion thereof to which the district is entitled.

(Paragraph 34, Contract Between the United States of America, New York Irrigation District, the New York Canal Company, Limited, and the Boise-Kuna Irrigation District, Providing for the Transfer of Operation and Maintenance of Canal System to the Water Users and Application of Terms of Fact Finders' Act (emphasis added).)

This contractual provision was intended to benefit plaintiffs and created rights in plaintiffs, as third-party beneficiaries, to a share of the net profit derived from power or power privileges at Arrowrock Dam by virtue of their status as irrigation districts which were "paying for an interest or share in said reservoir," pursuant to their Arrowrock Reservoir storage contracts with the United States of America. (Exhibits A-D hereto.)

72.

On or about February 9, 1984, the United States of America, acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, entered into a Memorandum of Understanding for Development of Proposed Arrowrock Powerplant (Exhibit O hereto) with the New York, Boise-Kuna, Nampa and Meridian, Wilder, and Big Bend irrigation districts. An amendment to

Memorandum of Understanding for Development of Proposed Arrowrock Powerplant (Exhibit P hereto) was executed by the same parties on or about December 5, 1984. Upon information and belief, subsequent amendments have been executed to keep the Memorandum of Understanding (Exhibit O hereto) in full force and effect.

73.

The Memorandum of Understanding for Development of Proposed Arrowrock Powerplant (Exhibit O hereto) provided for the parties to cooperate in the evaluation of the engineering, environmental, and financial feasibility of developing the Arrowrock powerplant. The United States of America, acting through the Bureau of Reclamation, agreed to perform, individually, certain tasks as set forth in paragraph 8 of the Memorandum (Exhibit O hereto):

Responsibilities of Reclamation

> 8. Reclamation will accomplish activities usually required to determine whether the development of the Powerplant project is engineeringly, economically and environmentally feasible. Those activities including, among other things, geologic explorations, hydrologic studies, detailed designs and cost estimates, economic evaluations, and an environmental assessment. Also, Reclamation will perform additional activities needed by the Districts to provide information to assist the Districts in their analysis of the potential Powerplant project and in their evaluation of a possible cooperative endeavor with Reclamation to develop the Powerplant.

The United States of America, acting through the Bureau of Reclamation, also agreed to perform, jointly with the irrigation districts, certain tasks as set forth in paragraph 10 of the Memorandum (Exhibit O hereto):

Joint Responsibilities

> 10. If the Districts determine that they wish to proceed with a cooperative endeavor in accordance with Article 7, the Districts and Reclamation will mutually (1) prepare reports and provide project development data as necessary to facilitate the sale of bonds by the Districts to finance all or part of the Powerplant, (2) seek congressional authorization of the project, and (3) secure all licenses and permits necessary to accomplish the financing, construction, operation, and maintenance of the Powerplant.

74.

The United States of America, acting through the Bureau of Reclamation, performed some, if not all, of the tasks described in paragraphs 8 and 10 of the Memorandum (Exhibit O hereto), thereby providing material assistance to the New York, Nampa and Meridian, Boise-Kuna, Wilder, and Big Bend irrigation districts in their efforts to develop a hydroelectric powerplant at Arrowrock Dam, thereby excluding plaintiffs from participating in the proposed hydroelectric project. The actions of the United States of America have violated the plaintiffs' third-party beneficiary rights, created by paragraph 34 of the 1926 contracts, described above in paragraph 71 hereof.

75.

Plaintiffs seek a declaration that they are third-party beneficiaries of the 1926 contracts and are therefore entitled to share in the net profits from the power generated at the proposed hydroelectric plant at Arrowrock Dam. Plaintiffs seek a determination that their rights were violated by the actions of the United States of America described in paragraphs 72 through 74 above. Plaintiffs also seek an injunction prohibiting the United

States of America from any further actions which violate their rights as third-party beneficiaries under the 1926 contracts and compelling the United States of America to provide plaintiffs and all similarly situated irrigation districts and companies with a share of the "net profit . . . as may be derived from power or power privileges at the Arrowrock Dam."

THIRTEENTH CAUSE OF ACTION

76.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 75 hereof.

77.

In May 1985 the United States of America, acting through the Department of the Interior, Bureau of Reclamation, printed a document entitled, "Boise Project Power and Modification Study, Boise River Basin, Idaho-Oregon, Planning Report and Draft Environmental Statement," (hereinafter "Modification Study.") The document was also marked, "Preliminary, Subject to Revision."

78.

The Modification Study described, among other things, the cooperative development of a hydroelectric power plant at the Arrowrock Dam by the United States of America, acting through the Bureau of Reclamation, and the New York, Nampa and Meridian, Boise-Kuna, Wilder, and Big Bend irrigation districts. It also contained an environmental, economic, and engineering analysis of the proposed hydroelectric project. In addition, the Modification Study described proposed changes in the operation of Arrowrock and Lucky Peak Dams and Reservoirs, including:

1) maintenance of a minimum reservoir pool of 28,700 acre feet of stored water in Arrowrock Reservoir;

2) "shaping" releases from Arrowrock Reservoir to maximize power generation at the proposed Arrowrock powerplant, resulting in daily fluctuations of the pool level in Lucky Peak Reservoir; and

3) a 5-foot reduction in the current Lucky Peak Reservoir full pool level to elevation 3050 after filling to improve Arrowrock powerplant generation.

79.

The United States of America intends to implement the proposed operational changes described in paragraph 78 above, after the proposed Arrowrock powerplant is constructed. The proposed operational changes will violate plaintiffs' rights under the Arrowrock storage contracts (Exhibits A-D hereto), under the 1954 contracts (Exhibits H and I hereto), and under the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) by substantially modifying the operations of Arrowrock and Lucky Peak reservoirs to benefit production at the proposed Arrowrock powerplant without obtaining the prior approval of the plaintiffs and other similarly situated water users, and by interfering with the operation of the reservoirs for irrigation purposes in accordance with the terms of those contracts. The implementation of the proposed operational changes by the United States of America will constitute a breach of the terms of those contracts and will violate plaintiffs' rights therein.

80.

Plaintiffs seek a declaration of their contract rights under the Arrowrock storage contracts (Exhibits A-D hereto), under the 1954 contracts (Exhibits H and I hereto), and under the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto). Plaintiffs seek a determination that those rights will be violated by the proposed actions of the United States of America. Plaintiffs also seek an injunction prohibiting the United States of America from implementing the proposed operational changes described in paragraph 78 above, without the express written consent of plaintiffs and all other similarly situated water users.

FOURTEENTH CAUSE OF ACTION

81.

Plaintiffs hereby reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 80 thereof.

82.

Plaintiffs have been required to employ the law firm of Elam, Burke and Boyd to prosecute this action, and plaintiffs are entitled to recover costs and attorney fees incurred, pursuant to 28 U.S.C. section 2412(a), (b), and (d)(1).

RELIEF REQUESTED

WHEREFORE, plaintiffs pray for relief from this court as follows:

1. FIRST CAUSE OF ACTION: Plaintiffs seek a declaration of their contract rights under paragraph 7 of the 1954 contracts (Exhibits H and I hereto) and a determination that those rights have been violated by the actions of the United States of America. Plaintiffs also seek an injunction requiring the United States of America to properly conduct the annual determinations required by paragraph 7 of the 1954 contracts (Exhibits H and I hereto).

2. SECOND CAUSE OF ACTION: Plaintiffs seek a declaration of their contract rights under paragraphs 5 and 6 of the 1954 contracts (Exhibits H and I hereto), and their rights under paragraph 16 of the 1943 contracts (Exhibits E and F hereto), and a determination that those rights have been violated by the actions of the United States of America. Plaintiffs also seek an injunction, prohibiting the United States of America from operating Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs for combined flood control and irrigation storage purposes except for the period from January 1 through July 31 of each year, and further prohibiting the United States of America from continuing to violate paragraph 16 of the 1943 contracts.

3. THIRD CAUSE OF ACTION: Plaintiffs seek a declaration of their contract rights with respect to refill of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs for irrigation purposes under the Government-District contracts (Exhibits A through F, H, and I hereto). Plaintiffs seek a determination that those rights have been violated by the actions of the United States of America in commencing the coordinated flood control and

irrigation storage operation of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs before January 1 of each year. Plaintiffs also seek an injunction prohibiting the United States of America from commencing the coordinated flood control and irrigation storage operation of Arrowrock, Anderson Ranch, and Lucky Peak Dams and Reservoirs before January 1 of each year.

4. FOURTH CAUSE OF ACTION: Plaintiffs seek a declaration of their rights under the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) and the 1954 contracts (Exhibits H and I hereto) and a determination that their rights have been violated by the actions of the United States of America in its unilateral adoption of the Water Control Manual for the Boise River Reservoirs, Boise, Idaho, dated April 1985, without obtaining the concurrence of the plaintiffs. Plaintiffs also seek an injunction prohibiting the United States of America from using the Water Control Manual for the Boise River Reservoirs, Boise, Idaho, dated April 1985 for the operation of the dams and reservoirs on the Boise River.

5. FIFTH CAUSE OF ACTION: Plaintiffs seek a declaration of their rights under the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) and the 1954 contracts (Exhibits H and I hereto) and a determination that their rights have been violated by the actions of the United States of America in its unilateral adoption of the Water Control Manual for the Boise River Reservoirs, Boise, Idaho, dated April 1985, without obtaining the concurrence of the plaintiffs. Plaintiffs also seek an injunction prohibiting the United States of America from using

the Water Control Manual for the Boise River Reservoirs, Boise, Idaho, dated April 1985, for the operation of the dams and reservoirs on the Boise River.

6. SIXTH CAUSE OF ACTION: Plaintiffs seek a declaration of their rights under paragraphs 5 and 7 of the 1954 contracts (Exhibits H and I hereto) and a determination that their rights have been violated by the actions of the United States of America in its reduction of the Lucky Peak Reservoir pool level as described in paragraphs 46 and 47 above. Plaintiffs further seek an injunction prohibiting the United States of America from reducing the pool level in the future, except in accordance with the provisions of the Government-District contracts (Exhibits A through F, H, and I hereto).

7. SEVENTH CAUSE OF ACTION: Plaintiffs seek a declaration that the United States of America has violated Idaho state law by its actions to reduce the Lucky Peak Reservoir pool level, as described above. Plaintiffs further seek an injunction prohibiting the United States of America from any additional violations of Idaho state law by such actions in the future.

8. EIGHTH CAUSE OF ACTION: Plaintiffs seek a declaration of their rights under the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) and the 1954 contracts (Exhibits H and I hereto) and a determination that these rights will be violated by the United States of America in its performance of the acts agreed upon in the Memorandum of Agreement for Hydro-electric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto), with respect to Lucky Peak water releases, in accordance

with the Water Control Manual for Boise River Reservoirs, Boise, Idaho, dated April 1985. Plaintiffs also seek an injunction prohibiting the United States of America from performing the acts agreed to in the Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto), with respect to Lucky Peak water releases in accordance with the Water Control Manual for Boise River Reservoirs, Boise, Idaho, dated April 1985. Plaintiffs also seek a determination that the Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto) is invalid, null, void, and of no effect with respect to Lucky Peak water releases in accordance with the Water Control Manual for Boise River Reservoirs, Boise, Idaho, dated April 1985.

9. NINTH CAUSE OF ACTION: Plaintiffs seek a declaration of their rights under the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto) and a determination that their rights will be violated by the actions of the United States of America in performance of the provisions of paragraph 7a of the Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto). Plaintiffs seek a declaration that the United States of America may take no action to accommodate or assist the operation of, or increase the efficiency or power potential of, the Lucky Peak Hydroelectric Project if such action conflicts with the operating plan set forth in the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto), or interferes with any existing water rights. Plaintiffs seek an injunction prohibiting the United

States of America from performing the obligations of paragraph 7a of the Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir (Exhibit K hereto). Plaintiffs also seek an injunction prohibiting the United States of America from taking any other actions contrary to the requirements of paragraph 8 of the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto).

10. TENTH CAUSE OF ACTION: Pioneer seeks a declaration of its rights under the August 24, 1966, contract (Exhibit L hereto) and a determination that its rights were violated by the actions of the United States of America described in paragraphs 46 and 47 above. Pioneer also seeks an injunction prohibiting the United States of America from making any other water releases to accommodate the requirements of the Lucky Peak Hydroelectric Project.

11. ELEVENTH CAUSE OF ACTION: Plaintiffs seek a declaration that their rights under the 1953 Memorandum of Agreement (Exhibit A to Exhibits H and I hereto), the 1954 contracts (Exhibits H and I hereto), and the 1966 contract (Exhibit L hereto) will be violated by the transfer of control over the Lucky Peak outlet works to the Seattle City Light Department or any other nonfederal entity by the United States of America. Plaintiffs seek an injunction prohibiting the United States of America from transferring control over the Lucky Peak outlet works to the Seattle City Light Department or any other nonfederal entity. In the alternative, plaintiffs seek an injunction requiring the full and complete participation of the

plaintiffs, or their authorized representatives, in the negotiations for the transfer of control of the Lucky Peak outlet works between the United States of America and the Seattle City Light Department and the inclusion of plaintiffs as parties to any agreement, with full rights to enforce the provisions thereof.

12. TWELFTH CAUSE OF ACTION: Plaintiffs seek a declaration that they are third-party beneficiaries of the 1926 contracts and are therefore entitled to share in the net profits from the power generated at the proposed hydroelectric plant at Arrowrock Dam. Plaintiffs seek a determination that their rights were violated by the actions of the United States of America described in paragraphs 72 through 74 above. Plaintiffs also seek an injunction prohibiting the United States of America from any further actions which violate their rights as third-party beneficiaries under the 1926 contracts and compelling the United States of America to provide plaintiffs and all similarly situated irrigation districts and companies with a share of the "net profit . . . as may be derived from power or power privileges at the Arrowrock Dam."

13. THIRTEENTH CAUSE OF ACTION: Plaintiffs seek a declaration of their contract rights under the Arrowrock storage contracts (Exhibits A-D hereto), under the 1954 contracts (Exhibits H and I hereto), and under the November 20, 1953, Memorandum of Agreement (Exhibit A to Exhibits H and I hereto). Plaintiffs seek a determination that those rights will be violated by the proposed actions of the United States of America.

Plaintiffs also seek an injunction prohibiting the United States of America from implementing the proposed operational changes described in paragraph 78 above, without the express written consent of plaintiffs and all other similarly situated water users.

14. FOURTEENTH CAUSE OF ACTION: Plaintiffs seek attorney fees and costs, pursuant to the Federal Rules of Civil Procedure and pursuant to 28 U.S.C. section 2412(a), (b), and (d)(1).

DATED this 23 day of December, 1986.

ELAM, BURKE & BOYD

By _____
Peter J. Boyd

By _____
Scott L. Campbell, of the Firm
Attorneys for Plaintiffs

Par. 8

(COPY)

~~Draft of August 15, 1911.~~

THIS AGREEMENT, Made this 27th day of February, 1913, between the UNITED STATES OF AMERICA, acting for this purpose by the Secretary of the Interior, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388) known as the Reclamation Act, and acts amendatory thereof or supplementary thereto, and the act of Congress of February 21, 1911, (36 Stat. L. 925), the party of the first part, hereinafter called the Government, and the PIONEER IRRIGATION DISTRICT, an irrigation district organized under the laws of the State of Idaho, and located in Canyon and Ada Counties, Idaho, acting for the purposes of this contract under authority of Title 14 of the Idaho Revised Codes, including Sections 2395, 2397 and 2398, the party of the second part, hereinafter called the District-

WITNESSETH, That

WHEREAS, the District includes within its boundaries about thirty-four thousand four hundred (34,400) acres of irrigated and irrigable land which is entitled to receive water from the District, and owns and controls those certain canals known as the Phyllis and Caldwell Canals through which water is supplied from the Boise River to the lands of the District for irrigation and domestic purposes, and whereas, the natural flow of the Boise River which the District is entitled to divert under its priorities and appropriations, is

EXHIBIT A

insufficient during the latter part of the irrigation season to furnish a complete water supply for the lands of the District, and the District desires to secure a certain amount of stored water in order to furnish its land owners and water users a more complete water supply during the low water periods of the irrigation season, and

WHEREAS, the irrigation of large tracts of land from the canals of the District and other canals in the vicinity thereof is resulting in bringing up seepage water and alkali in such quantities in some parts of the District that a large part of the land of the District are likely to become permanently ruined and incapable of producing crops, or bearing any share of the expense of the District, unless a drainage system is promptly provided; and whereas, it is believed that such a drainage system will reclaim large areas which cannot now be cultivated successfully on account of such seepage conditions, and will check the spread of such seepage conditions, and save other large areas which are now threatened with destruction from the same cause; and

WHEREAS, the Government is now constructing, under the provisions of the Reclamation Act, that certain irrigation project known as the Boise Project, including the Arrowrock and Deer Flat Storage Reservoirs, and a portion of the lands of the District have been subscribed to said project by the individual owners of such lands; and

WHEREAS, it is believed that under existing conditions the only way in which the additional water supply and drainage system

required by the District can be secured promptly and at a cost which the land owners of the District can afford to pay, is by means of a contract between the District and the Government, under the provisions of the Acts of Congress of June 17, 1902 (32 Stat. 388) and February 21, 1911 (36 Stat. L. 925) and Title 14 of the Idaho Revised Codes.

NOW, THEREFORE, It is hereby agreed-

1. That as a part of the general drainage system of its Boise Project, the Government will construct in the Pioneer Irrigation District, a drainage system to a total cost of three hundred fifty thousand dollars ($350,000), beginning with the main drains and following with the principal branches, so far as said limit of expenditure will allow such work to go, such drainage system to be located approximately as shown on the attached map, and to have sufficient capacity in its main drains to carry the seepage water flowing into the District from the lands lying above the District and draining into it, as well as that originating in the District itself. The Supervising Engineer in charge of such construction shall have the right to make changes in the location of the drains shown on the attahhed map, where such changes shall be found in his judgment to be necessary or desirable to increase the efficiency or economy of the system. It is fully understood that the Government is to expend only Three Hundred Fifty Thousand Dollars ($350,000) in drainage work in the Pioneer District under this contract and to stop when such limit of expenditure has been reached. It is not expected that the

ment will provide for the District that portion of the total storage capacity of Arrowrock Reservoir which Five Hundred Sixty Thousand Dollars ($560,000) is of the total cost of said reservoir, and will deliver at the downstream end of the outlets of the Arrowrock Reservoir, for the District each year after the completion of said reservoir, the same proportion of the stored water available from said reservoir at such time after three (3) days notice from the District to the Government officer in charge, and in such quantities as the District may direct, not in excess of the District's proportionate part of the available outlet capacity. The total cost of said reservoir to be determined and stated by the Secretary of the Interior in his public notice of the charges to be made for the Boise Project, and to include all costs and expenses of whatsoever nature or kind for the purpose of, growing out of, in connection with, or resulting from the construction of said reservoir including engineering expenses and overhead charges, and such interest, if any, as may be payable on account of advances under the provisions of the Act of Congress of June 25, 1910 (36 Stat. L. 835), or other legislation by Congress.

5. The said sum of Five Hundred Sixty Thousand Dollars ($560,000) shall be paid by the District to the Government in ten (10) installments of Fifty-Six Thousand Dollars ($56,000) each, the first of which shall be due and payable one (1) year after the date upon which public notice or announcement is made by the Secretary of the Interior of the charges to be made upon the Boise Project,

on account of the cost of construction of said project, and one (1) installment on the same day of each year thereafter; and the District will use the taxing power of the District, and all the powers and resources of the District to collect said sums of money, and pay the same to the Government when due, and will also pay each year its proportionate share of the cost of operation and maintenance of said reservoir and delivery of water therefrom, as announced by the Secretary of the Interior.

6. No interest will be charged on any of the said installments for drainage work, or stored water or money to be paid to the Government for operation and maintenance, on account of the drainage works or stored water, until due; but any part thereof which may remain unpaid after the same is due shall bear interest from maturity until paid at ten (10) per cent per annum, and the Government shall not be obliged to deliver or turn out for the District any stored water while the District is in default on any of the payments herein provided to be made by the District to the Government.

7. The District agrees to distribute the amount of water delivered to it by the Government under this contract in full compliance with the provisions of said Reclamation Act of June 17, 1902, and the rules and regulations thereunder, and to use and distribute the same only upon the lands within the District, and in compliance with the provisions of Section 2 of the Act of Congress of February 21, 1911 (36 Stat. L. 925), known as the Warren Act.

8. If it shall be found feasible to do so, the Government may, at its option, deliver to the District, in lieu of a portion of

the stored water from Arrowrock Reservoir to which the District is entitled under this contract, stored water from Deer Flat Reservoir in an amount equal to that which if delivered from Arrowrock Reservoir would have been received at the same point on the irrigation system of the District, provided that the proportion of the total amount of the stored water of the District which may be delivered at any point on the canal system of the District below its head shall not be greater than the proportion of the lands of the District lying below such point, and which can be served by the water so delivered. Subject to the same limitation the Government may also substitute in the ditches of the District, stored water for the natural flow to which the District is entitled, and then may divert such natural flow to other points on the Boise Project.

9. The Government acting through the Secretary of the Interior will join with the Payette-Boise Water Users' Association in releasing such lands in the District as have been subscribed under stock subscription and contract to the said association, and have therefore become subject to the lien provided in such subscription and contract for the repayment of a proportionate part of the cost of the Payette-Boise project from the lien and obligation of such stock subscription, and also release and cancel the contract under date of April 3, 1906, between the Pioneer Irrigation District, and the Payette-Boise Water Users' Association, providing for a credit to the subscribed lands of the District for existing works.

Directors, of which certified copies are hereto attached and made a part hereof.

PIONEER IRRIGATION DISTRICT,

By L. E. Groenslet, Pre.

(Seal)

Attest: J. Jester, Jr., Sec'y.

PAYETTE-BOISE WATER USERS' ASSOCIATION,

By E. C. Bradley, Pres.

(Seal)

H. W. Barnes, Sec'y.

Walter L. Fisher,
Secretary of the Interior, for
and on behalf of the United States.
C. W. C. E. C. F.

DEPARTMENT OF THE INTERIOR

UNITED STATES RECLAMATION SERVICE

Washington, D. C. February 25, 1915.

From Assistant Chief Counsel

To Supervising Engineer, Boise, Idaho.

Subject: Pioneer Irrigation District supplemental contract.

1. I have your letter of February 19, 1915, in which you state that you have not been advised of the approval by the Secretary of the Pioneer Irrigation District supplemental contract.

2. The said contract was approved by the Secretary January 7, 1915, but the files here do not show that either you or Mr. Stoutemyer was so notified. I regret that this inadvertence occurred.

3. As there seems to have been more than one draft of the contract prepared, I am enclosing copy of the form as approved.

- - - - - - -

(Signed)

E. L. Holgate.

enc.

~~Draft of January 2, 1915.~~

SUPPLEMENTAL CONTRACT.

THIS AGREEMENT made this 15th day of June 1915, between the UNITED STATES OF AMERICA, acting for this purpose by the Secretary of the Interior, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388) known as the Reclamation Act, and acts amendatory thereof or supplementary thereto, and particularly the Acts of Congress of February 21, 1911 (36 Stat. 925) and of August 13, 1914, the party of the first part, and the PIONEER IRRIGATION DISTRICT, an irrigation district organized under the laws of the State of Idaho, and located in Canyon and Ada Counties, Idaho, acting for the purposes of this contract under authority of Title 14 of the Idaho Revised Codes, including Sections 2395, 2397, and 2398, the party of the second part, hereinafter called the District, and the PAYETTE-BOISE WATER USERS' ASSOCIATION, the party of the third part and the successors in interest of the said parties:-

WITNESSETH: That

WHEREAS, a certain contract under date of February 27, 1913, has heretofore been made between the United States, the Payette-Boise Water Users' Association, and the said Pioneer Irrigation District for the purpose of the construction of a drainage system within the Pioneer District, and providing for said District storage capacity and storage water in and from Arrowrock Reservoir, and

EXHIBIT B

WHEREAS, said original contract provides "that as a part of the general drainage system of the Boise Project, the Government will construct in the Pioneer Irrigation District a drainage system to a total cost of $350,000, beginning with the main drains and following with the principal branches so far as said limit of expenditure will allow such work to go, such drainage system to be located approximately as shown on the attached map", and

WHEREAS, the drainage system provided for in said contract and shown on said attached map, is now approaching completion, and

WHEREAS, it is now probable that the cost per cubic yard for the construction of said drainage system will be much less than was estimated at the time that said above described original contract was made, and it is probable that after the completion of the drains shown on the map attached to said contract, including the drains of the first, second and third class, as shown on said map, there will still be a portion of said $350,000 remaining unexpended, and

WHEREAS, it has become evident since said contract was made that the water table in the eastern end of the Pioneer District is rising rapidly and that the danger of seepage in that portion of the District is becoming alarming, and that an additional drain or drains should be constructed in said portion of the Pioneer District at a location where none was shown on the map attached to the original contract and where none was contemplated under the original contract, and

WHEREAS, the aforesaid original contract between the District, the Payette-Boise Water Users' Association, and the United States, pro-

vides that the District will pay to the United States the sum of $560,000 for storage capacity in Arrowrock Reservoir, and

WHEREAS, it was contemplated at the time that said original contract was made that the said expenditure of $560,000 by the District would provide a storage capacity of one-half an acre-foot for each acre of land in the District, and

WHEREAS, the said Arrowrock Reservoir is now nearing completion and it is probable that the cost of said dam may be about $1,250,000 less than was estimated at the time that said original contract was made, and that on account of the completion of said reservoir at less cost than anticipated in the original estimates, the expenditure of the aforesaid $560,000 by the District would provide for the District more storage capacity than the one-half acre-foot per acre which it was expected would be secured under this contract, and

WHEREAS, it is believed that with the water supply owned and controlled by the irrigation district under its rights and priorities from Boise River one-half acre-foot per acre of storage capacity is sufficient for the needs of the District, and

WHEREAS, it is the desire of the District that the expenditure to be made by theDistrict should be reduced to such an amount as will provide approximately one-half acre-foot per acre of storage capacity under the revised estimates of the cost of Arrowrock Reservoir, and

WHEREAS, a certain contract has been proposed between the United States, the Nampa & Meridian Irrigation District, and the

Payette-Boise Water Users' Association, for purposes similar to those provided for in the said contract between the United States, the Pioneer Irrigation District, and the Payette-Boise Water Users' Association, and said proposed contract has been submitted to the voters of said Nampa & Meridian Irrigation District, and has been approved by the voters of said District by more than the necessary two-thirds majority, and the Directors of said Nampa & Meridian District are now proceeding as required by law to apportion the benefits under said contract and to have the same confirmed by the courts in due form, and

WHEREAS, said proposed additional drain in the eastern end of the Pioneer Irrigation District is needed both for the drainage of lands in the said Pioneer District and for the purpose of furnishing an outlet for said drains to be constructed in the Nampa & Meridian Irrigation District, and

WHEREAS, the preliminary estimate of the cost of said drains is $105,587.00, and the Directors of the Nampa & Meridian District are willing that a portion of the cost of said drain shall be paid for out of the funds to be used for the construction of the drainage system in the Nampa & Meridian Irrigation District.

NOW THEREFORE, it is hereby agreed:

1. That out of any surplus remaining of the $350,000 heretofore provided to be expended on the drainage system in the Pioneer Irrigation District after the construction of the drainage system shown on the map attached to the above described original contract, such an

amount not exceeding $50,000 as may be required to pay one-half of the cost of a deep drain in the eastern end of the Pioneer Irrigation District approximately as shown on the map hereto attached, may be used toward the construction of said deep drain, the same to be charged to the Pioneer Irrigation District and paid in the same manner as the cost of the other drains in the Pioneer District, provided that the Nampa & Meridian Irrigation District shall enter into a contract with the United States under which the payment for the balance of the cost of the said deep drain in the eastern end of the Pioneer Irrigation District may be made out of the funds for the construction of the proposed drainage system for the Nampa & Meridian Irrigation District, and said drain when constructed will be maintained by the Pioneer District in the same manner as the drains provided for in the said original contract between the Pioneer District, the United States, and the Water Users' Association.

3. Should there be a surplus still remaining unexpended out of said $350,000 drainage fund after the construction of the drains provided in said original contract and the payment of that portion of the cost of the said deep drain in the eastern end of the District provided above to be paid by the Pioneer District, then in that event such surplus still remaining unexpended need not be expended but the Secretary of the Interior by notice to that effect may reduce the amount provided in the said original contract to be paid by the District for drainage work to the extent of such surplus so remaining unexpended, or may expend such surplus or a portion thereof in the con-

struction of such other or additional drains for the Pioneer District as shall be agreed upon by the Secretary of the Interior and the Directors of the District, provided that in no event shall the United States be required to expend more than $350,000 for drainage work within the Pioneer Irrigation District.

3. That the drains heretofore or hereafter constructed in the territory lying above the Pioneer Irrigation District, in the Nampa & Meridian Irrigation District, and the Boise Project, may be connected with the drainage system in the Pioneer District and the water therefrom allowed to flow through the same.

4. That the construction charges to be paid by the District, both for the said drainage system and for the said storage capacity in Arrowrock Reservoir, shall be paid to the United States by the District in twenty (20) annual installments as set forth in Section 2 of the Act of Congress of August 13, 1914, entitled "An Act Extending the period of Payment under Reclamation Projects and for other Purposes", the first of which installments shall become due and payable on December 1st of the year in which the first Public Notice is issued for the Boise Project under the said Act of Congress of August 13, 1914, and subsequent installments on December 1 of each year thereafter. The first four (4) of such installments shall each be two percentum, the next two (2) installments shall each be four percentum, and the next fourteen (14) installments shall each be six percentum of the total construction charge.

5. If, after the completion of Arrowrock Reservoir the Secretary of the Interior shall find that 56/750ths of the cost thereof

is less than $560,000, the payment of which was provided for in paragraph 4 of said original contract, on account of storage capacity in Arrowrock Reservoir, he may by notice to that effect, modify the charge to the District for Arrowrock storage so that the amount thereof shall be 56/750ths of the whole and the District shall be entitled to that proportion of the total storage capacity of the Reservoir. The District shall receive a credit amounting to the same proportionate share of the proceeds of any sale, rental, disposition or transfer of machinery, equipment, supplies, appliances and structures of any and all kinds which were included in making the estimate of the total cost of the Reservoir and which remained on hand after the completion thereof.

6. That in all other particulars the aforesaid original contract between the United States, the District, and the Payette-Boise Water Users' Association shall remain in full force and effect and without any modification except as herein specified.

7. If it shall be found feasible to do so, the United States may substitute in the Phyllis Canal of the District, water developed by the United States, in exchange for a like amount of the natural flow of Boise River to which the District is entitled, and may then divert through the Government Canal the same amount of such natural flow for use on the Boise Project; Provided, that the amount of such water so turned into the Phyllis Canal for exchange shall not be a greater proportion of the total amount which the District is entitled

Draft of Nov. 14, 1917.

1. THIS AGREEMENT, made this 9th day of February, 1918, between the UNITED STATES OF AMERICA, acting for this purpose by the Assistant Secretary of the Interior, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, known as the Reclamation Laws, and particularly under Sections two and three of the Act of Congress of February 21, 1911 (36 Stat. L. 925) known as the Warren Act, the party of the first part, hereinafter called the UNITED STATES, and the Settlers Irrigation District, an irrigation district organized under the laws of the State of Idaho, the party of the second part, hereinafter called the DISTRICT.

WITNESSETH - That

2. WHEREAS, the District is an irrigation district furnishing water for the irrigation of the lands of its water users and irrigating about Twelve Thousand (12,000) acres of land on the South side of Boise River in Ada County, Idaho, and is the owner of that certain irrigation canal known as the Settlers' Canal, having its point of diversion on the South bank of the Boise River;

3. AND WHEREAS, the United States has constructed the Arrowrock and Deer Flat Reservoirs in connection with the Boise Project and has available in said reservoirs some

EXHIBIT C

surplus capacity over and above the needs of the lands now included in the Boise Project.

4. AND WHEREAS, the District needs some stored water during the latter part of the irrigation season to supplement the water supply of its water users during that part of the season when the natural flow of Boise River is insufficient to supply the District under its priorities the full amount of water needed by its water users to mature their crops.

5. NOW, THEREFORE, it is hereby agreed:

That the District will pay to the United States the sum of THIRTY THOUSAND ($30,000.00) DOLLARS for storage capacity in said Arrowrock Reservoir, and the United States will furnish the District the use and benefit of that proportionate part of the total available storage capacity of Arrowrock Reservoir which THIRTY THOUSAND ($30,000.00) DOLLARS is of the total cost of said reservoir, as announced by the Secretary of the Interior in his Public Notice for the Boise Project, being $4,750,000, and will deliver at the downstream end of the outlets of said Arrowrock Reservoir for the District each and every year after the execution of this contract by the Secretary of the Interior, as nearly as is reasonably practical, the same proportionate part of the stored water actually

available from said reservoir, such deliveries to be made as nearly as is reasonably practical at the times and rates of delivery directed by the District, provided that the District give the officer of the United States in charge of the reservoir at least three days notice in writing of the times and rates of delivery desired and that the rate of delivery requested be not in excess of the District's proportionate part of the available outlet capacity of the reservoir.

6. The United States shall not be liable for errors in the amount of water delivered or turned out for the District any year under this contract unless the amount of water lost to the District by such errors in delivery exceeds ten per cent of the amount agreed to be delivered and any liabilities or judgments which may be incurred and paid by the United States on account of any errors in amount of water delivered from said reservoir under this or any other contract shall be charged as a part of the cost of the operation of the said reservoir and distributed in the same manner as other costs in connection with the operation of the reservoir, but the liability of the United States for any shortage in the amount of water delivered hereunder during any year shall not in any event exceed that percentage of the total payment to be made to the United States that year

by the District, that such shortage is of the total amount of stored water that should have been delivered to the District that year.

7. That said sum of THIRTY THOUSAND ($30,000.00) DOLLARS shall be paid by the District to the United States in twenty (20) equal annual installments of ONE THOUSAND FIVE HUNDRED ($1,500.00) DOLLARS each, the first of which shall be paid in cash and draft or certified check therefor shall accompany this contract. The second shall be due and payable on December 1st of the year following the year in which this contract is made, and one installment on December 1st of each year thereafter until the whole of said sum of THIRTY THOUSAND ($30,000.00) DOLLARS has been paid. Should the District fail to pay any one of said installments when due, the whole of the unpaid balance of said sum of THIRTY THOUSAND ($30,000.00) DOLLARS shall at the option of the Secretary of the Interior become immediately due and payable upon notice to that effect from the Secretary of the Interior to the District.

8. The District will also pay to the United States each year its proportionate share of the cost of operation and maintenance of said reservoir and the delivery, protection and division of the water therefrom as announced by the Secretary of the Interior, including its proportionate

amount of all costs and expenses of whatsoever nature or kind for the purpose of, growing out of, in connection with or resulting from the operation and maintenance of said reservoir and the delivery, protection and division of the water therefrom. Prior to the delivery of stored water to the District each year from said reservoir, the District will pay to the United States its pro rata share of the estimated cost of the operation and maintenance of said reservoir and the delivery of water therefrom for that year as estimated in advance by the engineer of the United States in charge thereof and on or before March 1st of the following year the District will make such additional payment to the United States, or the United States will rebate to the District such amount as may be necessary to make the total payment, as so adjusted, the District's proper pro rata share of the actual cost of the operation and maintenance of the reservoir and delivery of the water for the year in question as announced by the Secretary of the Interior and including all the items mentioned above.

9. If it shall be found feasible to do so, the United States may at its option substitute in place of the Arrowrock water to which the District is entitled under this contract, or any part thereof, an equal number of acre-feet of water from any other reservoir hereafter

constructed or from any other source of supply under the control of the United States, provided the water is of good quality for irrigation and furnished for the District at or above the headgates of the District in Boise River. In that event, the water from such other reservoir or source of supply to be delivered and measured to the District at the outlets of Arrowrock Dam if turned into Boise River above that point, and if turned into Boise River below Arrowrock, then at such point on Boise River above the headgates of the District's said canal where the ditch or conduit from such other reservoir or source of supply empties into Boise River.

10. No interest will be charged on any of the said installments for stored water or for operation and maintenance until due; but any part thereof which may remain unpaid after the same is due shall bear interest from maturity until paid at twelve (12%) per cent per annum.

11. The District agrees to distribute the amount of water delivered to it by the United States under this contract in full compliance with the provisions of Section two (2) of the Act of Congress of February 21, 1911 (36 Stat. 925) known as the Warren Act, and to distribute the same only upon the lands lying under the said canal of the District.

12. This contract shall be binding upon and inure to the benefit of the successors in interest of the District and the United States.

13. The District and all persons claiming under or through the District expressly agree and covenant that the United States shall not be obliged to deliver or turn out any water for said District or the landowners thereunder or water users thereof at any time when the District is in default on any of the payments herein agreed to be made, and should any of the payments herein agreed to be made by the District to the United States remain unpaid for more than one year after the same becomes due, the Secretary of the Interior may at his option after thirty (30) days notice to the District, terminate this contract and after such termination the District shall have no further interest or right of any nature or kind whatsoever in said reservoir or the waters thereof, and it is expressly agreed and understood that the installments herein agreed to be paid by the District would be a fair and reasonable rental price for the use of said reservoir capacity and stored water, and in case of any such termination of the contract any installments or payments theretofore paid by the District shall be held and considered to be the rental price for the use and benefit of such stored water and reservoir

capacity as the District shall have received or used prior to such termination.

14. No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, shall be admitted to any share or part of this contract or agreement or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company as provided in Section 116 of the Act of Congress approved March 4, 1909 (35 Stat.L.1109).

IN WITNESS WHEREOF, WE HAVE HEREUNTO SET our hands and seals the day and year first above written.

UNITED STATES OF AMERICA,

By S G Hopkins
Acting SECRETARY OF THE INTERIOR.

(seal)

SITTERS' IRRIGATION DISTRICT,

ATTEST:

By ~~JOSEPH D. EATON~~ President.

~~EDWARD H. SUTTON~~ Secretary.

Signed July 13, 1918.

STATE OF IDAHO,)
) ss.
COUNTY OF ADA.)

On this 9th day of February, in the year 1918, before me, D. E. MILLER, a Notary Public in and for said County and State, personally appeared ----JOSEPH D. KEILOR---------- known to me to be the President of the Settlers' Irrigation District, the irrigation district that executed the within instrument, and acknowledged to me that such irrigation district executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

D. E. MILLER

(seal) Notary Public for State of Idaho.
Residing at: Boise, Idaho.
My commission expires Aug.25,1921.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

SUPPLEMENTAL CONTRACT WITH PIONEER IRRIGATION DISTRICT.

1. THIS AGREEMENT, made this 30th day of November, 1926, in pursuance of the Act of Congress of June 17, 1902, (32 Stat., 388) and acts amendatory thereof or supplementary thereto, all herein styled the Reclamation Law, between the UNITED STATES OF AMERICA, herein styled the United States, acting in this behalf by E. C. Finney, First Assistant Secretary of the Interior, herein styled the Secretary, and the PIONEER IRRIGATION DISTRICT, an irrigation district organized under the laws of the State of Idaho, herein styled the District.

WITNESSETH THAT:

2. WHEREAS, Under contracts dated February 27, 1913, and June 15, 1915, the District has agreed to make certain payments to the United States for the drainage works constructed by the United States for the District and for storage water to be furnished by the United States from Arrowrock Reservoir, and under the terms of the said contracts the construction charge provided for therein is due and payable in annual installments; and

3. WHEREAS, The District desires to make said payments in semi-annual installments instead of annual installments in order to better confrom to the dates of the

collection of taxes by the District from the land owners in the District.

4. NOW THEREFORE, It is hereby agreed that the said contracts of February 27, 1913, and June 15, 1915. are hereby amended, supplemented, and modified by adding thereto the following paragraph, to-wit:

> Annual Construction Charges Payable, one-Half December 31, and one-half July 1.

5. Pursuant to the provisions of the Act of Congress of May 15, 1922, entitled "An Act to provide for the application of the Reclamation Law to Irrigation Districts", in order to confrom better to the provisions of the State Law with reference to dates of payment of District taxes, it is hereby agreed that beginning with the construction charges coming due in the year 1926, each annual construction charge or installment provided for under said contracts of February 27, 1913, and June 15, 1915, coming duefrom the District to the United States in any year, may be paid by the District to the United States, one-half on the thirty-first (31st) day of December of said year, and one-half on the first (1st) day of the following July:

6. That in all other respects the said contracts of February 27, 1913, and June 15, 1915, shall remain unchanged and in full force and effect.

MEMBERS OF CONGRESS CLAUSE

7. No Member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company if the contract be for the general benefit of such corporation or company.

8. IN WITNESS WHEREOF, The Pioneer Irrigation District has caused its name and seal to be attached the day and year first above written, the District acting in pursuance of a resolution of its Board of Directors of which a certified copy is hereto attached and made a part hereof.

UNITED STATES OF AMERICA

By E. C. Finney
First Assistant Secretary

PIONEER IRRIGATION DISTRICT

(Seal)
ATTEST

By J. C. Baum President

Fred L. Evans
Secretary

THIS HAS BEEN COMPARED WITH THE CONTRACT OF THE PIONEER IRRIGATION DISTRICT. THE UNDERSCORING INDICATES DIFFERENCES AND ASTERICKS INDICATE OMMISSIONS.

EXHIBIT E

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOISE PROJECT, IDAHO

Contract with Settlers Irrigation District concerning construction of Anderson Ranch reservoir and related matters.

THIS AGREEMENT, Made this _____ day of _____, 194__, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, and particularly the Act of August 4, 1939 (53 Stat. 1187), known as the Reclamation Project Act of 1939, together hereinafter referred to as the Federal Reclamation Law, between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting for this purpose through the Secretary of the Interior, hereinafter referred to as the Secretary, and the Settlers Irrigation District, an irrigation district organized under the laws of the State of Idaho and located in Ada County, Idaho, hereinafter referred to as the District;

WITNESSETH:

Explanatory Recitals

2. WHEREAS, under the authority of the Federal Reclamation Law, the United States constructed that certain irrigation project in the State of Idaho commonly known as the Boise project, and also known as the Boise reclamation project; and

3. WHEREAS, the United States and the District entered into contract dated February 9, 1918, contract dated February 18, 1919 and amended September 19, 1921, and contract dated June 12, 1931, all of

which are hereinafter collectively referred to as the Government-District contract; and

4. WHEREAS, the water users within the District have suffered a shortage of water during certain irrigation seasons in the past and, in order to improve their water supply, desire the construction of additional storage capacity; and

5. WHEREAS, the Secretary has caused investigations to be made of a proposed reservoir on the south fork of the Boise river at or near the Anderson Ranch site, of approximately five hundred thousand (500,000) acre-feet capacity, hereinafter referred to as the Anderson Ranch reservoir, and the District, together with the other irrigation districts of the Arrowrock division of the Boise project, has requested the construction thereof; and

6. WHEREAS, the total cost of the proposed Anderson Ranch reservoir, of sufficient size to create a storage reservoir approximately 500,000 acre-feet capacity, and appurtenant works including facilities for the generation of electrical power at Anderson Ranch reservoir, and related flood control improvements at Arrowrock reservoir, is estimated to be the sum of $13,100,000, of which $400,000 is the estimated cost of the

flood control improvements at Arrowrock Reservoir and $2,400,000 is the estimated cost of the power plant, and of which sum of $13,100,000 the proportionate allocation for the storage of water for irrigation is $4,650,000, the proportionate allocation for flood control is $5,050,000, and the proportionate allocation for the generation of electrical power (including the estimated cost of the power plant) is $3,400,000; and

7. WHEREAS, that portion of the actual cost of the Anderson Ranch Reservoir allocated to irrigation is the proportionate part of the Anderson Ranch Reservoir cost (exclusive of the cost of the power plant and of the Arrowrock flood control improvements) that $4,650,000 is of $10,300,000; and

8. WHEREAS, the District desires to enter into a contract with the United States for certain additional storage water to be made available by said Anderson Ranch Reservoir;

NOW, THEREFORE, In consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby mutually agreed by and between the parties hereto as follows:

Works To Be Constructed

9. The United States, subject to article 37 and article 40 of this contract, will construct, on the South Fork of the Boise River at or near the Anderson Ranch site, a dam and reservoir (to be known as the Anderson Ranch Dam and Anderson Ranch Reservoir) designed to provide a storage capacity of approximately Five Hundred

Thousand (500,000) acre-feet, and, at its option, may enlarge the outlet gates at Arrowrock Dam with a view to providing improved flood control facilities, and may construct a power plant in connection with the said Anderson Ranch Dam.

General Repayment Obligation of the District

10. As its general repayment obligation under this contract, the District shall pay to the United States, in the installments hereinafter provided, the following amount:

Should the actual cost of the Anderson Ranch Reservoir (exclusive of the power plant and of Arrowrock flood control improvements) as determined and stated by the Secretary in the notice and statement provided for in Article 11 (a) hereof, be the same as the estimated cost of $10,300,000, the general repayment obligation of the District shall be $52,080.

Should the said actual cost exceed or be less than the said estimated cost, then the general repayment obligation of the District shall be that percentage of said actual cost which $52,080 is of said estimated cost of $10,300,000, as said actual cost is conclusively determined by the Secretary in accordance with the provisions of article 18 hereof, subject, however, to the limitation, that the maximum general repayment obligation of the District under this contract shall not exceed $65,100.

Terms of Payment of Construction Installments

11. (a) Whenever the construction of Anderson Ranch Reservoir is substantially completed, or is advanced to a point where storage water

in an amount exceeding 275,000 acre-feet becomes available for irrigation use from said storage reservoir, the Secretary shall so announce, and shall give to the District notice thereof, hereinafter referred to as the tentative construction cost notice. Said notice shall be given prior to September 1 of the year in which given and shall include a statement of the cost of the Anderson Ranch Reservoir, as then estimated, and of the District's general repayment obligation under Article 10 of this contract, based on said statement of cost. Said tentative construction cost notice shall govern the amount of repayment obligation installments until such time as the cost and the District's general repayment obligation based thereon can be determined by the Secretary, and the statement thereof submitted to the District in a final construction cost notice. Any difference between the District's general repayment obligation as stated in the tentative construction cost notice and said obligation as stated in the final construction cost notice shall be spread in such a manner as to maintain approximately equal overall annual payments as hereinafter provided for in this article, as increases or decreases as the case may be, in the installments on account of Anderson Ranch Reservoir coming due after said final construction cost notice has been given to the District.

The Secretary's determinations of cost and of the District's general repayment obligation in each of said notices shall be conclusive.

(b) At the time the Secretary gives to the District the tentative construction cost notice provided in (a) of this article, stating the District's general repayment obligation, the Secretary shall determine

the respective amounts of the first ten (10) successive annual installments of said obligation. The respective amounts of said first ten (10) installments shall be determined so that the annual installments, including the then estimate of those following the tenth, on account of Anderson Ranch Reservoir, when combined with the then unaccrued installments to be paid by the District for the repair, resurfacing, improvement and enlargement of Arrowrock Dam (hereinafter referred to as Arrowrock repairs), and the Secretary's then estimate of the probable annual construction installments to be paid by the District under the Government-District contract, form a combined, overall schedule of approximately equal annual installments throughout the forty (40) year repayment period within which the District's general repayment obligation under this contract shall be paid. In the year in which the tenth annual installment due from the District on account of Anderson Ranch Reservoir accrues, the Secretary shall determine the respective amounts of the remaining thirty (30) installments of the District's general repayment obligation under this contract in the same manner as provided above for the first ten installments, excepting that the determination in said tenth installment year shall be made upon consideration of the then unaccrued installments on account of Arrowrock repairs and the Secretary's then estimate of probable annual construction installments to be paid by the District under the Government-District contract. In no event, however, shall any annual installment to be paid by the District, on account of Anderson Ranch Reservoir be less than $1,000.

(c) The District agrees to pay the general repayment obligation, in the forty (40) successive annual installments, scheduled under (b) of this article; and there being no irrigation block designated by the Secretary and no development period fixed by him, the first installment shall become due and payable in the calendar year following immediately after the one in which the Secretary gives the tentative construction cost notice provided for in (a) of this article. Each year's installment on account of Anderson Ranch reservoir shall become due and payable from the District to the United States one-half on July 1 and one-half on December 31 of the year in question.

(d) Each year the installment of the District's general repayment obligation scheduled for such year shall be the construction charges due and payable by the District for such year, and the normal and percentage plan of payment shall not apply thereto unless such normal and percentage plan shall be hereafter adopted and provided for by supplemental contract, as authorized in Article 39 hereof.

District's Percentage of Stored Water from Anderson Ranch Reservoir

12. Subject to the holdover rights provided for in Article 16 hereof, and the allowance of similar holdover rights provided for by contracts with other contracting districts and companies entitled to receive stored water from Anderson Ranch reservoir, the United States, in the manner and subject to the conditions provided in this contract, will release for the use of the District each year (as ordered by the District as nearly as is reasonably practi-

cable one and twelve hundredths per cent (1.12%) of the stored water actually available from said reservoir that year for irrigation purposes, as determined by the Secretary.

Optional With Secretary to Measure and Deliver Anderson Storage Either at Outlets of Anderson Ranch Reservoir or at Outlets of Arrowrock Reservoir

13. At the option of the Secretary, the Anderson Ranch Reservoir stored water to which the District is entitled may be measured and delivered to or for the District either at the outlets of the Anderson Ranch Reservoir or at the outlets of the Arrowrock Reservoir.

Secretary Authorized to Determine the Administration of the Reservoirs and the Holding of Water Therein

14. In all matters not expressly covered by the provisions of this contract, the Secretary is authorized to determine the proper administration of the said Anderson Ranch Reservoir and Arrowrock Reservoir and the water supply therefrom, and his authority shall include but not be limited to the authority to determine the length of time and the extent to which the stored water belonging to either of said reservoirs may be held in the other without injury to the holders of rights to water therefrom.

All Rights in Reservoir of Equal Priority

15. It is agreed that all parties contracting with the United States for stored water for irrigation purposes from said Anderson Reservoir shall be entitled to proportionate rights to stored water available for irrigation purposes from said reservoir and that the rights of the District under this contract shall be in all respects on a par as to priority and dignity of rights with the rights of the other contracting parties, except as to holdover rights, which holdover rights shall be as provided for in Article 16 hereof.

Holdover Rights and Reservations For
Power and Flood Control and Temporary Holding
In One Reservoir of Water Belonging to Another

16. The rights provided for in this article will be referred to as the District's holdover rights. The District will be allowed to hold over in Anderson Ranch Reservoir from year to year stored water to which it may be entitled in any irrigation season but does not use during such season, and will be given credit therefor the following year or years subject to the following conditions and limitations:

(a) The District shall not be entitled to hold over to its credit in said reservoir at any one time more stored water than can be stored, subject to paragraph (g) of this article, in ~~two~~ and twenty-four hundredths per cent ~~(2.24%)~~ of the available storage capacity of the reservoir usable for irrigation; that is to say, ~~two~~ and twenty-four hundredths per cent ~~(2.24%)~~ of the capacity thereof other than that reserved for control of flash floods and that reserved for power.

(b) Whenever the combined amount of storage water in the Arrowrock Reservoir and the Anderson Ranch Reservoir reaches a point where there remains in the two reservoirs only 45,000 acre-feet unfilled capacity, and additional water shall be available for storage, then such additional storable water shall be considered stored in reservoir capacity made available therefor by reducing and eliminating holdover storage in the following manner: Water shall be considered released from holdover storage of the contracting party having on hand the largest amount of holdover storage water in per cent of its maximum holdover storage as fixed by (a) of this article until such per cent is reduced to that of

the party having on hand the next highest per cent, then from both parties' holdover storage, etc., until no party has holdover storage on hand. Any holdover right to and interest in water considered released under this paragraph shall be extinguished and terminated.

(c) It is fully agreed and understood that 75,000 acre-feet of the initial capacity in the Anderson Ranch Reservoir, and such water as can be stored therein, is reserved to the United States as dead storage and removable storage for power purposes, and that the removable part of the water stored in said 75,000 acre-feet of initial capacity may be held by the United States for release for power development purposes after the end of the irrigation season. Anderson Ranch Reservoir stored waters released for power production while Arrowrock Reservoir is not full, shall be considered stored in Arrowrock Reservoir, and in equal amounts may be subsequently replaced in Anderson Ranch Reservoir by storing therein waters storable in Arrowrock Reservoir, provided such replacement is effected prior to the next spill at Arrowrock Reservoir over the wasteway thereof.

(d) It is understood and agreed that a combined total of 45,000 acre-feet of empty storage space shall be kept available in the Anderson Ranch and Arrowrock Reservoirs for control of flash floods, except when used for control of such floods. Of water temporarily impounded in said 45,000 acre-feet capacity, when released, one and twelve hundredths per cent (1.12%) of it, or any part of said percentage, may be diverted for the use of the District if it so desires.

(e) It is further understood and agreed that for flood control purposes it is most desirable that the empty storage space should be maintained in Arrowrock Reservoir rather than in Anderson Ranch Reservoir,

and that the attempt will be made, so far as practicable, to keep the empty storage space in Arrowrock Reservoir so that it may be available to control floods from the largest possible watershed. With this purpose in view and for the purpose of making better use of the available water supply for power and irrigation purposes, storage water belonging to the Arrowrock Reservoir or the Deer Flat Reservoir may be held temporarily in the Anderson Ranch Reservoir, or vice versa, instead of holding the same in the reservoir in which it belongs on the basis of priority of right; but the temporary holding of such stored water in the Anderson Ranch Reservoir shall not in any way affect the rights of the several districts to the water in question, and such rights shall be considered to be the same as if said stored water were held at all times in the reservoir in which it properly belongs on the basis of priority of right. Storage water belonging in Arrowrock Reservoir or Deer Flat Reservoir but temporarily held in Anderson Ranch Reservoir will be turned down to the reservoir in which it belongs at or prior to the time that water available for storage in the Anderson Ranch Reservoir becomes available in sufficient quantity to fill the full storage capacity thereof other than the capacity thereof reserved exclusively for control of flash floods.

(f) For the purpose of a more prompt and accurate control of the water supply at canal headgates, and other beneficial purposes including but not limited to the carrying of peak loads at the power plant at the Anderson Ranch Reservoir, stored water belonging in Anderson Ranch Reservoir, or to the holders of rights in said water, and holdover storage or storage otherwise credited to the Anderson Ranch Reservoir, may likewise be held temporarily in unused space in Arrowrock Reservoir

without in any way impairing or affecting the rights of the parties entitled to such water; but such water shall not remain in Arrowrock Reservoir at any time when such use of Arrowrock capacity would injuriously affect the holders of Arrowrock storage rights in the benefit or enjoyment of such Arrowrock rights.

(g) In the filling of the available Anderson Ranch Reservoir capacity, except that reserved for power which will be filled first and except that amount of 45,000 acre-feet capacity reserved for control of flash floods, the reservoir management will endeavor so to handle the filling thereof that the same will serve both for the benefit of irrigation and for the benefit of flood control, and may for flood control purposes evacuate so much of its capacity as is deemed advisable with such releases to be first from holdover storage water on hand, in the same manner and with the same effect as provided in Article 16 (b).

(h) Holdover storage will be charged its pro rata share of evaporation and seepage losses.

General Obligation of the District

17. The District's obligation hereunder is a general repayment obligation under which the District as a whole is obligated to pay to the United States the full amount or amounts herein agreed upon according to the terms stated, notwithstanding any individual default in the payment to the District by any individual water user of any assessments, tolls, or other charges levied by the District; and while the District, so far as its powers under the laws of Idaho permit, may distribute said obligation among its landowners in a manner that takes into account the productivity of the various classes of lands of its landowners and the benefits accruing to said lands by reason of the construction

herein provided, no such distribution of said obligation shall in any manner be deemed to relieve the District, or any of its landowners, or any land therein, of the District's general obligations to the United States.

Computation of Cost

18. The cost of the Anderson Ranch Reservoir, which shall be the basis of determining the District's obligation as provided in Article 11 hereof, shall embrace all expenditures of whatsoever kind in connection with, growing out of, or resulting from the work described, including the cost of labor, material, equipment, investigations, engineering, legal work, superintendence, administration, overhead, rights of way, property, and damages of all kinds, and also including expenditures made for any of said above-mentioned purposes incurred prior to the date of this contract. The determination of what costs are properly chargeable hereunder, and the amount thereof, shall be conclusively made by the Secretary.

Cost of Operation and Maintenance to be Paid in Advance

19. For the year in which the first general repayment obligation instalment becomes due, as provided in Article 11 (c) above, and for each year thereafter, the District will pay to the United States in advance, in the manner hereinafter provided, its share of the operation and maintenance costs of Anderson Ranch Reservoir. Payment shall be made on the basis of annual estimates made by the Secretary. Such annual estimates, hereinafter referred to as the operation and maintenance charge notice, shall contain a statement of the estimated cost to be incurred during the calendar year covered by said notice for the

operation and maintenance of Anderson Ranch Reservoir, a statement of the part of said estimated costs allocated to the storage of water for irrigation, and the District's share thereof. The District's share shall be one and twelve hundredths per cent (1.12%) of the part of said estimated costs allocated by the Secretary to the storage of water for irrigation.

Such operation and maintenance charge notice shall be given to the District and to the Board of Control of the Arrowrock Division, Boise Project, on or before April 1 of the calendar year covered by said notice. The District agrees to pay its share of the estimated cost of operation and maintenance allocated to the storage of water for irrigation as set out in said notice on or before May 1 of the year in which said notice is given. Whenever in the opinion of the Secretary, funds so advanced will not be adequate to meet the District's share of costs of operating and maintaining Anderson Ranch Reservoir, he may give to the District and to the Board of Control a supplemental operation and maintenance charge notice stating therein the amount of the District's share, determined in the manner above provided, of the additional amount required for such operation and maintenance. The District shall pay its share of such additional amount, as set forth in said supplemental notice, on or before the due date fixed by the Secretary in said notice. If funds advanced by the District under this Article exceed the District's share of the actual cost and maintenance for the year for which advanced, as determined conclusively by the Secretary, the excess will be credited to operation and maintenance charges due from the district subsequent to the determination of such excess.

There shall be included in the operation and maintenance costs covered by the provisions of this Article an annual equitable charge, as determined by the Secretary, to cover general expenses and the cost of bookkeeping, accounting, clerical and legal work of the Bureau of Reclamation in connection with the accounts and collections for storage water from Anderson Ranch Reservoir.

Any expense incurred in running or protecting the Anderson Ranch Reservoir water in the channel of Boise River or the South Fork thereof or in diverting the same into the District's canals shall be considered a part of the cost of operation and maintenance of the Anderson Ranch Reservoir and charged accordingly in like manner as other operation and maintenance expenses in connection with said reservoir.

Water Rental Before Commencement of Construction Cost Repayment

20. Prior to the year in which the first general repayment obligation instalment provided for in Article 11 (c) accrues, storage water, if available, may be released for the use of the District only upon advance payment by the District to the United States of a charge per annum per acre-foot, or other charge, to be fixed by the Secretary each year and to be paid in advance of delivery of water. After the expiration of the water rental period, if any, any such charges collected and which the Secretary determines to be in excess of the cost of operation and maintenance, during the period, allocated by the Secretary to the District shall be credited to the general repayment obligation of the District under this contract in the manner determined by the Secretary.

Release of Water in Case of Default

21. No water from the Anderson Ranch Reservoir shall be delivered to or for the District if the District shall be in arrears in the advance payment of the operation and maintenance charges provided for in Article 19 or in arrears in the payment of any other operation and maintenance charges due to the United States, or more than twelve (12) months in arrears in the payment, as required by the terms of this contract, of the general repayment obligation instalments provided for in Article 11 of this contract, or more than twelve months in arrears in the payment of any other construction charge instalments due to the United States. The District agrees that it will refuse to deliver water to lands or parties which are in arrears in the advance payment of operation and maintenance charges due from said lands or parties to the United States or to the District, or to lands or parties who are in arrears for more than twelve months in the payment of the amounts due from said lands or parties to the United States or to the District for the general repayment obligation instalments due from the District to the United States under this or any other contract. The provisions of this Article are not exclusive and shall not in any manner prevent the United States from exercising any other remedy given by this contract or by law to enforce the collection of any payments due under the terms of this contract.

Penalty for Delinquent Payments

22. In the event that any payment provided for in this contract is not made on or before the date that such payment is due and payable, there shall be added to the amount unpaid a penalty of one-half of one

per cent (1/2%) on the day following the due date, and there shall be added a like penalty of one-half of one per cent of said unpaid amount on the first day of each calendar month thereafter so long as such default shall continue.

Title to Reservoir in the United States

23. Pursuant to the provisions of section 6 of the Act of June 17, 1902 (32 Stat. 388), title to the Anderson Ranch Reservoir shall remain in the United States until otherwise provided by Congress.

Power Resources to Remain Perpetually in the United States

24. The rights and resources which may be used or useful for the development of power, and any plant or plants and appurtenant structures and facilities which may be now or hereafter constructed by or under the authority of the United States which may be used or useful for the development of hydroelectric power, are hereby reserved to and shall be and remain in the exclusive control, possession and ownership of the United States: Provided, That no costs, as determined by the Secretary and which are in his opinion, attributable solely to power development, shall be taken into account in determining the District's construction cost obligation under this contract. All revenues, including miscellaneous revenues from or incident to the establishment or use of power plants or appurtenant structures and facilities, and from the use, sale or other disposal of power in any form, shall be and remain the property of the United States and shall be disposed of as provided in the Interior Department Appropriation Act, 1939, (Act of May 9, 1938, 52 Stat. 291, 322).

Operation and Maintenance of Works by the United States

25. The works constructed by the United States under the provisions of Article 9 above will be operated and maintained by the United States as a part of the reserved works of the Arrowrock Division of the Boise Project in the same manner as that provided in the Government-District contract, but the District's share of the cost of operation and maintenance of said works shall be paid by the District as provided in Article 19 above.

Economical Use of Water

26. (a) It is understood and agreed that if Anderson Ranch Reservoir is to be effective in reducing water shortages in dry cycles, it is essential that the District take every reasonable measure to effect economical and efficient use of water by every water user within the District; and the District agrees to take such measures. It is further understood and agreed that whenever wasteful, inefficient or uneconomical use of water is being made by a water user within the District, the District with the advice and cooperation of the Bureau of Reclamation will take such action as may be necessary to correct such wasteful, inefficient, or uneconomic use of water.

(b) The District agrees to distribute storage water made available to the District under the provisions of this contract and to use the same only upon lands within the District, upon like terms and conditions as provided for the use and distribution of storage water made available to the District under the provisions of the Government-District Contract.

District to Use All Powers to Collect Charges

27. The District agrees it will cause to be levied and collected all necessary assessments, and will use all the powers and resources of the District, including the taxing power of the District, and the power to withhold delivery of water, to pay to the United States all charges provided in this contract in full on or before the day that the same become due.

Shortage of Water

28. On account of drought, inaccuracy of distribution, or other causes, it is expected there will occur at times a shortage in the quantity of storage water which normally can be made available from Anderson Ranch Reservoir, and in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damages, direct or indirect, arising from any such shortage; and the payments to the United States provided for herein shall not be reduced because of any such shortage or damage.

Losses in Running Stored Water to be Deducted

29. A pro rata share of such losses, if any, as may be incurred in running the Anderson Ranch Reservoir stored water from the reservoir to the head of the Settlers Canal will be charged to the District.

Contract to be Authorized by Electors and Confirmed by Court

30. The District agrees that, upon the execution of this contract, it will proceed promptly to secure the authorization of this contract by the electors of said District, and will secure a decree of the proper

court of the State of Idaho approving and confirming this contract and decreeing and adjudging the same to be a lawful, valid and binding general obligation of the District, and decreeing the same to be lawful and valid, and promptly will apportion the benefits of this contract to the lands of the District and will secure a confirmation court decree confirming such apportionment as provided for in the Idaho statutes. The District shall furnish certified copies of such decrees to the Secretary. In the event that in the opinion of the Secretary satisfactory confirmatory decrees are not promptly secured as herein provided, the Secretary may terminate this contract.

Waste Water, Seepage, and Return Flow Water Not Abandoned and Right Reserved to Recapture the Same

31. It is agreed and understood that the United States does not abandon or relinquish any of the waste, seepage or return flow water resulting from the use, application or conveyance of the said Anderson Ranch Reservoir water, but that the same is reserved and intended to be retained for the benefit of the Boise Project.

Assignment of Contract

32. No assignment or transfer of this contract, or any part hereof, or interest therein, shall be valid until approved by the Secretary. All rights for breach of this contract are reserved to The United States as provided in Section 3737 of the Revised Statutes of the United States.

Secretary the Arbiter — Secretary's Acts, Decisions and Determinations Conclusive

33. In the event of disputes between the parties hereto arising out of this contract involving questions of fact, and in so far as the provisions hereof require a determination of fact to be made, the Secretary is hereby designated as the arbiter of such questions and as the one required to make such determination of facts; and his decision therein shall be conclusive and binding on the parties hereto. In all acts, matters and determinations provided in this contract to be done, determined or decided by the Secretary or by the United States, it is agreed that the acts, decisions, findings and determinations by the Secretary shall be final and conclusive and shall be accepted as final and conclusive by all the parties to this contract and by all persons claiming any rights under or by virtue of this contract or in any wise based upon or arising out of this contract or any act or proceeding carried on thereunder.

Changes in Organization of District

34. While this contract is in effect no change will be made in the District, either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the Secretary's written assent thereto.

Rules and Regulations

35. The Secretary reserves the right, so far as the purport thereof may be consistent with the provisions of this contract, to make rules and regulations and to add to and modify them, as may be deemed proper and

necessary to carry out this contract and to supply necessary details of its administration, and, by suitable rules and regulations, to provide for the administration of the Anderson Ranch Reservoir and the water supply thereof as to any details of such administration not expressly covered by the terms of this contract; and the District agrees to observe such rules and regulations.

Representative of Secretary

36. It is agreed and understood that where this contract requires action by the Secretary, said action may be taken for and on behalf of the Secretary by his representative duly authorized in writing by the Secretary. Written notice of any such authority shall be mailed to the District within one week from the date of such authorization.

Obligation to Proceed Contingent Upon the Execution of Contracts in Form Satisfactory to the Secretary Covering the Full Amount Allocated to Irrigation

37. The obligation of the United States to proceed with the construction provided for under the provisions of Article 9 hereof is contingent upon the execution and confirmation of contracts in form satisfactory to the Secretary providing for the repayment to the United States of the full proportionate part of the cost of the Anderson Ranch Reservoir allocated to irrigation.

Substitution of Payette or Salmon River Water

38. It is agreed that in lieu of the water which the District is entitled to receive from the Boise River and its tributaries and the reservoirs thereon, or any part of such water, the United States, at the option of the Secretary, shall have the right to substitute an

equal amount of water from the Payette River or the Salmon River, or in part from the Payette and in part from the Salmon, and in the event of such substitution the Secretary, upon the completion of the necessary tunnels and other works to such extent as may be necessary to convey such Payette River or Salmon River water to the Boise River immediately above the government diversion dam, for the Arrowrock Division of the Boise Project, will make, by appropriate credits, such readjustment, if any, in the charges against the District as he shall then find to be equitable in view of the changed conditions then applicable to the water supply furnished for the District, but such readjustment, if any, shall not increase the financial obligations of the District under this contract nor reduce the amount of water which the District is entitled to receive under this contract.

Rights to Include Obligations in Contract Under Reclamation Project Act of 1939

39. In the event that the District enters into an amendatory contract under the provisions of section 4 of the Reclamation Project Act of 1939 (53 Stat. 1187) for the purpose of securing the benefits of said section of said act, the right is reserved to the District to have included in such amendatory contract the construction charge obligations of the District under this contract, and in that event the then unaccrued portion of the charges for the costs incurred in the Arrowrock repairs shall be treated as part of the Arrowrock dam construction charges, as authorized by Act of April 22, 1940 (54 Stat. 155).

Contingent Upon Appropriation or Allotment of Funds

40. The expenditure of any money or the performance of any work by the United States herein provided for which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of Congress so to appropriate funds, or the failure of an allotment of funds shall not relieve the District from any obligations under this contract and no liability shall accrue to the United States in case such funds are not so appropriated or allotted.

Officials Not to Benefit

41. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Former Contracts Remain in Effect

42. All provisions of the Government-District Contract, to the extent that they are not inconsistent with the terms and provisions of this contract, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

UNITED STATES OF AMERICA

By_____
Secretary of the Interior

SETTLERS IRRIGATION DISTRICT

By_____
President

(Seal)

Attest:

_____
Secretary

tionate part of the stored water available from Arrowrock Reservoir, and also agreed to construct a drainage system for the District, and the District agreed to pay the United States for the same on the terms and conditions more fully set out therein; and, whereas, amendatory contracts were made by the United States and the District under dates of June 15, 1915 and November 30, 1926, which said contract of February 27, 1913 as amended by said contracts of June 15, 1915 and November 30, 1926 are hereinafter referred to as the Government-District contract; and

4. WHEREAS, the water users within the District have suffered a shortage of water during certain irrigation seasons in the past and, in order to improve their water supply, desire the construction of additional storage capacity; and

5. WHEREAS, the Secretary has caused investigations to be made of a proposed reservoir on the South Fork of the Boise River at or near the Anderson Ranch site, of approximately Five Hundred Thousand (500,000) acre-feet capacity, hereinafter referred to as the Anderson Ranch Reservoir, and the District, together with the other irrigation districts of the Arrowrock Division of the Boise Project, has requested the construction thereof; and

6. WHEREAS, the total cost of the proposed Anderson Ranch Reservoir, of sufficient size to create a storage reservoir of approximately 500,000 acre-feet capacity, and appurtenant works including facilities for the generation of electrical power at Anderson Ranch Reservoir, and related flood control improvements at Arrowrock Reservoir, is estimated to be the sum of $13,100,000, of which $400,000 is the estimated cost of the

flood control improvements at Arrowrock Reservoir and $2,400,000 is the estimated cost of the power plant, and of which sum of $13,100,000 the proportionate allocation for the storage of water for irrigation is $4,650,000, the proportionate allocation for flood control is $5,050,000, and the proportionate allocation for the generation of electrical power (including the estimated cost of the power plant) is $3,400,000; and

7. WHEREAS, that portion of the actual cost of the Anderson Ranch Reservoir allocated to irrigation is the proportionate part of the Anderson Ranch Reservoir cost (exclusive of the cost of the power plant and of the Arrowrock flood control improvements) that $4,650,000 is of $10,300,000; and

8. WHEREAS, the District desires to enter into a contract with the United States for certain additional storage water to be made available by said Anderson Ranch Reservoir;

NOW, THEREFORE, In consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby mutually agreed by and between the parties hereto as follows:

Works To Be Constructed

9. The United States, subject to article 37 and article 40 of this contract, will construct, on the South Fork of the Boise River at or near the Anderson Ranch site, a dam and reservoir (to be known as the Anderson Ranch Dam and Anderson Ranch Reservoir) designed to provide a storage capacity of approximately Five Hundred

Thousand (500,000) acre-feet, and, at its option, may enlarge the outlet gates at Arrowrock Dam with a view to providing improved flood control facilities, and may construct a power plant in connection with the said Anderson Ranch Dam.

General Repayment Obligation of the District

10. As its general repayment obligation under this contract, the District shall pay to the United States, in the installments hereinafter provided, the following amount:

Should the actual cost of the Anderson Ranch Reservoir (exclusive of the power plant and of Arrowrock flood control improvements) as determined and stated by the Secretary in the notice and statement provided for in Article 11 (a) hereof, be the same as the estimated cost of $10,300,000, the general repayment obligation of the District shall be $284,580.

Should the said actual cost exceed or be less than the said estimated cost, then the general repayment obligation of the District shall be that percentage of said actual cost which $284,580 is of said estimated cost of $10,300,000, as said actual cost is conclusively determined by the Secretary in accordance with the provisions of article 18 hereof, subject, however, to the limitation, that the maximum general repayment obligation of the District under this contract shall not exceed $313,038.

Terms of Payment of Construction Installments

11. (a) Whenever the construction of Anderson Ranch Reservoir is substantially completed, or is advanced to a point where storage water

in an amount exceeding 275,000 acre-feet becomes available for irrigation use from said storage reservoir, the Secretary shall so announce, and shall give to the District notice thereof, hereinafter referred to as the tentative construction cost notice. Said notice shall be given prior to September 1 of the year in which given and shall include a statement of the cost of the Anderson Ranch Reservoir, as then estimated, and of the District's general repayment obligation under Article 10 of this contract, based on said statement of cost. Said tentative construction cost notice shall govern the amount of repayment obligation installments until such time as the cost and the District's general repayment obligation based thereon can be determined by the Secretary, and the statement thereof submitted to the District in a final construction cost notice. Any difference between the District's general repayment obligation as stated in the tentative construction cost notice and said obligation as stated in the final construction cost notice shall be spread in such a manner as to maintain approximately equal overall annual payments as hereinafter provided for in this article, as increases or decreases as the case may be, in the installments on account of Anderson Ranch Reservoir coming due after said final construction cost notice has been given to the District.

The Secretary's determinations of cost and of the District's general repayment obligation in each of said notices shall be conclusive.

(b) At the time the Secretary gives to the District the tentative construction cost notice provided in (a) of this article, stating the District's general repayment obligation, the Secretary shall determine

the respective amounts of the first ten (10) successive annual installments of said obligation. The respective amounts of said first ten (10) installments shall be determined so that the annual installments, including the then estimate of those following the tenth, on account of Anderson Ranch Reservoir, when combined with the then unaccrued installments to be paid by the District for the repair, resurfacing, improvement and enlargement of Arrowrock Dam (hereinafter referred to as Arrowrock repairs), and the Secretary's then estimate of the probable annual construction installments to be paid by the District under the Government-District contract, form a combined, overall schedule of approximately equal annual installments throughout the forty (40) year repayment period within which the District's general repayment obligation under this contract shall be paid. In the year in which the tenth annual installment due from the District on account of Anderson Ranch Reservoir accrues, the Secretary shall determine the respective amounts of the remaining thirty (30) installments of the District's general repayment obligation under this contract in the same manner as provided above for the first ten installments, excepting that the determination in said tenth installment year shall be made upon consideration of the then unaccrued installments on account of Arrowrock repairs and the Secretary's then estimate of probable annual construction installments to be paid by the District under the Government-District contract. In no event, however, shall any annual installment to be paid by the District, on account of Anderson Ranch Reservoir be less than $3,000.

(c) The District agrees to pay the general repayment obligation, in the forty (40) successive annual installments, scheduled under (b) of this article; and there being no irrigation block designated by the Secretary and no development period fixed by him, the first installment shall become due and payable in the calendar year following immediately after the one in which the Secretary gives the tentative construction cost notice provided for in (a) of this article. Each year's installment on account of Anderson Ranch reservoir shall become due and payable from the District to the United States one-half on July 1 and one-half on December 31 of the year in question.

(d) Each year the installment of the District's general repayment obligation scheduled for such year shall be the construction charges due and payable by the District for such year, and the normal and percentage plan of payment shall not apply thereto unless such normal and percentage plan shall be hereafter adopted and provided for by supplemental contract, as authorized in Article 39 hereof.

District's Percentage of Stored Water from Anderson Ranch Reservoir

12. Subject to the holdover rights provided for in Article 16 hereof, and the allowance of similar holdover rights provided for by contracts with other contracting districts and companies entitled to receive stored water from Anderson Ranch reservoir, the United States, in the manner and subject to the conditions provided in this contract, will release for the use of the District each year (as ordered by the District) as nearly as is reasonably practi-

cable six and twelve hundredths per cent (6.12%) of the stored water actually available from said reservoir that year for irrigation purposes, as determined by the Secretary.

Optional With Secretary to Measure and Deliver Anderson Storage Either at Outlets of Anderson Ranch Reservoir or at Outlets of Arrowrock Reservoir

13. At the option of the Secretary, the Anderson Ranch Reservoir stored water to which the District is entitled may be measured and delivered to or for the District either at the outlets of the Anderson Ranch Reservoir or at the outlets of the Arrowrock Reservoir.

Secretary Authorized to Determine the Administration of the Reservoirs and the Holding of Water Therein

14. In all matters not expressly covered by the provisions of this contract, the Secretary is authorized to determine the proper administration of the said Anderson Ranch Reservoir and Arrowrock Reservoir and the water supply therefrom, and his authority shall include but not be limited to the authority to determine the length of time and the extent to which the stored water belonging to either of said reservoirs may be held in the other without injury to the holders of rights to water therefrom.

All Rights in Reservoir of Equal Priority

15. It is agreed that all parties contracting with the United States for stored water for irrigation purposes from said Anderson Reservoir shall be entitled to proportionate rights to stored water available for irrigation purposes from said reservoir and that the rights of the District under this contract shall be in all respects on a par as to priority and dignity of rights with the rights of the other contracting parties, except as to holdover rights, which holdover rights shall be as provided for in Article 16 hereof.

Holdover Rights and Reservations For Power and Flood Control and Temporary Holding In One Reservoir of Water Belonging to Another

16. The rights provided for in this article will be referred to as the District's holdover rights. The District will be allowed to hold over in Anderson Ranch Reservoir from year to year stored water to which it may be entitled in any irrigation season but does not use during such season, and will be given credit therefor the following year or years subject to the following conditions and limitations:

(a) The District shall not be entitled to hold over to its credit in said reservoir at any one time more stored water than can be stored, subject to paragraph (g) of this article, in twelve and twenty-four hundredths per cent (12.24%) of the available storage capacity of the reservoir usable for irrigation; that is to say, twelve and twenty-four hundredths per cent (12.24%) of the capacity thereof other than that reserved for control of flash floods and that reserved for power.

(b) Whenever the combined amount of storage water in the Arrowrock Reservoir and the Anderson Ranch Reservoir reaches a point where there remains in the two reservoirs only 45,000 acre-feet unfilled capacity, and additional water shall be available for storage, then such additional storable water shall be considered stored in reservoir capacity made available therefor by reducing and eliminating holdover storage in the following manner: Water shall be considered released from holdover storage of the contracting party having on hand the largest amount of holdover storage water in per cent of its maximum holdover storage as fixed by (a) of this article until such per cent is reduced to that of

the party having on hand the next highest per cent, then from both parties' holdover storage, etc., until no party has holdover storage on hand. Any holdover right to and interest in water considered released under this paragraph shall be extinguished and terminated.

(c) It is fully agreed and understood that 75,000 acre-feet of the initial capacity in the Anderson Ranch Reservoir, and such water as can be stored therein, is reserved to the United States as dead storage and removable storage for power purposes, and that the removable part of the water stored in said 75,000 acre-feet of initial capacity may be held by the United States for release for power development purposes after the end of the irrigation season. Anderson Ranch Reservoir stored waters released for power production while Arrowrock Reservoir is not full, shall be considered stored in Arrowrock Reservoir, and in equal amounts may be subsequently replaced in Anderson Ranch Reservoir by storing therein waters storable in Arrowrock Reservoir, provided such replacement is effected prior to the next spill at Arrowrock Reservoir over the wasteway thereof.

(d) It is understood and agreed that a combined total of 45,000 acre-feet of empty storage space shall be kept available in the Anderson Ranch and Arrowrock Reservoirs for control of flash floods, except when used for control of such floods. Of water temporarily impounded in said 45,000 acre-feet capacity, when released, six and twelve hundredths per cent (6.12%) of it, or any part of said percentage, may be diverted for the use of the District if it so desires.

(e) It is further understood and agreed that for flood control purposes it is most desirable that the empty storage space should be maintained in Arrowrock Reservoir rather than in Anderson Ranch Reservoir,

and that the attempt will be made, so far as practicable, to keep the empty storage space in Arrowrock Reservoir so that it may be available to control floods from the largest possible watershed. With this purpose in view and for the purpose of making better use of the available water supply for power and irrigation purposes, storage water belonging to the Arrowrock Reservoir or the Deer Flat Reservoir may be held temporarily in the Anderson Ranch Reservoir, or vice versa, instead of holding the same in the reservoir in which it belongs on the basis of priority of right; but the temporary holding of such stored water in the Anderson Ranch Reservoir shall not in any way affect the rights of the several districts to the water in question, and such rights shall be considered to be the same as if said stored water were held at all times in the reservoir in which it properly belongs on the basis of priority of right. Storage water belonging in Arrowrock Reservoir or Deer Flat Reservoir but temporarily held in Anderson Ranch Reservoir will be turned down to the reservoir in which it belongs at or prior to the time that water available for storage in the Anderson Ranch Reservoir becomes available in sufficient quantity to fill the full storage capacity thereof other than the capacity thereof reserved exclusively for control of flash floods.

(f) For the purpose of a more prompt and accurate control of the water supply at canal headgates, and other beneficial purposes including but not limited to the carrying of peak loads at the power plant at the Anderson Ranch Reservoir, stored water belonging in Anderson Ranch Reservoir, or to the holders of rights in said water, and holdover storage or storage otherwise credited to the Anderson Ranch Reservoir, may likewise be held temporarily in unused space in Arrowrock Reservoir

without in any way impairing or affecting the rights of the parties entitled to such water; but such water shall not remain in Arrowrock Reservoir at any time when such use of Arrowrock capacity would injuriously affect the holders of Arrowrock storage rights in the benefit or enjoyment of such Arrowrock rights.

(g) In the filling of the available Anderson Ranch Reservoir capacity, except that reserved for power which will be filled first and except that amount of 45,000 acre-feet capacity reserved for control of flash floods, the reservoir management will endeavor so to handle the filling thereof that the same will serve both for the benefit of irrigation and for the benefit of flood control, and may for flood control purposes evacuate so much of its capacity as is deemed advisable with such releases to be first from holdover storage water on hand, in the same manner and with the same effect as provided in Article 16 (b).

(h) Holdover storage will be charged its pro rata share of evaporation and seepage losses.

General Obligation of the District

17. The District's obligation hereunder is a general repayment obligation under which the District as a whole is obligated to pay to the United States the full amount or amounts herein agreed upon according to the terms stated, notwithstanding any individual default in the payment to the District by any individual water user of any assessments, tolls, or other charges levied by the District; and while the District, so far as its powers under the laws of Idaho permit, may distribute said obligation among its landowners in a manner that takes into account the productivity of the various classes of lands of its landowners and the benefits accruing to said lands by reason of the construction

herein provided, no such distribution of said obligation shall in any manner be deemed to relieve the District, or any of its landowners, or any land therein, of the District's general obligations to the United States.

Computation of Cost

18. The cost of the Anderson Ranch Reservoir, which shall be the basis of determining the District's obligation as provided in Article 11 hereof, shall embrace all expenditures of whatsoever kind in connection with, growing out of, or resulting from the work described, including the cost of labor, material, equipment, investigations, engineering, legal work, superintendence, administration, overhead, rights of way, property, and damages of all kinds, and also including expenditures made for any of said above-mentioned purposes incurred prior to the date of this contract. The determination of what costs are properly chargeable hereunder, and the amount thereof, shall be conclusively made by the Secretary.

Cost of Operation and Maintenance to be Paid in Advance

19. For the year in which the first general repayment obligation instalment becomes due, as provided in Article 11 (c) above, and for each year thereafter, the District will pay to the United States in advance, in the manner hereinafter provided, its share of the operation and maintenance costs of Anderson Ranch Reservoir. Payment shall be made on the basis of annual estimates made by the Secretary. Such annual estimates, hereinafter referred to as the operation and maintenance charge notice, shall contain a statement of the estimated cost to be incurred during the calendar year covered by said notice for the

operation and maintenance of Anderson Ranch Reservoir, a statement of the part of said estimated costs allocated to the storage of water for irrigation, and the District's share thereof. The District's share shall be six and twelve hundredths per cent (6.12%) of the part of said estimated costs allocated by the Secretary to the storage of water for irrigation.

Such operation and maintenance charge notice shall be given to the District and to the Board of Control of the Arrowrock Division, Boise Project, on or before April 1 of the calendar year covered by said notice. The District agrees to pay its share of the estimated cost of operation and maintenance allocated to the storage of water for irrigation as set out in said notice on or before May 1 of the year in which said notice is given. Whenever in the opinion of the Secretary, funds so advanced will not be adequate to meet the District's share of costs of operating and maintaining Anderson Ranch Reservoir, he may give to the District and to the Board of Control a supplemental operation and maintenance charge notice stating therein the amount of the District's share, determined in the manner above provided, of the additional amount required for such operation and maintenance. The District shall pay its share of such additional amount, as set forth in said supplemental notice, on or before the due date fixed by the Secretary in said notice. If funds advanced by the District under this Article exceed the District's share of the actual cost and maintenance for the year for which advanced, as determined conclusively by the Secretary, the excess will be credited to operation and maintenance charges due from the district subsequent to the determination of such excess.

There shall be included in the operation and maintenance costs covered by the provisions of this Article an annual equitable charge, as determined by the Secretary, to cover general expenses and the cost of bookkeeping, accounting, clerical and legal work of the Bureau of Reclamation in connection with the accounts and collections for storage water from Anderson Ranch Reservoir.

Any expense incurred in running or protecting the Anderson Ranch Reservoir water in the channel of Boise River or the South Fork thereof or in diverting the same into the District's canals shall be considered a part of the cost of operation and maintenance of the Anderson Ranch Reservoir and charged accordingly in like manner as other operation and maintenance expenses in connection with said reservoir.

Water Rental Before Commencement of Construction Cost Repayment

20. Prior to the year in which the first general repayment obligation instalment provided for in Article 11 (c) accrues, storage water, if available, may be released for the use of the District only upon advance payment by the District to the United States of a charge per annum per acre-foot, or other charge, to be fixed by the Secretary each year and to be paid in advance of delivery of water. After the expiration of the water rental period, if any, any such charges collected and which the Secretary determines to be in excess of the cost of operation and maintenance, during the period, allocated by the Secretary to the District shall be credited to the general repayment obligation of the District under this contract in the manner determined by the Secretary.

Release of Water in Case of Default

21. No water from the Anderson Ranch Reservoir shall be delivered to or for the District if the District shall be in arrears in the advance payment of the operation and maintenance charges provided for in Article 19 or in arrears in the payment of any other operation and maintenance charges due to the United States, or more than twelve (12) months in arrears in the payment, as required by the terms of this contract, of the general repayment obligation instalments provided for in Article 11 of this contract, or more than twelve months in arrears in the payment of any other construction charge instalments due to the United States. The District agrees that it will refuse to deliver water to lands or parties which are in arrears in the advance payment of operation and maintenance charges due from said lands or parties to the United States or to the District, or to lands or parties who are in arrears for more than twelve months in the payment of the amounts due from said lands or parties to the United States or to the District for the general repayment obligation instalments due from the District to the United States under this or any other contract. The provisions of this Article are not exclusive and shall not in any manner prevent the United States from exercising any other remedy given by this contract or by law to enforce the collection of any payments due under the terms of this contract.

Penalty for Delinquent Payments

22. In the event that any payment provided for in this contract is not made on or before the date that such payment is due and payable, there shall be added to the amount unpaid a penalty of one-half of one

per cent (1/2%) on the day following the due date, and there shall be added a like penalty of one-half on one per cent of said unpaid amount on the first day of each calendar month thereafter so long as such default shall continue.

Title to Reservoir in the United States

23. Pursuant to the provisions of section 6 of the Act of June 17, 1902 (32 Stat. 388), title to the Anderson Ranch Reservoir shall remain in the United States until otherwise provided by Congress.

Power Resources to Remain Perpetually in the United States

24. The rights and resources which may be used or useful for the development of power, and any plant or plants and appurtenant structures and facilities which may be now or hereafter constructed by or under the authority of the United States which may be used or useful for the development of hydroelectric power, are hereby reserved to and shall be and remain in the exclusive control, possession and ownership of the United States: Provided, That no costs, as determined by the Secretary and which are in his opinion, attributable solely to power development, shall be taken into account in determining the District's construction cost obligation under this contract. All revenues, including miscellaneous revenues from or incident to the establishment or use of power plants or appurtenant structures and facilities, and from the use, sale or other disposal of power in any form, shall be and remain the property of the United States and shall be disposed of as provided in the Interior Department Appropriation Act, 1939, (Act of May 9, 1938, 52 Stat. 291, 322).

Operation and Maintenance of Works by the United States

25. The works constructed by the United States under the provisions of Article 9 above will be operated and maintained by the United States as a part of the reserved works of the Arrowrock Division of the Boise Project in the same manner as that provided in the Government-District contract, but the District's share of the cost of operation and maintenance of said works shall be paid by the District as provided in Article 19 above.

Economical Use of Water

26. (a) It is understood and agreed that if Anderson Ranch Reservoir is to be effective in reducing water shortages in dry cycles, it is essential that the District take every reasonable measure to effect economical and efficient use of water by every water user within the District; and the District agrees to take such measures. It is further understood and agreed that whenever wasteful, inefficient or uneconomical use of water is being made by a water user within the District, the District with the advice and cooperation of the Bureau of Reclamation will take such action as may be necessary to correct such wasteful, inefficient, or uneconomic use of water.

(b) The District agrees to distribute storage water made available to the District under the provisions of this contract and to use the same only upon lands within the District, upon like terms and conditions as provided for the use and distribution of storage water made available to the District under the provisions of the Government-District Contract.

District to Use All Powers to Collect Charges

27. The District agrees it will cause to be levied and collected all necessary assessments, and will use all the powers and resources of the District, including the taxing power of the District, and the power to withhold delivery of water, to pay to the United States all charges provided in this contract in full on or before the day that the same become due.

Shortage of Water

28. On account of drought, inaccuracy of distribution, or other causes, it is expected there will occur at times a shortage in the quantity of storage water which normally can be made available from Anderson Ranch Reservoir, and in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damages, direct or indirect, arising from any such shortage; and the payments to the United States provided for herein shall not be reduced because of any such shortage or damage.

Losses in Running Stored Water to be Deducted

29. A pro rata share of such losses, if any, as may be incurred in running the Anderson Ranch Reservoir stored water from the reservoir to the head of the Phyllis Canal will be charged to the District.

Contract to be Authorized by Electors and Confirmed by Court

30. The District agrees that, upon the execution of this contract, it will proceed promptly to secure the authorization of this contract by the electors of said District, and will secure a decree of the proper

court of the State of Idaho approving and confirming this contract and decreeing and adjudging the same to be a lawful, valid and binding general obligation of the District, and decreeing the same to be lawful and valid, and promptly will apportion the benefits of this contract to the lands of the District and will secure a confirmation court decree confirming such apportionment as provided for in the Idaho statutes. The District shall furnish certified copies of such decrees to the Secretary. In the event that in the opinion of the Secretary satisfactory confirmatory decrees are not promptly secured as herein provided, the Secretary may terminate this contract.

Waste Water, Seepage, and Return Flow Water Not Abandoned and Right Reserved to Recapture the Same

31. It is agreed and understood that the United States does not abandon or relinquish any of the waste, seepage or return flow water resulting from the use, application or conveyance of the said Anderson Ranch Reservoir water, but that the same is reserved and intended to be retained for the benefit of the Boise Project.

Assignment of Contract

32. No assignment or transfer of this contract, or any part hereof, or interest therein, shall be valid until approved by the Secretary. All rights for breach of this contract are reserved to The United States as provided in Section 3737 of the Revised Statutes of the United States.

Secretary the Arbiter — Secretary's Acts, Decisions and Determinations Conclusive

33. In the event of disputes between the parties hereto arising out of this contract involving questions of fact, and in so far as the provisions hereof require a determination of fact to be made, the Secretary is hereby designated as the arbiter of such questions and as the one required to make such determination of facts; and his decision therein shall be conclusive and binding on the parties hereto. In all acts, matters and determinations provided in this contract to be done, determined or decided by the Secretary or by the United States, it is agreed that the acts, decisions, findings and determinations by the Secretary shall be final and conclusive and shall be accepted as final and conclusive by all the parties to this contract and by all persons claiming any rights under or by virtue of this contract or in any wise based upon or arising out of this contract or any act or proceeding carried on thereunder.

Changes in Organization of District

34. While this contract is in effect no change will be made in the District, either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the Secretary's written assent thereto.

Rules and Regulations

35. The Secretary reserves the right, so far as the purport thereof may be consistent with the provisions of this contract, to make rules and regulations and to add to and modify them, as may be deemed proper and

necessary to carry out this contract and to supply necessary details of its administration, and, by suitable rules and regulations, to provide for the administration of the Anderson Ranch Reservoir and the water supply thereof as to any details of such administration not expressly covered by the terms of this contract; and the District agrees to observe such rules and regulations.

Representative of Secretary

36. It is agreed and understood that where this contract requires action by the Secretary, said action may be taken for and on behalf of the Secretary by his representative duly authorized in writing by the Secretary. Written notice of any such authority shall be mailed to the District within one week from the date of such authorization.

Obligation to Proceed Contingent Upon the Execution of Contracts in Form Satisfactory to the Secretary Covering the Full Amount Allocated to Irrigation

37. The obligation of the United States to proceed with the construction provided for under the provisions of Article 9 hereof is contingent upon the execution and confirmation of contracts in form satisfactory to the Secretary providing for the repayment to the United States of the full proportionate part of the cost of the Anderson Ranch Reservoir allocated to irrigation.

Substitution of Payette or Salmon River Water

38. It is agreed that in lieu of the water which the District is entitled to receive from the Boise River and its tributaries and the reservoirs thereon, or any part of such water, the United States, at the option of the Secretary, shall have the right to substitute an

equal amount of water from the Payette River or the Salmon River, or in part from the Payette and in part from the Salmon, and in the event of such substitution the Secretary, upon the completion of the necessary tunnels and other works to such extent as may be necessary to convey such Payette River or Salmon River water to the Boise River immediately above the government diversion dam, for the Arrowrock Division of the Boise Project, will make, by appropriate credits, such readjustment, if any, in the charges against the District as he shall then find to be equitable in view of the changed conditions then applicable to the water supply furnished for the District, but such readjustment, if any, shall not increase the financial obligations of the District under this contract nor reduce the amount of water which the District is entitled to receive under this contract.

Rights to Include Obligations in Contract Under Reclamation Project Act of 1939

39. In the event that the District enters into an amendatory contract under the provisions of section 4 of the Reclamation Project Act of 1939 (53 Stat. 1187) for the purpose of securing the benefits of said section of said act, the right is reserved to the District to have included in such amendatory contract the construction charge obligations of the District under this contract, and in that event the then unaccrued portion of the charges for the costs incurred in the Arrowrock repairs shall be treated as part of the Arrowrock dam construction charges, as authorized by Act of April 22, 1940 (54 Stat. 155).

Contingent Upon Appropriation or Allotment of Funds

40. The expenditure of any money or the performance of any work by the United States herein provided for which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of Congress so to appropriate funds, or the failure of an allotment of funds shall not relieve the District from any obligations under this contract and no liability shall accrue to the United States in case such funds are not so appropriated or allotted.

Officials Not to Benefit

41. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Former Contracts Remain in Effect

42. All provisions to the Government-District Contract, to the extent that they are not inconsistent with the terms and provisions of this contract, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

UNITED STATES OF AMERICA

By Oscar L Chapman
Acting Secretary of the Interior

PIONEER IRRIGATION DISTRICT

By J. O. Baum
President

(SEAL)

Attest:

Fred L. Evans
Secretary

OFFICE OF PIONEER IRRIGATION DISTRICT

Caldwell, Idaho November 1, 1943

The Board met at two o'clock P. M., November 1, 1943, pursuant to adjournment.

Present: J. O. Baum, President, Monroe Dille and C. W. Shryack, Directors, and Fred L. Evans, Secretary. The Board proceeded to canvass the returns of the special election held in the District on October 26, 1943. The canvass showed the results as follows:

PRECINCT NO. 1 -

Total votes cast: One hundred fifty-eight (158)
Of said number 158 were "Contract Yes"
and no vote was "Contract No."

PRECINCT NO. 2

Total votes cast: Twenty-one (21)
Of said number 20 were "Contract Yes"
And one was "Contract No".

PRECINCT NO. 3

Total votes cast: One hundred forty-five (145)
Of said number 145 were "Contract Yes"
One ballot in said precinct was designated as blank in the returns.

Whereupon this Board finds that the total number of votes cast were three hundred twenty-four (324) and of said number three hundred twenty-three (323) were "Contract Yes" and one was "Contract No".

The following resolution was presented and unanimously adopted:

"WHEREAS, that at said special election held on the 26th day of October, 1943, in the Pioneer Irrigation District, there were 324 votes cast, of which 323 votes were in favor of the execution of said contract and 1 vote cast was against the execution

thereof.

"BE IT THEREFORE RESOLVED by the Board of Directors of this District and the Board of Directors hereby declare that at the special election held in said District on October 26th, 1943, that more than two-thirds of the votes cast being in favor of the execution of said contract that the execution thereof has been authorized by the electors of this district voting at said special election.

"BE IT FURTHER RESOLVED, that J. O. Baum, President of the Board of Directors, is authorized and directed to execute the said contract for and on behalf of this board and the district, and the Secretary, Fred L. Evans, to attest the same and affix the seal of the district thereto."

There being no further business the Board adjourned until ten o'clock A.M., November 2, 1943.

J. O. Baum
President.

Attest:

Fred L. Evans
Seal

STATE OF IDAHO)
COUNTY OF CANYON) ss.

I, FRED L. EVANS, the duly appointed, qualified and acting Secretary of the Board of Directors of Pioneer Irrigation District, do hereby certify that the above and foregoing is a true, full and correct copy of the minutes of the Board of Directors of said District at a meeting held on the 1st day of November, 1943, at which meeting the said Board canvassed the returns of the special election held on October 26, 1943.

WITNESS My hand and seal of the District this 2nd day of November.

Fred L. Evans
Secretary.

WAR DEPARTMENT
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON

May 13, 1946

CE SPEWF

The Chairman
Committee on Commerce
United States Senate
Washington, D. C.

My dear Mr. Chairman:

1. The Committee on Commerce of the United States Senate, by resolution adopted October 12, 1943, requested the Board of Engineers for Rivers and Harbors to review the report on the Boise River, Idaho, contained in House Document Numbered 957, Seventy-sixth Congress, with a view to determining whether or not additional improvements in the interest of flood control are advisable at the present time. Under date of November 10, 1943, the Committee on Flood Control of the House of Representatives requested the Board of Engineers for Rivers and Harbors to review the report on the Boise River and tributaries in Idaho, published as House Document No. 957, Seventy-sixth Congress, Third Session, with a view to determining whether improvements for flood control on the Boise River and tributaries are advisable at this time. I inclose the report of the Board in response thereto.

2. After full consideration of the reports secured from the district and division engineers, the Board recommends that Boise River, Idaho, be further improved by construction, operation and maintenance, by the War Department under the direction of the Secretary of War and supervision of the Chief of Engineers, of Lucky Peck Reservoir with gross capacity of 303,000 acre-feet primarily for flood control, in accordance with the plans of the district engineer and the comments herein and with such changes as in the discretion of the Secretary of War and the Chief of Engineers may be advisable, at an estimated cost of $10,584,000 for construction and $25,000 annually for operation and maintenance.

3. After due consideration of these reports, I concur in the views and recommendations of the Board.

Very truly yours,

R. A. Wheeler
Lieutenant General
Chief of Engineers

EXHIBIT G

Authorizing Document on Lucky Peak Project

NOV 2 1985

Subject: Review of Report on Boise River, Idaho (Basic: 2 Jan. 1946)

800.922(Boise River, Id.)
Port Dist. PADGB 1st Ind.

Office, Division Engineer, Pac. Divn., San Francisco, Calif., 4 Feb. 1946.

To: The Chief of Engineers, U. S. Army, WASHINGTON, D. C.

1. Basic control of floods in the Boise River valley is accomplished by locally owned levees and through incidental benefits obtained during the storing of irrigation water in Arrowrock Reservoir. Federal flood control improvements have been authorized to supplement that control. These improvements consist of Anderson Ranch Reservoir, now under construction, where 212,500 acre-feet, or 42.5% of the gross storage capacity, has been allotted to flood control; and changes to increase the discharge capacity of the outlet works at Arrowrock Dam which will provide increased control of floods incidental to storing water there for irrigation purposes. Collectively, the existing and authorized improvements for the control of floods are inadequate, because they furnish protection against only the smaller and more frequent floods. With those improvements only and with economic developments as existing in 1944, annual damages are estimated to average approximately $600,000.

2. Additional protection against floods is economically feasible only by scientific and system operation of Arrowrock Reservoir, Anderson Ranch Reservoir, and the proposed Lucky Peak Reservoir in the combined interests of flood control, irrigation and power. Such operation would be accomplished through the efficient forecasting of runoff from data obtained from an adequate network of meteorological and hydrological stations. Interest in the operation of those reservoirs as a system is threefold, since local water users, the Bureau of Reclamation, and the Corps of Engineers are vitally concerned in them.

3. The District Engineer's recommended plan of improvement would provide a large measure of additional protection from floods, and more dependable water supply for irrigation and power.

4. The average annual flood control benefits creditable to the recommended plan have been conservatively estimated at $444,810, and the irrigation, power, and recreation benefits at $96,900, $89,200 and

PADGB-295-46

District Engineer's report (Portland District) 2nd Ind 9 January 1946.

and $2,000, respectively. The annual tangible benefits total $632,910, which exceeds the estimated annual cost of the plan by about 25 per cent. Without the installation and operation of power facilities at Arrowrock Dam, which is to await the demand for power, and without the saving in the cost of pumping water from Lucky Peak Reservoir for use in the proposed Mountain Home irrigation project, which conceivably might not be realized, the average annual tangible benefits would be $458,310, or about equal to the estimated annual cost, $460,600. The ratio of benefits to costs is practically 1 to 1 without consideration of the benefits to be derived from future power, to any intangible benefits, or to any savings in future pumping costs for irrigation. The recommended plan, therefore, is fully justified.

5. I concur in the conclusions and recommendations of the District Engineer.

S. E. MORTNER
Colonel, Corps of Engineers
Acting Division Engineer.

PADGE-295-46

WAR DEPARTMENT
THE BOARD OF ENGINEERS FOR RIVERS AND HARBORS
WASHINGTON

April 30, 1946.

824.02(Boise River, Idaho)

Subject: Boise River, Idaho.

To: The Chief of Engineers, U. S. Army.

1. This report is in response to the following resolutions adopted October 12, 1943, and November 10, 1943, respectively:

"Resolved by the Committee on Commerce of the United States Senate, That the Board of Engineers for Rivers and Harbors, created under Section 3 of the River and Harbor Act, approved June 13, 1902, be, and is hereby, requested to review the report on the Boise River, Idaho, contained in House Document Numbered 957, Seventy-six Congress, with a view to determining whether or not additional improvements in the interest of flood control are advisable at the present time."

"RESOLVED, BY THE COMMITTEE ON FLOOD CONTROL, HOUSE OF REPRESENTATIVES, That the Board of Engineers for Rivers and Harbors created under Section 3 of the River and Harbor Act approved June 13, 1902, be, and is hereby requested to review the report on the Boise River and tributaries in Idaho, published as House Document No. 957, Seventy-six Congress, Third Session, with a view to determining whether improvements for flood control on the Boise River and tributaries are advisable at this time."

2. Boise River, which drains 4,134 square miles in southwestern Idaho, is formed by the junction of its Middle and North Forks, flows west for 95 miles and empties into Snake River near Parma, Idaho. Other large tributaries are its South Fork and Mores Creek which join the river about 80 and 70 miles above the mouth, respectively. The upper river and these tributaries flow in deep canyons through mountains and their foothills. About 60 miles above its mouth, Boise River leaves the canyon section and meanders to Snake River through the fertile alluvial plain of Boise Valley. This valley contains approximately 120 square miles divided into two parts by a short narrow section in the vicinity of Caldwell about 25 miles above the river mouth. Bordering the valley and 50 to 100 feet above its floor are benchlands which extend laterally for many miles. The average annual precipitation ranges from less than 8 inches at the river mouth to over 50 inches in the mountains drained by the headwaters where at least 75 percent is snowfall. The population of the watershed,

about 100,000, is concentrated in the western part of the basin. Boise, Idaho, the state capital and the largest city in the watershed, has a population of 26,130 and is located on the river a short distance below the head of Boise Valley. Principal natural resources of the area are timber, grazing and irrigable farm lands and mineral deposits.

3. At present about 342,000 acres of the basin are irrigated. Included is a considerable area northwest of Caldwell supplied with water by canal from Payette River which drains the adjoining watershed to the north. In addition the irrigated lands are served by 1,926 miles of other main and lateral canals. Water for irrigation is conserved by six completed reservoirs in the basin. However, four of these have a combined storage of only 42,500 acre-feet. Deer Flat Reservoir, located off the river south of Caldwell, has 177,000 acre-feet of storage and is supplied with water principally through Main South Side Canal by diversion from Boise River at the Diversion Dam 62 miles above the river mouth. Arrowrock Reservoir constructed by the Bureau of Reclamation on Boise River about 22 miles above Boise has a capacity of 286,500 acre-feet. The Boise Project Board of Control owns the Main South Side Canal and several others and contracts for the waters stored in Arrowrock Reservoir. Although all the storage is used for irrigation, some incidental flood control is obtained during the filling period. Penstocks for possible use in the development of hydroelectric power were included in Arrowrock Dam when it was constructed, but a power plant has not been provided for the reported reasons that the power plant discharge would not fit the irrigation demand for water and a reservoir below to suitably reregulate the power flows is not available. With these improvements the irrigated lands have experienced a shortage of water during about 60 percent of the seasons. Hydroelectric power is developed by the Idaho Power Company at Barber Dam about 4 miles above Boise.

4. To supply additional water for irrigation, provide storage for flood control and develop hydroelectric power, the Bureau of Reclamation has under construction Anderson Ranch Reservoir on the South Fork of Boise River about 63 miles above Boise. This reservoir will have a capacity of 500,000 acre-feet and provision will be made for the generation of 30,000 kilowatts of hydroelectric power. The storage has been allocated 212,500 acre-feet for flood control, an equal amount for irrigation, 45,000 acre-feet for power and 30,000 acre-feet for silt. In operation of the flood control storage on the basis of flood forecasts from snow surveys largely financed by local interests, increased storage for irrigation will be realized. The project contemplates coordinated operation of the Arrowrock and Anderson Ranch Reservoirs. The district engineer finds that use of the storage to maximum advantage, including flood control, would require drawdown of the reservoirs early in the year and refilling on the basis of runoff forecasts. Irrigationists oppose this method of operation as they fear that it might jeopardize the storage of water for

irrigation. Hence, no definite agreement has been made for the use of Arrowrock storage for flood control. The project provides for increasing the outlet capacity of Arrowrock Dam in the interest of more efficient joint operation.

5. The basin contains good unirrigated land in the Willow Creek area northeast of Caldwell. Also south of Boise, partially within the Boise River basin and partially outside the basin draining directly to Snake River, is a large tract of irrigable land which the Bureau of Reclamation refers to as the Mountain Home Area. The Bureau has developed a plan for the Mountain Home project to irrigate these lands which provides among other works the construction of a reservoir in the Payette River basin; an aqueduct to convey water from this reservoir to the Boise River Diversion Dam; pumping plants and a canal system to deliver water from the Diversion Dam to the Mountain Home Area; and a diversion dam on the South Fork of Boise River about 5 miles below Anderson Ranch Reservoir with a tunnel leading therefrom to the Mountain Home Area. Under this tentative plan, the Bureau contemplates that water imported from the Payette Basin will be exchanged for the Boise River water from Anderson Ranch Reservoir which will be used in the Mountain Home Area. The district engineer indicates that some of the imported water is expected to be used for gravity irrigation of land in the Willow Creek area and that some will have to be pumped through a lift of 285 feet to serve the Mountain Home Area. His studies indicate that under this plan, occasional shortage of irrigation water will occur amounting to an average of 11,500 acre-feet annually.

6. Commencing at an early date local interests have constructed various levees and bank protective works in the basin. While the levees have materially decreased the area subject to inundation by minor floods they do not afford protection from larger floods. During the period 1937-1939, the Work Projects Administration spent about $231,600 plus a local contribution of $20,700 in constructing embankments along Boise River to prevent overflow through side channels and inundation of certain low areas. Subsequent to the flood of 1943 about $450,000 of Federal emergency funds have been spent in the repair of the existing minor flood control works.

7. Boise River is subject to frequent destructive floods which occur in spring and early summer as a result of rapid melting of snow in the headwater area and are characterized by a duration of two or three months above bankfull stage. Since 1865, inclusive, 27 major floods and many smaller floods have been experienced in Boise Valley. Natural peak discharges of the major floods at the Diversion Dam, as estimated, or obtained from records since 1895, range from 16,550 cubic feet per second to 50,000 cubic feet per second for the flood of May 1872. The largest recent flood was that of April 1943 which had an actual peak discharge at

the Diversion Dam, as reduced by the effects of Arrowrock Reservoir and irrigation canal diversions, of 20,000 cubic feet per second and an estimated natural peak discharge of 25,040 cubic feet per second. The safe channel capacity is 6,500 cubic feet per second. Lower flows result in some damage from stream bed movement and siltation of irrigation canals. With Arrowrock and Anderson Ranch Reservoirs in operation and including irrigation diversions, studies of the district engineer indicate that the safe channel capacity discharge or greater can be expected with an average frequency of once in two years and a flow of 50,000 cubic feet per second once in 100 years. The flood of 1943 inundated about 29,000 acres mostly agricultural land but some waste and including a considerable amount of urban and suburban property. A flood with peak discharge of 55,000 cubic feet per second would inundate about 58,400 acres including 1,780 acres of urban and suburban property. Although urban areas are inundated and there is considerable damage to highways, railroads and other utilities, the principal flood damage is agricultural. This consists of loss of crops, damage to farm lands and property in inundated areas and agricultural losses in irrigated areas outside the flood plain due to flood effects on irrigation works which render them incapable of use for the delivery of water. Taking into account the protection afforded by previously constructed levees, the diversion of water through the irrigation canals and the reduction of flood flows by Arrowrock and Anderson Ranch Reservoirs after construction of the latter is completed, the district engineer estimates the average annual direct and indirect flood damages in the basin at $593,660 assuming economic developments in the area as they existed in 1944.

8. Local interests desire construction of additional reservoirs to regulate flows in the interest of flood control and irrigation; additional channel improvement along the full length of the river in the alluvial plain section to accommodate larger discharges without damage to adjacent property; development of power for pumping irrigation water; and the control of silt by reservoirs and watershed improvements.

9. The district engineer finds that Arrowrock and Anderson Ranch Reservoirs cannot be augmented economically by additional channel and levee improvements to correct the flood damage problem. He presents a plan in the interest of flood control, irrigation and hydroelectric power development which provides for construction of Lucky Peak Reservoir on Boise River with dam site about 10 miles above Boise. The proposed dam is an earth fill structure 251 feet high above low water and would have above it a drainage area of 2,650 square miles which includes 430 square miles below Arrowrock Reservoir. Lucky Peak Reservoir would have 28,0[illegible] acre-feet of dead storage and 280,000 acre-feet of active storage and the improvement would include an access road to the reservoir and construction of an adjacent park for recreation. The plan also provides for construction of a hydroelectric power plant with 13,000 kilowatt capacity at

Arrowrock Dam and minor alterations in the drainage system at that dam; installation and operation of a network of climatological stations for forecasting seasonal runoff; and for operation as a system, in accordance with runoff forecasts, of the storage space in Anderson Ranch, Arrowrock and Lucky Peak Reservoirs in the combined interest of flood control, irrigation and power.

10. The district engineer finds that with this added reservoir and use of an adequate factor of safety in forecasting runoff, additional storage space in Anderson Ranch and Arrowrock Reservoirs can be used for flood control when needed without endangering the irrigation water supply and that additional water for irrigation would be made available thereby. He proposes to furnish this supplemental water to the irrigationists who use Arrowrock Reservoir water as a recompense for the proposed flood control use of that reservoir. Maintenance of the proposed dead storage in Lucky Peak Reservoir would reduce the pumping head for supplying certain irrigation water to the Mountain Home Area by about 80 feet. This reservoir by serving as a flow reregulator would remove the past objection to development of hydroelectric power at Arrowrock Dam. The district engineer estimates the average salable energy output of the proposed Arrowrock power plant at 38,150,000 kilowatt-hours annually. With the three reservoirs operated according to his plan and repetition of the flood cycle for the period 1865 to 1945, inclusive, he finds that in only 8 of the 79 years would the modified flood discharge at the Diversion Dam have exceeded 6,500 cubic feet per second, that the peak discharge of the maximum known flood, 50,000 cubic feet per second, would have been reduced to 28,000 cubic feet per second and that a design flood with peak flow of 55,000 cubic feet per second could be reduced to a peak of 40,000 cubic feet per second.

11. The first cost of the plan is estimated by the district engineer at $10,634,000 for Lucky Peak Reservoir including $50,000 for recreational facilities; $885,000 for the drainage changes, power plant and auxiliaries at Arrowrock Dam; and $25,000 for the hydrometeorological network; a total of $11,544,000. He estimates the annual cost of operation and maintenance for Lucky Peak Reservoir at $22,000, for the meteorological network at $3,000 and for the power plant at $10,000. The estimated annual cost for the complete plan is $507,630 of which $47,030 is for the power features and $460,600 for the remainder. Average annual tangible benefits as evaluated by the district engineer are as follows:

Reduction of flood losses	$426,870
Increased land use	17,940
Supplemental water for irrigation	11,500
Reduction of pumping lift for contemplated Mountain Home project	85,400
Recreation	2,000
Power value	89,200
Total	$632,910

This indicates a ratio of annual costs to benefits of 1.0 to 1.25 neglecting intangible benefits such as fish and wildlife values and prevention of probable loss of life in major floods.

12. The district engineer recommends that Lucky Peak Reservoir with gross capacity of 306,000 acre-feet to be used primarily for flood control be authorized for construction and operation by the War Department; that the described power plant at Arrowrock Dam be authorized for construction and operation by the Bureau of Reclamation, this facility to wait until justified by the demand for power; that the War Department be authorized to install and operate the flood forecasting network of climatological and hydrological stations; and that initiation of the proposed construction be conditioned upon obtaining satisfactory assurances from interested water users that, in consideration of the irrigation benefits to be derived from the additional storage in Lucky Peak Reservoir, they will agree to use of Anderson Ranch and Arrowrock Reservoirs for flood control as proposed in the present report of the district engineer.

13. The division engineer notes that without the power facilities, which as proposed by the district engineer would not be constructed until justified by the demand for power, and without the benefits for saving in pumping cost which are concerned with the contemplated but uncertain Mountain Home irrigation plan, the estimated annual costs would be $460,600 and the estimated annual benefits $458,310, an economic ratio of about 1 to 1. In his opinion the proposed plan is economically justified and he concurs in the recommendation of the district engineer.

14. Local interests were advised of the nature of the report of the division engineer and afforded an opportunity to present additional information to the Board. No communications have been received.

Views and Recommendations of the Board of Engineers for Rivers and Harbors.

15. The Board concurs in the findings of the reporting officers that further improvement of Boise River, Idaho, by construction of Lucky Peak Reservoir is economically advisable.

16. The plan of the district engineer contemplates joint use of the storage in Lucky Peak, Arrowrock and Anderson Ranch Reservoirs and his recommendation makes initiation of construction of Lucky Peak Reservoir contingent upon securing certain prior agreements from local interests. In the opinion of the Board, the plan should be flexible in regard to combined operation of the reservoirs in order that the use of storage may at all times conform to changing conditions and best serve the varying needs of the locality. It also believes that construction should not be delayed for the time required to secure the contemplated agreements. Accordingly,

the Board proposes that accomplishment of the plan be initiated by construction of Lucky Peak Reservoir, for operation as a flood control facility, by the War Department under the direction of the Secretary of War and supervision of the Chief of Engineers, with the understanding that complete or partial joint use of the storage in the three reservoirs may be undertaken at such time as may be mutually agreed upon by the Secretary of War, the Secretary of the Interior and local interests concerned with flood control and the use of irrigation water. By initial use of the storage in Lucky Peak Reservoir, and the 212,500 acre-feet of flood control storage in Anderson Ranch Reservoir, for flood control, all floods of the magnitude of those which have occurred in the 46-year period, 1898 to 1943, inclusive, except that of 1943, could be reduced to the bankfull discharge of 6,500 cubic feet per second or less passing Diversion Dam and a flood such as that of 1943 could be reduced from a natural peak discharge of 25,040 cubic feet per second to a controlled peak of about 9,000 cubic feet per second. Thus during the interim between completion of Lucky Peak Reservoir and accomplishment of arrangements for combined use of all three reservoirs a substantial degree of flood control would be obtained. The interim period, would be terminated upon the consummation by the Bureau of Reclamation of its plans for irrigation of the Mountain Home Area and the conclusion of satisfactory agreements for combined operation of the three reservoirs to secure the much greater multiple-purpose benefits.

17. Lucky Peak Reservoir as a purely flood control facility including the flood forecasting network of climatological and hydrological stations is estimated to cost $10,684,000 for construction and $25,000 annually for maintenance and operation. The Board is of the opinion that the reservoir should be authorized for construction at this time and for operation initially for flood control with the understanding that changes in the method of operation will be made in the future when the Secretary of War, upon the advice of the Chief of Engineers, finds that such changes are in the best interest of flood control, irrigation and power development, and that they are agreeable to the Secretary of the Interior and to local interests concerned with flood control and the use of irrigation water. The annual cost for the project is estimated as $460,600. Benefits during the interim period when the reservoir would be operated primarily for flood control, are estimated as $392,930 annually, of which $379,430 is for flood control, $11,500 for supplemental irrigation, and $2,000 for recreation. When operated in combination with the other reservoirs for multiple purposes the benefits would be increased to $543,700, of which $444,800 would be for flood control, $97,900 for irrigation, and $2,000 for recreation. With intangible benefits taken into account, the ratio of cost to benefits would be approximately 1 to 0.9 during the early stages of operation and 1 to 1.2 during the later period.

18. Accordingly, the Board recommends that Boise River, Idaho, be further improved by construction, operation and maintenance, by the War

824.02(Boise River, Idaho)
Subject: Boise River, Idaho.

Department under the direction of the Secretary of War and supervision of the Chief of Engineers, of Lucky Peak Reservoir with gross capacity of 306,000 acre-feet primarily for flood control, in accordance with the plans of the district engineer and the comments herein and with such changes as in the discretion of the Secretary of War and the Chief of Engineers may be advisable, at an estimated cost of $10,684,000 for construction and $25,000 annually for operation and maintenance.

For the Board:

R. C. Crawford,
Brigadier General,
Senior Member.

Incls:
Review of survey report, 1/2/46,
Record of hearing,
8 tracings and
Letter of transmittal, 1/29/46.

Contract No. 14-06-W- 85

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Boise Project - Idaho

SUPPLEMENTAL CONTRACT
With
PIONEER IRRIGATION DISTRICT

THIS CONTRACT, made this 3d day of August 1954, pursuant to the Federal Reclamation Laws and the Act of July 20, 1946 (60 Stat. 650), between THE UNITED STATES OF AMERICA (hereinafter called the United States), acting through W. A. Dexheimer, Commissioner of Reclamation, for the Secretary of the Interior, and the Pioneer Irrigation District, (hereinafter called the District), the corporation organized and existing under the laws of the State of Idaho, and having its place of business at Caldwell, Idaho,

WITNESSETH, That:

2. WHEREAS, the United States, under the Federal Reclamation Laws, has heretofore constructed and is now operating Anderson Ranch and Arrowrock dams and reservoirs, Lake Lowell, and the related works of the Boise Federal Reclamation Project, and under the Act of July 20, 1946, is now constructing Lucky Peak Dam and Reservoir;

3. WHEREAS, the United States and the District have heretofore entered into the following contracts with respect to storage rights in

EXHIBIT H

Anderson Ranch and Arrowrock dams and reservoirs and Lake Lowell of the Boise Project:

Ilr-94 dated February 27, 1913
Ilr-94 dated June 15, 1915
Ilr-94 dated November 30, 1926
Ilr-1479 dated November 10, 1943

being collectively referred to hereinafter as the Government-District contracts; and

4. WHEREAS, the District, recognizing the benefits to accrue from a system-wide operation of Anderson Ranch, Arrowrock, and Lucky Peak dams in the interest, jointly, of flood control and irrigation and from the integrated operation of the Boise Project powerplants, including an attendant reduction in the amount of construction costs of Anderson Ranch Dam otherwise allocable to irrigation and the assignment of irrigation costs for return from power revenues, desires to cooperate with the United States and the various other water users organizations to permit such system-wide and integrated operations,

NOW, THEREFORE, in consideration of the mutual and dependent covenants hereinafter stated, it is hereby agreed between the parties hereto as follows:

Definitions

5. The following terms, wherever used in this contract, shall have the following respective meanings:

"Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplemental thereto.

"Storage season" shall mean, as to the reservoir system and Lake Lowell, the period beginning October 1 of one year and ending during the next year when no more water is available for storage therein.

"Flood control period" shall mean the period from January 1 through July 31 of each year beginning with the first full calendar year after this contract becomes effective.

"Reservoir system" shall mean Anderson Ranch, Arrowrock, and Lucky Peak dams and reservoirs.

Flood Control Operating Plan; Assent Thereto

6. (a) The United States shall operate the net total active capacity of the reservoir system, exclusive of the initial 5,000 acre-feet thereof heretofore reserved in Anderson Ranch Reservoir for power production, 1/ during the flood control period of each year jointly for irrigation and flood control storage in accordance with the operating plan as set forth in the agreement of November 20, 1953, between the departments of the Army and Interior, a copy of which is attached hereto as Exhibit A, as that plan may be implemented by rules and regulations issued under authority of law; and the District, so far as its storage rights as defined in

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1/ The net space so to be used under current (1954) estimates of total active capacity is 983,000 acre-feet.

the existing Government-District contracts are concerned, hereby assents to such plan in substitution for the flood control plan reflected in the contract of November 10, 1943 between the United States and the Pioneer Irrigation District.

(b) The various provisions of article 16 of the contract of November 10, 1943 (Symbol and No. Ilr-1479) relating to the use of capacity of Anderson Ranch Reservoir for flood control benefits, including in particular the provision that 45,000 acre-feet of Anderson Ranch and Arrowrock capacity be kept available for the control of flash floods, shall be inoperative while this contract remains in effect.

Guarantee

7. Beginning with the first full flood control period after the agreement set forth in Exhibit A has become operative, there shall be a determination for each storage season as of the end of that season

(a) of the amount of water to which the District would have been entitled under its storage rights in the reservoir system and Lake Lowell under its Government-District contracts had Anderson Ranch, Arrowrock, and Lake Lowell reservoirs been operated in accordance with those contracts except for the provisions thereof relating to the use of capacity for flood control benefits and without regard to the flood control plan referred to in article 6, and

(b) of the amount of water which is creditable to the storage rights of the District under its Government-District contracts taking account of actual operations under the flood control operating plan in accordance with this supplemental contract.

If the amount under (a) exceeds that under (b), there shall be credited and made available to the District, out of the water accrued to storage rights in Lucky Peak Reservoir, an amount of stored water equal to that difference. Determinations under this article shall be by a committee of three comprising the State Watermaster of District No. 12-A, a representative of the water users to be selected by the Boise Project Board of Control, and the officer of the United States in charge of the Boise Project; and, so far as practicable, shall be made within thirty (30) days of the end of the storage season involved.

Effective Date of Contract

8. (a) This supplemental contract shall become effective only when an allocation report for the Boise Project, supplemental to the report and finding of June 25, 1940 covering Anderson Ranch Dam (H. Doc. No. 916, 71st Cong.) reflecting the flood control benefits based on the operating plan set forth in Exhibit A has been presented to the Congress and become operative and shall remain effective while the provisions of article 7 are operative and water accruing to Lucky Peak storage rights required to meet deficiencies in fill by reason of the flood control operating plan is made available as therein provided.

(b) The District may, at its option, terminate this contract within five (5) years from December 31 of the year in which the Army-Interior agreement set out in Exhibit A first becomes effective. Such termination shall be effected by the giving of written notice by the District's board of directors to the secretaries of the Army and Interior and the State Reclamation Engineer not less than six (6) months in advance of the termination date. Upon termination, the rights of the District under its Government-District contracts shall be determined without regard to the provisions of this supplemental contract, but such termination shall not preclude the continued functioning of the operating plan set forth in Exhibit A pursuant to contractual arrangements with other entities having storage rights in the reservoir system.

Status of Existing Contracts

9. This contract is amendatory of and supplementary to the existing Government-District contracts and, except to the extent that the provisions of such contracts are specifically suspended by this contract, the existing contracts shall remain unaffected by this contract.

Contingent on Appropriations or Allotment of Funds

10. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by the Congress or the allotment of Federal funds, shall be contingent on such appropriations or allotments being made. The failure of the Congress to appropriate funds, or the failure of any allotment of funds shall not, however, relieve the District from any obligation heretofore

accrued under this contract, nor give the District the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case such funds are not so appropriated or allotted.

Successors and Assigns Obligated; Assignments Prohibited

11. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract, or any part thereof, or interest therein, shall be valid until approved by the Secretary.

Officials Not to Benefit

12. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA DEC 7 - 1954

By H A Dieheimer
For the Secretary of the Interior

(SEAL)

Attest:
N. H. Moore
Secretary

PIONEER IRRIGATION DISTRICT

By Wayne Hanks
President

STATE OF IDAHO)
: ss.
County of Canyon)

On this 3rd day of August 19 54 before me personally appeared WAYNE NAUGLE and W. W. MOORE to me known to be, respectively, the President and the Secretary of the Board of Directors of the Pioneer Irrigation District, the corporation that executed the within and foregoing instrument. They acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that they were authorized to execute said instrument and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I set my hand and affix my official seal the day and year first above written.

Peter J. Boyd
Notary Public in and for the
State of Idaho
Residing at Caldwell, Idaho

(SEAL)

My commission expires May 18, 1958

DISTRICT OF COLULBIA : ss,

I, Harold L. Byrd , a notary public in and for the District of Columbia, do hereby certify that W. A. Dexheimer Commissioner Bureau of Reclamation ~~Secretary of the Interior~~, who executed the foregoing contract with the Pioneer Irrigation District dated August 3, 1954 , personally appeared before me, the said W. A. Dexheimer being personally known to me as the person who executed the said contract on behalf of the United States of America, and acknowledged the same to be his act and deed.

Given under my hand and seal this 7th day of December, 1954

Harold L. Byrd
Notary Public in and for the
District of Columbia

(SEAL)

My commission expires May 14, 1957

MEMORANDUM OF AGREEMENT EXHIBIT A
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE DEPARTMENT OF THE INTERIOR
FOR
FLOOD CONTROL OPERATION OF BOISE RIVER RESERVOIRS, IDAHO

THIS MEMORANDUM OF AGREEMENT entered into this 20th day of November, 1953, by and between the Department of the Army, represented by Robert T. Stevens, SECRETARY OF THE ARMY, and the Department of the Interior, represented by Fred G. Aandahl, Assistant SECRETARY OF THE INTERIOR,

W I T N E S S E T H

WHEREAS, the Department of the Army, through the Corps of Engineers, is engaged in constructing the Lucky Peak Dam and Reservoir on the Boise River in the State of Idaho, under authority of the Act of July 24, 1946 (60 Stat. 641), which authorized construction of Lucky Peak Reservoir substantially in accordance with the recommendations of the Chief of Engineers in his report of May 13, 1946; and

WHEREAS, said report concurred in the views and recommendations of the Board of Engineers for Rivers and Harbors that the Lucky Peak Reservoir be constructed with the understanding that complete or partial joint use of the storage in the three-reservoir system, viz., Lucky Peak, Arrowrock, and Anderson Ranch Reservoirs, may be undertaken at such time as may be mutually agreed upon by the Secretary

of War (now Secretary of the Army), the Secretary of the Interior, and local interests concerned with flood control and the use of irrigation water; and

WHEREAS, said report concurred in the views and recommendations of the Board of Engineers for Rivers and Harbors that Lucky Peak Reservoir be authorized for construction with the understanding that changes in the method of operation will be made in the future when the Secretary of War (now Secretary of the Army), upon the advice of the Chief of Engineers, finds that such changes are in the best interest of flood control, irrigation, and power development, and that they are agreeable to the Secretary of the Interior and to the local interests concerned with flood control and the use of irrigation water; and

WHEREAS, said act provides that Lucky Peak Dam and Reservoir "shall be operated in such manner as not materially to interfere with the operation of said Arrowrock Reservoir"; and

WHEREAS, the Department of the Interior, through the Bureau of Reclamation, acting under the Federal Reclamation Laws (these being the Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof or supplemental thereto), has constructed and is operating Arrowrock Dam and Reservoir on the Boise River and Anderson Ranch Dam and Reservoir on the south fork of the Boise River, both upstream from the Lucky Peak Dam; and

WHEREAS, there are storage rights in Arrowrock, Anderson Ranch, and Lake Lowell Reservoirs by virtue of appropriations under the laws of Idaho and contracts between the United States, represented by the Department of the Interior, and various water users' organizations serving lands in the Boise Valley, and there are other existing rights in and to the use of waters of the Boise River, both stored and natural flow, which waters are in part diverted and distributed through the transferred works of the Boise Project being operated and maintained by the Boise Project Board of Control and in part by means of other works being operated and maintained by other water users' organizations; and

WHEREAS, certain of the rights above described are adjudicated rights, which are exercised under the supervision of the State of Idaho, represented by the watermaster of District No. 12-A, Boise River; and

WHEREAS, to comply with the above-quoted Congressional declaration of operational policy in regard to Lucky Peak and Arrowrock Dams, and to achieve the greatest multiple-purpose use of the combined total usable flood control and irrigation storage of 983,000 acre-feet of water in all three reservoirs, a coordinated plan of operation is necessary for this reservoir system on the Boise River, a river totally within the State of Idaho, together with Diversion Dam, the New York Canal headworks, and Lake Lowell; and

WHEREAS, it is recognized that the successful operation of this coordinated irrigation and flood control plan will call for the cooperation and assumption of responsibilities by the two Departments and the water users having storage rights in the reservoir system, and that there is need for a policy of mutual coordination, information, and assistance in its performance;

NOW, THEREFORE, for and in consideration of the premises and certain benefits and advantages accruing hereunder to affected local interests, it is hereby agreed as follows:

1

The hydrologic situation is shown on Plate 1, attached hereto and made a part of this agreement, which depicts the general location of the Lucky Peak, Arrowrock, and Anderson Ranch Reservoirs, herein referred to collectively as the reservoir system, Diversion Dam, the New York Canal headworks, and Lake Lowell.

2

The plan of operation hereinafter set forth is limited to the flood control operation phase of the respective general operating plans of the parties hereto and shall be used during the period commencing with the actual operation of Lucky Peak Reservoir.

3

To attain the maximum benefits from the reservoir system, the total capacity of 1,084,000 acre-feet will be utilized as follows:

a. 983,000 acre-feet (418,000 acre-feet in Anderson Ranch, 285,000 acre-feet in Arrowrock Reservoir, and

4

280,000 acre-feet in Lucky Peak Reservoir) will be operated primarily in the interests of irrigation and flood control and secondarily in the interests of power, as governed by forecasts of runoff. The allocation of flood control space is shown on Plate 2.

b. 5,000 acre-feet in Anderson Ranch Reservoir will be used exclusively for power production.

c. 96,000 acre-feet (70,000 acre-feet in Anderson Ranch and 26,000 acre-feet in Lucky Peak Reservoirs) will be reserved for dead storage and allocated exclusively to the maintenance of minimum power head, maintenance of permanent pools for the preservation and propagation of fish and wildlife and for silt control.

The above-designated 983,000 acre-feet or any part thereof in storage at the end of each flood season will be primarily considered as available for irrigation except as such amount must be reduced by evacuation requirements for flood control.

4

No reregulation of storage or annual exchange of storage as provided in this plan shall, however, deprive any entity of water accruing to it under existing rights in Arrowrock, Anderson Ranch, and Lake Lowell Reservoirs.

5

The Chief of Engineers, the Commissioner of Reclamation, and the watermaster, having agreed upon acceptable methods of

forecasting seasonal volumes of runoff for the Boise River above Diversion Dam, will periodically during the period from January 1 to June 30 of each year, determine the volume of runoff that may be expected in the drainage area tributary to the Boise River above Diversion Dam. Any differences in forecasted amounts shall be reconciled to arrive at a common forecast within 48 hours after basic data for forecasts are available. To facilitate forecasting of runoff, mutually satisfactory arrangements will be made among the Chief of Engineers, the Commissioner of Reclamation, and the State of Idaho, after consultation with the interested water users' organizations, to expand the existing hydrologic network and to establish and operate continuously a system for the efficient assembly, analysis, and exchange of the basic data.

6

Beginning with the first year this plan is put into operation, the system will be operated, through close collaboration with all agencies concerned on the basis of periodic sequential forecasted runoffs made during each year, as nearly as practicable in accordance with the following particular terms and provisions:

a. The storage space to be allocated to flood control for each year is defined as follows:

It is the combined reservoir space which, using the governing forecast of flood runoff for the year, is required to control the forecasted flood volume,

from the time in that year that the natural flow as determined at Diversion Dam exceeds the allowable release through the succeeding July 31. The governing forecast of flood volume for each year is the forecast made as of the date the natural flow, as determined at Diversion Dam, first exceeds the allowable flow at that point and this date is usually about April 15. Allowable releases from the reservoir system during the period from the date of the governing forecast to the succeeding July 31 will be such that the flow in the river channel below Diversion Dam will not exceed 6,500 second-feet, in so far as this control can be accomplished with a total system capacity of 983,000 acre-feet together with the diversion to the New York Canal of an average of 1,365 second-feet during March and of 2,820 second-feet from April 1 through July 31, except that, due to decreased irrigation demand, diversions to the New York Canal may infrequently be reduced below the diversion figures indicated above. When the above decreased diversions are required, it may be necessary to increase flow in Boise River below Diversion Dam.

b. Attached hereto as Plate 2 is a scale figure depicting flood storage allocation parameters representing runoff volume anticipated at Diversion Dam between the

forecast date and July 31. These parameters were empirically derived from floods of record and are enveloping curves of the storage requirements for various volumes of total forecasted runoff from any given date to July 31. The total reservoir capacity required to control a flood to a discharge of 6,500 second-feet (or less) in the river channel past Diversion Dam is indicated by the ordinate of the parameter corresponding to the forecasted runoff on the date of the governing forecast.

c. During the period of each year from the date of the first forecast, about January 1, to the date that natural flow of Boise River at Diversion Dam first exceeds allowable releases, herein designated as the evacuation period, the reservoir system will be operated in such a manner that the reservoir levels on the date of the governing forecast as determined by the parameters on Plate 2, can be attained with the minimum practicable rates and fluctuations of discharge. The rate of discharge during the evacuation period will be determined as far as practicable in the following manner: The combined total reservoir space required on or about April 15 (approximate date of the governing forecast) will be estimated by use of the parameters

on Plate 2 and an April 15 forecast, which would be derived by deducting from the forecast made on any periodic forecast date probable average inflows, as determined from Plate 3, or measured inflow for the intervening period from the date of periodic forecasts to April 15. The required reservoir capacities thus estimated would comprise tentative allocations of flood control space at which to aim the evacuation procedure. The rate of discharge at Lucky Peak Reservoir then will be selected as that required to release the probable average inflow, as determined from Plate 3, or measured inflow for the period between the date of forecast and April 15, plus the evacuation necessary to attain the required total reservoir capacity indicated by the latest tentative allocation.

d. The evacuation of the active capacity in the reservoirs will be made in the following order: First, from Lucky Peak; second, from Arrowrock; and last, from Anderson Ranch. At least forty thousand (40,000) acre-feet of vacant space will be maintained in Lucky Peak Reservoir from November 1 to January 1 of every year, and from January 1 to May 24 of every year, except when forecasted amount of runoff between date of forecast

and July 31 is less than six hundred thousand (600,000) acre-feet and except that storage space in Anderson Ranch Reservoir may be considered partially to fulfill this requirement in Lucky Peak Reservoir to the extent of forty percent (40%). Power operation from Anderson Ranch storage will be so limited that, to the extent possible as to space allocated to flood control for any year, at least sixty percent (60%) thereof will be provided in Lucky Peak and Arrowrock Reservoirs. Filling of the three reservoirs will follow the reverse of the evacuation schedule to the extent that water is available at each of the respective sites. In the event Anderson Ranch or Arrowrock Reservoirs are not filled by reason of having evacuated water for flood control, storage in Lucky Peak will be considered as belonging to Arrowrock and Anderson Ranch storage rights to the extent of the space thus remaining unfilled at the end of the storage season but not to exceed the amount evacuated for flood control.

e. From the date of the governing forecast each year through July 31 of that year, herein designated as the filling period, the reservoir system will be operated in such a manner that the combined reservoir content, as determined from the parameter chart (Plate 2), will be

maintained except when irrigation requirements necessitate a drawdown below such total content, but will not be exceeded except when total storage above such content is required to limit the releases to allowable flows (as determined by downstream channel capacity and irrigation diversions) at Diversion Dam. However, when the forecasted runoff indicates extraordinary flood flows, requiring storage capacity for flood control in excess of the total active storage capacity of the reservoir system (983,000 acre-feet), temporary releases at Lucky Peak in excess of the allowable flows may be required but such releases will be made at a rate so as to minimize the peak rate of flow in the river channel below the Diversion Dam. The rate of such releases shall be specified by the Chief of Engineers after consultation with the Commissioner of Reclamation to the extent consistent with paragraph 6g herein.

f. Release of water for irrigation will be made from Lucky Peak Reservoir at such times and at such rates, pursuant to rights established under law, as requested by the owners thereof, or by officials or agencies authorized to make such requests. Flood control releases prescribed by the Chief of Engineers will be made in such a manner as to cause minimum practicable short-time

fluctuations in the flow of the Boise River below Lucky Peak Reservoir. Arrangements will be made to notify the State Watermaster, and other officials upon request, of contemplated significant changes in rate of release from Lucky Peak Reservoir.

g. The Chief of Engineers and the Commissioner of Reclamation may establish operating rules and regulations for the purpose of protecting from damage the dams and reservoirs being operated under their respective supervision but such rules and regulations shall, to the greatest extent practicable, avoid interference with the delivery of water accruing to rights established under law.

h. In order to enhance the recreational value of Lucky Peak Reservoir after recession of the flood each year, that reservoir will be filled, if not already full from flood water storage or natural flow, by transfer of water from Arrowrock storage, and will be held full through September 15 each year except when Arrowrock Reservoir has been drawn down to a level from which it can no longer supply the irrigation requirements prior to that date, in which case irrigation releases will be made as required from Lucky Peak storage. In no case will storage be released from Anderson Ranch

Reservoir for the purpose of holding Lucky Peak Reservoir full for recreational purposes.

7

If operating experience indicates the desirability therefor or if justified by future changes or improvements in the Boise River system, the Chief of Engineers and the Commissioner of Reclamation or their duly authorized representatives, after consultation with the Reclamation Engineer of the State of Idaho or his authorized representative, the Watermaster, Boise River, and the Project Manager, Boise Project Board of Control, may, within the general objectives of this agreement, modify from time to time the operating plan herein described with respect to allowable releases and the amount of space allocated each year to flood control on the basis of advanced forecasts of runoff. However, no modification which would affect in any substantial way any storage rights in the reservoir system and Lake Lowell, shall be made without the concurrence of all entities having rights in the reservoir system and Lake Lowell.

8

If and when a power plant is installed at Lucky Peak Dam, it shall be operated in a manner consistent with this operating plan and in subordination to any water rights validly established under law.

9

This memorandum of agreement shall become effective when it has been formally accepted by the water users having storage rights in the reservoir system and Lake Lowell and after a revised allocation report for the Boise Project, supplemental to the report and finding of June 25, 1940, by the Secretary of the Interior (H. Doc. No. 916, 76th Cong., 3d Sess.), reflecting the flood control benefits based on the operating plan herein set forth, has been transmitted to the Congress.

10

Except for the original execution thereof, this agreement shall be administered on behalf of the Department of the Army by the Chief of Engineers, representing the Corps of Engineers, and on behalf of the Department of the Interior by the Commissioner of Reclamation, representing the Bureau of Reclamation, or their duly authorized representatives.

IN WITNESS WHEREOF, this memorandum of agreement has been executed as of the date first above stated.

DEPARTMENT OF THE ARMY

By /s/ Robert T. Stevens
Secretary of the Army

DEPARTMENT OF THE INTERIOR

By /s/ Fred G. Aandahl
Assistant Secretary of the Interior

Contract No. 14-06-W- 83

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

Boise Project - Idaho

SUPPLEMENTAL CONTRACT
With

SETTLERS' IRRIGATION DISTRICT

THIS CONTRACT, made this 18th day of June 1954, pursuant to the Federal Reclamation Laws and the Act of July 20, 1946 (60 Stat. 650), between THE UNITED STATES OF AMERICA (hereinafter called the United States), acting through W. A. Dexheimer, Commissioner of Reclamation, for the Secretary of the Interior, and the Settlers' Irrigation District, (hereinafter called the District), the corporation organized and existing under the laws of the State of Idaho, and having its place of business at Boise, Idaho,

WITNESSETH, That:

2. WHEREAS, the United States, under the Federal Reclamation Laws, has heretofore constructed and is now operating Anderson Ranch and Arrowrock dams and reservoirs, Lake Lowell, and the related works of the Boise Federal Reclamation Project, and under the Act of July 20, 1946, is now constructing Lucky Peak Dam and Reservoir;

3. WHEREAS, the United States and the District have heretofore entered into the following contracts with respect to storage rights in

EXHIBIT I

Anderson Ranch and Arrowrock dams and reservoirs and Lake Lowell of the Boise Project:

Ilr-342 dated February 9, 1918
Ilr-416 dated February 18, 1919
Ilr-416 dated June 12, 1931
Ilr-1478 dated July 26, 1943
I74r-1691 dated December 17, 1951

being collectively referred to hereinafter as the Government-District contracts; and

4. WHEREAS, the District, recognizing the benefits to accrue from a system-wide operation of Anderson Ranch, Arrowrock, and Lucky Peak dams in the interest, jointly, of flood control and irrigation and from the integrated operation of the Boise Project powerplants, including an attendant reduction in the amount of construction costs of Anderson Ranch Dam otherwise allocable to irrigation and the assignment of irrigation costs for return from power revenues, desires to cooperate with the United States and the various other water users organizations to permit such system-wide and integrated operations,

NOW, THEREFORE, in consideration of the mutual and dependent covenants hereinafter stated, it is hereby agreed between the parties hereto as follows:

Definitions

5. The following terms, wherever used in this contract, shall have the following respective meanings:

"Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplemental thereto.

"Storage season" shall mean, as to the reservoir system and Lake Lowell, the period beginning October 1 of one year and ending during the next year when no more water is available for storage therein.

"Flood control period" shall mean the period from January 1 through July 31 of each year beginning with the first full calendar year after this contract becomes effective.

"Reservoir system" shall mean Anderson Ranch, Arrowrock, and Lucky Peak dams and reservoirs.

Flood Control Operating Plan; Assent Thereto

6. (a) The United States shall operate the net total active capacity of the reservoir system, exclusive of the initial 5,000 acre-feet thereof heretofore reserved in Anderson Ranch Reservoir for power production, 1/ during the flood control period of each year jointly for irrigation and flood control storage in accordance with the operating plan as set forth in the agreement of November 20, 1953, between the departments of the Army and Interior, a copy of which is attached hereto as Exhibit A, as that plan may be implemented by rules and regulations issued under authority of law; and the District, so far as its storage rights as defined in

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1/ The net space so to be used under current (1954) estimates of total active capacity is 983,000 acre-feet.

the existing Government-District contracts are concerned, hereby assents to such plan in substitution for the flood control plan reflected in the contract of July 26, 1943 between the United States and the Settlers' Irrigation District.

(b) The various provisions of article 16 of the contract of July 26, 1943 (Symbol and No. Ilr-1478) relating to the use of capacity of Anderson Ranch Reservoir-for flood control benefits, including in particular the provision that 45,000 acre-feet of Anderson Ranch and Arrowrock capacity be kept available for the control of flash floods, shall be inoperative while this contract remains in effect.

Guarantee

7. Beginning with the first full flood control period after the agreement set forth in Exhibit A has become operative, there shall be a determination for each storage season as of the end of that season

(a) of the amount of water to which the District would have been entitled under its storage rights in the reservoir system and Lake Lowell under its Government-District contracts had Anderson Ranch, Arrowrock, and Lake Lowell reservoirs been operated in accordance with those contracts except for the provisions thereof relating to the use of capacity for flood control benefits and without regard to the flood control plan referred to in article 6, and

(b) of the amount of water which is creditable to the storage rights of the District under its Government-District contracts taking account of actual operations under the flood control operating plan in accordance with this supplemental contract.

If the amount under (a) exceeds that under (b), there shall be credited and made available to the District, out of the water accrued to storage rights in Lucky Peak Reservoir, an amount of stored water equal to that difference. Determinations under this article shall be by a committee of three comprising the State Watermaster of District No. 12-A, a representative of the water users to be selected by the Boise Project Board of Control, and the officer of the United States in charge of the Boise Project; and, so far as practicable, shall be made within thirty (30) days of the end of the storage season involved.

Effective Date of Contract

8. (a) This supplemental contract shall become effective only when an allocation report for the Boise Project, supplemental to the report and finding of June 25, 1940 covering Anderson Ranch Dam (H. Doc. No. 916, 71st Cong.) reflecting the flood control benefits based on the operating plan set forth in Exhibit A has been presented to the Congress and become operative and shall remain effective while the provisions of article 7 are operative and water accruing to Lucky Peak storage rights required to meet deficiencies in fill by reason of the flood control operating plan is made available as therein provided.

(b) The District may, at its option, terminate this contract within five (5) years from December 31 of the year in which the Army-Interior agreement set out in Exhibit A first becomes effective. Such termination shall be effected by the giving of written notice by the District's board of directors to the secretaries of the Army and Interior and the State Reclamation Engineer not less than six (6) months in advance of the termination date. Upon termination, the rights of the District under its Government-District contracts shall be determined without regard to the provisions of this supplemental contract, but such termination shall not preclude the continued functioning of the operating plan set forth in Exhibit A pursuant to contractual arrangements with other entities having storage rights in the reservoir system.

Status of Existing Contracts

9. This contract is amendatory of and supplementary to the existing Government-District contracts and, except to the extent that the provisions of such contracts are specifically suspended by this contract, the existing contracts shall remain unaffected by this contract.

Contingent on Appropriations or Allotment of Funds

10. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by the Congress or the allotment of Federal funds, shall be contingent on such appropriations or allotments being made. The failure of the Congress to appropriate funds, or the failure of any allotment of funds shall not, however, relieve the District from any obligation heretofore

accrued under this contract, nor give the District the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case such funds are not so appropriated or allotted.

Successors and Assigns Obligated; Assignments Prohibited

11. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract, or any part thereof, or interest therein, shall be valid until approved by the Secretary.

Officials Not to Benefit

12. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA DEC 7 - 1954

By H A Dieterich
For the Secretary of the Interior

(SEAL)

Attest:
Secretary

SETTLERS' IRRIGATION DISTRICT

By
President

STATE OF IDAHO)
: ss.
County of Ada)

On this 18th day of June 1954 before me personally appeared Norman C. Steele and Frank L. Cox to me known to be, respectively, the President and the Secretary of the Board of Directors of the Settlers' Irrigation District, the corporation that executed the within and foregoing instrument. They acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that they were authorized to execute said instrument and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I set my hand and affix my official seal the day and year first above written.

Notary Public in and for the
State of Idaho
Residing at Boise, Ida.

(SEAL)

My commission expires Nov. 10, 1957

DISTRICT OF COLUMBIA : ss.

I, Harold L. Byrd , a notary public in and for the District of Columbia, do hereby certify that W. A. Dexheimer Commissioner Bureau of Reclamation ~~Secretary of the Interior~~, who executed the foregoing contract with the Settlers' Irrigation District dated June 18, 1954 , personally appeared before me, the said W. A. Dexheimer being personally known to me as the person who executed the said contract on behalf of the United States of America, and acknowledged the same to be his act and deed.

Given under my hand and seal this 7th day of December, 1954.

Harold L. Byrd
Notary Public in and for the
District of Columbia

(SEAL)

My commission expires May 14, 1957

MEMORANDUM OF AGREEMENT EXHIBIT A
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE DEPARTMENT OF THE INTERIOR
FOR
FLOOD CONTROL OPERATION OF BOISE RIVER RESERVOIRS, IDAHO

THIS MEMORANDUM OF AGREEMENT entered into this 20th day of November, 1953, by and between the Department of the Army, represented by Robert T. Stevens, SECRETARY OF THE ARMY, and the Department of the Interior, represented by Fred G. Aandahl, Assistant SECRETARY OF THE INTERIOR,

W I T N E S S E T H

WHEREAS, the Department of the Army, through the Corps of Engineers, is engaged in constructing the Lucky Peak Dam and Reservoir on the Boise River in the State of Idaho, under authority of the Act of July 24, 1946 (60 Stat. 641), which authorized construction of Lucky Peak Reservoir substantially in accordance with the recommendations of the Chief of Engineers in his report of May 13, 1946; and

WHEREAS, said report concurred in the views and recommendations of the Board of Engineers for Rivers and Harbors that the Lucky Peak Reservoir be constructed with the understanding that complete or partial joint use of the storage in the three-reservoir system, viz., Lucky Peak, Arrowrock, and Anderson Ranch Reservoirs, may be undertaken at such time as may be mutually agreed upon by the Secretary

of War (now Secretary of the Army), the Secretary of the Interior, and local interests concerned with flood control and the use of irrigation water; and

WHEREAS, said report concurred in the views and recommendations of the Board of Engineers for Rivers and Harbors that Lucky Peak Reservoir be authorized for construction with the understanding that changes in the method of operation will be made in the future when the Secretary of War (now Secretary of the Army), upon the advice of the Chief of Engineers, finds that such changes are in the best interest of flood control, irrigation, and power development, and that they are agreeable to the Secretary of the Interior and to the local interests concerned with flood control and the use of irrigation water; and

WHEREAS, said act provides that Lucky Peak Dam and Reservoir "shall be operated in such manner as not materially to interfere with the operation of said Arrowrock Reservoir"; and

WHEREAS, the Department of the Interior, through the Bureau of Reclamation, acting under the Federal Reclamation Laws (these being the Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof or supplemental thereto), has constructed and is operating Arrowrock Dam and Reservoir on the Boise River and Anderson Ranch Dam and Reservoir on the south fork of the Boise River, both upstream from the Lucky Peak Dam; and

WHEREAS, there are storage rights in Arrowrock, Anderson Ranch, and Lake Lowell Reservoirs by virtue of appropriations under the laws of Idaho and contracts between the United States, represented by the Department of the Interior, and various water users' organizations serving lands in the Boise Valley, and there are other existing rights in and to the use of waters of the Boise River, both stored and natural flow, which waters are in part diverted and distributed through the transferred works of the Boise Project being operated and maintained by the Boise Project Board of Control and in part by means of other works being operated and maintained by other water users' organizations; and

WHEREAS, certain of the rights above described are adjudicated rights, which are exercised under the supervision of the State of Idaho, represented by the watermaster of District No. 12-A, Boise River; and

WHEREAS, to comply with the above-quoted Congressional declaration of operational policy in regard to Lucky Peak and Arrowrock Dams, and to achieve the greatest multiple-purpose use of the combined total usable flood control and irrigation storage of 983,000 acre-feet of water in all three reservoirs, a coordinated plan of operation is necessary for this reservoir system on the Boise River, a river totally within the State of Idaho, together with Diversion Dam, the New York Canal headworks, and Lake Lowell; and

WHEREAS, it is recognized that the successful operation of this coordinated irrigation and flood control plan will call for the cooperation and assumption of responsibilities by the two Departments and the water users having storage rights in the reservoir system, and that there is need for a policy of mutual coordination, information, and assistance in its performance;

NOW, THEREFORE, for and in consideration of the premises and certain benefits and advantages accruing hereunder to affected local interests, it is hereby agreed as follows:

1

The hydrologic situation is shown on Plate 1, attached hereto and made a part of this agreement, which depicts the general location of the Lucky Peak, Arrowrock, and Anderson Ranch Reservoirs, herein referred to collectively as the reservoir system, Diversion Dam, the New York Canal headworks, and Lake Lowell.

2

The plan of operation hereinafter set forth is limited to the flood control operation phase of the respective general operating plans of the parties hereto and shall be used during the period commencing with the actual operation of Lucky Peak Reservoir.

3

To attain the maximum benefits from the reservoir system, the total capacity of 1,084,000 acre-feet will be utilized as follows:

a. 983,000 acre-feet (418,000 acre-feet in Anderson Ranch, 285,000 acre-feet in Arrowrock Reservoir, and

4

280,000 acre-feet in Lucky Peak Reservoir) will be operated primarily in the interests of irrigation and flood control and secondarily in the interests of power, as governed by forecasts of runoff. The allocation of flood control space is shown on Plate 2.

b. 5,000 acre-feet in Anderson Ranch Reservoir will be used exclusively for power production.

c. 96,000 acre-feet (70,000 acre-feet in Anderson Ranch and 26,000 acre-feet in Lucky Peak Reservoirs) will be reserved for dead storage and allocated exclusively to the maintenance of minimum power head, maintenance of permanent pools for the preservation and propagation of fish and wildlife and for silt control.

The above-designated 983,000 acre-feet or any part thereof in storage at the end of each flood season will be primarily considered as available for irrigation except as such amount must be reduced by evacuation requirements for flood control.

4

No reregulation of storage or annual exchange of storage as provided in this plan shall, however, deprive any entity of water accruing to it under existing rights in Arrowrock, Anderson Ranch, and Lake Lowell Reservoirs.

5

The Chief of Engineers, the Commissioner of Reclamation, and the watermaster, having agreed upon acceptable methods of

forecasting seasonal volumes of runoff for the Boise River above Diversion Dam, will periodically during the period from January 1 to June 30 of each year, determine the volume of runoff that may be expected in the drainage area tributary to the Boise River above Diversion Dam. Any differences in forecasted amounts shall be reconciled to arrive at a common forecast within 48 hours after basic data for forecasts are available. To facilitate forecasting of runoff, mutually satisfactory arrangements will be made among the Chief of Engineers, the Commissioner of Reclamation, and the State of Idaho, after consultation with the interested water users' organizations, to expand the existing hydrologic network and to establish and operate continuously a system for the efficient assembly, analysis, and exchange of the basic data.

Beginning with the first year this plan is put into operation, the system will be operated, through close collaboration with all agencies concerned on the basis of periodic sequential forecasted runoffs made during each year, as nearly as practicable in accordance with the following particular terms and provisions:

a. The storage space to be allocated to flood control for each year is defined as follows:

It is the combined reservoir space which, using the governing forecast of flood runoff for the year, is required to control the forecasted flood volume,

from the time in that year that the natural flow as determined at Diversion Dam exceeds the allowable release through the succeeding July 31. The governing forecast of flood volume for each year is the forecast made as of the date the natural flow, as determined at Diversion Dam, first exceeds the allowable flow at that point and this date is usually about April 15. Allowable releases from the reservoir system during the period from the date of the governing forecast to the succeeding July 31 will be such that the flow in the river channel below Diversion Dam will not exceed 6,500 second-feet, in so far as this control can be accomplished with a total system capacity of 983,000 acre-feet together with the diversion to the New York Canal of an average of 1,365 second-feet during March and of 2,820 second-feet from April 1 through July 31, except that, due to decreased irrigation demand, diversions to the New York Canal may infrequently be reduced below the diversion figures indicated above. When the above decreased diversions are required, it may be necessary to increase flow in Boise River below Diversion Dam.

b. Attached hereto as Plate 2 is a scale figure depicting flood storage allocation parameters representing runoff volume anticipated at Diversion Dam between the

forecast date and July 31. These parameters were empirically derived from floods of record and are enveloping curves of the storage requirements for various volumes of total forecasted runoff from any given date to July 31. The total reservoir capacity required to control a flood to a discharge of 6,500 second-feet (or less) in the river channel past Diversion Dam is indicated by the ordinate of the parameter corresponding to the forecasted runoff on the date of the governing forecast.

c. During the period of each year from the date of the first forecast, about January 1, to the date that natural flow of Boise River at Diversion Dam first exceeds allowable releases, herein designated as the evacuation period, the reservoir system will be operated in such a manner that the reservoir levels on the date of the governing forecast as determined by the parameters on Plate 2, can be attained with the minimum practicable rates and fluctuations of discharge. The rate of discharge during the evacuation period will be determined as far as practicable in the following manner: The combined total reservoir space required on or about April 15 (approximate date of the governing forecast) will be estimated by use of the parameters

on Plate 2 and an April 15 forecast, which would be derived by deducting from the forecast made on any periodic forecast date probable average inflows, as determined from Plate 3, or measured inflow for the intervening period from the date of periodic forecasts to April 15. The required reservoir capacities thus estimated would comprise tentative allocations of flood control space at which to aim the evacuation procedure. The rate of discharge at Lucky Peak Reservoir then will be selected as that required to release the probable average inflow, as determined from Plate 3, or measured inflow for the period between the date of forecast and April 15, plus the evacuation necessary to attain the required total reservoir capacity indicated by the latest tentative allocation.

d. The evacuation of the active capacity in the reservoirs will be made in the following order: First, from Lucky Peak; second, from Arrowrock; and last, from Anderson Ranch. At least forty thousand (40,000) acre-feet of vacant space will be maintained in Lucky Peak Reservoir from November 1 to January 1 of every year, and from January 1 to May 24 of every year, except when forecasted amount of runoff between date of forecast

and July 31 is less than six hundred thousand (600,000) acre-feet and except that storage space in Anderson Ranch Reservoir may be considered partially to fulfill this requirement in Lucky Peak Reservoir to the extent of forty percent (40%). Power operation from Anderson Ranch storage will be so limited that, to the extent possible as to space allocated to flood control for any year, at least sixty percent (60%) thereof will be provided in Lucky Peak and Arrowrock Reservoirs. Filling of the three reservoirs will follow the reverse of the evacuation schedule to the extent that water is available at each of the respective sites. In the event Anderson Ranch or Arrowrock Reservoirs are not filled by reason of having evacuated water for flood control, storage in Lucky Peak will be considered as belonging to Arrowrock and Anderson Ranch storage rights to the extent of the space thus remaining unfilled at the end of the storage season but not to exceed the amount evacuated for flood control.

e. From the date of the governing forecast each year through July 31 of that year, herein designated as the filling period, the reservoir system will be operated in such a manner that the combined reservoir content, as determined from the parameter chart (Plate 2), will be

maintained except when irrigation requirements necessitate a drawdown below such total content, but will not be exceeded except when total storage above such content is required to limit the releases to allowable flows (as determined by downstream channel capacity and irrigation diversions) at Diversion Dam. However, when the forecasted runoff indicates extraordinary flood flows, requiring storage capacity for flood control in excess of the total active storage capacity of the reservoir system (983,000 acre-feet), temporary releases at Lucky Peak in excess of the allowable flows may be required but such releases will be made at a rate so as to minimize the peak rate of flow in the river channel below the Diversion Dam. The rate of such releases shall be specified by the Chief of Engineers after consultation with the Commissioner of Reclamation to the extent consistent with paragraph 6g herein.

f. Release of water for irrigation will be made from Lucky Peak Reservoir at such times and at such rates, pursuant to rights established under law, as requested by the owners thereof, or by officials or agencies authorized to make such requests. Flood control releases prescribed by the Chief of Engineers will be made in such a manner as to cause minimum practicable short-time

fluctuations in the flow of the Boise River below Lucky Peak Reservoir. Arrangements will be made to notify the State Watermaster, and other officials upon request, of contemplated significant changes in rate of release from Lucky Peak Reservoir.

g. The Chief of Engineers and the Commissioner of Reclamation may establish operating rules and regulations for the purpose of protecting from damage the dams and reservoirs being operated under their respective supervision but such rules and regulations shall, to the greatest extent practicable, avoid interference with the delivery of water accruing to rights established under law.

h. In order to enhance the recreational value of Lucky Peak Reservoir after recession of the flood each year, that reservoir will be filled, if not already full from flood water storage or natural flow, by transfer of water from Arrowrock storage, and will be held full through September 15 each year except when Arrowrock Reservoir has been drawn down to a level from which it can no longer supply the irrigation requirements prior to that date, in which case irrigation releases will be made as required from Lucky Peak storage. In no case will storage be released from Anderson Ranch

Reservoir for the purpose of holding Lucky Peak Reservoir full for recreational purposes.

7

If operating experience indicates the desirability therefor or if justified by future changes or improvements in the Boise River system, the Chief of Engineers and the Commissioner of Reclamation or their duly authorized representatives, after consultation with the Reclamation Engineer of the State of Idaho or his authorized representative, the Watermaster, Boise River, and the Project Manager, Boise Project Board of Control, may, within the general objectives of this agreement, modify from time to time the operating plan herein described with respect to allowable releases and the amount of space allocated each year to flood control on the basis of advanced forecasts of runoff. However, no modification which would affect in any substantial way any storage rights in the reservoir system and Lake Lowell, shall be made without the concurrence of all entities having rights in the reservoir system and Lake Lowell.

8

If and when a power plant is installed at Lucky Peak Dam, it shall be operated in a manner consistent with this operating plan and in subordination to any water rights validly established under law.

9

This memorandum of agreement shall become effective when it has been formally accepted by the water users having storage rights in the reservoir system and Lake Lowell and after a revised allocation report for the Boise Project, supplemental to the report and finding of June 25, 1940, by the Secretary of the Interior (H. Doc. No. 916, 76th Cong., 3d Sess.), reflecting the flood control benefits based on the operating plan herein set forth, has been transmitted to the Congress.

10

Except for the original execution thereof, this agreement shall be administered on behalf of the Department of the Army by the Chief of Engineers, representing the Corps of Engineers, and on behalf of the Department of the Interior by the Commissioner of Reclamation, representing the Bureau of Reclamation, or their duly authorized representatives.

IN WITNESS WHEREOF, this memorandum of agreement has been executed as of the date first above stated.

DEPARTMENT OF THE ARMY

By /s/ Robert T. Stevens
Secretary of the Army

DEPARTMENT OF THE INTERIOR

By /s/ Fred G. Aandahl
Assistant Secretary of the Interior

MEMORANDUM OF UNDERSTANDING
for
CONFIRMATION, RATIFICATION, AND ADOPTION OF
WATER CONTROL MANUAL
BOISE RIVER RESERVOIRS, BOISE RIVER, IDAHO

This Memorandum of Understanding is made and entered into by and between the Department of Army represented by the Division Engineer, Corps of Engineers, the authorized representative of the Chief of Engineers, hereinafter referred to as Corps, and the Department of Interior represented by the Regional Director, Pacific Northwest Region, Bureau of Reclamation, the authorized representative of the Secretary of Interior, hereinafter referred to as Bureau.

WITNESSETH

WHEREAS, the Boise River reservoirs (Anderson Ranch, Arrowrock, and Lucky Peak) have been regulated in accordance with a general operating plan and procedures developed by the parties pursuant to Article 6 of Memorandum of Agreement for Flood Control Operation of Boise River Reservoirs, dated 20 November 1953; and

WHEREAS, Article 7 of said Memorandum of Agreement provides that the operating plan and procedures may be changed or modified if operating experience indicates the desirability therefor, and future changes and improvements in the Boise River system are justified within the general objectives of the Agreement; and

WHEREAS, Department of the Army Engineer Regulation (ER) 1110-2-240, Engineering and Design, Water Control Management, 8 October 1982, and Engineer Technical Letter (ETL) 1110-2-251, Engineering and Design, Preparation of Water Control Manuals, 14 March 1980, prescribe that water control plans for such Federal projects be continually reviewed and adjusted to ensure that the best use is made of available water resources; and

WHEREAS, the Bureau and Corps, after consultation with the State of Idaho, Boise River Watermaster, and Project Manager of the Boise Project

Board of Control, have agreed based on past operating experiences that revision of the operating plan and procedures is needed to reflect current conditions, needs, and technology and have worked jointly to develop a Water Control Manual; and

WHEREAS, a final revision of the Water Control Manual has now been completed, reviewed, and approved by the Bureau, Corps, and State of Idaho.

NOW THEREFORE, the parties hereby confirm, ratify, and adopt Water Control Manual dated April 1985 as an integral part of "Memorandum of Agreement for Flood Control Operation of Boise River Reservoirs," dated 20 November 1953, and further agree that:

a. The Water Control Manual shall constitute the current operating plan and procedures until further changed or modified by the parties in accordance with Article 7 of the Memorandum of Agreement and paragraph e. hereof.

b. The Bureau, as project owner, shall be responsible for the operation and maintenance of the Anderson Ranch and Arrowrock Dams and related facilities subject to the reservoir regulation objectives established by the Water Control Manual in paragraph a.

c. The Corps, as project owner, shall be responsible for the operation and maintenance of the Lucky Peak Dam and related facilities subject to the regulation objectives established by the Water Control Manual in paragraph a.

d. The Bureau and the Corps shall regulate Anderson Ranch, Arrowrock, and Lucky Peak Dams jointly as a system in accordance with regulation criteria and procedures within the Water Control Manual for Boise River reservoirs.

e. Portions of the Water Control Manual for Boise River reservoirs may be updated from time to time as conditions warrant. Any portion of this manual which is revised shall be labeled as revised and shall show the date of revision. Either party may propose revisions to the Water Control Manual, but such proposed revision shall not be adopted or become

f. All terms and provisions of Memorandum of Agreement dated 20 November 1953 not inconsistent with this Memorandum of Understanding and the Water Control Manual shall remain in full force and effect.

THIS AGREEMENT shall become effective on the date of the last-dated signature hereto.

L. W. Lloyd
Regional Director
Pacific Northwest Region
Bureau of Reclamation
Authorized Representative of
the Secretary of Interior

DATE 9/25/85

George R. Robertson
Brigadier General, Corps of Engineers
Division Engineer
North Pacific Division
Authorized Representative of
the Chief of Engineers

DATE 21 JUN 85

MEMORANDUM OF AGREEMENT

FOR

HYDROELECTRIC FACILITIES

AT

LUCKY PEAK DAM & RESERVOIR

This Memorandum of Agreement made and entered into this 24th day of May 1984, by and between the Corps of Engineers, Walla Walla District, hereinafter referred to as Corps and the New York Irrigation District, Boise, Idaho; Nampa & Meridian Irrigation District, Nampa, Idaho; Boise-Kuna Irrigation District, Kuna, Idaho; Wilder Irrigation District, Caldwell, Idaho, and Big Bend Irrigation District, Nyssa, Oregon, all of which irrigation districts by their signatures hereto collectively authorize their representation by the Boise Project Board of Control, hereinafter referred to BPC.

ARTICLE 1. PURPOSE AND INTENT.

a. BPC is the licensee of the Federal Energy Regulatory Commission (FERC) of Project No. 2832 for the design, construction, operation and maintenance of a hydroelectric facility, hereinafter referred to as the Project at the Lucky Peak Dam & Reservoir, near Boise in Ada County, Idaho.

b. BPC has the responsibility for and will provide direct supervision and administration of all contracts for exploration, design and construction, and related supply contracts to be awarded for the accomplishment of the project works and for all contract performance.

EXHIBIT K

c. The Corps constructed the Lucky Peak Dam and Reservoir on the Boise River, State of Idaho, under authority of the Flood Control Act of July 24, 1946, PL-526, 79th Congress, 2nd Session (60 Stat. 641). Pursuant to such authorization the Corps has the duty to maintain the safety and integrity of the Lucky Peak Dam. In furtherance of this responsibility, Article 37 of the License, as amended (said License and amendments are attached hereto as Exhibit A and made a part hereof) provides and 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 review and approval of the Corps and further that the Corps shall be reimbursed for all reasonable costs incurred for such review, approval, and supervision of the project.

d. For purposes of this Agreement "Integral part" of the Lucky Peak Dam or project used herein and in the License shall be construed to include the power intake structure and all facilities upstream of the powerhouse butterfly valves, the diversion and outlet tunnel and any blasting operations on the project having a possible impact on the safety or integrity of the Lucky Peak Dam structure.

ARTICLE 2. OBLIGATIONS OF THE PARTIES.

a. BPC, acting by and under authority of FERC License No. 2832 and this Agreement, shall:

(1) Accomplish all actions necessary to timely commence construction of the project on or before 1 June 1984, the effective date for commencement of construction under the License, and comply with all

of the conditions and provisions of the License, provided, however, that no construction may be commenced on any feature of the project without first receiving approval by the Corps of the design, plans and specifications for that feature of the Project, as hereinafter set forth.

(2) Provide qualified personnel to design and supervise construction of the facility described in the License.

(3) Provide without costs to and for the Corps exclusive use, an office on the project site or in close proximity to the field office of BPC for the use of two Corps employees during construction of any integral part of the project works. The office shall be equipped with adequate furniture, heat, electric lights, telephone, toilet, janitorial services and parking spaces.

(4) Provide the Corps with six copies of all design criteria for review and approval prior to beginning design.

(5) Provide the Corps with two copies of their foundation exploration plan for review and approval. This plan will include the type and locations of explorations, and materials testing to be accomplished during the design and construction phases. As geologic information becomes available, the Corps may require additional exploration and/or testing if the Corps determines it is necessary to insure the safety and integrity of the structure.

(6) Provide the Corps two copies of design computations and six copies of design work for review at the 60% and 95% completion stage and for the Corps final review and approval of the completed design, plans and specifications of the integral part.

(7) Furnish shop construction drawings in duplicate, which the Corps identifies as being necessary for review and approval. Ten working days for review will be necessary, mailing time not included. Drawings not approved by the Corps shall be corrected and submitted in duplicate. One copy of all drawings will be retained by the Corps.

(8) Provide full reimbursement of salaries and other direct and indirect costs, including overhead, incurred by the Corps in performance of services under this Agreement and render payment in full within 30 days following receipt of invoices and billings from the Corps.

(9) Notwithstanding Corps review approval of design, plans and specifications or construction procedures as provided herein, such approval shall not relieve BPC from liability for any damages to Corps facilities at Lucky Peak Dam caused by construction or operation of the project work.

b. The Corps will:

(1) Provide a design engineer to review the design and construction of any integral part of the project.

(2) Provide geotechnical expertise to review and approve all foundation drilling and blasting activities necessary for the design and construction of the intake structure and tunnel, penstock and manifold, powerhouse foundation, and any and all blasting activities that may affect the safety and integrity of the dam.

(3) Provide a qualified construction engineer and/or geologist to be at the site on an as needed basis during construction of any integral part of project for observation and consultation with BPC's designated

construction representative. After consultation all matters requiring Corps decision or approval shall be referred to the District Engineer or his authorized representative.

(4) Provide vehicles for transportation of Corps personnel with assigned duties and working under this Agreement. The Corps shall be reimbursed for the fixed and variable operating costs of providing vehicles. Operating costs may include, but are not limited to gas, oil, tires, lubricating greases, depreciation and major and minor repair.

(5) Maintain financial records of all salaries and other direct and indirect costs incurred by the Corps during the performance of review and supervision pursuant to this Agreement or for the project works. All invoices or billings for reimbursable costs and service hereunder will be submitted to BPC for payment not more frequently than monthly. All such financial records supporting the costs for which the Corps is entitled to reimbursement will be available for inspection by BPC at all reasonable times at the Corps District office in Walla Walla, Washington.

ARTICLE 3. PRECONSTRUCTION SURVEY.

Prior to any construction on the project, the parties will make a joint preconstruction survey of the Lucky Peak Dam and project area to determine and document existing conditions for purposes of evaluating or assessing damage that may occur. Photographs shall be taken, properly marked with date and time taken, which will be included as a part of the written survey report to be prepared and approved by the parties hereto.

ARTICLE 4. NONINTERFERENCE.

Nothing contained in the Agreement shall be construed as granting BPC any rights to interfere or restrict the Corps normal use, operations and maintenance procedures, and other Corps or contract work for the Lucky Peak Dam and Reservoir.

ARTICLE 5. RELATIONSHIP OF THE PARTIES.

The parties to this Agreement act in their independent capacities in the performance of their respective functions under it or the License, and neither party is to be considered the officer, agent or employee of the other.

ARTICLE 6. HOLD AND SAVE HARMLESS.

BPC 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.

ARTICLE 7. OPERATIONS.

a. All water releases from Lucky Peak will be determined, controlled, and directed by the Corps in accordance with the "Memorandum of Agreement" for "Flood Control Operation of Boise River Reservoirs, Idaho" and the "Water Control Manual for Boise River Reservoir" and any amendments thereto between the Department of Army and Department of Interior. The Corps will transmit to the BPC, dam flow release schedules at the Lucky Peak Dam in units of cubic feet per second. The BPC, after

receiving the flow release schedules, shall provide an operations program for that period. The operation program will include the flow distribution through all discharge valves and the powerplant necessary to comply with the Corps release schedules. The Corps will be notified immediately of any revisions to this program. Such revisions may be necessary to increase power plant efficiency or improve valve operation. In no case will such revisions affect the Corps release schedules.

b. The BPC will be responsible for the establishment of new discharge tables for the above mentioned valves and power plant. The BPC will develop these discharge tables in accordance with procedures approved by the Corps.

c. During emergency situations, as determined by the Corps, the Corps will advise the BPC of the situation and will take appropriate action. The Corps will not be held liable for damage to the BPC's facilities.

d. The Lucky Peak Power Plant will receive flows from the existing outlet conduit. The power plant discharges may be supplemented by flow through the discharge valve, or auxiliary outlet, so as to meet and maintain the required dam release into the Boise River.

e. A detailed start-up testing plan will be developed at a later date by the BPC, and will be subject to Corps approval.

f. No change to the Lucky Peak Power Project, which in the opinion of the Corps is substantial and may affect the structural integrity of Lucky Peak or its operation shall be made by the BPC without first obtaining the written consent of the Corps.

g. The power plant, existing outlet and auxiliary outlet will be operated and maintained in accordance with a subsequent agreement which shall include items 7a through 7f as approved by the Corps.

ARTICLE 8. TERM.

This Agreement will remain in force and effect for a term coextensive with the FERC License No. 2832 or any extensions or modifications thereof or for the life of the project whichever is the later date.

ARTICLE 9. GOVERNING MOU.

The Memorandum of Understanding between the Federal Energy Regulatory Commission and the Department of the Army regarding non-federal Hydropower Development executed November 2, 1981, is incorporated by reference. In the event of any inconsistency between this Memorandum of Agreement for Hydroelectric Facilities at Lucky Peak Dam and Reservoir and the said incorporated Memorandum of Understanding between FERC and the Department of the Army, the terms of the said incorporated MOU will govern.

CORPS OF ENGINEERS

By _____
JAMES W. VAN LOBEN SELS
Brigadier General, U.S. Army
Division Engineer

BOISE PROJECT BOARD OF CONTROL

By _____
Chairman

BOISE-KUNA IRRIGATION DISTRICT

By _____

NAMPA & MERIDIAN IRRIGATION DISTRICT

By _____

BIG BEND IRRIGATION DISTRICT

By _____

NEW YORK IRRIGATION DISTRICT

By _____

WILDER IRRIGATION DISTRICT

BY _____

Field Solicitor
Draft 4/2/65

Contract No.
14-06-100-5599

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Boise Project, Idaho

WATER SERVICE CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND PIONEER IRRIGATION DISTRICT PROVIDING FOR THE CONSERVATION USE OF LUCKY PEAK DAM AND RESERVOIR

THIS CONTRACT, Made this 24th day of August , 1966, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, including section 8 of the Act of December 22, 1944 (58 Stat. 887-891), and the Act of July 24, 1946 (60 Stat. 641), all of which acts are commonly known and referred to as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the Contracting Officer, and the Pioneer Irrigation District, hereinafter referred to as the Contractor,

WITNESSETH, THAT:

EXPLANATORY RECITALS

2. WHEREAS, the United States has constructed and operates the Lucky Peak Dam and Reservoir on the Boise River in which there is water stored which can be used for the irrigation of land and for other beneficial uses, which stored water was appropriated by the United States pursusnt to the laws of Idaho for beneficial use under the Federal Reclamation Laws; and

EXHIBIT L

3. WHEREAS, the Contractor desires to secure a supplemental supply of water from the United States;

NOW, THEREFORE, in consideration of the premises and the payment by the Contractor to the United States of the charges in the manner hereinafter provided, it is agreed:

DEFINITIONS

4. The following terms used in this contract shall have the following respective meanings:

"Contracting Officer" shall mean the Secretary of the United States Department of the Interior, his duly authorized representative, or any other representative of the United States who may hereafter be duly authorized.

"Year" shall mean the period from January 1 through December 31.

WATER SERVICE FROM LUCKY PEAK RESERVOIR TO BE AVAILABLE TO THE CONTRACTOR

5. The United States will operate and maintain the Lucky Peak Reservoir and will make available to the Contractor stored water accruing to five and seventy-five thousand one hundred twenty-six one hundred thousandths percent (5.75126%) of the active capacity of that Reservoir within the limits and upon the terms provided in this contract. This percent shall, so long as the Reservoir has an active capacity of 278,200 acre-feet, be treated as the equivalent of 16,000 acre-feet of active capacity. The latter figure of active capacity may be adjusted from time to time by the Contracting Officer whenever there are determinations that the active capacity is other than as stated above.

PLACE OF DELIVERY AND MEASUREMENT AND OF USE OF WATER

6. (a) Water for the purposes hereof shall be made available at the outlet works of Lucky Peak Reservoir and shall be delivered to the Contractor and measured at that point, except as hereinafter provided. The Contractor shall receive said water at the delivery point and shall be wholly responsible for taking said water at that point and diverting, conveying, and utilizing it. The water to be delivered hereunder is to be diverted at:

> a point on the farm known as the William Frost Farm in section eighteen (18), township four (4) north, range one (1) west, Boise meridian, through what is known as the Caldwell Highland Canal.
>
> Also, a point on the south bank of the Boise River opposite the lower part of Eagle Island in section twenty-four (24), township four (4) north, range one (1) west, Boise meridian, through what is known as the Phyllis Canal,

by means of a device satisfactory to the State officer in charge of the distribution of water from the Boise River. Such device shall be furnished, installed, and maintained by and at the expense of the Contractor, but it shall be and remain at all times under the control of the State-appointed watermaster whose representative may at all times have access to it over any lands of the Contractor. The Contractor will stand its proportionate share of all losses incurred in running the stored water from the place of measurement and delivery to the place of diversion,

and losses of water from seepage, evaporation, or other causes, below said point of measurement, shall be borne by the Contractor.

(b) Water made available to the Contractor pursuant to this contract shall be used for the irrigation of lands described as follows:

The lands legally served by the Pioneer Irrigation District.

RATE OF PAYMENT BY THE CONTRACTOR

7. Stored water which is released at the request of the Contractor, as provided above, will be paid for by the Contractor at the rate of fifty cents ($.50) per acre-foot initially, but that rate is subject to revision from time to time throughout the term of this contract in accordance with the construction, operation, and maintenance costs of the Lucky Peak Dam and Reservoir as allocated to the water supply available for irrigation uses, the then requirements of law relating to such allocations and the return of such costs. Any revision will be made only as to future charges and shall be announced by written notice three (3) months prior to the irrigation season to which the new rate would be applicable.

TERM OF CONTRACT

8. This contract shall remain in effect for a period of forty (40) years from the date of its execution; Provided, That under the terms and conditions mutually agreeable to the parties hereto, renewals may be made for successive periods not to exceed forty (40) years each. The terms and conditions of each renewal shall be agreed upon not later than one (1) year prior to the expiration of the then existing contract; Provided further, That upon written request by the Contractor of the Secretary made not later than one (1) year prior to the expiration of this contract, whenever, account being taken of the amount then credited to the costs of construction of water supply works, the remaining amount of construction costs of water supply works which is properly assignable for

ultimate return by the Contractor as established by the Secretary of the Interior pursuant to (3) of Section 1 of Public Law 643 (70 Stat. 483), probably can be repaid to the United States within the term of a contract under subsection (d), Section 9 of the 1939 Reclamation Project Act (53 Stat. 1187), this contract may be converted to a contract under said subsection (d) upon terms and conditions mutually agreeable to the United States and the Contractor. Notwithstanding any provisions of this contract, the Contractor reserves and shall have all rights and benefits under Public Law 643.

ORDERING OF WATER SERVICE AND
METHOD OF PAYMENT BY THE CONTRACTOR

9. The Contractor shall by notice to the Contracting Officer request that amount of stored water under this contract which it desires to use during that year. The notice shall be accompanied by payment for the cost of the quantity of water ordered. It is the intention of this contract that insofar as possible this request shall be for the amount of stored water which the Contractor actually requires during that year. If the total amount of stored water actually delivered is less than that for which payment has been made in advance, the excess payment shall be applied against water requested in future years and, if the total amount of stored water actually delivered is more than the amount for which payment has been made in advance, the excess shall be paid for at the rate specified in article 7 on or before December 31 of that year.

WATER SUPPLY AND OPERATION OF THE RESERVOIR

10. (a) As of the date of this contract, the United States holds Permit No. 1183, dated March 20, 1964, issued by the State of Idaho to the United States for the storage of 307,000 acre-feet per annum of the waters of Boise River in Lucky Peak Reservoir. The primary purpose of the Reservoir is for flood control, for which it will be operated, in accordance with the flood control operating plan contained in a Memorandum of Agreement between the Department of the Army and the Department of the Interior, dated November 20, 1953, and as it may be amended, a copy of which is available for inspection at the office of the Contracting Officer. Subject to such operation for flood control, the United States will operate Lucky Peak Dam and Reservoir so as to store under existing storage rights all available water, and during each irrigation season, the United States will make available to the Contractor for irrigation the Contractor's proportionate share of the stored water that accrues in each year to the active capacity of the Reservoir, together with any stored water that may have been carried over in the Contractor's share of such active capacity from prior water years.

(b) The Contractor may hold over in Lucky Peak Reservoir water from prior water years, subject to these limitations:

(1) Water may be held only to the extent that the total amount of Lucky Peak stored water held to the credit of the Contractor for any irrigation season

shall not exceed the amount which can be stored in the Contractor's proportionate part of the total active capacity of that Reservoir.

(2) Whatever water is held for the credit of the Contractor in Lucky Peak Reservoir as holdover water shall no longer be accounted for as holdover water as of any date of spilling of the Reservoir.

(3) The United States may discharge such water as required for flood control purposes, or under subarticle (h) of this article, and such discharged water shall be deducted from any stored water held to the credit of the Contractor.

(c) All space in Lucky Peak Reservoir shall be operated with like priority as to storage rights; and the United States reserves the privilege of granting to others holdover rights and of itself exercising such holdover rights as to any unsold space that are not inconsistent with the rights granted to the Contractor under this contract. While the Contractor's storage water rights are defined in terms of active capacity in Lucky Peak Reservoir, the United States shall have the right, without change in the Contractor's obligations with respect to storage rights, to store water accrued to those rights in any storage capacity available to it or to supply a like amount of water from other sources, by exchange or otherwise, so long as delivery for the Contractor of all stored water to which it is entitled under this contract is not in

anywise impaired. In determining the amount of stored water available, losses incidental to storage will be prorated equally over all water in storage in a given reservoir; and, in determining the amount of stored water delivered, the point of measurement shall be the outlet works from which the delivery is made.

(d) While the Lucky Peak Reservoir is being operated and maintained by the United States, it will operate the Reservoir to the end of delivering all the water to which the Contractor is entitled under this contract and on such schedule of deliveries as shall be agreed to between the Contractor and the contracting officer, within the capacity limits of the Reservoir and having regard for other existing rights which must be supplied therefrom. Deliveries of stored water shall be limited at any time to the amount which can be delivered by means of the Contractor's proportionate share of the outlet capacity, taking into account the requirement of passing through the Reservoir water belonging to prior rights and the physical limitation of the existing outlet works. The Contractor shall conform its diversions to the control of the stream as established by the State watermaster.

(e) The Contractor hereby releases the United States and agrees to hold the United States free and harmless from all damage claims that might result from the diversion into storage, storage, regulation and release of water by the United States for the account of the Contractor, in accordance with the Contractor's instructions. In the event of the failure of the Contractor to fulfill its obligations under this subdivision,

the United States may discontinue service to the Contractor hereunder as provided in article 13 hereof and may exercise against the Contractor any and all its other rights and remedies.

(f) The United States shall not be liable or responsible for the carriage, distribution, or diversion of water for irrigation purposes after its release from the delivery point, or for any loss or damage of any type or description arising therefrom.

(g) The Contractor does not agree to indemnify the United States against any obligation or liability arising out of the operation of the Project for flood control purposes or arising out of damage or injury allegedly occurring within the Reservoir. The United States shall not be responsible for loss of water to which the Contractor, or those claiming by, through, or under the Contractor, is entitled and which has been stored in the Reservoir of the Project and which has been released as a result of the operation of the Project for flood control purposes.

(h) The United States temporarily may reduce water storage, as may be necessary, for the purpose of investigation, inspection, maintenance, repair, or replacement of any of the facilities of the Project. So far as it is feasible, however, the United States will give the Contractor reasonable notice in advance of such temporary reduction except in cases of emergency when notice need not be given.

NO LIABILITY FOR WATER SHORTAGES OR INTERRUPTIONS
QUALITY OF WATER

11. No liability shall accrue against the United States or any of its officers, agents, or employees for damage, direct, or indirect, arising by reason of shortages in the quantity of water available through the project irrigation works or interruptions in water deliveries to lands in the Pioneer Irrigation District resulting from drought, failure of the power supply, inaccuracy in distribution, hostile diversion, prior or superior claims, accident to or failure of facilities of the project irrigation works, whether or not attributable to negligence of officers, agents, or employees of the United States, or other causes of whatsoever kind. Nor shall the Contractor's obligations to the United States under this contract be reduced by reason of such shortages or interruptions. The United States assumes no responsibility with respect to the quality of water to be furnished pursuant to this contract and it does not warrant the quality of any such water.

EXCESS LAND - COMMINGLING OF PROJECT AND
NON-PROJECT WATER

12. (a) Except as permitted by the Act of July 11, 1956 (70 Stat. 524), or the Act of September 2, 1960 (74 Stat. 732), water made available hereunder shall not be delivered to more than one hundred and sixty (160) irrigable acres held in the beneficial ownership of any single person whether a beneficiary of a trust approved by the Contracting Officer, a natural person, a corporation or other entity, or to more than three hundred and twenty (320) irrigable acres held in the beneficial

ownership of husband and wife jointly, as tenants in common or by the entirety, or as community property, and each owner of land within the area to be served hereunder shall, as a condition precedent to such service, be required to certify to the Contractor or to the Contracting Officer, the extent of such ownership and, if said ownership is in excess of the above limitation, to designate the portion thereof to be treated as nonexcess land and as such eligible to receive service hereunder; Provided, That no irrigable land may be selected, designated, or otherwise receive service as nonexcess land for the purpose of this contract which is held as excess land for the purpose of any repayment, water service, or similar contract with the United States made pursuant to Federal Reclamation Law as supplemented or amended.

(b) Water made available pursuant to this contract may, as necessary, be transported by the Contractor, or water users served by the Contractor, by means of the same non-Federally constructed conveyance facilities, works, and channels used for the transport of water available from non-Reclamation project sources. Notwithstanding such mingling of water, the provisions of this contract shall be applicable only to Reclamation project water and shall not subject to the provisions of this contract any quantity of water available to the Contractor, or water users served by the Contractor, from non-project sources. The Contractor shall install and maintain or cause to be installed and maintained, such measuring equipment and distribution facilities and maintain such records as may be necessary to determine that the amount of water

delivered to lands within the area served by the Contractor, other than to those lands designated as nonexcess pursuant to subarticle (a) hereof, does not, in any 24-hour period, exceed that quantity of water which the Contractor and water users within the area served by the Contractor have introduced into said conveyance facilities, works, and channels from the supply or supplies available other than pursuant to this contract or other water service, repayment, or similar contracts entered into with the United States pursuant to Federal Reclamation Law. The Contracting Officer, or his authorized representative, shall have the right at all reasonable times to inspect such records and measuring equipment.

REFUSAL OF WATER SERVICE IN CASE OF DEFAULT, AND TERMINATION

13. (a) The United States reserves the right to refuse to operate the Project for the benefit of the Contractor or to order the cessation of the operation thereof for the benefit of the Contractor pursuant to this contract in the event that the Contractor is in default of any of its obligations under this contract, and that it fails after thirty (30) days notice to remedy the said default.

(b) In the event the Contractor is delinquent in advance payment of the charges payable by it herein, the United States shall refuse to operate the Project for the benefit of the Contractor until such time as the delinquency is remedied.

WAIVER OF DEFAULT

14. The waiver by either party to this contract as to any default shall not be construed as a waiver of any other default or as authority of the other party to continue such default or to make, do, or perform, or not to make, do, or perform, as the case may be, any act or thing which would constitute a default.

TITLE TO PROJECT WORKS

15. Title to all of the Lucky Peak Dam and Reservoir and associated works shall be and remain in the United States until otherwise provided for by the Congress.

GENERAL OBLIGATION--LEVIES THEREFOR

16. (a) The Contractor as a whole is obligated to pay to the United States the charges becoming due as provided in this contract notwithstanding the default in the payment to the Contractor by individual water users of assessments, tolls, or other charges levied by the Contractor.

(b) The Contractor will cause to be levied and collected all necessary assessments, tolls, and other charges and will use all of the authority and resources of the Contractor to meet its obligations hereunder to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract.

CONSOLIDATION OF CONTRACTING ENTITIES

17. Consolidation of Contractors may be approved by the Contracting Officer provided:

(a) He approves the form and organization of the resulting entity and the utilization by it of the total supply;

(b) The obligations of the Contractor are assumed by such entity.

No such consolidation shall be valid unless and until approved by the Contracting Officer.

BOOKS, RECORDS, AND REPORTS

18. (a) The Contractor shall establish and maintain a modern set of books of account showing all financial transactions of the Contractor, and furnish such financial statements and reports as may be required from time to time. Subject to applicable Federal laws and regulations, the Contractor shall have full and free access at all reasonable times to the account books and official records of the Bureau of Reclamation relating to the construction, operation, and maintenance of the works relating to this contract and the status of the accounts concerning the Contractor's payments of construction and operation and maintenance charges, with the right at any time during office hours to make copies thereof. Subject to applicable state laws and regulations, the proper representatives of the United States shall have similar rights in respect to the account books and records of the Contractor.

(b) The Contractor shall cooperate with the Contracting Officer in the preparation of an annual crop report which will provide a reasonable estimate of crops raised under the irrigation system.

CONTINGENT ON APPROPRIATIONS OR ALLOTMENT OF FUNDS

19. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by the Congress or the allotment of federal funds, shall be contingent on such appropriations or allotments being made. The failure of the Congress to appropriate funds, or the failure of any allotment of funds, shall not, however, relieve the Contractor from any obligations theretofore accrued under this contract nor give the Contractor the right to terminate this contract as to any of its executory features.

No liability shall accrue against the United States in case such funds are not so appropriated or allotted.

OFFICIALS NOT TO BENEFIT

20. (a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(b) Neither the Contractor nor any official of the Contractor or of its subcontractors shall receive any benefit that may arise by reason of this contract other than as a landowner and in the same manner as other landowners.

ASSIGNMENTS LIMITED;
SUCCESSORS AND ASSIGNS OBLIGATED

21. The provisions of this contract shall apply to and shall bind the successors and assigns of the parties hereto but, except as herein provided, no assignment or transfer of this contract or any part or interest therein shall be valid until approved by the Contracting Officer.

NOTICES

22. Any notice, demand, or request required or authorized by this contract shall be deemed properly given, except where otherwise herein specifically provided, if mailed, postage prepaid, to the Regional Director, Bureau of Reclamation, Boise, Idaho, on behalf of the United

State, and to the Pioneer Irrigation District, c/o Mr. W. M. Moore, P. O. Box 426, Caldwell, Idaho, Sec.-Treas/on behalf of the Contractor. The designation of the person to be notified or the address of such person may be changed at any time by similar notice.

COVENANT AGAINST CONTINGENT FEES

23. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the United States shall have the right to annul this contract without liability or in its discretion to require the Contractor to pay to the United States the full amount of such commission, percentage, brokerage, or contingent fee.

CIVIL RIGHTS ACT OF 1964

24. The Contractor hereby agrees as follows:

(a) To comply with Title VI (Section 601) of the Civil Rights Act of July 2, 1964 (78 Stat. 241) which provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance," and to be bound by the regulations of the Department of the Interior for the effectuation thereof, as set forth in 43 CFR 17.

(b) To obligate his subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.

IN WITNESS WHEREOF, the parties hereto have signed their names as of the day and year first above written.

THE UNITED STATES OF AMERICA

By Norman H. Moore
Regional Director, Region 1
Bureau of Reclamation
P. O. Box 937, Boise, Idaho
8008

PIONEER IRRIGATION DISTRICT

Fred Houston Contractor

W. W. Moore Sec.

W.W.Moore Contractor

STATE OF IDAHO)
) ss.
County of Ada)

On this 24th day of August , 1966, personally appeared before me Norman H. Moore to me known to be the official of The United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

John H. Welch
Notary Public in and for the
State of Idaho
Residing at: Boise
My commission expires: 6/10/67

(SEAL)

STATE OF IDAHO)
County of [illegible]) ss.

On this 17th day of August, 1966, before me personally appeared Fred Hoostal and W W. Moore to me known to be the President and Secretary, respectively, of the Pioneer Irrigation District, the corporation that executed the within and foregoing instrument. They acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that they were authorized to execute said instrument and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I set my hand and affix my official seal the day and year last above written.

[illegible]
Notary Public in and for the
State of Idaho
Residing at: [illegible]
My commission expires: [illegible]

(SEAL)

Your
Seattle
City Light

Randall W. Hardy, Superintendent
Charles Royer, Mayor

March 19, 1986

District Engineer
Walla Walla District, Corps of Engineers
Building 602, City County Airport
Walla Walla, WA 99362

Attention Don Johnson

Dear Sir:

With the development of the hydro generation facilities at the Lucky Peak Project, there are several operation and maintenance concerns that need to be addressed. Since Seattle City Light will be operating the generation plant, it follows that we will assume responsibility for regulated water releases in total from the Lucky Peak Project.

It is my understanding that informal discussions have taken place between City Light representatives and Messrs. Johnson, Winborg and Leonard of your agency regarding our assuming the operation and maintenance of the existing inlet and outlet facilities. With your concurrence, we will structure the staffing and operation plans to include those existing facilities.

In the interim period from about June, 1986, until we have resident staff on site, we would prefer that your personnel operate the new by-pass facilities. We anticipate having resident staff on site to perform all operating functions by September, 1987.

Please advise me of your position on the above proposals.

Sincerely,

Gerald R. Garman
Director, Energy Resources Planning and Management

JEF:st

EXHIBIT M

JUN 1 : 1986

DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
BUILDING 602, CITY-COUNTY AIRPORT
WALLA WALLA, WASHINGTON 99362-9265

June 11, 1986

REPLY TO
ATTENTION OF:
Engineering Division

Mr. Scott L. Campbell
Elam, Burke and Boyd
Attorneys and Counselors at Law
First Interstate Building
Post Office Box 1559
Boise, Idaho 83701

Dear Mr. Campbell:

Reference is made to your May 8, 1986 letter on behalf of the Pioneer Irrigation District regarding the Lucky Peak Power Development Project.

Attached at your request is a March 19, 1986 letter from Seattle City Light on behalf of the Boise Project Board of Control (BPBC). It is our intention to maintain interim control of the BPBC auxiliary outlet until such time as permanent operating staff is on site and a permanent operating agreement is executed. It should be noted that although Seattle City Light will be responsible for making the actual water releases, the Corps will continue to determine, control, and direct all water releases from Lucky Peak, as stated in paragraph 7a of our May 24, 1984 Memorandum of Agreement with the BPBC which was provided to you by my January 9, 1986 letter. As all water releases are determined in accordance with existing agreements between the Corps and the Department of Interior, the Corps considers the water release determination or methodology to be non-negotiable. In that respect, the requests for pool regulation by BPBC have been, and will continue to be, a subject for agreement with the holder of storage rights, the Bureau of Reclamation, as pointed out in our May 2, 1986 letter to you.

The March 19, 1986 letter is the only correspondence relating to your request. I extend an invitation for you to come to Walla Walla and examine our files and to copy any documents considered to be of interest.

EXHIBIT N

Should you wish to arrange for such an examination of our files, please contact Mr. Donald R. Johnson 48 hours prior to your arrival at telephone number 509-522-6514.

Sincerely,

James B. Royce

James B. Royce
Colonel, Corps of Engineers
District Engineer

Attachment

Copies Furnished:

Regional Director
Bureau of Reclamation
ATTN: 150
Box 043-550 West Fort Street
Boise, Idaho 83724

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF THE INTERIOR
AND
BOISE-KUNA IRRIGATION DISTRICT,
NEW YORK IRRIGATION DISTRICT,
NAMPA AND MERIDIAN IRRIGATION DISTRICT,
BIG BEND IRRIGATION DISTRICT,
AND
WILDER IRRIGATION DISTRICT
FOR
DEVELOPMENT OF PROPOSED ARROWROCK POWERPLANT

THIS MEMORANDUM OF UNDERSTANDING is entered into this 9th day of February, 1984, by and between the United States of America, acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, referred to herein as "Reclamation," and the Boise-Kuna Irrigation District, the New York Irrigation District, the Nampa and Meridian Irrigation District, the Big Bend Irrigation District, and the Wilder Irrigation District, referred to herein as the "Districts."

WITNESSETH, THAT:

2. WHEREAS, Reclamation has constructed and operates and maintains Arrowrock Dam and Reservoir on the Boise River in southwest Idaho for irrigation and flood control, and Arrowrock Reservoir is an integral part of Reclamation's coordinated Boise Project operations; and

3. WHEREAS, the Secretary of the Interior has been authorized by Congress in Public Law 96-375, October 3, 1980, to conduct investigations to determine the feasibility of constructing, operating, and maintaining the proposed Arrowrock Powerplant, hereafter called the "Powerplant," at Arrowrock Dam; and

4. WHEREAS, the Districts have sought and obtained a preliminary permit, issued August 14, 1981, for the proposed Powerplant from the Federal Energy Regulatory Commission ("FERC") and desire to undertake the preparation of a feasibility study as a preliminary to filing an application for a FERC license; and

EXHIBIT O

5. WHEREAS, the Districts and Reclamation have engaged in cooperative efforts to determine the feasibility of constructing the Powerplant, largely conducted by Reclamation, and now wish to set forth in writing the respective responsibilities thereunder; and

6. WHEREAS, it is desirable that Reclamation and the Districts enter into this Memorandum of Understanding as an interim agreement setting forth the activities to be accomplished and the responsibilities of the parties with regard to those activities, preparatory to the possible filing of an application for a FERC license and the negotiation and execution of a contract to accomplish the financing, construction, operation, and maintenance of the Powerplant.

NOW THEREFORE, it is agreed by and between the parties as follows:

Term

7. This Memorandum of Understanding shall become effective upon its execution by the parties and shall continue while the initial determination of the engineering, enviromental, and financial feasibility of developing the Powerplant is being made by the Districts and Reclamation. The Memorandum of Understanding will continue in effect during the following activities unless o or both of the parties wishes to terminate it. (1) After the initial determination of feasibility has been made, the Districts and Reclamation will stat in writing whether they remain interested in a cooperative endeavor and whethe they intend to pursue the detailed evaluations required prior to entering into a cooperative endeavor. Such decisions will be made by March 1, 1984, or with 90 days of the initial determination of feasibility, whichever occurs last; provided that the period may be extended if both parties agree to the extensio (2) After the remaining feasibility studies are completed, the Districts and

Reclamation will decide whether they wish to proceed with a cooperative endeav to develop the Powerplant. These decisions will be made within 180 days after the completion of the feasibility studies or by January 1, 1985, whichever occurs first. (3) If the Districts and Reclamation wish to proceed, this Memorandum of Understanding will continue in effect for a period of 1 year following such decision or until a contract for development of the Powerplant is executed by the parties, whichever occurs first. If such contract for development of the Powerplant is not executed within 1 year as aforesaid, this Memorandum of Understanding shall terminate.

Responsibilities of Reclamation

8. Reclamation will accomplish activities usually required to determine whether the development of the Powerplant project is engineeringly, economicall and environmentally feasible. Those activities include, among other things, geologic explorations, hydrologic studies, detailed designs and cost estimates, economic evaluations, and an environmental assessment. Also, Reclamation will perform additional activities needed by the Districts to provide information t assist the Districts in their analysis of the potential Powerplant project and in their evaluation of a possible cooperative endeavor with Reclamation to develop the Powerplant.

Responsibilities of the Districts

9. During the time Reclamation is accomplishing the activities described in Article 8 above, the Districts will, in cooperation with Reclamation and to the extent possible, (1) investigate possible arrangements for marketing the power produced by the Powerplant and for providing the transmission lines needed to transmit that power and (2) make preliminary investigations of

potential sources of project financing in amounts sufficient to construct all or part of the Powerplant.

Joint Responsibilities

10. If the Districts determine that they wish to proceed with a cooperative endeavor in accordance with Article 7, the Districts and Reclamation will mutually (1) prepare reports and provide project development data as necessary to facilitate the sale of bonds by the Districts to finance all or part of the Powerplant, (2) seek congressional authorization of the project, and (3) secure all licenses and permits necessary to accomplish the financing, construction, operation, and maintenance of the Powerplant.

Costs

11.(a) The Districts shall establish and maintain a separate accounting of costs they incur in accomplishing their sole and joint responsibilities as set forth in Articles 9 and 10. Such costs shall be reimbursable from bond proceeds upon the decision by the Districts to proceed with the Powerplant as subsequently provided in the contract to be entered into by the parties following that decision.

11.(b) Reclamation shall establish and maintain a separate accounting of costs it incurs in accomplishing its sole and joint responsibilities as set forth in Articles 8 and 10. Such costs shall be reimbursable upon the decision by the Districts to proceed with the Powerplant as subsequently provided for in the contract to be entered into by the parties following that decision. If the Districts decide not to proceed with the Powerplant under a cooperative endeavor with Reclamation, they shall reimburse Reclamation only for the costs associated with the additional activities which Reclamation performed in providing the information required in Article 8 hereof and in an amount not to exceed $50,000.

General

12. Each party shall be liable for its own acts and shall not be liable for the acts of the other in carrying out its responsibilities and activities pursuant to this Memorandum of Understanding.

13. In order to facilitate the prompt and orderly accomplishment of the activities outlined herein, each party shall designate a contact person who will have the authority to act on its behalf in matters dealing with its precontract responsibilities. The contact persons shall meet as necessary to assess and facilitate the timely accomplishment of the activities to be accomplished pursuant to this Memorandum of Understanding.

14. The expenditure or advance of money or the performance of some of the work by the United States under this Memorandum of Understanding may require the appropriation of funds by the Congress. The commitment of the United States to perform such activities shall be contingent upon the necessary action being taken by Congress. No liability shall accrue to the United States if such action is not taken.

IN WITNESS WHEREOF, the Memorandum of Understanding has been executed as of the date first above stated.

THE UNITED STATES OF AMERICA

By L.W. Lloyd

Regional Director, PN Region
Bureau of Reclamation
Box 043, 550 West Fort Street
Boise, Idaho 83724

BOISE-KUNA IRRIGATION DISTRICT

By _____
President
Boise-Kuna Irrigation District
311 South School Street
Kuna, Idaho 83634

NEW YORK IRRIGATION DISTRICT

By _____
Chairman
New York Irrigation District
214 Broadway
Boise, Idaho 83702

NAMPA AND MERIDIAN IRRIGATION DISTRICT

By _____
President
Nampa and Meridian Irrigation District
1503 First Street South
Nampa, Idaho 83651

BIG BEND IRRIGATION DISTRICT

By _____
President
Big Bend Irrigation District
P.O. Box 3193
Adrian, Oregon 97901

WILDER IRRIGATION DISTRICT

By _____
Chairman
Wilder Irrigation District
P.O. Box 416
Caldwell, Idaho 83605

AMENDMENT TO

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE U.S. DEPARTMENT OF THE INTERIOR
AND
Boise-Kuna Irrigation District,
New York Irrigation District,
Nampa and Meridian Irrigation District,
Big Bend Irrigation District,
And
Wilder Irrigation District

For

Development of Proposed Arrowrock Powerplant

This amendment entered into this 5TH day of December, 1984

WITNESSETH, THAT:

WHEREAS, the parties have entered into a Memorandum of Understanding dated February 9, 1984; and

WHEREAS, the parties desire to extend the term of article 7(2) of said Memorandum of Understanding;

NOW THEREFORE it is agreed as follows:

1. Article 7(2) of said Memorandum of Understanding is amended to read as follows:

> (2) After the remaining feasibility studies are completed, the Districts and Reclamation will decide whether they wish to proceed with a cooperative endeavor to develop the powerplant. These decisions will be made within 180 days after the completion of the feasibility studies or by January 1, 1986, whichever occurs first.

2. Except as above provided the terms of the February 9, 1984, Memorandum of Understanding remains in full force and effect.

THE UNITED STATES OF AMERICA

BY L.W. Lloyd

Regional Director, PN Region
Bureau of Reclamation
Box 043, 550 West Fort Street
Boise, Idaho 83724

EXHIBIT P

BOISE-KUNA IRRIGATION DISTRICT

By _____
President
Boise-Kuna Irrigation District
311 South School Street
Kuna, Idaho 83634

NEW YORK IRRIGATION DISTRICT

By _____
Chairman
New York Irrigation District
214 Broadway
Boise, Idaho 83702

NAMPA AND MERIDIAN IRRIGATION DISTRICT

By _____
President
Nampa and Meridian Irrigation District
1053 First Street South
Nampa, Idaho 83651

BIG BEND IRRIGATION DISTRICT

By _____
President
Big Bend Irrigation District
P.O. Box 3193
Adrian, Oregon 97901

WILDER IRRIGATION DISTRICT

By _____
Chairman
Wilder Irrigation District
P.O. Box 426
Caldwell, Idaho 83605

63-10120
63-10240

Arrowrock Dam Outlet Works Rehabilitation Project

- **Project overview**
- **Project schedule**
- **Issues**
  - **Estimates, costs, and repayment**
  - **Dam safety**
  - **Water delivery**
  - **Storage volume**

Project Purpose

- Existing ensign valves installed in 1915
  - Design life of 50 years
- Existing valves have been damaged through prolonged use
  - Three valves in the lower row out of service
  - Two of the five sluice gates are also damaged
  - All 25 valves need major maintenance
- Existing valves require reservoir drawdown for maintenance!

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Project Purpose (Cont.)

- Risk - lower valves could malfunction and stick in either the open or closed position
  - A valve stuck open would require limiting reservior elevation to 3118 feet, losing irrigation storage and requiring an unplanned reservoir drawdown for repair
  - A valve stuck closed would limit irrigation and flood control deliveries - three are already out of service
- Last inspection in 1987 - 6-year inspection/repair interval - long overdue!

Schedule

- **Arrowrock bridge**
  - **Construction substantially completed**
- **Arrowrock valves**
  - **EIS – ROD signed April 30, 2001**
  - **Design – completed March 9, 2001**
  - **Contract – awarded August 24, 2001**
  - **Construction underway - on schedule!**

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Schedule (Cont.)

- **Valve rehabilitation**
  - **Started work Sept. 17**
  - **Will acquire materials, begin concrete demolition, and install liners first year**
  - **Gates manufactured first year, installed the second year**
  - **Will complete upstream work between Sept 2003 and March 2004**
  - **Contract complete by July 15, 2004**

History of Cost Estimates

- Fall of 1997 - informal presentations to district boards about concept; figure of $7.0 million used. This number was based on the in-progress value engineering team construction estimate
- On May 27, 1998 - sent letter sent to districts transmitting the final value engineering workbook containing a preliminary worksheet with pre-conceptual construction cost. The letter estimated a $7 million total cost, underestimating the support costs required for a job of this size and complexity

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History of Estimates (Cont.)

- On August 4, 1998 - conceptual design completed by the TSC with a new worksheet detailing a $12 million construction cost. In March, 2000, a final conceptual design was issued by the TSC, with the cost remaining at $12 million. This figure only included the actual contract bid cost; with no planning, design, support, or construction management costs
- On October 23, 2000 - draft EIS issued to public, with a $15 million estimated total project cost for the preferred alternative; which include the costs for the EIS, TSC inspection/oversight, construction management, historical documentation, ESA work, and water quality monitoring

Costs

- Bridges (Left and right) = $ 1.35 million
- Additional costs due to:
  - Additional excavation for crane access
  - Additional excavation for spillway abutments
  - Unknown conditions = inadequate support for left abutment bridge
  - Accelerated schedule to meet valve project mobilization date

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Costs (Cont.)

- Valve costs = $ 15.3 million
  - EIS, ESA, wtr qual = $ 834,000
  - Design & planning = $ 1.3 million
  - Contract = $ 11.1 million
  - Construction management = $ 2.1 million
- Total Cost (1997 to end of project): $15.3M + $1.35M = $16.7M
- Repayment
  - Districts are responsible for 46%
  - Billed quarterly (Feb 12, 2001 letter)
  - Loan legislation pending?

Safety of Dams

- Reclamation's Safety of Dams act of 1978
  - Authorizes the Secretary of the Interior to analyze existing Reclamation dams, changes in the state-of-the-art criteria, and additional hydrologic and seismic data developed since the dams were constructed
  - For dams where a safety concern exists, the secretary is authorized to modify the structure to ensure its continued safety

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Safety of Dams (Cont.)

- The April 26, 1989 Modification Decision Analysis: "based on additional data and analysis, no safety of dam deficiencies exist"
- Since the dam can safely withstand overtopping, valves are not needed to protect the structure, but are required for flood control. Flood control pays 46%
- Therefore, replacement of the valves under the safety of dams program can not be supported by the authorizing legislation

Water Delivery

- October – releases reduced to below inflow, reservoir begins to refill
- Releases increased in spring for flood control
- In very wet years, the reservoir pool is held very low in april; then filled in May and June
- Arrowrock drafted heavily for irrigation in July and August – drafted earlier in dry years

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Water Delivery (Cont.)

- Existing valves have a "bottleneck" at elevation 3118, due to the head limitation on the lower valves
- At elevation 3118, the upper valves are limited to 3,500 cfs, which is inadequate to meet irrigation and flood control demands
- With the new clamshells, full releases may be made at any reservoir head (7,800 cfs @ elev. 3118). Important for full delivery in late summer when Arrowrock elevation low, Lucky Peak high (small net head)

Storage Volume

- Without the sluice gates, there will be 557 AF inactive pool below the clamshell gates
- Typically, some storage is retained in arrowrock and the equivalent volume is supplied from un-contracted storage, principally from lucky peak
- In extreme drought years if all contracted irrigation storage is used, any shortfall would have to be supplied from un-contracted storage space

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Next Update

- Date of next status update
- Goals for next update
  - Items you would like addressed
  - Format of presentation

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