ernon
2952×
Water Tank
3063
UNION
PENITENTIARY
BARBER
ROAD
CANAL
PACIFIC
Barber
BM 2768
Warm Spgs
2750
Mile 58
HOLCOMB RD
30
S ECKERT
AVE
CANAL
Diversion Dam
BR 2814
Well
EAST
AMITY
ROAD
2826
2830
Substations
31
2939
2982
2959
YAMHILL RD
2E 3E BOISE
3N MERIDIAN
2938
2N
BM
2989
3032
6
3034
3097
Fivemile
BM
3053
AY ELEV
3008
3423×
3897
Spring
Squaw
Spring
Spring
3815
Reservoir
3447×
2780
PENITENTIARY
29
28
Trailer
Park
2794
Barber
Sewage Disposal
Ponds
Well
2812
2758
Barber
Dam
2767
Mile 59
BOISE
CANAL
×3341
Maynard
32
33
Mile
60
NEW
YORK
VALLEY
BOISE
CANAL
3017
5
4
Well 2862
2823
BM
2830
Powerplant
Diversion Dam
2813
RIVE
3137
3140
3193×
MICROFILMED
FEB 29 1988

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

Jill Backsen, 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 June 9, 1983, and ending with the issue of June 16, 1983.

Jill Backsen

Subscribed and sworn to before me this 16th day of June, 1983.

Dorothy Engum

Notary Public for Idaho, Residing at Boise, Idaho

NOTICE OF CORRECTION

Notice is hereby given that notice of Application for a Water Right Permit No. 63-10028 in the name of Ada County was published in error on 5/12 & 5/19/83.

The Applicant's name was advertised as being Ada County, WHEREAS, the actual name is Ada County, State of Idaho and the use of water and rate of diversion were advertised as being irrigation and .09 cfs. WHEREAS, the actual use of water and rate of diversion is for irrigation .09 cfs and power 3,000 cfs.

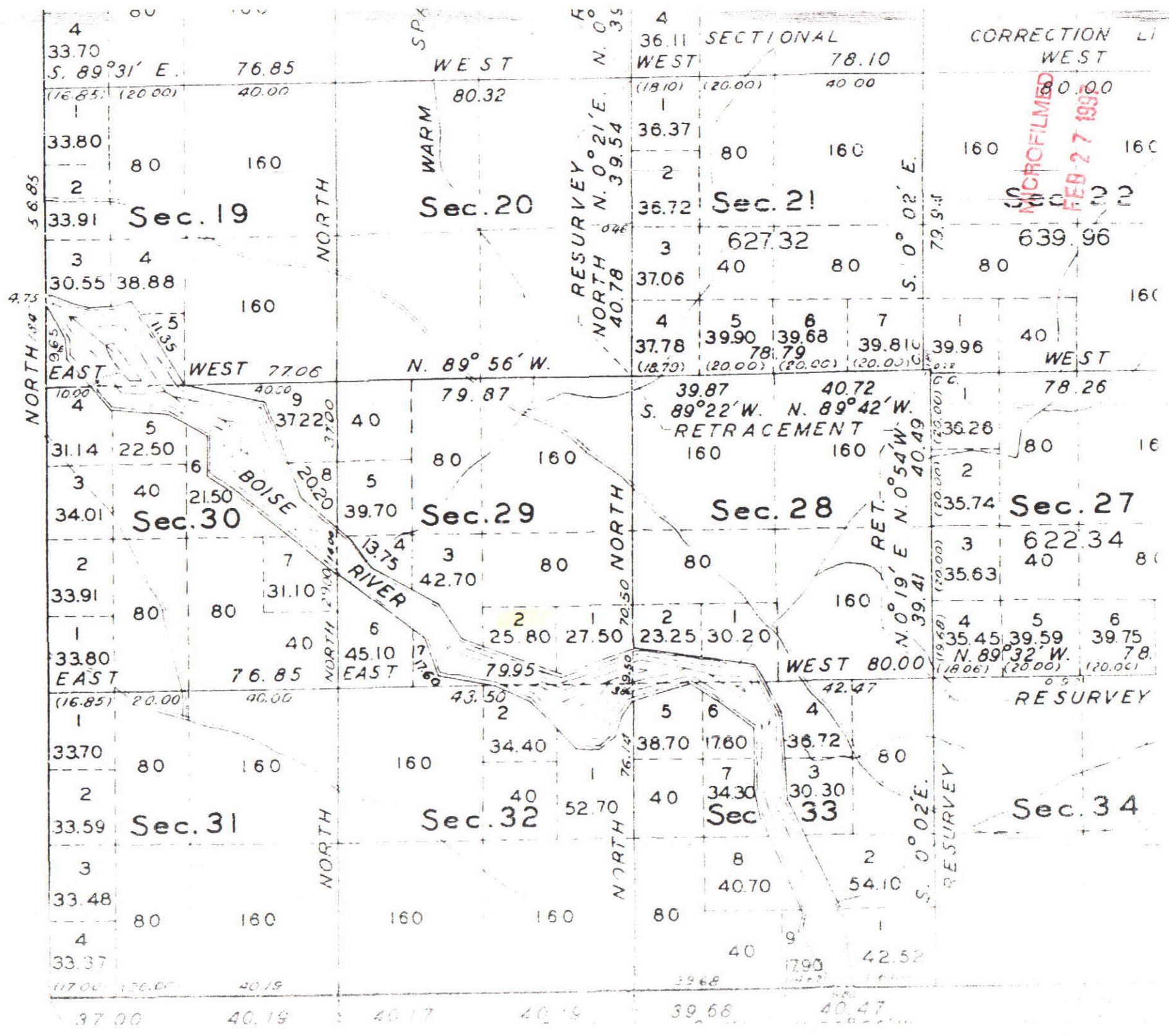
If issued, the permit will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, Statehouse, 450 W. State St., Boise, ID 83720 on or before June 27, 1983.

KEN DUNN
Director

Pub. June 9, 16, 1983 625

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JUN 17 1983
Department of Water Resources
Western Regional Office

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Sec. 19
Sec. 20
Sec. 21
Sec. 22
Sec. 28
Sec. 27
Sec. 30
Sec. 29
Sec. 31
Sec. 32
Sec. 33
Sec. 34
SECTIONAL CORRECTION
RESURVEY
RETRACEMENT
BOISE RIVER
WARM SPRINGS
NORTH
WEST
EAST
S. 89°31' E.
N. 89° 56' W.
S. 89°22' W.
N. 89°42' W.
N. 89°32' W.
627.32
639.96
622.34
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FEB 27 1995

Form 219
6/92

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

RECEIVED
NOV 22 1994
Department of Water Resources

A. GENERAL INFORMATION

Permit No. 63-10028

1. Owner: Fulcrum, Inc. c/o CHI Phone No. 338-2603

Current Address: 1555 Shoreline Drive, Suite 200, Boise, ID 83707

2. Accompanied by: John Bloom EXAM DATE: 3/22/94

Address: Same Phone No. Same

Relationship to Permit Holder: Employee

3. Source: Boise River tributary to Snake River

B. OVERLAP REVIEW

1. Other water rights with the same place of use: 63-02388, 63-09343, 63-00184, 63-00365

2. Other water rights with the same point of diversion: 63-02010

C. DIVERSION AND DELIVERY SYSTEM

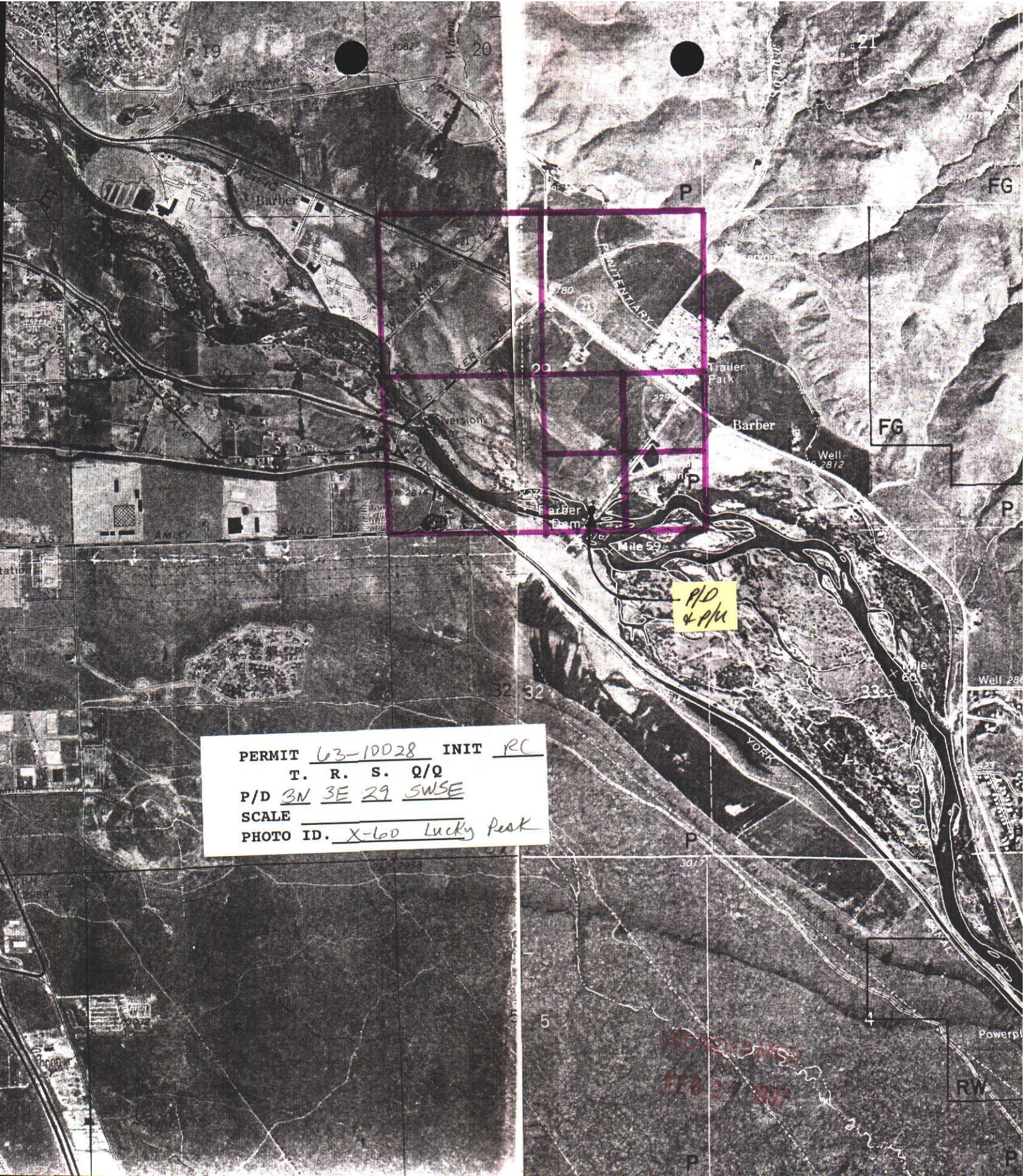
1. **Point(s) of Diversion:**

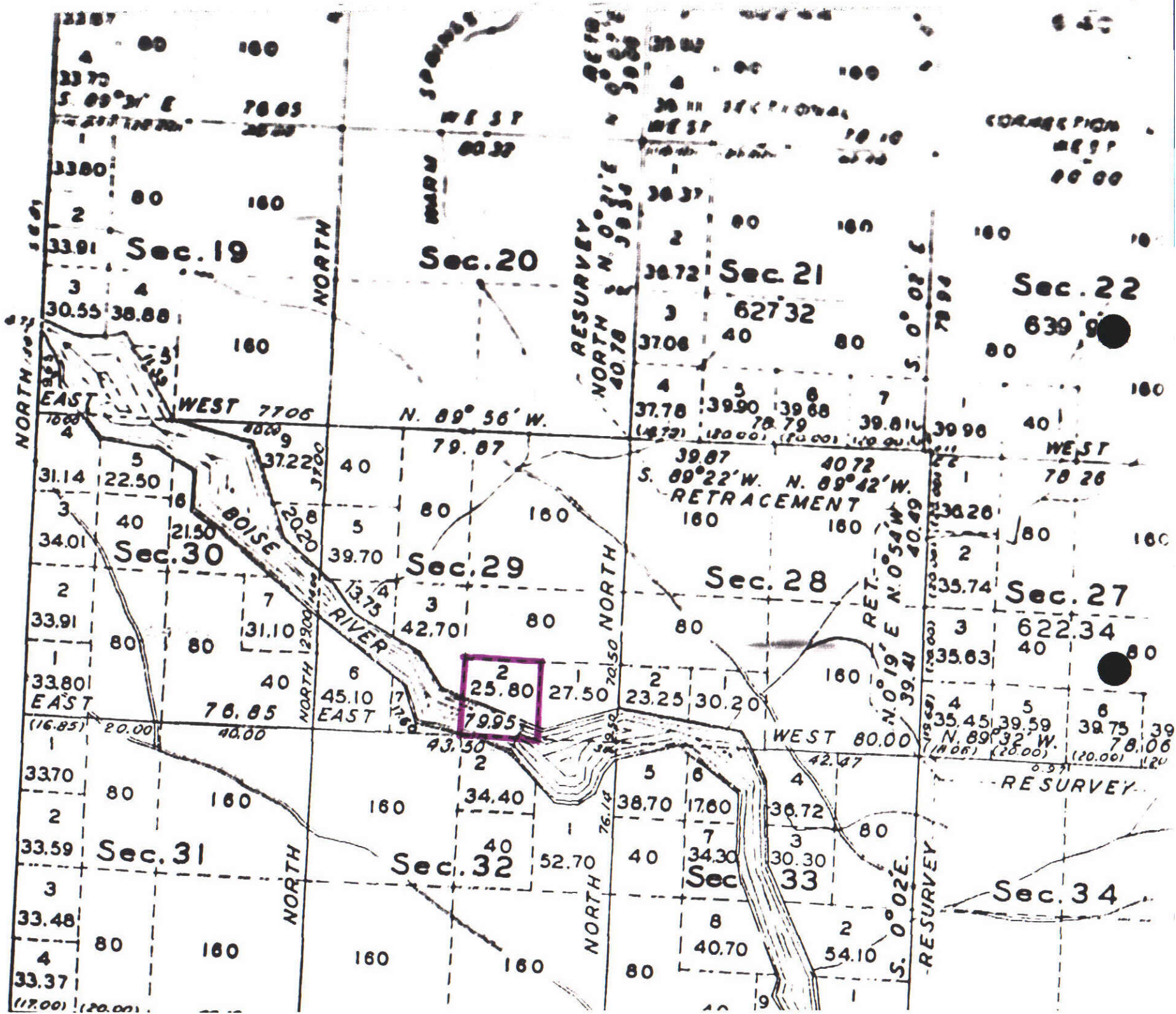
Ident No.	Gov't Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			SW	SE	29	3N	3E	Ada	Aerial Map

2. **Place(s) of Use:** Indicate Method of Determination Same as P/D

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	3E	29															P		

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PERMIT 63-10028 INIT RC
T. R. S. Q/Q
P/D 3N 3E 29 SWSE
SCALE
PHOTO ID. X-60 Lucky Peak
P/D & P/M
Barber
Trailer Park
Barber Dam
Mile 59
Well 2812
PENITENTIARY
YORK
FG
P
RW
RECEIVED
FEB 27 1997



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FEB 27 1997



PHOTO ONE- View southeasterly of power house and Tailrace. Dam spillway shown to right of power house. (Barber Dam)



View southerly of Barber Dam spillway.

PHOTO TWO-



PHOTO THREE- View southeast of old diversion or Levee. This portion of channel discharges over spillway.

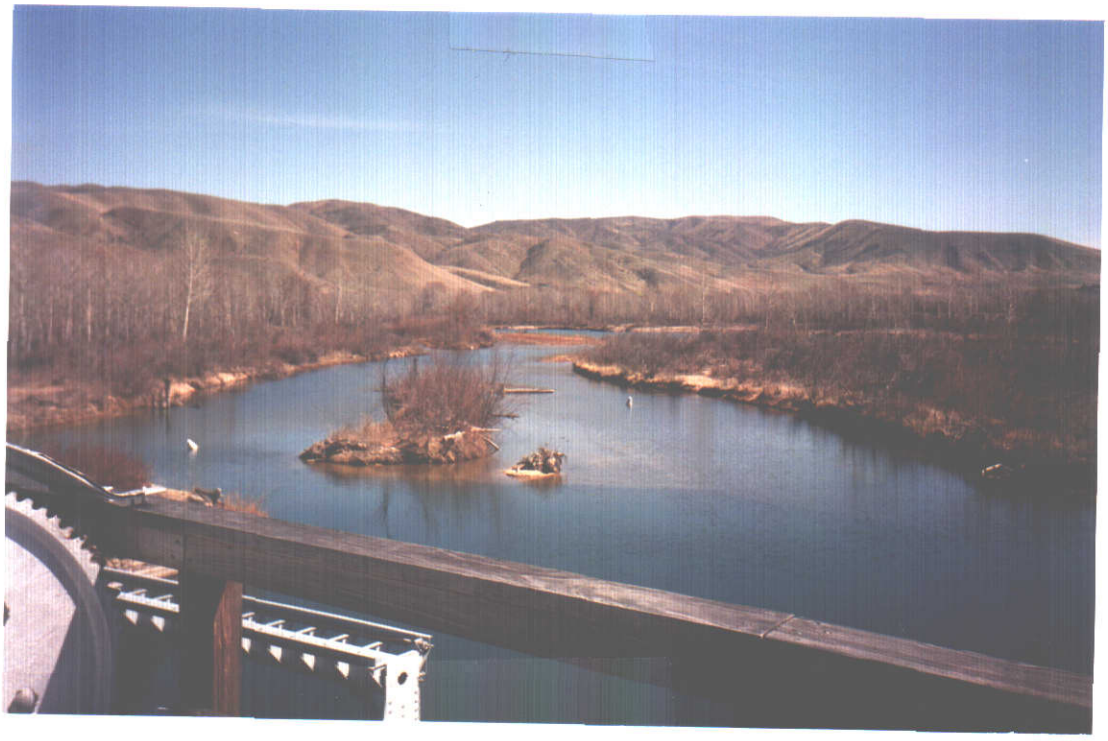


PHOTO FOUR- View easterly of main channel to gates to power house.

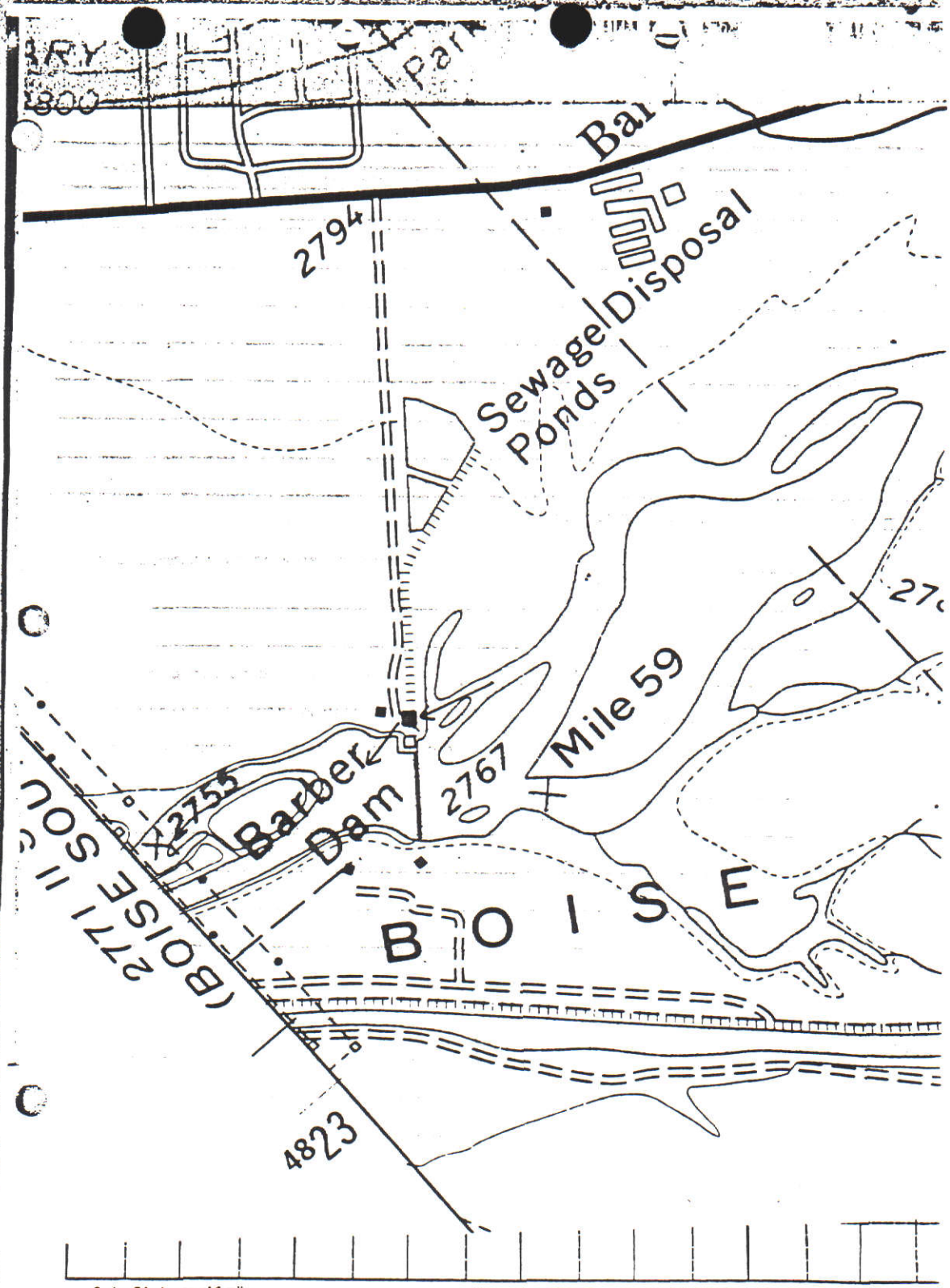


PHOTO FIVE- View southerly of gates to penstock, which Lead inside powerhouse to Two 2 megawatt generators.



PHOTO SIX- View inside power house of the Two 2 megawatt generators.

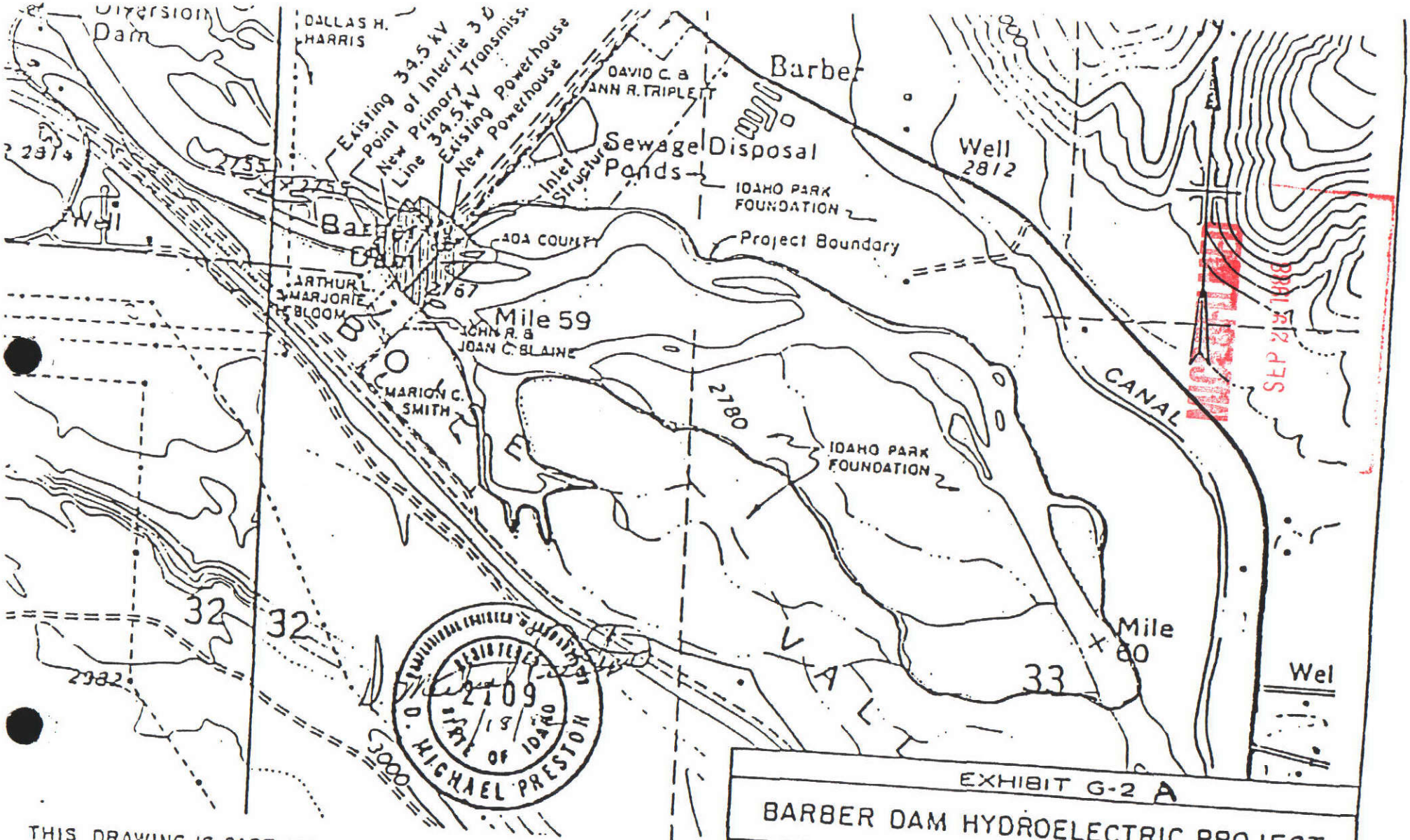
MICROFILMED FEB 27 1997



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
SEP 29 1988

ADA COUNTY
(Applicant) COMMISSIO



THIS DRAWING IS PART OF THE APPLICATION FOR LICENSE SUBMITTED BY THE UNDERSIGNED THIS 28 DAY OF August, 1982.

David M. Lee, P.E.
Ada County Engineer

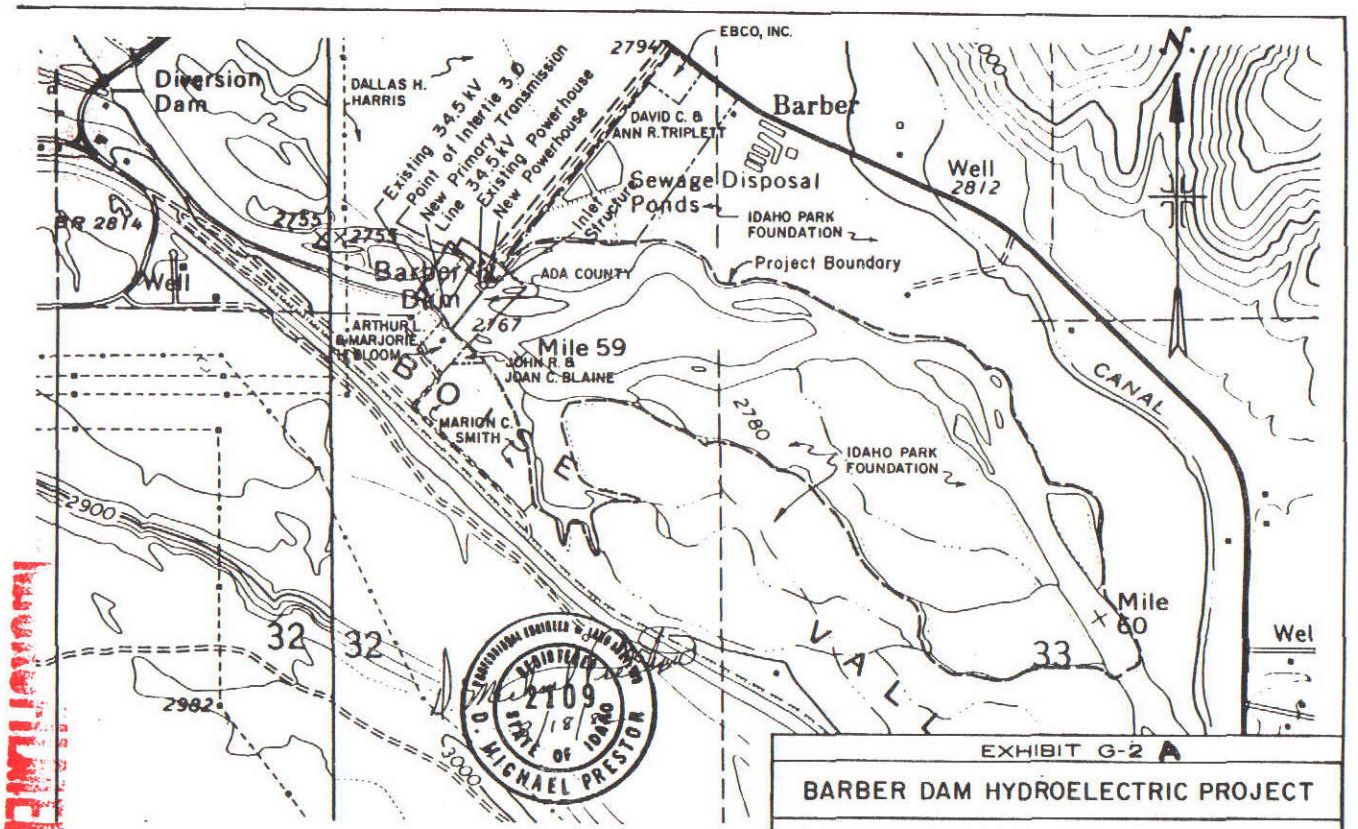
EXHIBIT G-2 A

BARBER DAM HYDROELECTRIC PROJECT

LOCATION MAP

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Boise, Idaho

DE.	DR. JK	CK	SHEET OF
SCALE 1"=1000	DATE JULY, 1982		DWG NO 8820-7



THIS DRAWING IS PART OF THE APPLICATION FOR LICENSE SUBMITTED BY THE UNDERSIGNED THIS 18 DAY OF August, 1982.

David M. Cole, P.E.
ada County Engineer

EXHIBIT G-2 A

BARBER DAM HYDROELECTRIC PROJECT

LOCATION MAP

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Boise, Idaho

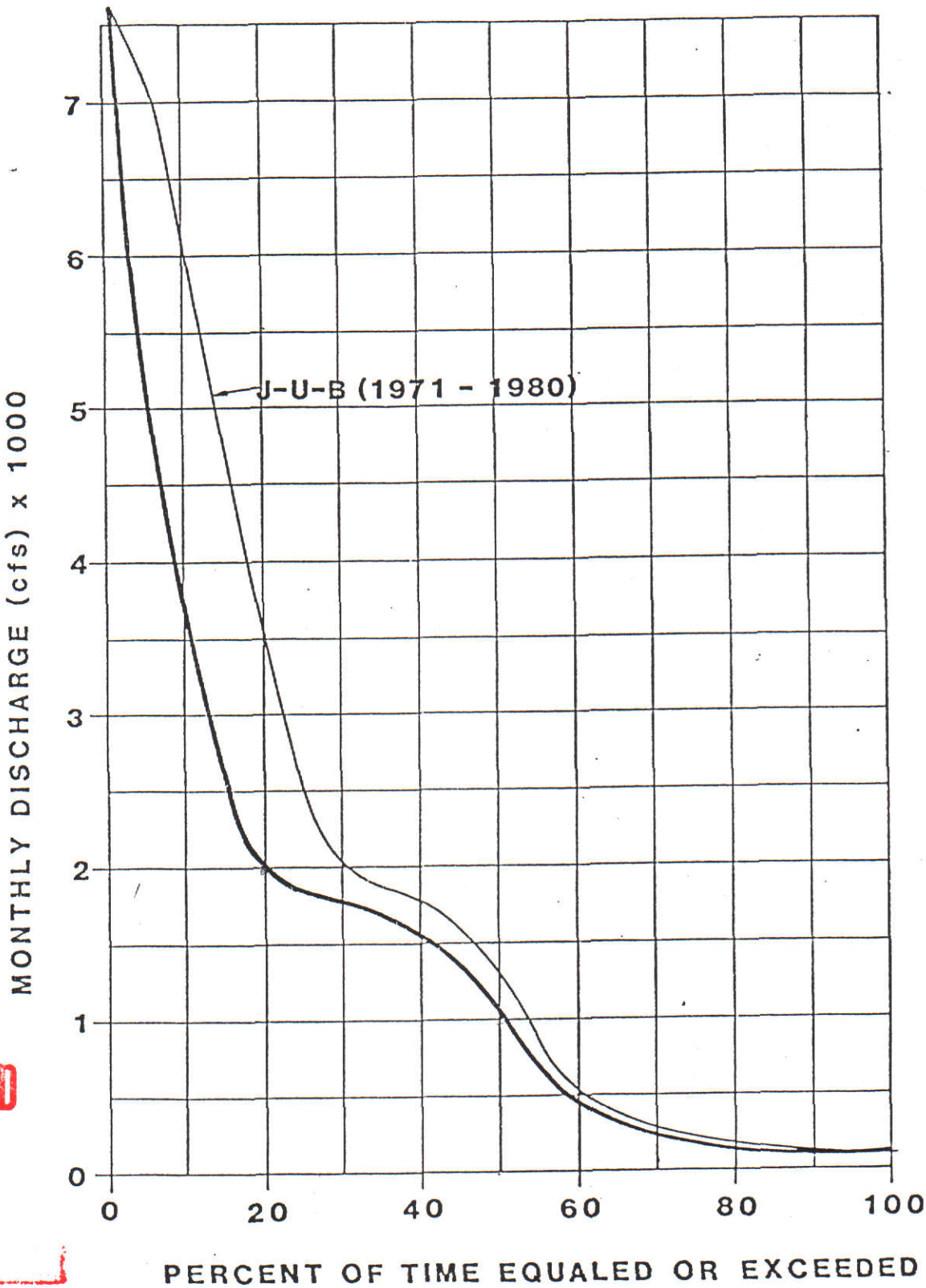
DE.	DR. BK.	CK.	SHEET OF
SCALE 1"=1000	DATE JULY, 1982		DWG. NO. B820723

FEB 29 1988

Appendix 1

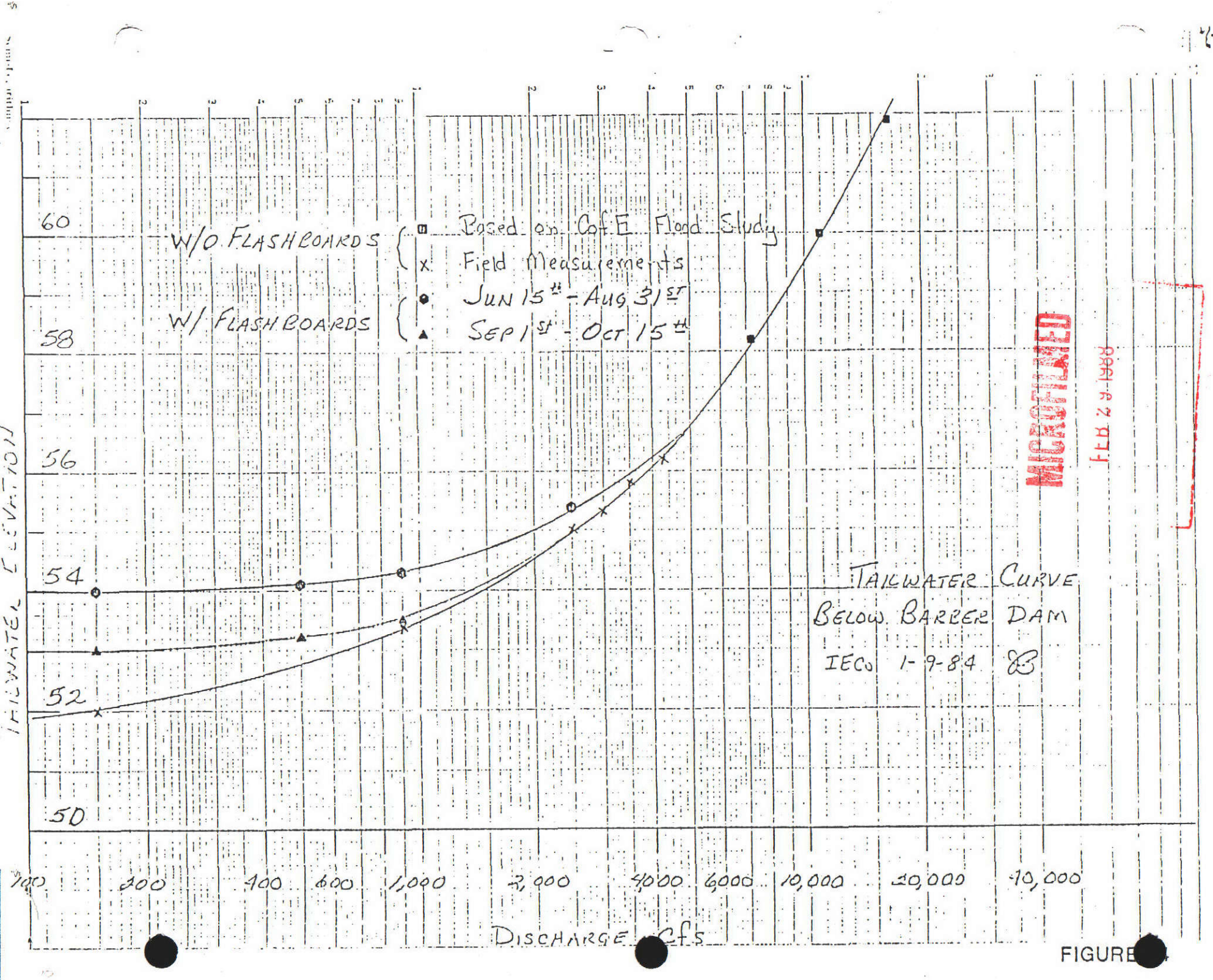
FLOW-DURATION CURVES

(1928 -1978 MONTHLY FLOWS)

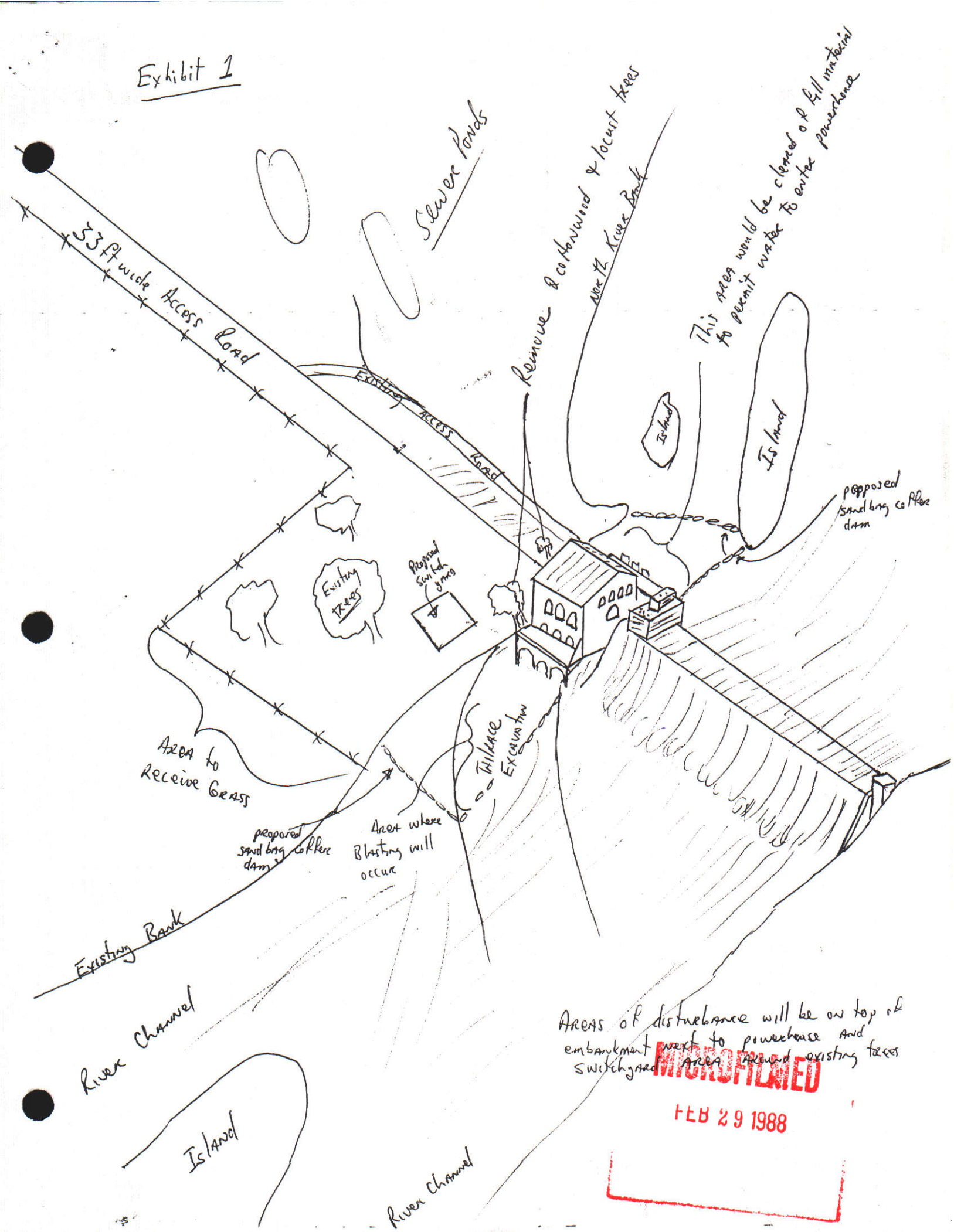


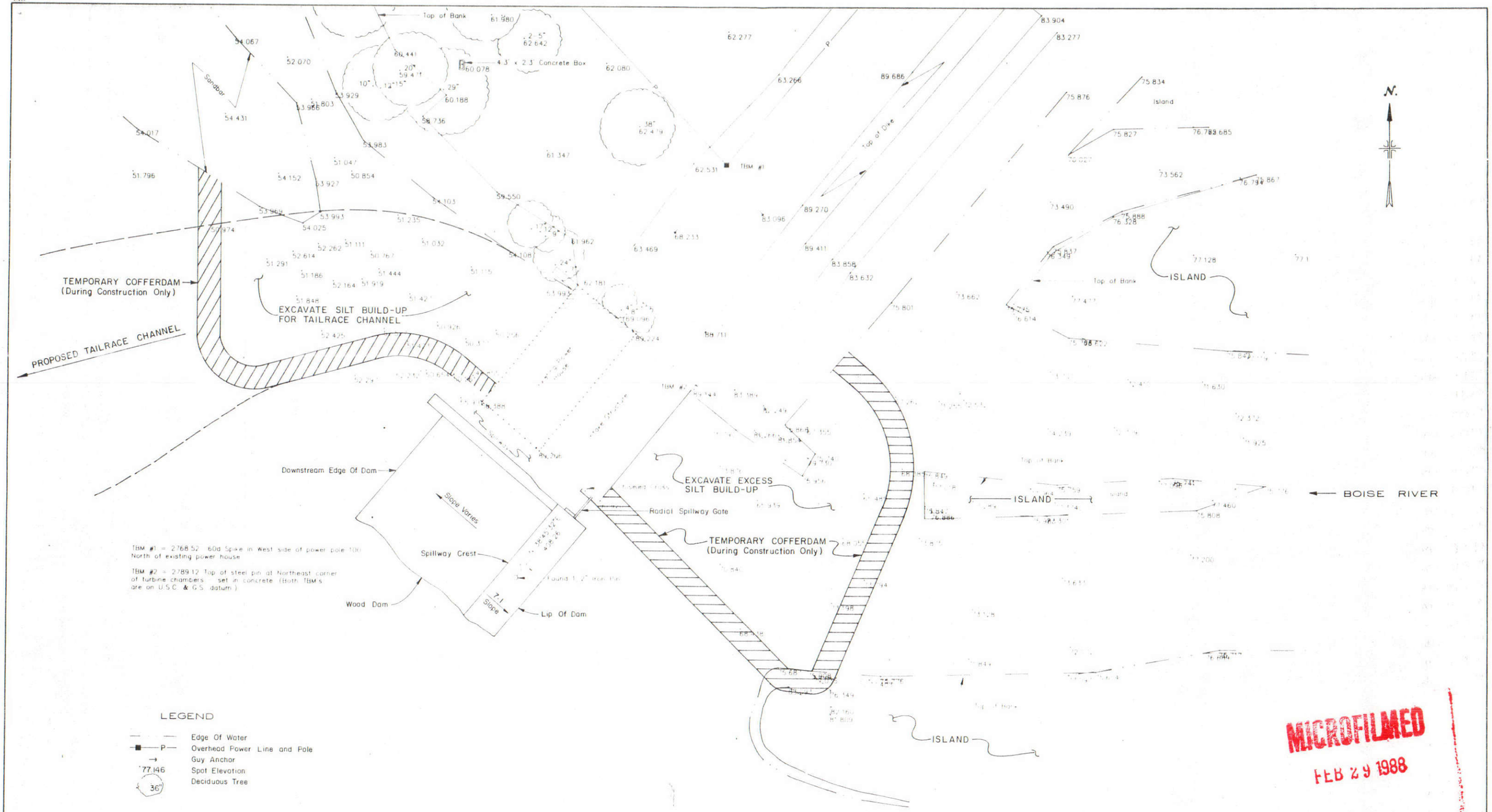
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FEB 29 1988

FIGURE 1


W/O FLASHBOARDS
Based on Corps of E Flood Study
Field Measurements
W/ FLASHBOARDS
JUN 15th - AUG 31st
SEP 1st - OCT 15th
60
58
56
54
52
50
TAILWATER ELEVATION
100
200
400
600
1,000
2,000
4000
6000
10,000
20,000
40,000
DISCHARGE cfs
TAILWATER CURVE
BELOW BARBER DAM
IECo 1-9-84
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FIGURE


Exhibit 1
Sewer Ponds
53 ft wide Access Road
Existing Access Road
Remove & cottonwood & locust trees near the River Bank
This area would be cleared of fill material to permit water to enter powerhouse
Island
Island
proposed sand bag cofferdam
Proposed sanitary
Existing trees
Area to Receive Grass
Tailrace Excavation
proposed sand bag cofferdam
Area where Blasting will occur
Existing Bank
River Channel
Island
River Channel
Areas of disturbance will be on top of embankment next to powerhouse and switchyard
AREA around existing trees
MICROFILMED
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TBM #1 = 2768.52 60d Spike in West side of power pole 100 North of existing power house

TBM #2 = 2789.12 Top of steel pin at Northeast corner of turbine chambers set in concrete (Both TBM's are on U.S.C. & G.S. datum)

LEGEND

- Edge Of Water
- P — Overhead Power Line and Pole
- Guy Anchor
- 77.146 Spot Elevation
- 36" Deciduous Tree

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FEB 29 1988

Preliminary
Subject to Review

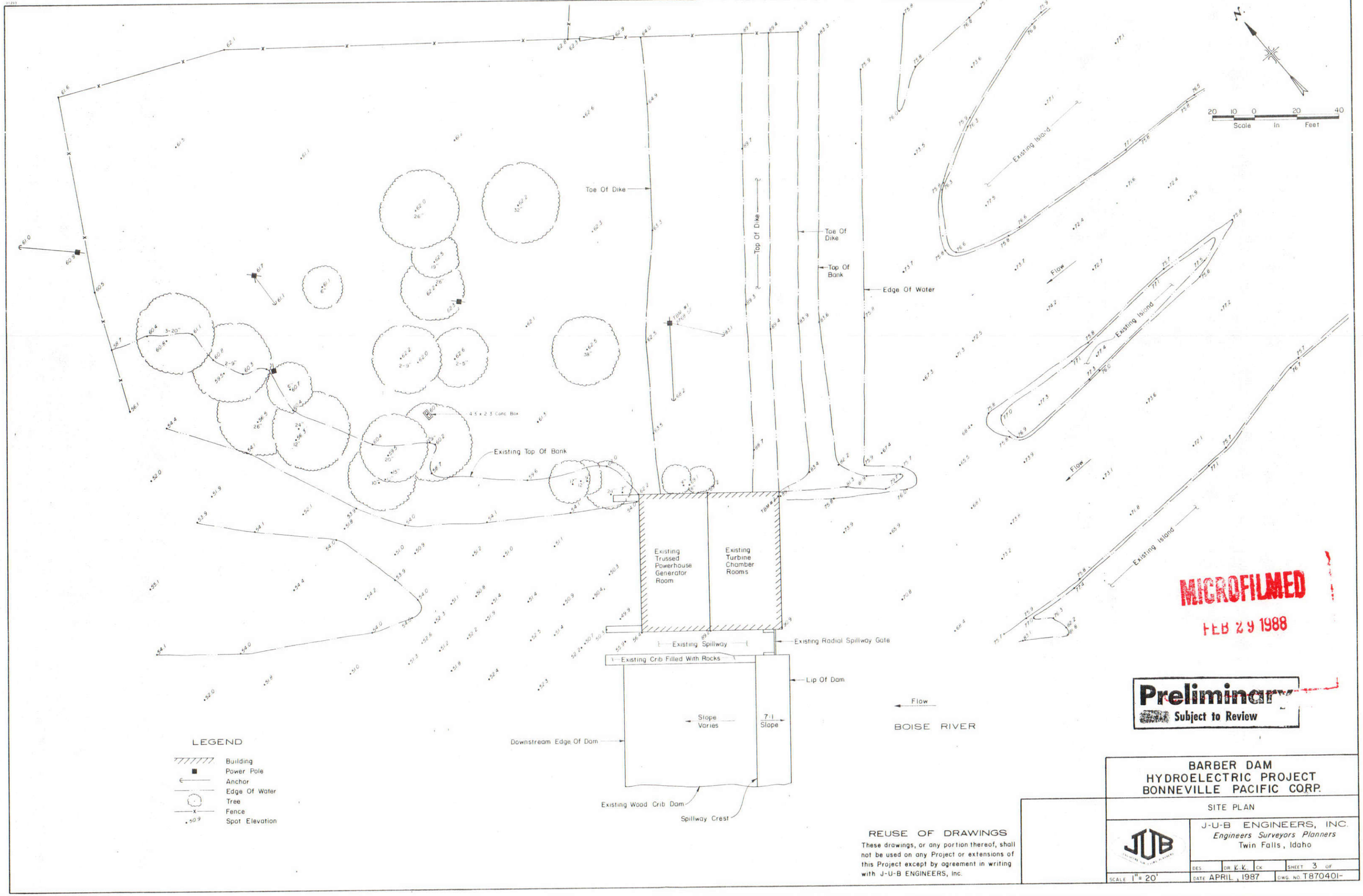
BARBER DAM
HYDROELECTRIC PROJECT
BONNEVILLE PACIFIC CORP.

TEMPORARY COFFERDAM PLAN

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Twin Falls, Idaho

DES | DR K.K | CK | SHEET 2 OF

SCALE 1" = 20' | DATE APRIL, 1987 | DWG NO T87040I-



LEGEND

- Building
- Power Pole
- Anchor
- Edge Of Water
- Tree
- Fence
- .509 Spot Elevation

MICROFILMED
FEB 29 1988

Preliminary
Subject to Review

BARBER DAM HYDROELECTRIC PROJECT BONNEVILLE PACIFIC CORP.

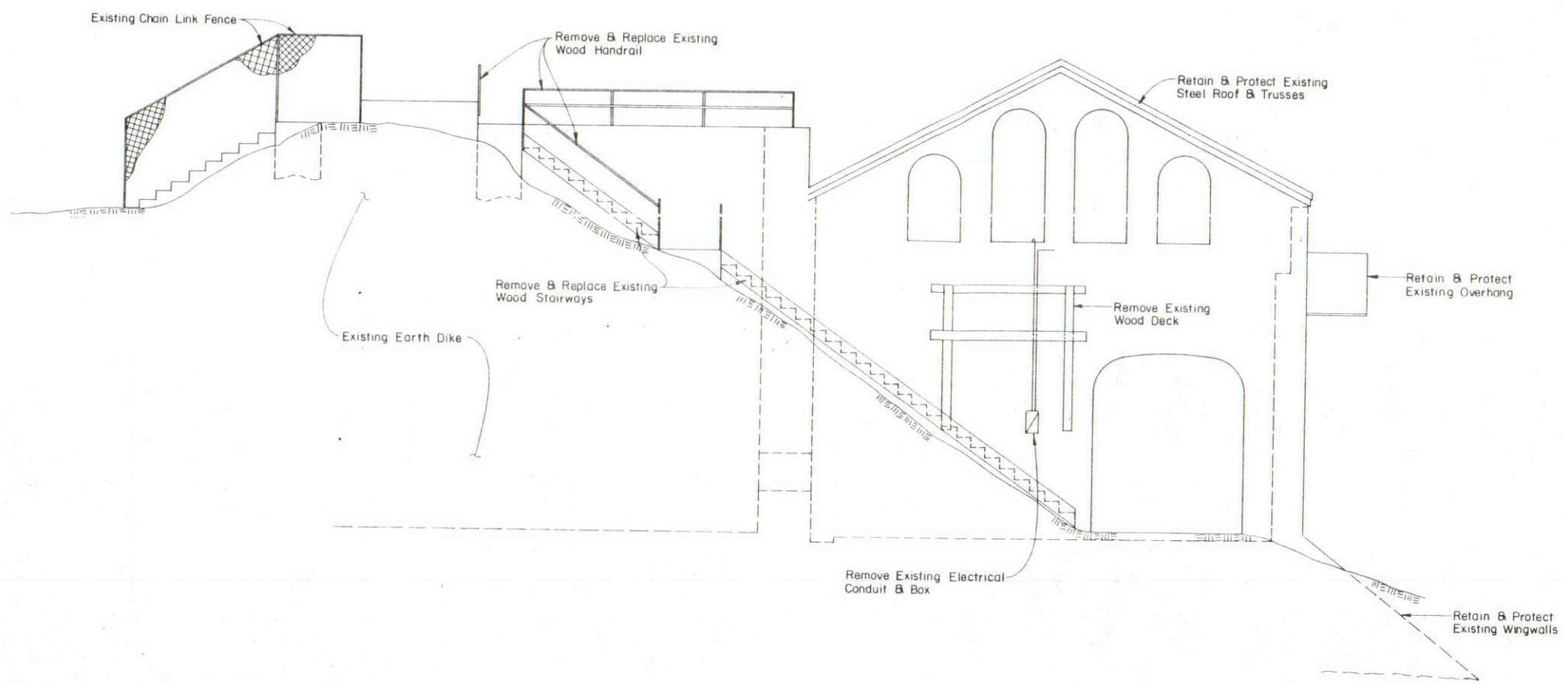
SITE PLAN

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Twin Falls, Idaho

DES | DR. K.K. | CK | SHEET 3 OF

SCALE 1"= 20' | DATE APRIL, 1987 | DWG. NO. T870401-

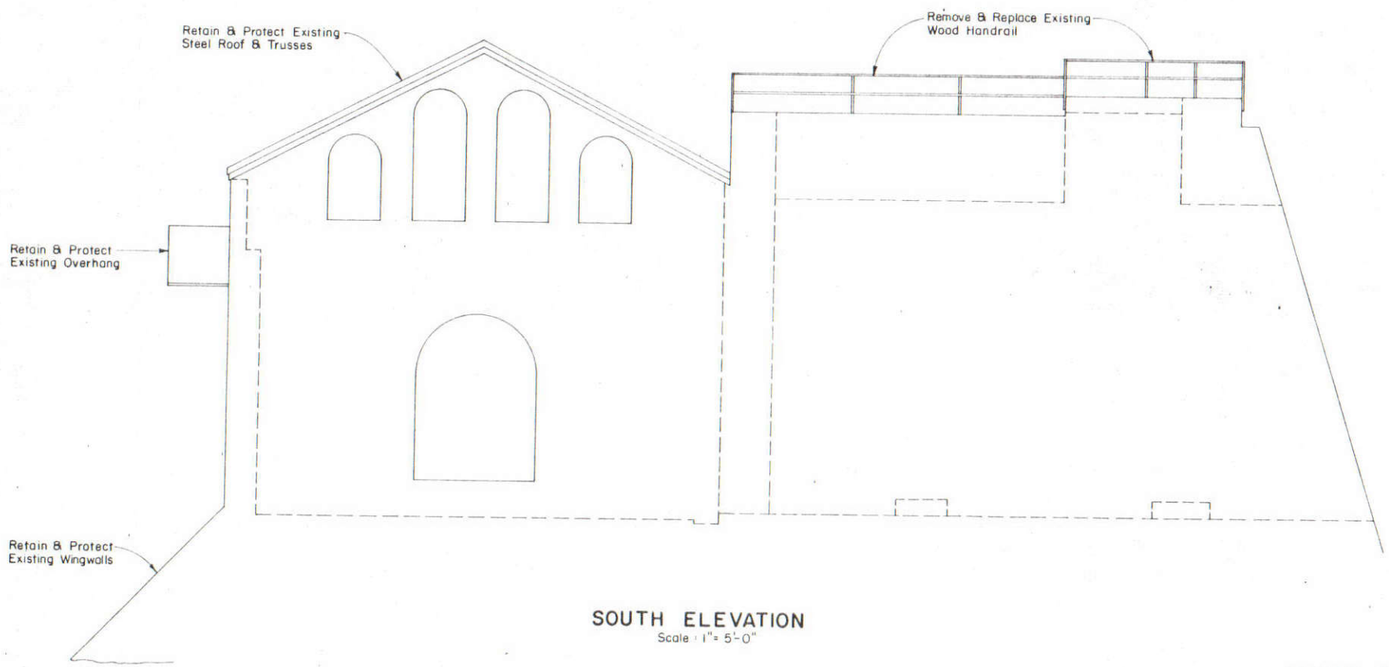
REUSE OF DRAWINGS
These drawings, or any portion thereof, shall not be used on any Project or extensions of this Project except by agreement in writing with J-U-B ENGINEERS, Inc.



NORTH ELEVATION
Scale: 1" = 5'-0"

NOTE:

1. All Exterior Walls And Window Openings To Be Retained And Protected.
2. New Glass Windows To Be Installed In All Existing Window Openings.
3. Remove All Graffitti From Interior And Exterior Walls.



SOUTH ELEVATION
Scale: 1" = 5'-0"

MICROFILMED
FEB 29 1988

Preliminary
Subject to Review

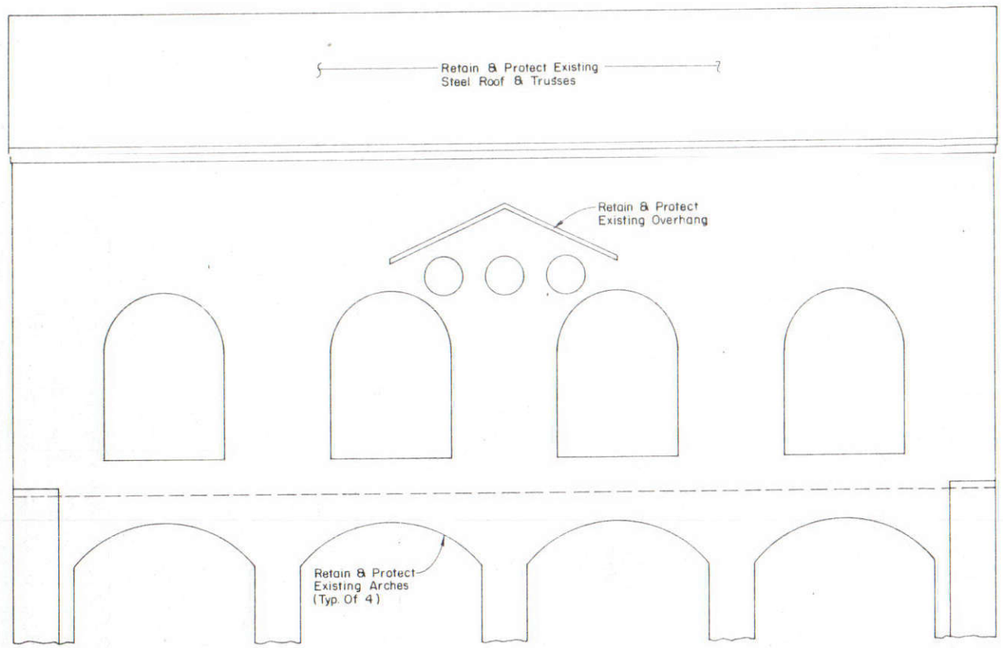
REUSE OF DRAWINGS
These drawings, or any portion thereof, shall not be used on any Project or extensions of this Project except by agreement in writing with J-U-B ENGINEERS, Inc.

BARBER DAM
HYDROELECTRIC PROJECT
BONNEVILLE PACIFIC CORP.

EXISTING
NORTH AND SOUTH ELEVATIONS

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Twin Falls, Idaho

DES. | DR V.L. | CK | SHEET 4 OF
SCALE AS SHOWN | DATE APRIL, 1987 | DWG. NO T87040I-



WEST ELEVATION
Scale: 1"= 5'-0"

NOTE:

1. All Exterior Walls And Window Openings To Be Retained And Protected.
2. New Glass Windows To Be Installed In All Existing Window Openings.
3. Remove All Graffitti From Interior And Exterior Walls.

MICROFILMED
FEB 29 1988

Preliminary
Subject to Review

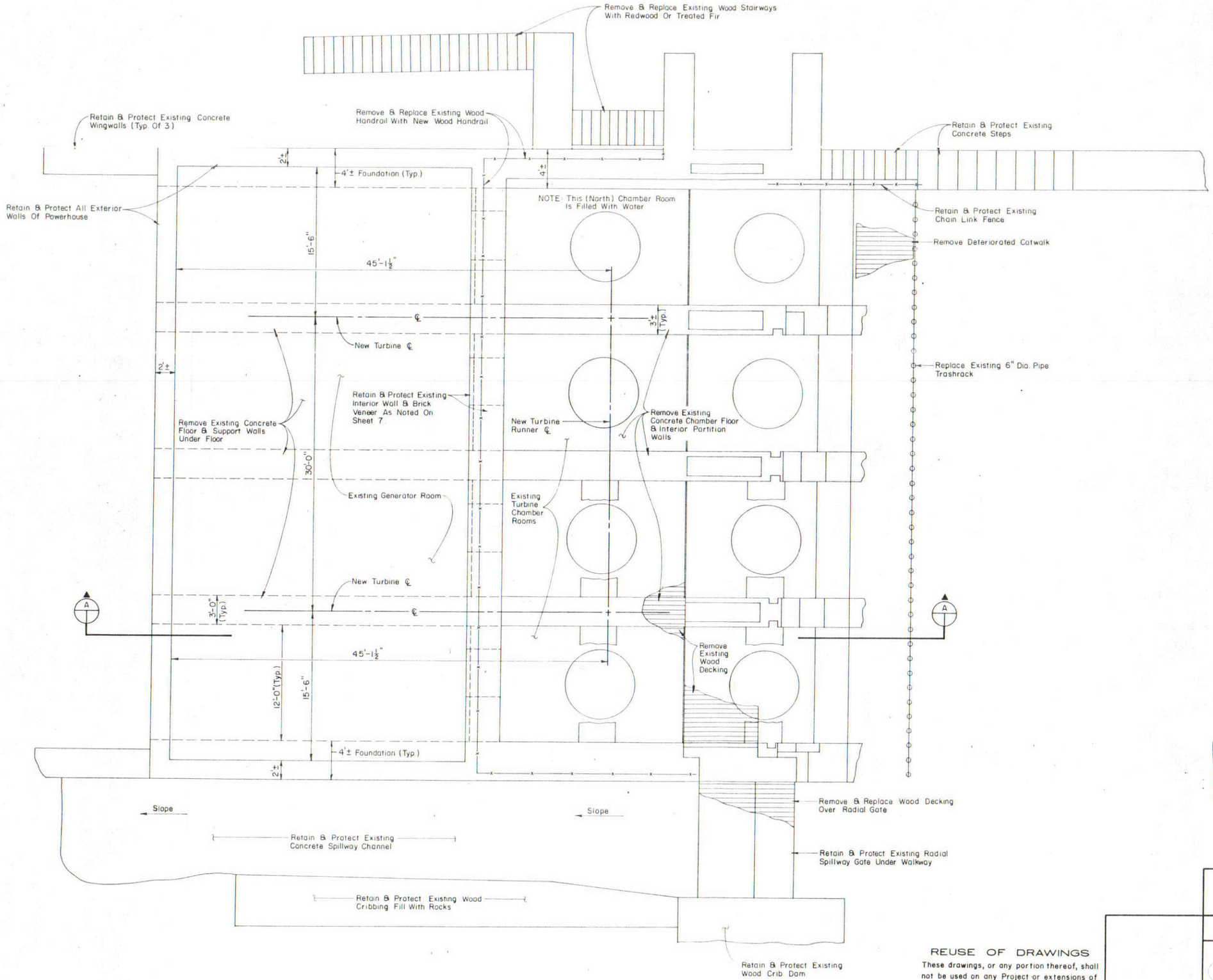
REUSE OF DRAWINGS
These drawings, or any portion thereof, shall not be used on any Project or extensions of this Project except by agreement in writing with J-U-B ENGINEERS, Inc.

BARBER DAM
HYDROELECTRIC PROJECT
BONNEVILLE PACIFIC CORP.

EXISTING WEST ELEVATION
AND MISCELLANEOUS DETAILS

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Twin Falls, Idaho

DES.	DR E.K.	CK	SHEET 5 OF
SCALE AS SHOWN	DATE APRIL, 1987		DWG. NO. T870401-



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FEB 29 1988

Preliminary
Subject to Review

BARBER DAM HYDROELECTRIC PROJECT BONNEVILLE PACIFIC CORP.

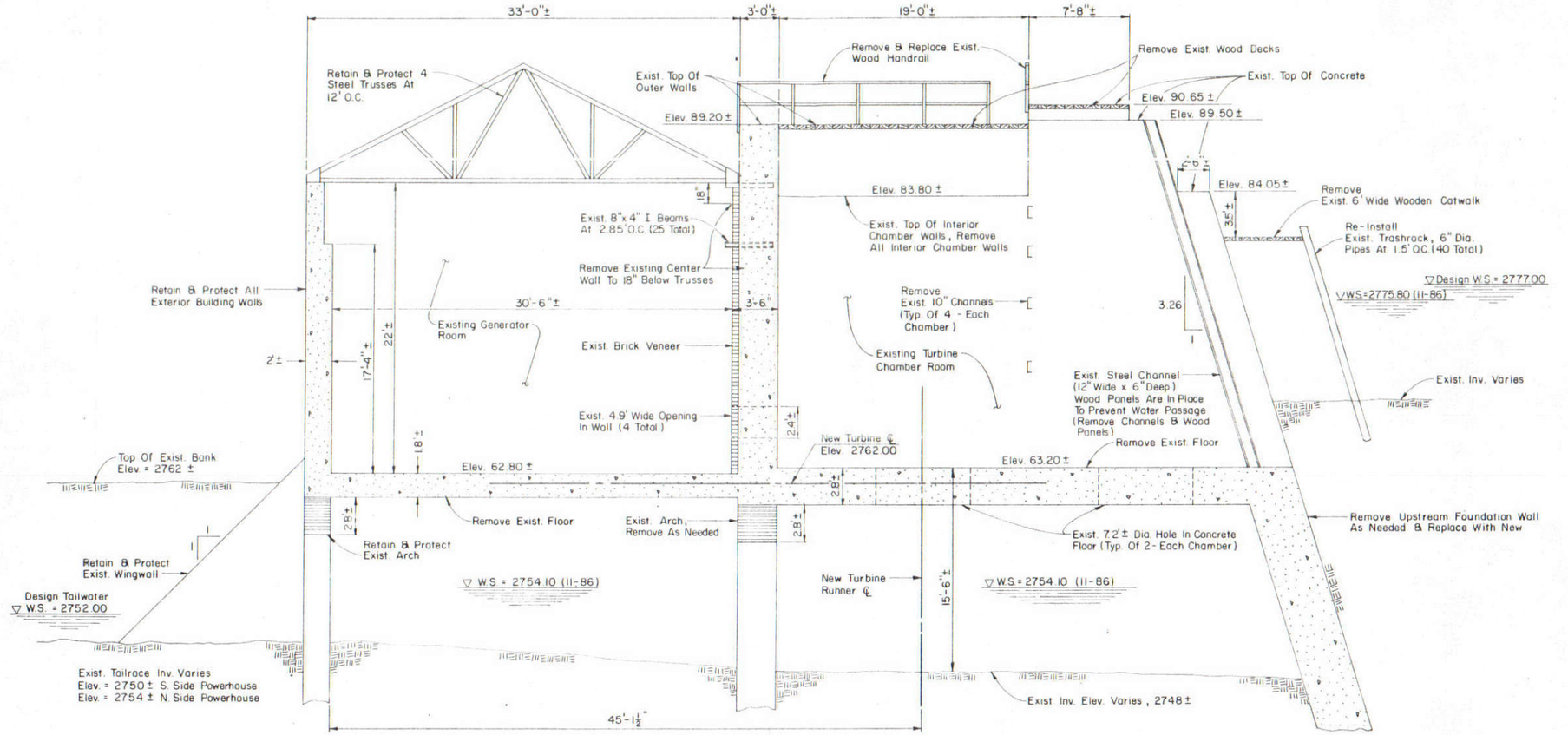
EXISTING POWERHOUSE FLOOR PLAN

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Twin Falls, Idaho

DES. | DR K.C. | CK | SHEET 6 OF

SCALE 1"=5'-0" | DATE APRIL, 1987 | DWG. NO. T870401-

REUSE OF DRAWINGS
These drawings, or any portion thereof, shall not be used on any Project or extensions of this Project except by agreement in writing with J-U-B ENGINEERS, Inc.



SECTION (A)
Scale: 1"=5'-0"

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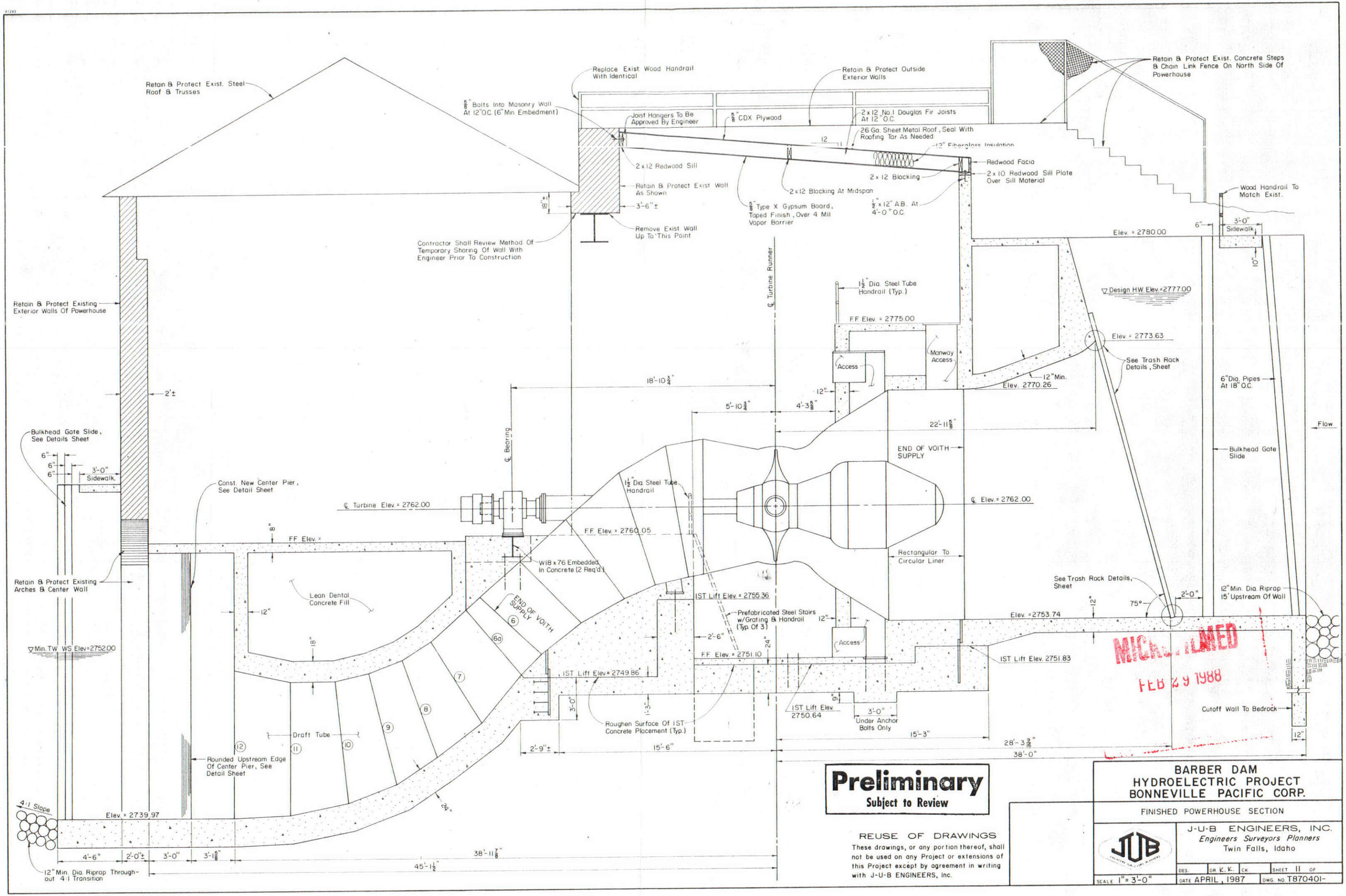
Preliminary
Subject to Review

BARBER DAM HYDROELECTRIC PROJECT BONNEVILLE PACIFIC CORP.

EXISTING POWERHOUSE SECTION

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Twin Falls, Idaho

SCALE AS SHOWN	DES.	DR. K.L.	CK.	SHEET 7 OF
	DATE APRIL, 1987			DWG. NO. T870401-



Preliminary
Subject to Review

REUSE OF DRAWINGS

These drawings, or any portion thereof, shall not be used on any Project or extensions of this Project except by agreement in writing with J-U-B ENGINEERS, Inc.

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FEB 29 1988

BARBER DAM HYDROELECTRIC PROJECT BONNEVILLE PACIFIC CORP.

FINISHED POWERHOUSE SECTION

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Twin Falls, Idaho

DES.	DR. K.K.	CK.	SHEET 11 OF
SCALE 1"= 3'-0"	DATE APRIL, 1987		DWG. NO T870401-

WATER RIGHT SUMMARY

ACTION	RIGHT NO.	NAME	AMOUNT CFS
Original Permit	63-10028	County of Ada	2000.0
Full Assignment	63-10028	Bonneville Pacific Corp.	2000.0
Full Assignment	63-10028	Fulcrum Inc.	2000.0

Stewart Title of Idaho - Trustee
Idaho Power Co. - lienholder
The Fuji Bank Ltd. - lienholder

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OCT 27 1992

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 63-10028

Priority: April 28, 1983

Maximum Diversion Rate: 2000.00 CFS
Maximum Diversion Volume: 1445400.0 AF

This is to certify, that FULCRUM INC
C/O CHI
1555 SHORELINE DR #200
BOISE ID 83707 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated April 28, 1983; and has submitted Proof of Beneficial Use on October 1, 1992. An examination indicates that the works have a diversion capacity of 2154.000 cfs of water from:

BOISE RIVER tributary to SNAKE RIVER

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
POWER	01/01 to 12/31	2000.00 CFS	1445400.0 AF

LOCATION OF POINT(S) OF DIVERSION: Lot 2(SWSE), Sec. 29, Township 03N, Range 03E
ADA County

PLACE OF USE: POWER

TWN	RGE	SEC	
03N	03E	29	Lot 2(SWSE)

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
6. Use of water under this right shall be non-consumptive.

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 63-10028

CONDITIONS OF APPROVAL AND REMARKS

7. The rights for the use of water confirmed in this license shall be junior and subordinate to all 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 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 of this right.
8. Use of water under this water right will be regulated by the watermaster of State Water District No. 63.
9. The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of license 4881-007 issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
10. A permanent measuring device shall be maintained to readily determine the rate of diversion for hydropower purposes.
11. Facility known as Barber Dam Project.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 24TH day of FEBRUARY, 1997.

Acting for KARL J. DREHER, Director

Form 217
11/91

OFFICE USE ONLY
Amt. of Fee $ 600.00
Date 10-1-92
Receipt No. C025444
Receipt by

RECEIVED
OCT 0 1 1992
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

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

1. Permit No. 63-10028 Telephone No. 208-339-2603

2. Name(s) of Permit Holder(s): Fulcrum, Inc.

3. Mailing Address: C/O CHI, 1555 Shoreline Dr.-Ste. 200, Boise, Idaho 83707

4. Source of Water: Boise River,

   If **GROUNDWATER**, Well Driller's Name: _____ Date Drilled: _____

   OPTIONAL:
   Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use (as authorized by the permit):

   Domestic _____ (No. of households) Stockwater _____ (No. and type of stock)

   Irrigation _____ (No. of acres) Other Electric generation

6. Total rate and/or volume for which proof is submitted 2000 cfs **OR** _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

   Measuring device: Required? ___ Yes ___ No Installed? ✓ Yes ___ No
   OK
   OR
   Flow Measurement Port: Required? ___ Yes ___ No Installed? ✓ Yes ___ No

8. Fee Enclosed: $ 600.00 (See License Fee Schedule on back of Instruction Sheet)

9. Person to contact to accompany the Department representative during field examination of the water system.

   Shirley Lindstrom 338-2603
   Name Telephone No.

   1555 Shoreline Drive, ste. 200 Boise, Idaho 83707
   Address

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OCT 27 1992

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

9/28/92 _____
Date Signature (and title, if on behalf of a company or organization)

Form 202
3/78

Ident. No. 63-10028

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Ada County, State of Idaho Phone (208) 383-4424

   Post office address 650 Main Street, Boise, Idaho 83702

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

3. Location of point of diversion is SW ¼ of SE ¼ of Section 29 Township 3N Range 3E B.M. Ada County, additional description: ~~points of diversion if any:~~

   At Barber Dam, circa River Mile 58.9, Boise River

4. Water will be used for the following purposes:

   Allow 2000 JJ 10/6/87
   Amount ~~3000~~ (cfs or ~~acre-feet per annum~~) for elect. gen. purposes from 1/1 to 12/31 (both dates inclusive)

   Amount ~~0.09~~ (cfs or ~~acre-feet per annum~~) for ~~IRRIGATION~~ purposes from ~~3/15~~ to ~~11/15~~ (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:

   Allow 2000 JJ 10/6/87
   a. ~~3000~~ cubic feet per second and/or b. N/A acre-feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. Siphon penstocks to turbine/ generators; return to river via an open channel tailrace.

   b. Height of ~~storage~~ dam 23 ± feet, active reservoir capacity negligible acre-feet; total reservoir capacity neg. acre-feet, materials used in storage dam: Timber crib w/pneumatic concrete face

      Period of year when water will be diverted to storage N/A (Month/Day) to --- (Month/Day) inclusive.

   c. Proposed well diameter is N/A 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: SW ¼ of SE ¼ of Section 29 Township 3N Range 3E B.M.

      (2) Amount of power to be generated: 7300 theoretical horsepower under 23 ± feet of head.

      (3) List number of each kind of livestock to be watered N/A

      (4) Name of municipality to be served N/A, or number of families to be supplied with domestic water ---.

      (5) If water is to be used for other purposes describe: Power generation.

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
~~3N~~	~~3E~~	~~29~~															3		3

Total number of acres to be irrigated 3

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 Ada County

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

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

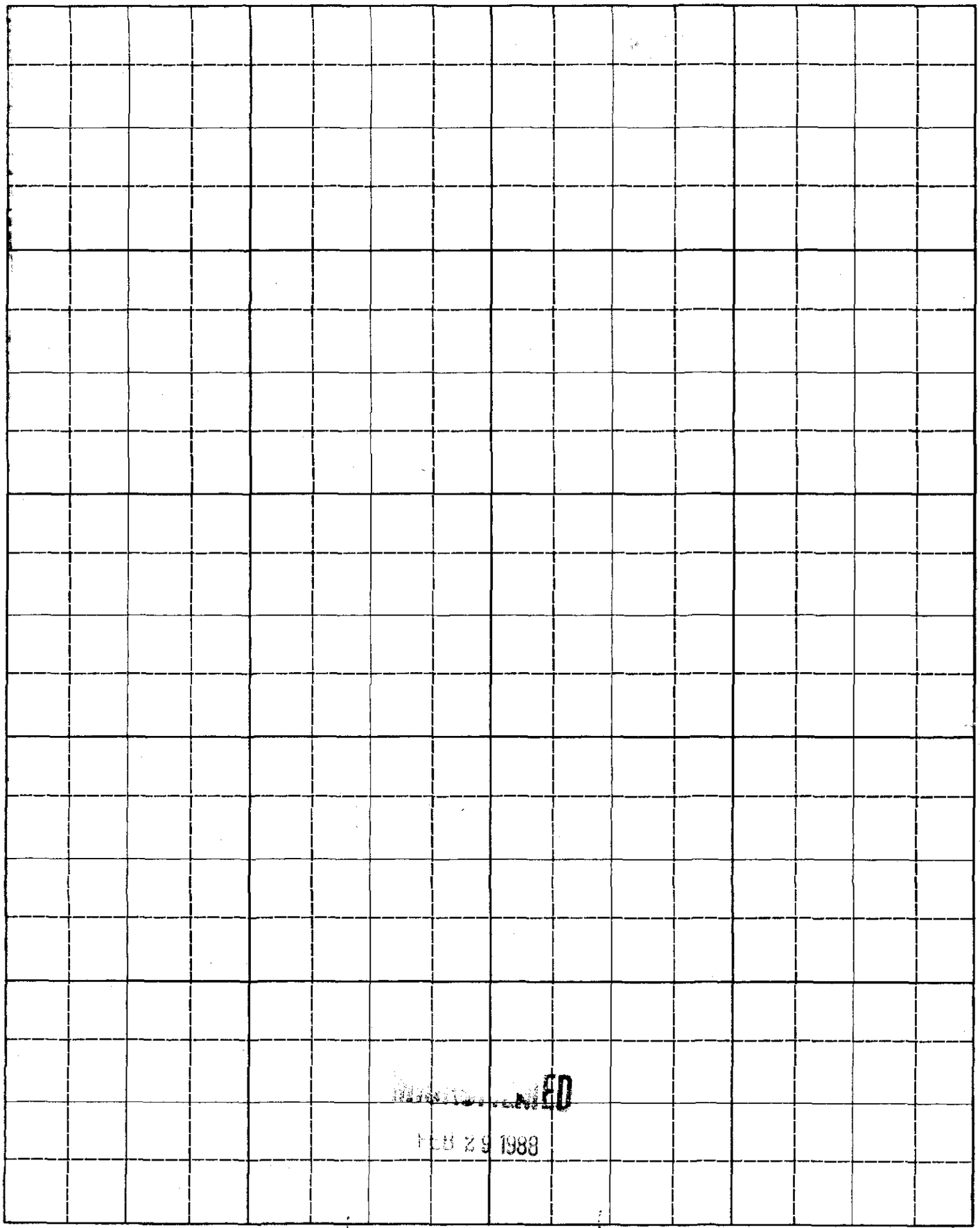
10. Remarks

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Water Tank
3063
UNION
PENITENTIARY
BARBER
PACIFIC
Barber
BM 2768
CANAL
RIVER
Warm Spgs
2750
HOLCOMB RD
30
29
28
Diversion Dam
AVE
CANAL
EAST
AMITY
ROAD
2826
Well
BM 2814
2830
Substations
Spring
Squaw
Spring
3423
3897
3845
Reservoir
3427
2780
PENITENTIARY
Trailer Park
2794
Barber
Sewage Disposal Ponds
Well 2812
2753
Barber Dam
2767
Mile 59
BOISE
CANAL
3341
Mile 60
Well 2862
33
32
NEW YORK
VALLEY CANAL
BOISE
2823
3017
CANAL
BM 2830
Diversion Dam
Powerplant
2813
RIV
3137
3193
31
2939
2982
2959
YAMHILL RD
2E 3E
3N
2N
BOISE MERIDIAN
BM 2989
2938
3032
6
5
4
3034
3097
BM 3053
Fivemile
AY ELEV. 3008
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11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



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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.

Vern Emery ADA COUNTY
(Applicant) COMMISSIONER

Proposed Priority 4/28/83

Received by JG Date 4/28/83 Time _____

Preliminary check by JG Fee $ 5,725.00

Receipted by JG Date 4/28/83 #27964

Publication prepared by SP Date 5/5/83

Published in Idaho Statesman

Publication dates 5/12 & 5/19/83 Corr 6/9 & 6/16/83

Publication approved Is SP Date 6/20/83

Protests filed by: none

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for (approval) denial by DBS 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. 63-10028, 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 October 1, 19 92.

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

   d. Other: SEE ATTACHED SHEET FOR CONDITIONS d thru n.

Witness my hand this 30TH day of NOVEMBER, 1987.

R. Keith Higginson
Director

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FEB 29 1988

ATTACHMENT TO CONDITIONS OF APPROVAL
To Permit No. 63-10028

d. This permit does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
e. Prior to placing water to beneficial use under this permit, the permit holder must determine the rate of loss within his facilities using a procedure approved by the Director of the Department of Water Resources, and provide a source of augmentation water to mitigate all losses.
f. Use of water under this permit shall be non-consumptive and only for power generation.
g. Permit holder shall install and maintain a permanent measuring device, or install and rate a flow section, or provide curves and other data acceptable to the Director which can be used to readily determine the rate of diversion for hydropower generation.
h. The storage of water under this permit is contingent upon the certification of the dam and authorization of storage per the dam safety provisions of the Idaho Code.
i. This permit is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this permit. Failure to comply with these provisions is cause for immediate cancellation of this permit.
j. Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.
k. The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director on the date(s) of expiration of any license issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
l. The water right acquired under this permit for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.mn.
m. The maximum rate of diversion under this permit shall not exceed 2000 cfs.
n. Use of water under this permit is subject to control by the watermaster of State Water District No. 63, Boise River.

Witness my hand this 30TH day of NOVEMBER, 1987.

Director

RECORDED
DEC 09 1988

Form 205/206
7/81

Ident. No._____

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

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

1. Individual Applicant or Individual Members of a Partnership:

I,_____ (name) of_____ (city),

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

2. ~~Corporation~~: County:

I, Vern Emery (name) of Boise (city),

County of Ada, State of Idaho, being duly sworn, depose and say: That I am the designated registered agent of the County of Ada (name of ~~corporation~~ County): that as such I am in charge of the ~~registered~~ office of the said County ~~as required by Section 30-1-12, Idaho Code~~, at Boise (city) Idaho, wherein are kept the County records ~~required by Section 30-1-52, Idaho Code~~: and that the County of Ada (name of ~~corporation~~ County) is a County qualified to do business in the State of Idaho under the laws of the State of Idaho.

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

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

(check one)

☐ Will not utilize existing man-made irrigation facilities such as a dam or a canal.

☐ Will utilize existing man-made irrigation facilities such as a dam or a canal, and permission of the owner is documented in an affidavit attached hereto.

☒ Will utilize existing man-made ~~irrigation facilities such as a~~ dam ~~or a canal~~ and the owner of the facilities is the signee of this affidavit.

Vern Emery
Applicant Vern Emery

State of Idaho)
County of Ada) ss.

On this 11th day of April, 19 83, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Ellen Franklin
Notary Public residing at
Kuna, Idaho 83634

seal

My commission expires:
5/25/85

FEB 23 1983

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

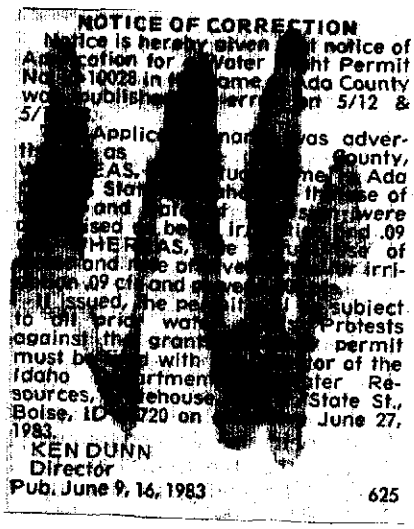
Jill Backsen, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published 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 June 9, 1983, and ending with the issue of June 16, 1983.

Jill Backsen

Subscribed and sworn to before me this 16th day of June, 1983.

Notary Public for Idaho, Residing at Boise, Idaho



NOTICE OF CORRECTION

Notice is hereby given [illegible] notice of Application for [illegible] Water [illegible] ht Permit No. 10028 in the name [illegible] Ada County was published [illegible] on 5/12 & 5/[illegible]; Applic[illegible] has adver- [illegible] as [illegible] County, WHEREAS, [illegible] Ada [illegible] State [illegible] the use of [illegible] and [illegible] were [illegible] be [illegible] ed .09 [illegible] WHEREAS, [illegible] use of [illegible] and [illegible] ver [illegible] irri- [illegible] .09 cfs and [illegible] Issued, the permit [illegible] subject to all [illegible] water [illegible] Protests against the granting of permit must be filed with [illegible] or of the Idaho [illegible] artment [illegible] ater Resources, [illegible] tehouse [illegible] State St., Boise, ID [illegible] 720 on [illegible] June 27, 1983.

KEN DUNN
Director

Pub. June 9, 16, 1983 625

RECEIVED
JUN [illegible]
Department of Water Resources
Western Regional Office

MICROFILMED
FEB 29 1988

NOTICE OF APPLICATION FOR WATER RIGHT

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

63-10023
SEUFERT, WILLIAM T. &/or JANIS L.
7247 VALLEY HEIGHTS DR.
BOISE, ID 83709
Source: GROUNDWATER
Date Filed: 04/29/1983
Diversion Point: SWSW Sec 03 T 02N R 01E
Use: IRRIGATION (0.06 CFS)
STOCKWATER (0.04 CFS)
DOMESTIC (0.04 CFS)
In: SWSW Sec 03 T 02N R 01E FOR 2 ACRES

63-10024
STARK, E. F. &/or DARYLINE
133 ROOSTER DR., EAGLE, ID 83616
Source: GROUNDWATER
Date Filed: 05/02/1983
Diversion Point: NWSW Sec 04 T 04N R 01E
Use: IRRIGATION (0.08 CFS)
DOMESTIC (0.02 CFS)
In: NWSW Sec 04 T 04N R 01E FOR 2 ACRES

63-10028 ✓R
ADA COUNTY
650 MAIN ST., BOISE, ID 83702
Source: BOISE RIVER trib. to SNAKE RIVER
Date Filed: 04/28/1983
Diversion Point: SWSE Sec 29 T 03N R 03E
Use: IRRIGATION (0.09 CFS)
In: SWSE Sec 29 T 03N R 03E FOR 3 ACRES

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 MAY 31, 1983.

A. KENNETH DUNN
Director

Pub. May 12, 19, 1983 408

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

Jill Backsen, 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 12, 1983, and ending with the issue of May 19, 1983.

Jill Backsen

Subscribed and sworn to before me this 19th day of May, 1983.

Notary Public for Idaho, Residing at Boise, Idaho

MICROFILMED

FEB 29 1988

Department of Water Resources
Western Region

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

L. DREHER
ECTOR

February 26, 1997

3/10/97
I called the phone # listed & asked them to return my call on answering machine.
Patti

FULCRUM INC
C/O CHI
1555 SHORELINE DR #200
BOISE ID 83707

RE: WATER RIGHT NO. 63-10028

Dear Water Right Holder(s):

The Department of Water Resources (the Department) has issued the enclosed license confirming that a water right has been established in accordance with the permit referenced above. The license 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 unless a party petitions for reconsideration within fourteen (14) days after issuance 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 twenty-one (21) 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. Otherwise, this preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

ORAL ARGUMENT

If the Department grants a petition to review the preliminary order, the Department 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 Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department 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 Department in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 Department 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.

If you have questions, please contact me at (208) 327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

c: Western Region

Enclosures

CERTIFICATE OF MAILING

I hereby certify that on the **26th** day of **February, 1997**, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER (Approved License)** to the person(s) listed below:

Water Right No. 63-10028

FULCRUM INC
C/O CHI
1555 SHORELINE DR #200
BOISE ID 83707

S Curtis

Sharla Curtis
Water Resource Agent

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 63-10028

Priority: April 28, 1983 Maximum Diversion Rate: 2000.00 CFS
Maximum Diversion Volume: 1445400.0 AF

This is to certify, that FULCRUM INC
C/O CHI
1555 SHORELINE DR #200
BOISE ID 83707 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated April 28, 1983; and has submitted Proof of Beneficial Use on October 1, 1992. An examination indicates that the works have a diversion capacity of 2154.000 cfs of water from:

BOISE RIVER tributary to SNAKE RIVER

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
POWER	01/01 to 12/31	2000.00 CFS	1445400.0 AF

LOCATION OF POINT(S) OF DIVERSION: Lot 2(SWSE), Sec. 29, Township 03N, Range 03E ADA County

PLACE OF USE: POWER

TWN	RGE	SEC	
03N	03E	29	Lot 2(SWSE)

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
6. Use of water under this right shall be non-consumptive.

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 63-10028

CONDITIONS OF APPROVAL AND REMARKS

7. The rights for the use of water confirmed in this license shall be junior and subordinate to all 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 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 of this right.
8. Use of water under this water right will be regulated by the watermaster of State Water District No. 63.
9. The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of license 4881-007 issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
10. A permanent measuring device shall be maintained to readily determine the rate of diversion for hydropower purposes.
11. Facility known as Barber Dam Project.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 24TH day of FEBRUARY, 1997.

Acting for KARL J. DREHER, Director

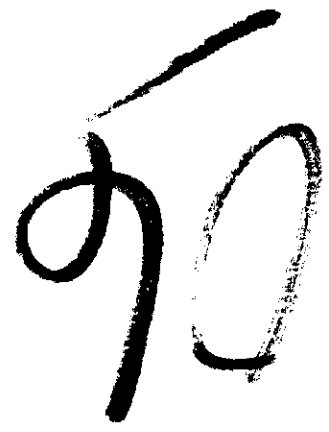
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD STREET
BOISE, IDAHO 83706-2237

BOISE
FEB 27 97
ID
DR
7815746
0.78
U.S. POSTAGE

RETURNED TO SENDER
UNDELIVERABLE AS ADDRESSED—
NO FORWARDING ORDER ON FILE

53-10028
FULCRUM INC
C/O CHI
1555 SHORELINE DR #200
BOISE ID 83707

RECEIVED
MAR 03 1997
Department of Water Resources



State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

February 26, 1997

FULCRUM INC
C/O CHI
1555 SHORELINE DR #200
BOISE ID 83707

RE: WATER RIGHT NO. 63-10028

Dear Water Right Holder(s):

The Department of Water Resources (the Department) has issued the enclosed license confirming that a water right has been established in accordance with the permit referenced above. The license 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 unless a party petitions for reconsideration within fourteen (14) days after issuance 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 twenty-one (21) 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. Otherwise, this preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

ORAL ARGUMENT

If the Department grants a petition to review the preliminary order, the Department 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 Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department 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 Department in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 Department 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.

If you have questions, please contact me at (208) 327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

c: Western Region

Enclosures

CERTIFICATE OF MAILING

I hereby certify that on the **26th** day of **February, 1997**, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER (Approved License)** to the person(s) listed below:

Water Right No. 63-10028

FULCRUM INC
C/O CHI
1555 SHORELINE DR #200
BOISE ID 83707

S Curtis

Sharla Curtis
Water Resource Agent

MEMORANDUM

TO: File 63-10028

FROM: Sharla

DATE: February 11, 1997

RE: Recommendation Adjustment(s)

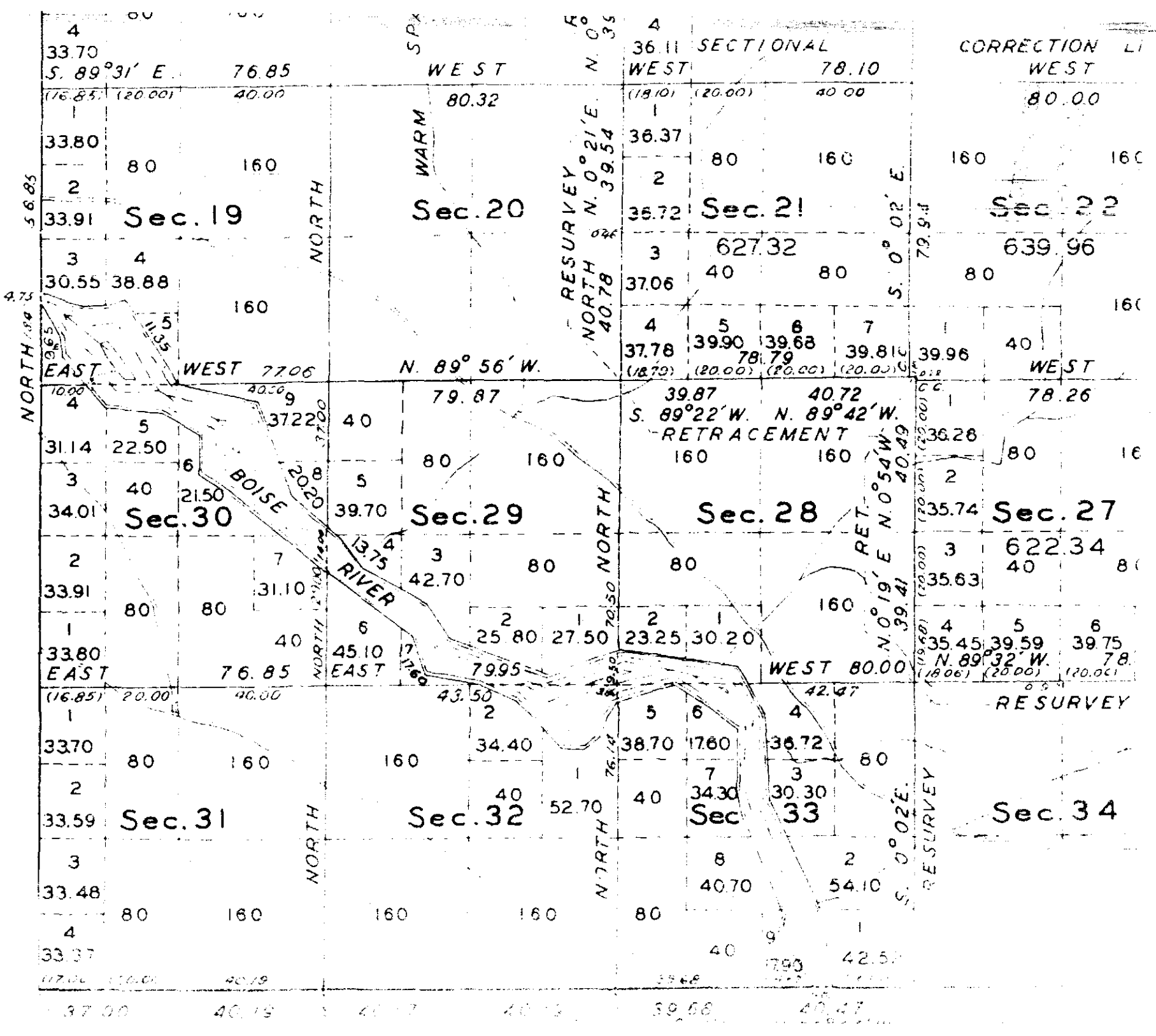
The final license recommendations for Right 63-10028 are based on the following:

H. RECOMMENDATIONS
1. Recommended Amounts

Power	1/1 - 12/31	2000.0 cfs	1445400.0 afa

A volume is required to be listed and has been calculated on the rate of diversion.

Examiner: Rick Collingswood
Exam Date: March 22, 1994


Sec. 19
Sec. 20
Sec. 21
Sec. 22
Sec. 30
Sec. 29
Sec. 28
Sec. 27
Sec. 31
Sec. 32
Sec 33
Sec. 34
SECTIONAL CORRECTION LI
RESURVEY
RESURVEY
RESURVEY
RETRACEMENT
BOISE RIVER
WARM
NORTH
NORTH
NORTH
NORTH
WEST
WEST
WEST
WEST
EAST
EAST
S. 89°31' E.
N. 89° 56' W.
S. 89°22' W.
N. 89°42' W.
N. 89°32' W.
627.32
639.96
622.34
RESURVEY N. 0° 21' E. 39.54
RESURVEY N. 0° 02' E. 79.94
RESURVEY N. 0° 54' W. 40.49
RET. N. 0° 19' E 39.41
RESURVEY S. 0° 02' E.
NORTH 40.78
WEST 77.06
WEST 80.00
WEST 80.0
WEST 78.26
EAST 76.85
EAST 76.85
WEST 78.10
WEST 80.32
S 6.85
NORTH 4.75
NORTH 9.65
NORTH 10.00
NORTH 11.35
NORTH 20.20
NORTH 13.75
NORTH 17.60
NORTH 20.50
NORTH 76.14
NORTH 79.95
NORTH 43.50
NORTH 52.70
NORTH 39.56
NORTH 40.47
NORTH 37.00
NORTH 40.15
NORTH 40.78
NORTH 39.66
NORTH 42.87
NORTH 42.57
NORTH 40.70
NORTH 54.10
NORTH 30.30
NORTH 34.30
NORTH 38.70
NORTH 36.72
NORTH 23.25
NORTH 30.20
NORTH 25.80
NORTH 27.50
NORTH 42.70
NORTH 45.10
NORTH 34.40
NORTH 31.10
NORTH 22.50
NORTH 21.50
NORTH 37.22
NORTH 39.70
NORTH 39.87
NORTH 40.72
NORTH 39.90
NORTH 39.68
NORTH 39.81
NORTH 39.96
NORTH 78.79
NORTH 78.26
NORTH 36.28
NORTH 35.74
NORTH 35.63
NORTH 35.45
NORTH 39.59
NORTH 39.75
NORTH 30.55
NORTH 38.88
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NORTH 36.37
NORTH 35.72
NORTH 37.06
NORTH 37.78

LICENSE REVIEW CHECKLIST

PERMIT NO. 63-10028 DATE 2/7/97 REVIEWER: *SHARLA*

	Change	OK	
NAME	__	✓	Address Change NO
SOURCE	__	✓	Is change clarification of originally intended source? __ If not, prepare Notice of Intent to Void __
POINT OF DIV	__	✓	Amendment required NO
PLACE OF USE	__	✓	Amendment required NO

Does map agree with written description? ✓ yes __ no

OVERLAPS __ P/D __ P/U

RATE OF DIV

Permitted Rate 2000 cfs

Fee limit 2000+ cfs $600.00

Measured ~~2154~~ cfs 200?

Theoretical 2154 cfs design capacity

Recommended Total Div Rate 2000 cfs

ANNUAL VOLUME/ NATURE OF USES __ ✓ Use Volume Calculation

Use	Volume Calculation
Power	____ af
____	____ af
____	____ af
____	____ af
SUBTOTAL	____ af

Flow rate 2000 cfs X 365 days X 1.98~~22~~ = 1,445,400 af

Total volume recommended ____ af
(SUBTOTAL or Flow Rate, whichever is less)

REMARKS Facility known as Barber Dam Project. W43(4881-007) exam done in '94 - low snow pack years. this year 2000 cfs may be maintained year-round

CONDITIONS R04 Watermaster Control WD# 63

__ GW Measurement/Measuring Device

__ Overlap

__ Use-specific conditions 025, 027, 093

Advancement of Priority Date Required __ yes ✓ no R22

Corresp. of 9/22/87 stated ave. use 1900 cfs (2777 af/day) for annual ave of 1,013,605 af. amt. used depends on flow of river.

SRBA Claim Filed N/A

Adjustment Memo volume

1st Amend Letter N/A

2nd Amend Letter N/A

Form 219
6/92

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

RECEIVED
NOV 22 1994
Department of Water Resources

A. GENERAL INFORMATION

Permit No. 63-10028

1. Owner: Fulcrum, Inc. c/o CHI Phone No. 338-2603

Current Address: 1555 Shoreline Drive, Suite 200, Boise, ID 83707

2. Accompanied by: John Bloom EXAM DATE: 3/22/94

Address: Same Phone No. Same

Relationship to Permit Holder: Employee

3. Source: Boise River tributary to Snake River

B. OVERLAP REVIEW

1. Other water rights with the same place of use: 63-02388, 63-09343, 63-00184, 63-00365

2. Other water rights with the same point of diversion: 63-02010

C. DIVERSION AND DELIVERY SYSTEM

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

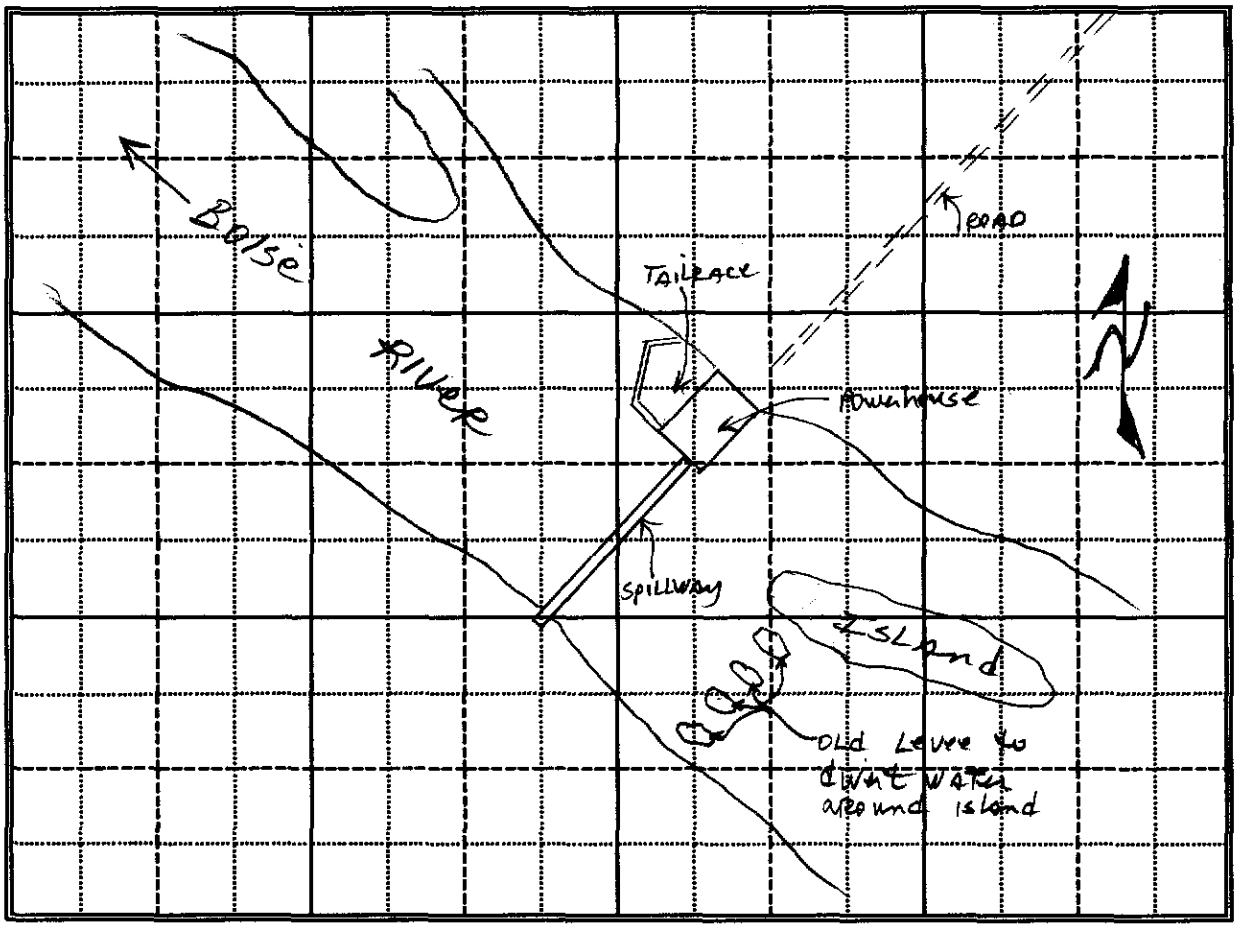
Ident No.	Gov't Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			SW	SE	29	3N	3E	Ada	Aerial Map

2. **Place(s) of Use:** Indicate Method of Determination Same as P/D

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	3E	29															P		

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FEB 27 1997

3. **Delivery System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable.



Scale: 1" = NTS.

✓ Copy of USGS Quadrange Attached Showing location(s) of point(s) of diversion and place(s) of use (required).

N/A Aerial Photo Attached (required for irrigation of 10+ acres)

✓ Photo of Diversion and System Attached

4. N/A – Siphon PenSTOCKS TO (2) Generators

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size

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

D. FLOW MEASUREMENTS N/A

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

2. **Measurements:** None – Given specification sheet for peak flow, power generation, head, etc.

(2) PenSTOCKS rated @ 1077.1 CFS/ea Q ≈ 2000 CFS

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FEB 27 1997

E. NARRATIVE/REMARKS/COMMENTS

OVERLAPS - P/D Same QQ, different P/D.
P/U Same QQ, different areas of use.

Two siphon penstocks, approximately 10' in diameter, deliver water to Two Turbines, which produces power in two generators.
Flow through Turbines is determined by flow in Boise River. Peak flow is during spring runoff, usually from April - June.
John Bloom supplied a copy of the design data for this operation. A plate attached to the side of each Turbine were:

Q = 1077.1 CFS
Head = 24.69'
Power = 2082 KW

Though the flow at the time of the examination was only 200 CFS ±, the specifications clearly indicate that each Turbine is able to produce a flow of 1077.1 CFS. The requested ALLOCATION, 2000 CFS, is slightly less than the design capacity of 2154 CFS, therefore recommend Licensing for 2000 CFS for power generation.

(No adjudication claim filed)

Have conditions of permit approval been met? ✓ yes ___ no

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FEB 27 1977

F. FLOW CALCULATIONS N/A ____ Additional Computation Sheets Attached

Measured Method:

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation: N/A

$V_{I.R}$ = (Acres Irrigated) x (Irrigation Requirement) = _____

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

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

2. *Volume Calculations for Other Uses:* N/A

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use From	Period of Use To	Rate of Diversion Q (cfs)	Annual Volume V (afa)
Electricity Generation (Power)	1/1	12/31	2000	—
		Totals:	2000	—

2. Recommended Amendments

___ Change P.D. as reflected above ___ Add P.D. as reflected above ✓ None

___ Change P.U. as reflected above ___ Add P.U. as reflected above ___ Other

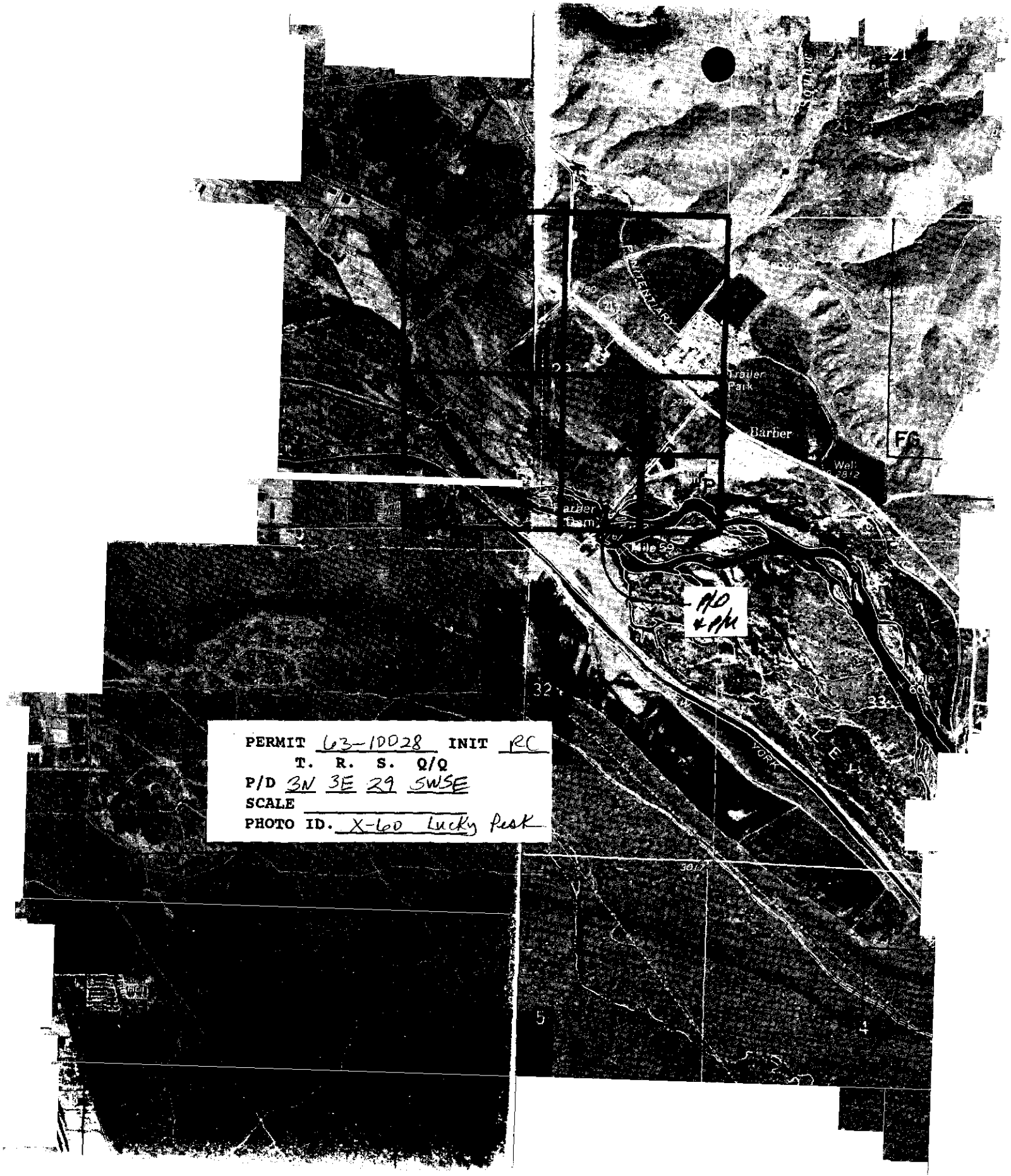
I. AUTHENTICATION

Field Examiner's Name Rick Collingwood Date 4/12/94

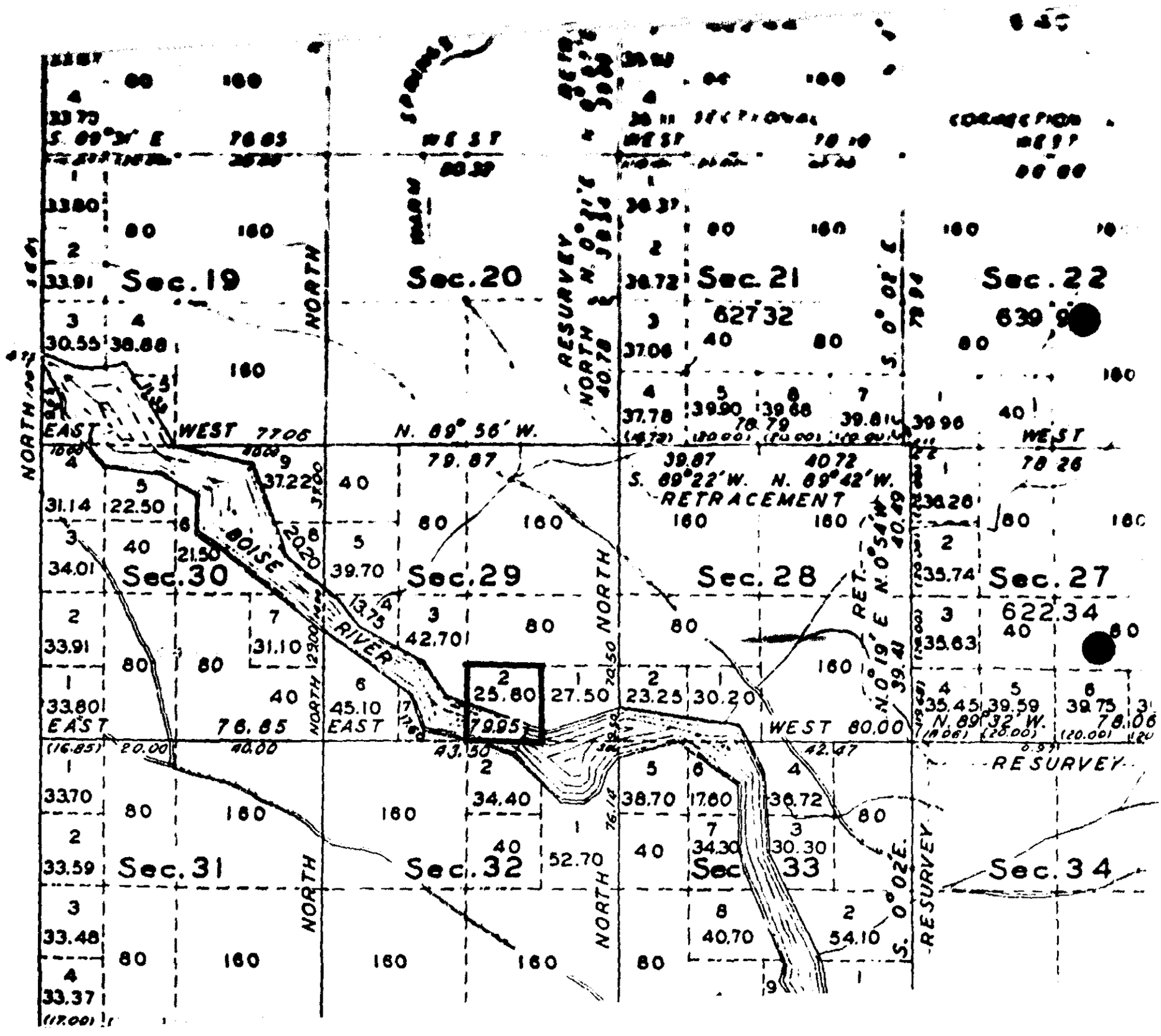
Reviewer _____ Date _____ SEAL

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FEB 2 7 1997



PERMIT 63-10028 INIT RC
T. R. S. Q/Q
P/D 3N 3E 29 SWSE
SCALE
PHOTO ID. X-60 Lucky Peak


Sec. 19
Sec. 20
Sec. 21
Sec. 22
Sec. 30
Sec. 29
Sec. 28
Sec. 27
Sec. 31
Sec. 32
Sec. 33
Sec. 34
NORTH
RESURVEY
N. 89° 56' W.
S. 89°22'W. N. 89°42'W.
RETRACEMENT
BOISE RIVER
WEST
EAST
62732
622.34

VOITH-DESIGN-DATA SHEET (Function Sheet)

Turbine No.	18062 - 18063	Date	: 22.03.94
Name of plant	: Barber Dam		
Type of turbine	: S-Turbine	Department No.	: 2983
No. of turbines	: 2	Initials	: SKW
Turbine size [dm]	: 26.50	Extension No.	: 7660
Turb. speed n [rpm]	: 146.00		
Customer	: Interwest Finanzial, Idaho, USA		
Country	: USA		
Frequency	: 60		
Shop order No./AI-No.	: 617896		
Date of order	: 03.03.87	Order received by	: VH
Date of delivery	: Dez87/Jan88		
Date of commissioning	: 15.12.88		
Direction of rotation	: clockwise		
Number of steges	: 1	Function group No.	: TK13
Number of entries	: 1		
Orientation of shaft	: horizontal		
Speedincreaser	: yes		

OPERATION DATA:

Rated head [m]	7.525
Rated discharge [m3/s]	30.500 *
Efficiency [%]	92.71
Rated output [kW]	2082.000
Head (P=Pmax) [m]	8.500
Discharge [m3/s]	0.000
Efficiency [%]	0.00
Max. Output [kW]	0.000
Min. Head [m]	0.000
Discharge [m3/s]	0.000
Efficiency [%]	0.00
Output [kW]	0.000
Max. HWL [m]	846.430
Min. HWL [m]	846.430
Max. TWL [m]	841.858
Min. TWL [m]	838.810
Max. gross head [m]	7.620
Min. gross head [m]	4.572
Shaft/spiral case CL [m]	841.858
Max. runaway speed [1/min]	407.0

DIMENSIONS:

Runner:	
Type	K84a/b
Material	G-X5CrNi134
Ds [mm]	2650
s [mm]	1.33
d4 [mm]	2573.0
Hub ratio [-]	0.000
phi-max	32.0
phi-min	0.0
Wicket gates:	
Type	RL22b
degamma-max	65.0
zo [-]	16
bo [mm]	914.3
Dz [mm]	0.0
Intake / spiral casing:	
Intake height [mm]	
Intake width [mm]	
Intake dia. Dd [mm]	
Draft tube:	
Hs [mm]	0
Bs [mm]	0
Ls [mm]	0
T [mm]	

* 30.5 m^3/s = 1077.1 cubic feet per sec. (F3/S)

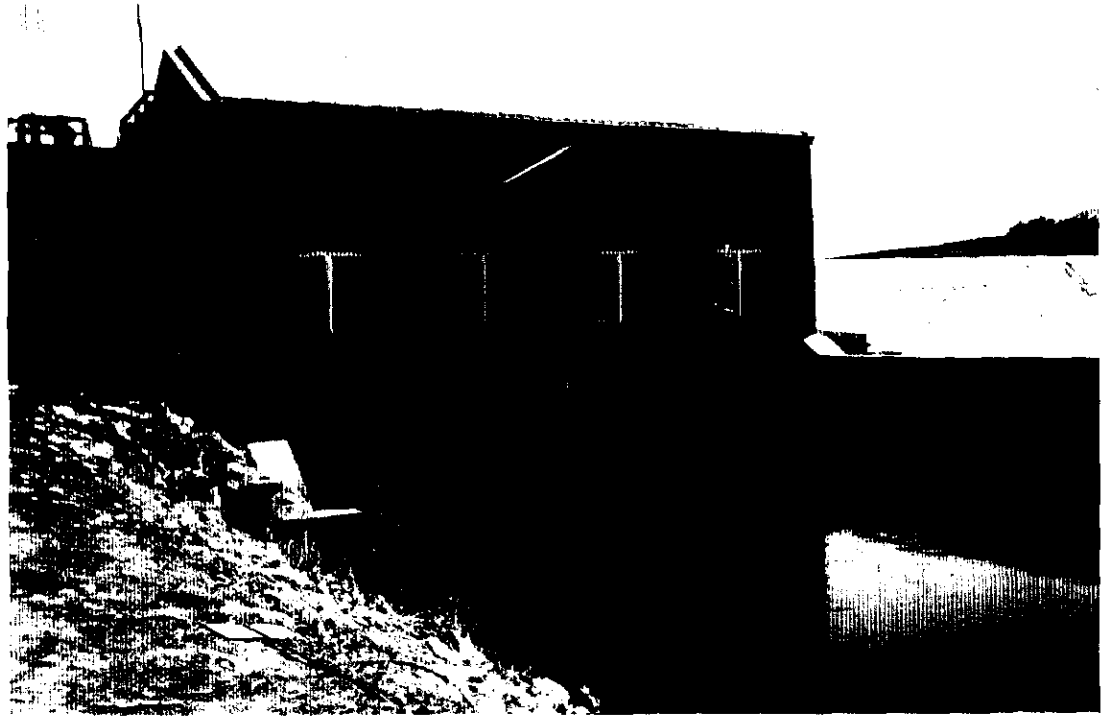


PHOTO ONE- View southeasterly of power house and Tailrace. Dam spillway shown to right of power house. (Barber Dam)

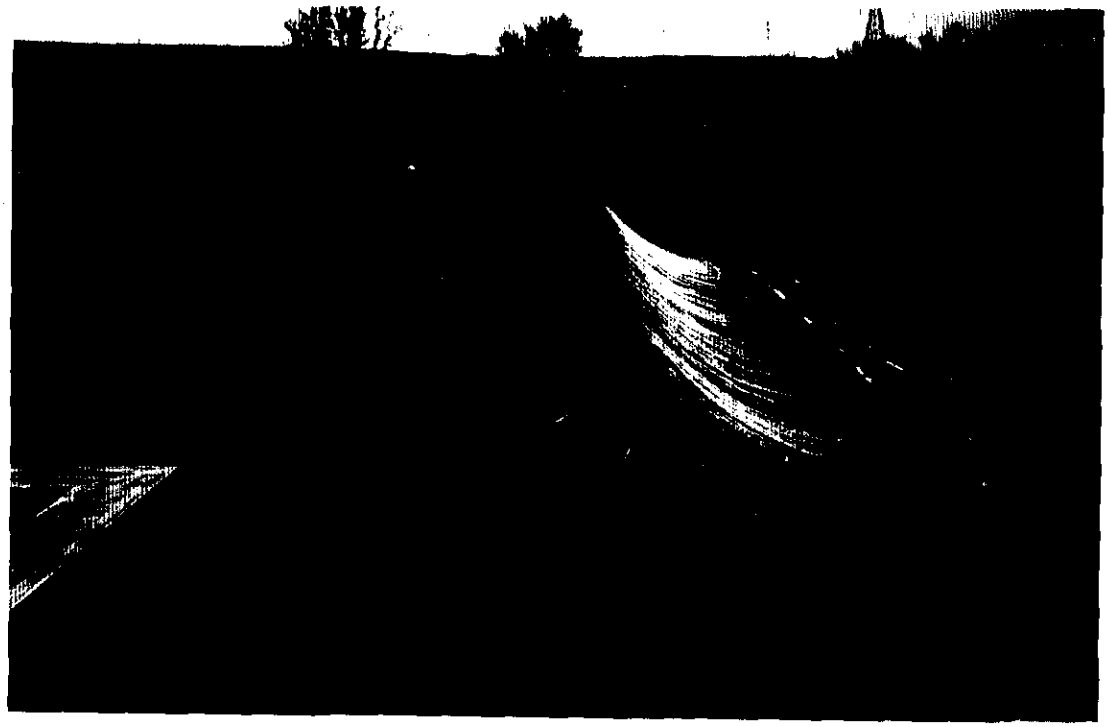


PHOTO TWO- View southerly of Barber Dam spillway.



PHOTO THREE- View southeast of old diversion or Levee. This portion of channel discharges over spillway.

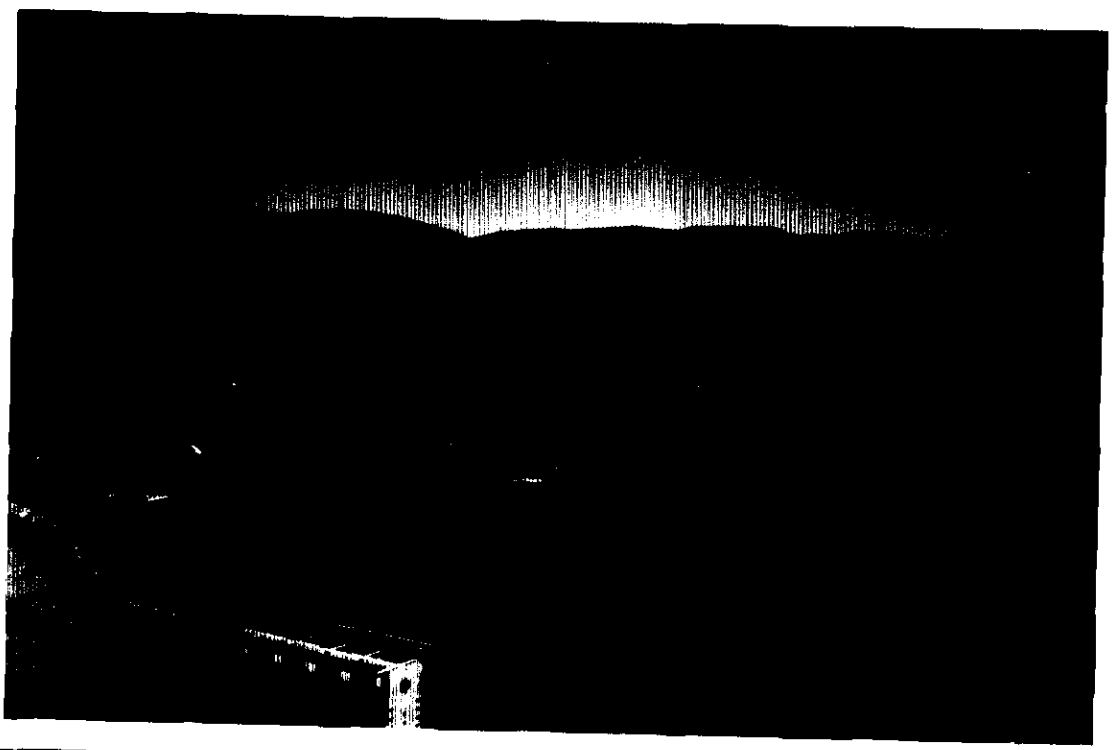


PHOTO FOUR- View easterly of main channel to gates to power house.



PHOTO FIVE- View southerly of gates to penstock, which lead inside powerhouse to Two 2 megawatt generators.

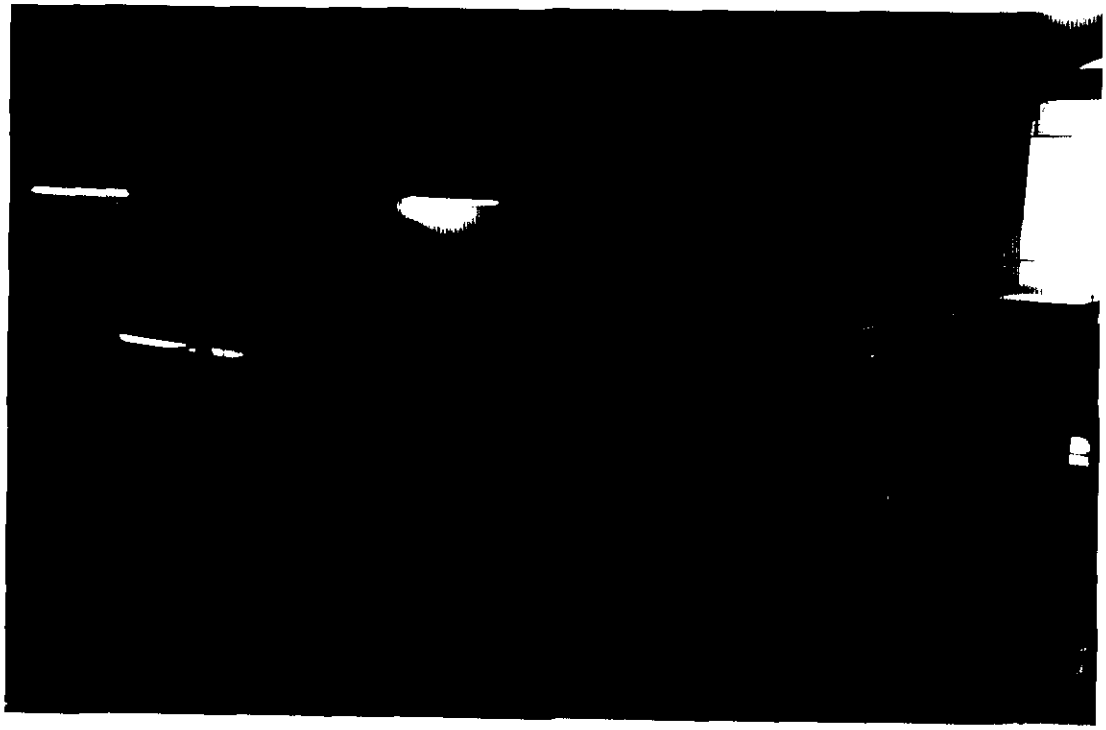


PHOTO SIX- View inside power house of the Two 2 megawatt generators.

October 2, 1992

Fulcrum, Inc.
c/o CHI
1555 Shoreline Dr Ste 200
Boise, ID 83707

ORP.

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 63-10028

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the WESTERN Regional Office in Boise at (208)334-2190.

Sincerely,

Karen L. Gustafson
Secretary/Records Manager

c: IDWR - Region

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OCT 27 1992

ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE

Permit No. 63-10028 Reviewed by Klg Date 10/2/92

GENERAL CONSIDERATIONS

yes Name same as permit?
no Address same as permit?
yes Proof timely received?
If not, complete calculation below.

TYPES OF USE

power

Correct Uses? yes

SOURCE OF WATER

✓ Surface water source
____ Ground water source
NA Drilling permit required?
____ Copy in the file? Drilling Permit No. ____
____ Amount paid for permit ____ Correct?
____ Well log in the file?

LICENSE EXAMINATION FEE

yes Required?
600 Amount Submitted
yes Correct?

MEASURING DEVICE

yes Required?
yes Installed?
NA Waiver requested?

PRIORITY CALCULATION

Date proof received	NA	
Date proof due		-
No. of days late		=
Priority Date		+
New Priority Date		

DEFICIENCIES OR ACTION ITEMS

proof acceptable

DATA ENTRY
New Address c/o CH1 1555 Shoreline Dr Ste 200 Boise, ID 83707 ← Proof Made 10/1/92
Klg 7 10/2/92

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

September 14, 1992

Shirley Lindstrom
Consolidated Hydro
1555 Shoreline Drive Suite 200
Boise, ID 83707

Dear Ms. Lindstrom:

Per your request to this Department today, enclosed are copies of permit no. 63-10028 and an assignment form. As we discussed, until Fulcrom Inc. assigns the permit to you, it will remain in their name. However, in order to meet all of the required dates, I recommend that you complete the proof of beneficial use form and return to me on or before October 1, 1992.

If you have any questions or if I can be of any further assistance, please feel free to contact me.

Sincerely,

Karen L. Gustafson
Secretary/Records Manager

Enclosures

MICROFILMED
OCT 27 1992

July 31, 1992

FULCRUM INC.
C/O BONNEVILLE PACIFIC CORP.
257 E. 200 S. #800
SALT LAKE CITY UT 84111

PROOF DUE NOTICE

RE: PERMIT NO. 63-10028

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before October 1, 1992. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

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

SINCERELY,

Karen L. Gustafson
Secretary/Records Manager

Enclosures

CERTIFIED MAIL
NO. 139267

RECEIVED
OCT 27 1992

ER-DEPARTMENT MEMO — 1

FROM JJ SEIFERT

DATE DECEMBER 26, 1990

TO FILE NO. 63-10028

SUBJECT PLEASE SEE FILE NO. 01-7022 FOR COPIES OF SECURTIY DOCUMENTS PERTAINING TO THE ABOVE LISTED FILE.

MICROFILMED

OCT 27 1992

SIGNATURE

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

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

November 8, 1990

Gary Montgomery
Attorney at Law
737 N 7th Street
Boise, ID 83702-5595

RE: Security Arrangements for Permits to Appropriate Water Nos. 01-7022 & 01-7058, Dietrich Drop; Permit No. 01-7063, Lower Low Line; 47-7771, Rock Creek, and; 63-10028, Barber Dam

Dear Gary:

About two months ago, I received multiple copies of partially signed security documents for the refinancing of the above projects. I understood that a single fully executed copy of all the security documents would be sent to me. To date, I have not received the documents.

Would you please send me copies so that our files may be complete?

Sincerely,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

MICROFILMED
OCT 27 1992

August 24, 1990

Richard A. Shortz, Esq.
Jones, Day, Reavis & Pogue
355 South Grand Avenue, Suite 3000
Los Angeles, California 90071

SEE FILE 01-7022 FOR ALL DOCUMENTS REFERENCED IN THIS LETTER.

Nicholas G. Miller, Esq.
Hawley Troxell Ennis & Hawley
First Interstate Center, Suite 1000
P.O. Box 1617
Boise, Idaho 83701

Jonathan Bigelow
The Fuji Bank, Limited, Los Angeles Agency
333 South Grand Avenue
Los Angeles, California 90071

Gary L. Montgomery, Esq.
Marcus, Merrick & Montgomery
737 North 7th Street
Boise, Idaho 83702-5595

Gretta C. Spendlove, Esq.
Fulcrum, Inc.
c/o Bonneville Pacific Corporation
257 East 200 South, Suite 800
Salt Lake City, Utah 84111

RE: Release and Assignment and Trust Agreement for Water Permit No. 63-10028

Ladies and Gentlemen:

This office has received an executed copy of (i) an Assignment and Trust Agreement dated as of August 22, 1990, (the "Assignment"), among Fulcrum, Inc., an Idaho corporation ("Fulcrum"), Stewart Title of Idaho, Inc., an Idaho corporation ("Stewart Title"), and The Fuji Bank, Limited, Los Angeles Agency (the "Bank"), pursuant to which Fulcrum granted and assigned a first priority security interest in its right, title and interest in and to the above-referenced permit (the "Permit") to Stewart Title, as trustee for the Bank.

MICROFILMED
OCT 27 1992

This office has also received an executed copy of (i) a Release terminating the Construction Assignment and releasing all collateral granted thereunder and (ii) a Consent to Assignment and Subordination Agreement between Idaho Power Company and Fulcrum subordinating the Collateral Assignment of Agreements dated as of December 22, 1988, (the "Original Secondary Assignment"), between Fulcrum and Idaho Power. In addition, this office has received certificates from the office of the Secretary of State of the State of Idaho verifying that Fulcrum, Stewart Title and Idaho Power are qualified to do business in Idaho.

Based upon our understanding of the information contained in the Assignment, the Bank has agreed to provide financing to enable Fulcrum to repay a loan made by the Construction Lenders to finance the cost of construction of the Barber Dam Hydroelectric Project. This office also understands that, (i) as a condition to making the loan under the Credit Agreement, the Bank has required that the Release and the Consent to Assignment and Subordination Agreement between Idaho Power Company and Fulcrum be executed and delivered terminating the Construction Assignment and subordinating Idaho Power's Secondary Assignment, respectively, and (ii) as part of the security for the Guaranty and for the repayment of the loan made by the Bank under the Credit Agreement, the Bank has required that the Permit be assigned to Stewart Title, as trustee for the benefit of the Bank, in order to protect the Bank's interest in the Permit.

We find that the Release, the Consent to Assignment and Subordination Agreement and the Assignment satisfy the requirements of Idaho Code Sections 42-206 through 42-210. Specifically, Stewart Title is a qualified entity to hold the Permit, as trustee, and Idaho Power is a qualified entity to hold the Permit, as collateral security, in accordance with the laws of the State of Idaho. Therefore, the Release, the Consent to Assignment and Subordination Agreement and the Assignment is consented to and approved by the Idaho Department of Water Resources, as of the dated of this letter.

As of the date of this letter, (i) the Permit is in full force and effect, (ii) all conditions contained in the Permit have, to the Department's best knowledge, been complied with, and (iii) the Department has no knowledge of any fact or circumstance that could result in a modification, suspension, termination, revocation or cancellation of the Permit.

Please note that Fulcrum will continue to be listed as the owner of record of the Permit. The Department acknowledges the collateral assignment to and security interest of Stewart Title as trustee on behalf of the Bank, the first secured party with respect to the Permit and the secondary collateral assignment to and subordinate security interest of Idaho Power as second lienor

OCT 27 1992

with respect to the Permit. The Department acknowledges that the Assignment provides that the water license to be issued to replace the Permit shall be issued to Fulcrum despite such collateral assignments. While the Department will endeavor to follow the provisions of the Assignment, we cannot guarantee that the Department will issue such license as requested. It is the ultimate responsibility of the parties to the Assignment to insure that the terms thereof are properly enforced.

Sincerely,

GARY SPACKMAN, Manager
Water Rights Permits Section

OCT 27 1992

[Execution Copy]

WATER PERMIT NO. 63-10028
RELEASE

THIS RELEASE dated as of _____, 1990 (this "Release"), is made by and among FULCRUM, INC., an Idaho corporation ("Fulcrum"), having its principal office at 257 East 200 South, Suite 800, Salt Lake City, Utah 84111, STEWART TITLE OF IDAHO, INC., an Idaho corporation (the "Trustee"), having an office at 1412 West Idaho Street, Boise, Idaho 83702, and NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION, FIRST SECURITY BANK OF UTAH, N.A., MARQUETTE BANK MINNEAPOLIS, N.A. and SECURITY PACIFIC BANK WASHINGTON, N.A. (as successor in interest to Rainier National Bank) (collectively, the "Banks").

R E C I T A L S

A. Pursuant to an Assignment and Trust Agreement dated as of August 1, 1988 (the "Assignment"), among Fulcrum, the Trustee and the Banks, Fulcrum assigned to the Trustee, as trustee for the benefit of the Banks, all Fulcrum's right, title and interest in and to the Permit (as defined in the Assignment) as collateral security for the performance and payment of all the obligations of Fulcrum to the Banks under the Project Lending Agreement (as defined in the Assignment).

B. The Banks' commitment under the Project Lending Agreement to lend for purposes of constructing the Project (as defined in the Assignment) has terminated and all amounts outstanding under the notes issued under the Project Lending Agreement, including accrued and unpaid interest thereon, and all other amounts outstanding under the Project Lending Agreement have been paid in full.

C. The parties hereto desire to terminate the Assignment and release all collateral granted thereunder from the terms and provisions thereof.

Accordingly, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. As of the date hereof, (i) the Assignment is hereby terminated and (ii) all collateral granted thereunder to the Trustee, as trustee for the benefit of the Banks, is hereby released.

RECEIVED
JUN 13 1994

2. This Release shall be deemed made in and shall be governed by and construed in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, the parties hereto have caused this Release to be duly executed as of the day and year first above written.

FULCRUM, INC.

By:_____

Name:_____

Title:_____

STEWART TITLE OF IDAHO, INC.

By:_____

Name:_____

Title:_____

NORWEST BANK MINNESOTA,
NATIONAL ASSOCIATION

By:_____

Name:_____

Title:_____

FIRST SECURITY BANK OF UTAH, N.A.

By: Harvey Dann

Name: Harvey Dann

Title:_____

RECEIVED

JUN 13 1994

2. This Release shall be deemed made in and shall be governed by and construed in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, the parties hereto have caused this Release to be duly executed as of the day and year first above written.

FULCRUM, INC.

By: Todd J. Stevens

Name: TODD J. STEVENS

Title: ASSISTANT TREASURER

STEWART TITLE OF IDAHO, INC.

By: Joan M. Hart

Name: JOAN M. HART

Title: Vice President

NORWEST BANK MINNESOTA,
NATIONAL ASSOCIATION

By: Jeffrey A. Ruehle

Name: Jeffrey A. Ruehle

Title: Assistant Vice President

FIRST SECURITY BANK OF UTAH, N.A.

By: _____

Name: _____

Title: _____

RECORDED

JUN 13 1994

MARQUETTE BANK MINNEAPOLIS, N.A.

By: _____

Name: J.E. Gates

Title: Group Vice President

SECURITY PACIFIC BANK
WASHINGTON, N.A.

By: _____

Name: _____

Title: _____

STATE OF California)
) ss.
County of Los Angeles)

On this 22 day of August, 1990, before me, Maria Esthela Ramos, a notary public, personally appeared Todd J. Stevens, known or identified to me to be the Assistant Treasurer of Fulcrum, Inc. ("Corporation") that executed the above instrument or the person who executed the instrument on behalf of the Corporation and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

OFFICIAL NOTARY SEAL
MARIA ESTHELA RAMOS
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires JUL 15,1994

Maria Esthela Ramos

Notary Public M. Esthela Ramos
Residing at Los Angeles, [illegible]
My commission expires 7-15, 1994

JUN 13 1994

MARQUETTE BANK MINNEAPOLIS, N.A.

By:_____

Name:_____

Title:_____

SECURITY PACIFIC BANK
WASHINGTON, N.A.

By: Matthew C. Rudolf

Name: Matthew Rudolf

Title: Vice President

STATE OF California)
) ss.
County of Los Angeles)

On this 22 day of August, 1990, before me, Maria Esthela Ramos, a notary public, personally appeared Todd J. Stevens, known or identified to me to be the Treasurer - Assistant of Fulcrum, Inc. ("Corporation") that executed the above instrument or the person who executed the instrument on behalf of the Corporation and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Maria Esthela Ramos

Notary Public Maria Esthela Ramos
Residing at Los Angeles County
My commission expires [illegible]

OFFICIAL NOTARY SEAL
MARIA ESTHELA RAMOS
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires JUL 15,1994

JUN 13 1994

STATE OF Idaho)
) ss.
County of Ada)

On this 24 day of August, 1990, before me, Sherri Anderson, a notary public, personally appeared Jonn M. Hart, known or identified to me to be the Vice-President of Stewart Title of Idaho, Inc. ("Corporation") that executed the above instrument or the person who executed the instrument on behalf of the Corporation and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

SHERRI ANDERSON
☆ NOTARY PUBLIC ☆
STATE OF IDAHO
My Commission Expires 3-2-1994

Notary Public
Residing at Boise, ID
My commission expires 6/2, 1994

STATE OF Minnesota)
) ss.
County of Hennepin)

On this 27th day of July, 1990, before me, Michael J Henning, a notary public, personally appeared Jeffrey A Blehr, known or identified to me to be the Assistant Vice President of Norwest Bank Minnesota, National Association ("Bank") that executed the above instrument or the person who executed the instrument on behalf of the Bank and acknowledged to me that such Bank executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

MICHAEL HENNING
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 10-18-95

Notary Public
Residing at Ramsey County, Mn
My commission expires 10-18, 1995

RECORDED

JUN 13 1994

ACKNOWLEDGEMENT - Corporate

STATE OF Idaho, County of Ada, ss.

On this 24 day of August
in the year of 1990, before me, the undersigned, a Notary
Public in and for said State, personally appeared John M.
Hart
known or identified to me to be the Vice-President
of the corporation that executed the instrument
or the person who executed the instrument on behalf of said corporation,
and acknowledged to me that such corporation executed the same.

Signature:
Name: Sheri Anderson
(type or print)
Residing at: Boise, ID
My commission expires: 6/2/94

400-3 1785

Notary Public
LOS ANGELES
My Comm. Exp.

August, 1990, before me,
, a notary public, personally
, known or identified
of Stewart Title of Idaho,
ted the above instrument or the
ent on behalf of the Corporation
h Corporation executed the same.

have hereunto set my hand and
y and year in this certificate

Notary Public Maria Esthela Ramos
Residing at
My commission expires 7-15-1994

STATE OF Idaho)
) ss.
County of Ada)

On this 24 day of August, 1990, before me,
Sherri Anderson, a notary public, personally
appeared John M. Hart, known or identified to
me to be the Vice-President of Norwest Bank Minnesota, National
Association ("Bank") that executed the above instrument or the
person who executed the instrument on behalf of the Bank and
acknowledged to me that such Bank executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal the day and year in this certificate
first above written.

Notary Public
Residing at
My commission expires , 19

RECORDED

JUN 13 1994

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 1990, before me, _____, a notary public, personally appeared _____, known or identified to me to be the _____ of First Security Bank of Utah, N.A. ("Bank") that executed the above instrument or the person who executed the instrument on behalf of the Bank and acknowledged to me that such Bank executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public
Residing at _____
My commission expires _____, 19__

STATE OF MINNESOTA)
) ss.
County of HENNEPIN)

On this 26TH day of JULY, 1990, before me, AMY GAMET, a notary public, personally appeared JERRY GATES, known or identified to me to be the GROUP VICE PRES of Marquette Bank Minneapolis, N.A. ("Bank") that executed the above instrument or the person who executed the instrument on behalf of the Bank and acknowledged to me that such Bank executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

AMY GAMET
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My commission expires 11-1-94

amy Gamet
Notary Public
Residing at MINNEAPOLIS, MN
My commission expires 11-01, 1994

JUN 13 1994

STATE OF WASHINGTON)
) ss.
County of KING)

On this 27th day of July, 1990, before me, Donna M. Heivilin, a notary public, personally appeared Matthew C. Rudolf, known or identified to me to be the Vice President of Security Pacific Bank Washington, N.A. ("Bank") that executed the above instrument or the person who executed the instrument on behalf of the Bank and acknowledged to me that such Bank executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Donna M. Heivilin
Notary Public
Residing at Seattle, WA
My commission expires 12/1, 1992

JUN 13 1994

STATE OF UTAH)
) ss.
County of SALT LAKE)

On this 22nd day of AUGUST, 1990, before me, K O Chapman, a notary public, personally appeared Harvey Tanner, known or identified to me to be the VICE PRESIDENT, of First Security Bank of Utah, N.A. ("Bank") that executed the above instrument or the person who executed the instrument on behalf of the Bank and acknowledged to me that such Bank executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written

K O Chapman
Notary Public
Residing at S.L.C., Utah
My commission expires 3/28/, 1991

JUN 13 1994

1. Debtor(s): (last name first, and mailing address(es))
Fulcrum, Inc.
c/o Bonneville Pacific Corporation
Suite 800
[illegible] st 200 South
[illegible]ake City, Utah 84111

2. Secured Party(ies) and address(es)
Stewart Title of Idaho, Inc.
1412 West Idaho
Boise, Idaho 83707

3. FOR FILING OFFICER ONLY
(Date, time, number and filing office)

4. This Statement refers to original Financing Statement No. 2-01-0325785
Filed with Secretary of State Date filed August 3 19 88

☐ CONTINUATION. The original financing statement between the foregoing Debtor and Secured party, bearing file number shown above, is still effective.

☒ TERMINATION. Secured party no longer claims a security interest under the financing statement bearing file number shown above.

☐ ASSIGNMENT. The secured party's right under the financing statement bearing file number shown above to the property described below has been assigned to the assignee whose name and address appears below.

☐ AMENDMENT. Financing Statement bearing file number shown above is amended as set forth below.

☐ RELEASE. Secured Party releases the collateral described below from the financing statement bearing file number shown above.

TERMINATED

Name(s) of secured party(ies) and address(es):

STEWART TITLE OF IDAHO, INC.

BY: _____
Signature(s) of Debtor(s)
(Required only on some amendments)

BY: _____
Signature(s) of Secured Party(ies) or Assignee of Record

Idaho Form UCC-3 Rev. 79 FORM APPROVED BY PETE T. CENARRUSA, SECRETARY OF STATE

(5) FILE COPY—DEBTOR(S)

Barber Dam

JUN 13 1994

This FINANCING STATEMENT is presented to filing officer for filing pursuant to the Uniform Commercial Code.

No. of additional sheets presented: 1

3. FOR FILING OFFICER ONLY (Date, time, number and filing office)

SECRETARY OF ST
UCC-1 3.00
2-01-0325785
8/03/88 16:01 #56811

1. Debtor(s). (last name first, and mailing address(es)

Fulcrum, Inc.
%Bonneville Pacific Corporation
257 East 200 South, Suite 800
Salt Lake City, Utah 84111

2. Secured Party(ies) and address(es):

Stewart Title of Idaho, Inc.
1412 West Idaho
Boise, Idaho 83707

4. This Financing Statement covers the following types (or items) of property:
(Use this space for Real Property legal description and name of record owner, if required.)

See Exhibit A attached hereto and made a part hereof

TERMINATED

Filed with the Idaho Secretary of State

5. Assignee(s) of Secured Party(ies) and address(es)

CHECK ☒ IF COVERED ☐ Products of collateral are also covered.

Filed with: ☒ Secretary of State ☐ County Recorder of County

If one of the following boxes is checked, the secured party may sign the financing statement. The collateral described herein is:

☐ Brought into this state already subject to a security interest in another jurisdiction.
☐ Subject to a security interest in another jurisdiction, and the debtor's location has changed to this state.
☐ Proceeds of the original collateral described above in which a security interest was perfected.
☐ The subject of a financing statement which has lapsed.
☐ Subject to a security interest perfected under a prior name or identity of the debtor.

FULCRUM, INC.

BY: David B. Hinds - Vice President
Signature(s) of Debtor(s).

BY:
SIGNATURE(S) OF SECURED PARTY(IES) OR ASSIGNEE OF RECORD

SECRETARY OF STATE

(1) FILING OFFICER COPY--ALPHABETICA_

JUN 13 1994

EXHIBIT A
TO
UCC-1 FINANCING STATEMENT

Debtor: Fulcrum, Inc.

Secured Party: Stewart Title of Idaho, Inc.

This Financing Statement covers the following types or items of property:

All right, title and interest of the Debtor (whether now existing or hereafter arising) in Water Permit No. 63-10028, approved by the Department of Water Resources of the State of Idaho on November 30, 1987, together with any and all other water permits issued by the Department of Water Resources of the State of Idaho for the appropriation of water for power purposes to be utilized in connection with the hydroelectric power plant, known as the Barber Dam Hydroelectric Project in Ada County, State of Idaho (the "Project"); and

TERMINATED

all right, title and interest of the Debtor in any water license hereafter issued by the Department of Water Resources of the State of Idaho to replace any such permits in connection with the Project.

Together with all substitutions and replacements for and products and proceeds of any of the foregoing property.

JUN 13 1994

1. Debtor(s) (Last Name First) and address(es)

Fulcrum, Inc.
c/o Bonneville Pacific Corporation*

S ...urity No. _____

I.D. No. 82-0391234

2. Secured Party(ies) and address(es)

Stewart Title of Idaho, Inc.
1412 West Idaho
Boise, Idaho 83707

4. This statement refers to original Financing Statement bearing File No. 1170400

Date Filed August 3 19 88 Maturity Date _____ 19____

For Filing Officer (Date, Time and Filing Office)

5. ☐ **Continuation.** The original financing statement between the foregoing Debtor and Secured Party, bearing file number shown above, is still effective.

6. ☒ **Termination.** Secured party no longer claims a security interest under the financing statement bearing file number shown above.

7. ☐ **Assignment.** The secured party's right under the financing statement bearing file number shown above to the property described in Item 10 have been assigned to the assignee whose name and address appears in Item 10.

8. ☐ **Amendment.** Financing Statement bearing file number shown above is amended as set forth in Item 10.

9. ☐ **Partial Release** Secured Party releases the collateral described in Item 10 from the financing statement bearing file number shown above.

10.

* Suite 800
257 East 200 South
Salt Lake City, Utah 84111

TERMINATED

AUG 21 1990

U.C.C. DEPT.
STATE OF UTAH

No. of additional Sheets presented: 0

STEWART TITLE OF IDAHO, INC.

By: _____
Signature(s) of Debtor(s) (necessary only if item 8 is applicable).

By: _____
Signature(s) of Secured Party(ies)

ORIGINATOR - *Remove this copy and forward balance of form intact for filing.*

DEBTOR COPY

JUN 13 1994

SNAKE RIVER



HYDRO POWER

IDAHO POWER COMPANY

BOX 70 • BOISE, IDAHO 83707

September 21, 1989

RECEIVED
SEP 25 1989
Department of Water Resources

Mr Gary Spackman, Manager
Water Right Permits Section
Department of Water Resources
Statehouse Mail
Boise, ID 83720

RE: Your letter of February 21, 1989 - Secondary Collateral Assignment for Water Permit Number 63-10028 - Barber Dam Hydro Project

Dear Mr Spackman:

Per your request in the above reference letter, enclosed is a copy of the fully executed Collateral Assignment of Agreements for the Barber Dam Hydro Project Idaho Power Facility No. 21615078.

If you have any questions, please don't hesitate to contact me.

Sincerely,

John Ferree
Administrator of
Customer Generation

JF/ekg

enclosure

cc: B L Kline

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OCT 27 1992

COLLATERAL ASSIGNMENT
OF AGREEMENTS

THIS COLLATERAL ASSIGNMENT OF AGREEMENTS made as of the 22nd day of December, 1988, by and between Fulcrum, Inc. ("Assignor") and Idaho Power Company ("Assignee").

WHEREAS, Interwest Hydro, Inc. ("Interwest") and Assignee entered into a certain Firm Energy Sales Agreement dated July 13, 1987 (the "Agreement"), which Firm Energy Sales Agreement was assigned to Bonneville Pacific Corporation ("BPC") by that certain Assignment Agreement between Interwest and BPC dated May 13, 1988, and which Firm Energy Sales Agreement was subsequently assigned to Assignor by that certain Assignment Agreement between BPC and Assignor dated June 2, 1988, whereunder, in accordance with the terms and conditions thereof, Interwest agreed to sell, and Assignee agreed to buy, certain electrical power generated by Assignor's hydroelectric project located in Ada County, Idaho (the "Facility"); and

WHEREAS, the Agreement was approved by the Idaho Public Utilities Commission (the "Commission") on July 27, 1987, Order No. 21359; and

WHEREAS, on or about September 20, 1988, Interwest and Assignee entered into a First Amendment to Firm Energy Sales Agreement (the "First Amendment"), which First Amendment was approved by the Commission on September 20, 1988, and requires, among other things, that Interwest grant a "Second Lien" in and to its rights, titles and interests in the Facility as security for the payment of liquidated damages in the amounts specified in the Agreement; and

WHEREAS, BPC and Assignor have entered into certain contractual arrangements with Norwest Bank Minnesota, National Association, First Security Bank of Utah, N.A., Rainier National Bank, and Marquette Bank Minneapolis, N.A., (together "the Banks"), and Norwest Bank Minnesota, National Association, as Agent for Banks, and has granted to said Agent and Banks a first lien security interest in and to all Assignor's rights, titles and interest in the Facility; and

WHEREAS, Assignor desires hereby to grant to Assignee a security interest in and to all of its rights, titles and interest in and to the Facility subject only to the security interest previously granted to the Banks, and Assignee is willing to accept such grant as a conveyance complying with the terms and conditions of the First Amendment and Commission orders relating thereto.

ACCORDINGLY, in consideration of the foregoing the parties do hereby agree as follows:

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OCT 27 1992

1. Assignment. The Assignor hereby assigns to Assignee, subject only to a prior assignment to the Banks all of its respective rights, titles and interests whether now owned or hereafter acquired, in, to and under the following agreements:

a. Firm Energy Sales Agreement, Facility No. 21615078, between Interwest and Assignee dated July 13, 1987, a copy of which is attached hereto as Schedule I-A;

b. Assignment Agreement dated May 13, 1988 wherein the interest of Interwest in and to the Firm Energy Sales Agreement has been assigned to BPC, which, in turn, has been assigned by BPC to Assignor by Assignment dated June 2, 1988, copies of which are attached hereto as Schedules I-B and I-C, respectively;

c. Lease -- Agreement No. 627 between Interwest and Ada County, State of Idaho, dated December 9, 1986, a copy of which is attached hereto as Schedule II-A;

d. Assignment of Lease dated June 27, 1988 wherein the interest of Interwest has been assigned to Assignor, a copy of which is attached hereto as Schedule II-B;

e. Access Agreement and Grant of Easement between Dallas H. Harris and Alta Harris, husband and wife, and Assignor dated September 21, 1987, a copy of which is attached hereto as Schedule III-A;

f. First Amendment to Access Agreement and Grant of Easement dated August 2, 1988, a copy of which is attached hereto as Schedule III-B;

g. Easement Agreement between Assignor and the Idaho Foundation for Parks and Lands dated June 27, 1988, a copy of which is attached hereto as Schedule IV;

h. State of Idaho Temporary Permit No. 1962 between the Idaho State Board of Land Commissioners and Assignor issued June 29, 1988, a copy of which is attached hereto as Schedule V;

i. Development Agreement -- Agreement No. 628 between Interwest and Ada County, State of

UNOFFICIAL COPY
OCT 27 1992

Idaho, and City of Boise, State of Idaho dated December 9, 1986, a copy of which is attached hereto as Schedule VI;

j. Assignment Agreement wherein the interest of Interwest in the Development Agreement has been assigned to Assignor pursuant to the Assignment Agreements referred to in Schedule I-B above;

k. Construction Agreement between BPC and Summit Construction Company dated March 1, 1988, a copy of which is attached hereto as Schedule VII;

l. Application for Permit to Appropriate Public Water No. 63-10028, as approved by the Idaho Department of Water Resources and as assigned to Assignor, copies of which are attached hereto as composite Schedule VIII; and

m. Assignor's interest in and to the License granted by the Federal Energy Regulatory Commission dated December 23, 1983 relating to the Facility, a copy of which is attached hereto as Schedule IX.

The assignments of the foregoing agreements permits and license (the "Documents") are made as collateral security for the payment and performance of all obligations of Assignor under the Agreement as amended by the First Amendment.

2. No Assumption of Obligations or Duties of the Assignor. This Assignment is an assignment only of all right, title and interest of the Assignor in the Agreements, and the Assignor covenants and agrees with Assignee to perform and observe all obligations of the Assignor under the Agreements as if this Assignment had not been made. The Assignor agrees that Assignee does not assume any of the obligations or duties of the Assignor under or with respect to the Documents unless and until the Assignee shall have given the parties to the Documents written notice that it has affirmatively assumed such obligations and duties as the result of an event of default existing under the Agreement as modified by the First Amendment.

3. Representations, Warranties and Covenants of Assignor. The Assignor represents and warrants to Assignee that the copies of the Documents attached hereto as Schedules I-A, I-B, I-C, II-A, II-B, III-A, III-B, IV, V, VI, VII, VIII and IV are true and correct copies thereof as in effect on the date hereof, that the Documents are in full force and effect, have not been amended or modified, have not been assigned by

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OCT 27 1992

the Assignor, and no event has occurred as of the date hereof which with or without the passage of time or the giving of notice, or both, would constitute a default thereunder. The Assignor covenants and agrees that no amendments or modifications of the Documents shall be effective without the prior written approval of the Assignee. The Assignor further covenants and agrees that, so long as this Assignment is in effect, the Assignor will not terminate the Documents and will not assign, sell, pledge, mortgage or otherwise transfer or encumber its interest in the Documents, except for the collateral assignment effected hereby and except as approved by Assignee pursuant to the First Amendment.

4. Appointment of Assignee as Attorney-in-Fact. In the event of a Default and subject to the prior rights granted by Assignor and BPC to the Banks, the Assignor hereby irrevocably constitutes and appoints the Assignee as its attorney-in-fact to demand, receive and enforce the rights and interests of the Assignor with respect to the Documents, and give appropriate receipts, releases and satisfactions for and on behalf of and in the name of the Assignor or, at the option of the Assignee in the name of the Assignee, with the same force and effect as the Assignor could do if this Assignment had not been made.

5. Effect of Assignment. This Assignment shall constitute a perfected, absolute and present assignment subject only to the prior perfected rights of the Banks; provided that the Assignee shall have no right under this Assignment to enforce the provisions of the Documents until there shall occur a default under the Agreement which has not been cured within the time and after giving notice as required under the Agreement ("Default"). Upon the occurrence of any such Default, the Assignee may, without affecting any of its rights or remedies against Assignor under any other instrument, document or agreement, exercise its rights under this Assignment as attorney-in-fact of the Assignor in any manner permitted by law, and in addition, Assignee shall have the right to exercise and enforce any or all rights and remedies available after Default to a secured party under the applicable Uniform Commercial Code. If notice to the Assignor of any intended disposition of collateral or any other intended action is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to the date of intended disposition or other action.

6. Costs and Expenses. Assignor hereby agrees to pay all costs and expenses (including without limitation reasonable attorneys' fees) which Assignee may incur in exercising and enforcing any of its rights and remedies under this Assignment.

7. Successors and Assigns. Subject to the limitations on further assignment of [illegible] by the

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OCT 27 1992

Assignor contained herein, this Assignment shall be binding upon the Assignor and its successors and assigns, and shall inure to the benefit of the Assignee and its successors and assigns. The Assignee may, in its absolute discretion, assign its right, title and interest in the Documents upon notice to the parties thereto and to the Banks, but without any requirements for the consent of the Assignor.

8. Amendment. This Assignment can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the Assignee. A waiver signed by the Assignee shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the rights or remedies of the Assignee hereunder. All rights and remedies of the Assignee shall be cumulative and may be exercised singularly or concurrently, at the option of the Assignee, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise of enforcement of any other.

9. Termination. The Assignee shall release all collateral granted hereunder when the Agreement has terminated and any amounts due Assignee thereunder have been paid, or upon order of the Commission terminating this Assignment.

10. Choice of Laws. This Assignment shall be deemed made in and shall be governed by the internal laws of the State of Idaho.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

FULCRUM, INC.

By Robert M. Pratt
Its Vice President

IDAHO POWER COMPANY

By C. E. Bissell
Its Sr. Vice President

d/a/00344

MICROFILMED
OCT 27 1992

Bonneville Pacific Corporation

March 2, 1989

RECEIVED
MAR 06 1989
Department of Water Resources

Mr. Gary Spackman
Manager
Water Rights Permits Section
State of Idaho Department of
Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Re: Your letters of February 21, 1989 in connection with the Assignment and Trust Agreement and Secondary Collateral Assignment for Water Rights relating to the Dietrich Drop, Barber Dam and Rock Creek II Projects

Dear Gary:

We are most appreciative of your efforts in clarifying the position of the Department of Water Resources with respect to the Secondary Collateral Assignment of the Water Rights in connection with the above-referenced projects. In our view your letter meets the requirements of Idaho Power Company as well as the requirements of our lenders in connection with the projects.

Thank you again for the time and effort which you and Phil Rassier have taken on behalf of Bonneville in clarifying this matter.

As I indicated to you in our meeting in Boise some time ago, Bonneville Pacific Corporation is presently undertaking the permanent financing of these three facilities and in addition a facility known as Low Line II. The permanent lender on these projects will be Cigna Investments, Inc. or a designated trustee under a trust indenture to be executed in connection with the permanent financing. As documentation relating to that financing are received, I will contact you relative to our request for a further consent by the Department of Water Resources to a collateral assignment of the water rights relating to all four of these projects to Cigna or its

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OCT 07 1992

257 East 200 South, Suite 800 / Salt Lake City, Utah 84111 / 801-363-2520 / Facsimile 801-363-9537

designated trustee. It is presently anticipated that Stewart Title Company may serve as trustee for Cigna and, therefore, subject to your review and approval of the documentation relating to the permanent financing, a letter similar to the February 21, 1989 letters reflecting the tertiary assignment of the water rights relating to all four projects will be necessary.

I will keep you advised on this matter. Again, thank you for your cooperation.

Very truly yours,

David P. Hirschi
General Counsel

DPH: tbf

cc: Gary L. Montgomery, Esq.

d/c/00676

MICROFILMED
OCT 27 1992

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

February 21, 1989

Idaho Power Company
Attn: John Ferree
Box 70
Boise, Idaho 83707

Barton L. Kline, Esq.
Evans, Keane, Koontz, Boyd & Ripley
101 South Capitol Blvd., Suite 1701
Boise, Idaho 83701

David P. Hirschi, Esq.
Bonneville Pacific Corporation
257 East 200 South, Suite 800
Salt Lake City, Utah 84111

Patrick G. Bassett
Norwest Bank Minnesota
National Association
Sixth Street and Marquette Avenue
Minneapolis, Minnesota 55402-3901

RE: Assignment and Trust Agreement and Secondary Collateral Assignment for Water Permit Number 63-10028 - Barber Dam Project

Gentlemen:

This office has received an executed copy of the Assignment and Trust Agreement dated August 1, 1988, whereunder Bonneville Pacific Corporation ("Bonneville Pacific") assigned its right, title and interest for security purposes in and to the above referenced water permit ("Permit") to Stewart Title of Idaho, Inc., an Idaho Corporation ("Stewart Title"), as Trustee for Norwest Bank Minnesota, National Association, First Security Bank of Utah, N.A., Marquette Bank Minneapolis N.A., and Ranier National Bank, (collectively "Banks").

This office has previously received, acknowledged and accepted the assignment of said Permit to Bonneville Pacific and the Department currently recognizes Bonneville Pacific as the legal owner of the Permit. Likewise, this office has previously reviewed and approved the above referenced Assignment and Trust Agreement between Bonneville Pacific and Stewart Title and recognizes Stewart Title as holding a beneficial interest for security purposes in the Permit on behalf of and in favor of the Banks. It is our understanding, based upon a

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OCT 27 1992

Assignment of Agreement which we have received with respect to the above referenced project, that Bonneville Pacific now desires to assign a second lien security interest in the Permit to Idaho Powers Company pursuant to Idaho Public Utility Commission Order Nos. 21690 and 21800 in Case No. U-1006-292 and pursuant to a First Amendment to Power Contract entered into between Bonneville Pacific and Idaho Power Company.

After reviewing this matter, we have concluded that Idaho Power Company meets the statutory qualifications for holding a beneficial interest in water permits and based upon our review of the Collateral Assignment of Agreement with respect to this matter, we have concluded that such assignment is proper and the same is approved. Upon full execution of the fully executed copy of the same to this office, we will recognize Idaho Power Company as an additional secured party with respect to the Permit.

Please note, that Bonneville Pacific will continue to be listed as the owner of record of the Permit. The Department acknowledges the Collateral Assignment to and security interest of Stewart Title as First Lienor on behalf of the Banks and Idaho Power Company as Second Lienor pursuant to Idaho Public Utility Commission Orders.

Sincerely,

Gary Spackman

Gary Spackman, Manager
Water Right Permits Section

cc: Phillip J. Rassier, Esq.
d/c/00431

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OCT 27 1992

COLLATERAL ASSIGNMENT
OF AGREEMENTS

THIS COLLATERAL ASSIGNMENT OF AGREEMENTS made as of the 22nd day of December, 1988, by and between Fulcrum, Inc. ("Assignor") and Idaho Power Company ("Assignee").

WHEREAS, Interwest Hydro, Inc. ("Interwest") and Assignee entered into a certain Firm Energy Sales Agreement dated July 13, 1987 (the "Agreement"), which Firm Energy Sales Agreement was assigned to Bonneville Pacific Corporation ("BPC") by that certain Assignment Agreement between Interwest and BPC dated May 13, 1988, and which Firm Energy Sales Agreement was subsequently assigned to Assignor by that certain Assignment Agreement between BPC and Assignor dated June 2, 1988, whereunder, in accordance with the terms and conditions thereof, Interwest agreed to sell, and Assignee agreed to buy, certain electrical power generated by Assignor's hydroelectric project located in Ada County, Idaho (the "Facility"); and

WHEREAS, the Agreement was approved by the Idaho Public Utilities Commission (the "Commission") on July 27, 1987, Order No. 21359; and

WHEREAS, on or about September 20, 1988, Interwest and Assignee entered into a First Amendment to Firm Energy Sales Agreement (the "First Amendment"), which First Amendment was approved by the Commission on September 20, 1988, and requires, among other things, that Interwest grant a "Second Lien" in and to its rights, titles and interests in the Facility as security for the payment of liquidated damages in the amounts specified in the Agreement; and

WHEREAS, BPC and Assignor have entered into certain contractual arrangements with Norwest Bank Minnesota, National Association, First Security Bank of Utah, N.A., Rainier National Bank, and Marquette Bank Minneapolis, N.A., (together "the Banks"), and Norwest Bank Minnesota, National Association, as Agent for Banks, and has granted to said Agent and Banks a first lien security interest in and to all Assignor's rights, titles and interest in the Facility; and

WHEREAS, Assignor desires hereby to grant to Assignee a security interest in and to all of its rights, titles and interest in and to the Facility subject only to the security interest previously granted to the Banks, and Assignee is willing to accept such grant as a conveyance complying with the terms and conditions of the First Amendment and Commission orders relating thereto.

ACCORDINGLY, in consideration of the foregoing the parties do hereby agree as follows:

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OCT 27 1992

1. Assignment. The Assignor hereby assigns to Assignee, subject only to a prior assignment to the Banks all of its respective rights, titles and interests whether now owned or hereafter acquired, in, to and under the following agreements:

a. Firm Energy Sales Agreement, Facility No. 21615078, between Interwest and Assignee dated July 13, 1987, a copy of which is attached hereto as Schedule I-A;

b. Assignment Agreement dated May 13, 1988 wherein the interest of Interwest in and to the Firm Energy Sales Agreement has been assigned to BPC, which, in turn, has been assigned by BPC to Assignor by Assignment dated June 2, 1988, copies of which are attached hereto as Schedules I-B and I-C, respectively;

c. Lease -- Agreement No. 627 between Interwest and Ada County, State of Idaho, dated December 9, 1986, a copy of which is attached hereto as Schedule II-A;

d. Assignment of Lease dated June 27, 1988 wherein the interest of Interwest has been assigned to Assignor, a copy of which is attached hereto as Schedule II-B;

e. Access Agreement and Grant of Easement between Dallas H. Harris and Alta Harris, husband and wife, and Assignor dated September 21, 1987, a copy of which is attached hereto as Schedule III-A;

f. First Amendment to Access Agreement and Grant of Easement dated August 2, 1988, a copy of which is attached hereto as Schedule III-B;

g. Easement Agreement between Assignor and the Idaho Foundation for Parks and Lands dated June 27, 1988, a copy of which is attached hereto as Schedule IV;

h. State of Idaho Temporary Permit No. 1962 between the Idaho State Board of Land Commissioners and Assignor issued June 29, 1988, a copy of which is attached hereto as Schedule V;

i. Development Agreement -- Agreement No. 628 between Interwest and Ada Cou[illegible] of

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OCT 27 1992

Idaho, and City of Boise, State of Idaho dated December 9, 1986, a copy of which is attached hereto as Schedule VI;

j. Assignment Agreement wherein the interest of Interwest in the Development Agreement has been assigned to Assignor pursuant to the Assignment Agreements referred to in Schedule I-B above;

k. Construction Agreement between BPC and Summit Construction Company dated March 1, 1988, a copy of which is attached hereto as Schedule VII;

l. Application for Permit to Appropriate Public Water No. 63-10028, as approved by the Idaho Department of Water Resources and as assigned to Assignor, copies of which are attached hereto as composite Schedule VIII; and

m. Assignor's interest in and to the License granted by the Federal Energy Regulatory Commission dated December 23, 1983 relating to the Facility, a copy of which is attached hereto as Schedule IX.

The assignments of the foregoing agreements permits and license (the "Documents") are made as collateral security for the payment and performance of all obligations of Assignor under the Agreement as amended by the First Amendment.

2. No Assumption of Obligations or Duties of the Assignor. This Assignment is an assignment only of all right, title and interest of the Assignor in the Agreements, and the Assignor covenants and agrees with Assignee to perform and observe all obligations of the Assignor under the Agreements as if this Assignment had not been made. The Assignor agrees that Assignee does not assume any of the obligations or duties of the Assignor under or with respect to the Documents unless and until the Assignee shall have given the parties to the Documents written notice that it has affirmatively assumed such obligations and duties as the result of an event of default existing under the Agreement as modified by the First Amendment.

3. Representations, Warranties and Covenants of Assignor. The Assignor represents and warrants to Assignee that the copies of the Documents attached hereto as Schedules I-A, I-B, I-C, II-A, II-B, III-A, III-B, IV, V, VI, VII, VIII and IV are true and correct copies thereof as in effect on the date hereof, that the Documents are in full force and effect, have not been amended or modified, have not been assigned by

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the Assignor, and no event has occurred as of the date hereof which with or without the passage of time or the giving of notice, or both, would constitute a default thereunder. The Assignor covenants and agrees that no amendments or modifications of the Documents shall be effective without the prior written approval of the Assignee. The Assignor further covenants and agrees that, so long as this Assignment is in effect, the Assignor will not terminate the Documents and will not assign, sell, pledge, mortgage or otherwise transfer or encumber its interest in the Documents, except for the collateral assignment effected hereby and except as approved by Assignee pursuant to the First Amendment.

4. Appointment of Assignee as Attorney-in-Fact In the event of a Default and subject to the prior rights granted by Assignor and BPC to the Banks, the Assignor hereby irrevocably constitutes and appoints the Assignee as its attorney-in-fact to demand, receive and enforce the rights and interests of the Assignor with respect to the Documents, and give appropriate receipts, releases and satisfactions for and on behalf of and in the name of the Assignor or, at the option of the Assignee in the name of the Assignee, with the same force and effect as the Assignor could do if this Assignment had not been made.

5. Effect of Assignment. This Assignment shall constitute a perfected, absolute and present assignment subject only to the prior perfected rights of the Banks; provided that the Assignee shall have no right under this Assignment to enforce the provisions of the Documents until there shall occur a default under the Agreement which has not been cured within the time and after giving notice as required under the Agreement ("Default"). Upon the occurrence of any such Default, the Assignee may, without affecting any of its rights or remedies against Assignor under any other instrument, document or agreement, exercise its rights under this Assignment as attorney-in-fact of the Assignor in any manner permitted by law, and in addition, Assignee shall have the right to exercise and enforce any or all rights and remedies available after Default to a secured party under the applicable Uniform Commercial Code. If notice to the Assignor of any intended disposition of collateral or any other intended action is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to the date of intended disposition or other action.

6. Costs and Expenses. Assignor hereby agrees to pay all costs and expenses (including without limitation reasonable attorneys' fees) which Assignee may incur in exercising and enforcing any of its rights and remedies under this Assignment.

7. Successors and Assigns. Subject to the limitations on further assignment of the Documents by the

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Assignor contained herein, this Assignment shall be binding upon the Assignor and its successors and assigns, and shall inure to the benefit of the Assignee and its successors and assigns. The Assignee may, in its absolute discretion, assign its right, title and interest in the Documents upon notice to the parties thereto and to the Banks, but without any requirements for the consent of the Assignor.

8. Amendment. This Assignment can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the Assignee. A waiver signed by the Assignee shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the rights or remedies of the Assignee hereunder. All rights and remedies of the Assignee shall be cumulative and may be exercised singularly or concurrently, at the option of the Assignee, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise of enforcement of any other.

9. Termination. The Assignee shall release all collateral granted hereunder when the Agreement has terminated and any amounts due Assignee thereunder have been paid, or upon order of the Commission terminating this Assignment.

10. Choice of Laws. This Assignment shall be deemed made in and shall be governed by the internal laws of the State of Idaho.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

FULCRUM, INC.

By_____
Its_____

IDAHO POWER COMPANY

By_____
Its_____

d/a/00344

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OCT 27 1992

Bonneville Pacific Corporation

JAN 17 1989

January 13, 1989

Mr. Gary Spackman
Department of Water Resources
1301 North Orchard Street
State House Mail
Boise, Idaho 83720

Re: Assignment and Trust Agreement and Collateral Assignment for Water Permits:
Dietrich Drop Nos. 01-7022 and 01-7058
Barber Dam Permit No. 6310028
Rock Creek Permit No. 47-7771

Dear Gary:

Pursuant to our recent discussion of the Collateral Assignments for security purposes of the above referenced water permits (the "Permits"), please be advised that Bonneville Pacific Corporation in the case of Dietrich Drop and Rock Creek, and Fulcrum, Inc., a wholly-owned subsidiary of Bonneville Pacific Corporation, in the case of Barber Dam, has collaterally assigned its water rights to Stewart Title of Idaho, Inc. ("Stewart Title") as Trustee for Norwest Bank Minnesota, National Association, First Security Bank of Utah, N.A., Marquette Bank Minneapolis, N.A., and Ranier National Bank (collectively "Banks"). This Assignment was accomplished through an Assignment and Trust Agreement with respect to each of those projects, copies of which you have received. You have previously indicated by letter your approval of the Collateral Assignments of the above referenced Permits to Stewart Title for and on behalf of the Banks in connection with the closing of the construction financing of those projects. It was indicated to you in our conversation that those assignments were for "security purposes only" and constitute true Collateral Assignments as opposed to actual assignments of the Permits. Therefore, Bonneville Pacific Corporation, in the case of Rock Creek and Dietrich Drop, and Fulcrum, Inc. (in the case of Barber Dam) remain the legal owner of the Permits and this should be reflected in your files. Stewart Title should be shown as a secured party holding a beneficial interest in the Permits for the benefit of the Banks.

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OCT 27 1992

257 East 200 South, Suite 800 / Salt Lake City, Utah 84111 / 801-363-2520 / Facsimile 801-363-9557

We have requested that the Department of Water Resources approve a second Collateral Assignment of the Permits in favor of Idaho Power Company pursuant to Idaho Public Utility Commission Order Nos. 21690 and 21800 in Case No. U-1006-292. Enclosed for your convenience in reviewing this matter, please find unexecuted copies of the Collateral Assignments proposed to be entered into in connection with the Barber Dam and Rock Creek transactions. You have been previously provided with a copy of the Collateral Assignment in favor of Idaho Power Company used in connection with the Dietrich Drop project. These Collateral Assignments are substantially similar in form and substance to the Collateral Assignments whereunder Bonneville and Fulcrum transferred their respective Permits in these projects to Stewart Title for the benefit of the Banks. It is clear from the Collateral Assignments in favor of Idaho Power Company that they are considered to be "second liens" as that term is commonly used in Uniform Commercial Code settings. Thus, Bonneville Pacific Corporation and Fulcrum, Inc., as their interest may appear, continue to have legal ownership of the Permits but have transferred beneficial interest in the same to Stewart Title as the primary secured party and now desire to transfer the same to Idaho Power Company as a secondary secured party.

We request that you review this matter in light of our recent discussions and approve the granting of the second lien security interests by Bonneville and Fulcrum to Idaho Power Company as contemplated in the Collateral Assignments enclosed herewith. We further request that the records of the Department of Water Resources reflect that Bonneville Pacific Corporation holds the legal title to the Permits involved in the Rock Creek and Dietrich Drop projects and that Fulcrum, Inc. holds the legal title to the Permit used in connection with the Barber Dam project.

If you find forms of these materials to be acceptable and if you are in agreement with the manner in which these Permits should be reflected on your records, we will appreciate your executing letters similar to those enclosed approving the Collateral Assignment for security purposes of Permits for Dietrich Drop, Rock Creek and Barber Dam.

By copy of this letter, I am advising Stewart Title of Idaho, Paul T. Birkeland, counsel for the Banks, and Barton L. Kline, counsel to Idaho Power of our desires with respect to

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this matter. Any party having questions or comments concerning this matters, should contact me at their earliest opportunity.

Very truly yours,

David P. Hirschi
General Counsel

DPH: tbf

cc: Gary L. Montgomery, Esq.
Kenneth W. Bell
Barton L. Kline, Esq.
Stewart Title of Idaho, Inc.

d/c/00430

OCT 27 1992

STEWART TITLE OF IDAHO, Inc.

A FUTURA COMPANY

Sanctity of Contract

☐ 1412 WEST IDAHO, P.O. BOX 7546, BOISE, IDAHO 83707, (208) 336-6515
☐ 6933 EMERALD, SUITE 103, BOISE, IDAHO 83704, (208) 378-1666
☐ 517 S. 10th STREET, SUITE C, CALDWELL, IDAHO 83605, (208) 454-1491
BOISE TO CALDWELL 385-0114

February 14, 1989

Mr. Gary Spackman
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

Re: Assignment and Trust Agreement and Collateral Assignment for Water Permits:
Dietrich Drop Permit Nos. 01-7022 and 01-7058
Barber Dam Permit No. 6310028
Rock Creek Permit No. 47-7771

Dear Mr. Spackman:

Please be advised that Stewart Title of Idaho, Inc. ("Stewart Title") has reviewed David P. Hirschi's letter of January 13, 1989 addressed to you, which discusses the status of the above referenced water permits. Stewart Title concurs with Mr. Hirschi's characterization of the permits as set forth in said letter (copy attached hereto).

Specifically, Stewart Title acknowledges and agrees that Bonneville Pacific Corporation ("Bonneville") in the case of Dietrich Drop and Rock Creek and Fulcrum, Inc. ("Fulcrum") in the case of Barber Dam have collaterally assigned their water rights to Stewart Title as trustee for and on behalf of certain banks which have provided construction financing for the projects and have made further collateral assignments of the permits in favor of Idaho Power Company, thereby granting Idaho Power "second liens" in said permits. These Assignments are for security purposes only and constitute true collateral assignments as opposed to actual assignments of the permits. Accordingly, Bonneville remains the legal owner of the permits associated with Dietrich Drop and Rock Creek, and Fulcrum remains the legal owner of the permit associated with the Barber Dam Project.

Very truly yours,

STEWART TITLE OF IDAHO, INC.

Joan M. Hart

Joan M. Hart
Vice President

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Bonneville Pacific Corporation

January 13, 1989

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JAN 16 1989
Department of Water Resources

Mr. Gary Spackman
Department of Water Resources
1301 North Orchard Street
State House Mail
Boise, Idaho 83720

Re: Assignment and Trust Agreement and Collateral Assignment for Water Permits:
Dietrich Drop Nos. 01-7022 and 01-7058
Barber Dam Permit No. 6310028
Rock Creek Permit No. 47-7771

Dear Gary:

Pursuant to our recent discussion of the Collateral Assignments for security purposes of the above referenced water permits (the "Permits"), please be advised that Bonneville Pacific Corporation in the case of Dietrich Drop and Rock Creek, and Fulcrum, Inc., a wholly-owned subsidiary of Bonneville Pacific Corporation, in the case of Barber Dam, has collaterally assigned its water rights to Stewart Title of Idaho, Inc. ("Stewart Title") as Trustee for Norwest Bank Minnesota, National Association, First Security Bank of Utah, N.A., Marquette Bank Minneapolis, N.A., and Ranier National Bank (collectively "Banks"). This Assignment was accomplished through an Assignment and Trust Agreement with respect to each of those projects, copies of which you have received. You have previously indicated by letter your approval of the Collateral Assignments of the above referenced Permits to Stewart Title for and on behalf of the Banks in connection with the closing of the construction financing of those projects. It was indicated to you in our conversation that those assignments were for "security purposes only" and constitute true Collateral Assignments as opposed to actual assignments of the Permits. Therefore, Bonneville Pacific Corporation, in the case of Rock Creek and Dietrich Drop, and Fulcrum, Inc. (in the case of Barber Dam) remain the legal owner of the Permits and this should be reflected in your files. Stewart Title should be shown as a secured party holding a beneficial interest in the Permits for the benefit of the Banks.

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257 East 200 South, Suite 800 / Salt Lake City, Utah 84111 / 801-363-2520 / Facsimile 801-363-9557

We have requested that the Department of Water Resources approve a second Collateral Assignment of the Permits in favor of Idaho Power Company pursuant to Idaho Public Utility Commission Order Nos. 21690 and 21800 in Case No. U-1006-292. Enclosed for your convenience in reviewing this matter, please find unexecuted copies of the Collateral Assignments proposed to be entered into in connection with the Barber Dam and Rock Creek transactions. You have been previously provided with a copy of the Collateral Assignment in favor of Idaho Power Company used in connection with the Dietrich Drop project. These Collateral Assignments are substantially similar in form and substance to the Collateral Assignments whereunder Bonneville and Fulcrum transferred their respective Permits in these projects to Stewart Title for the benefit of the Banks. It is clear from the Collateral Assignments in favor of Idaho Power Company that they are considered to be "second liens" as that term is commonly used in Uniform Commercial Code settings. Thus, Bonneville Pacific Corporation and Fulcrum, Inc., as their interest may appear, continue to have legal ownership of the Permits but have transferred beneficial interest in the same to Stewart Title as the primary secured party and now desire to transfer the same to Idaho Power Company as a secondary secured party.

We request that you review this matter in light of our recent discussions and approve the granting of the second lien security interests by Bonneville and Fulcrum to Idaho Power Company as contemplated in the Collateral Assignments enclosed herewith. We further request that the records of the Department of Water Resources reflect that Bonneville Pacific Corporation holds the legal title to the Permits involved in the Rock Creek and Dietrich Drop projects and that Fulcrum, Inc. holds the legal title to the Permit used in connection with the Barber Dam project.

If you find forms of these materials to be acceptable and if you are in agreement with the manner in which these Permits should be reflected on your records, we will appreciate your executing letters similar to those enclosed approving the Collateral Assignment for security purposes of Permits for Dietrich Drop, Rock Creek and Barber Dam.

By copy of this letter, I am advising Stewart Title of Idaho, Paul T. Birkeland, counsel for the Banks, and Barton L. Kline, counsel to Idaho Power of our desires with respect to

OCT 27 1992

this matter. Any party having questions or comments concerning this matters, should contact me at their earliest opportunity.

Very truly yours,

David P. Hirschi
General Counsel

DPH: tbf

cc: Gary L. Montgomery, Esq.
Kenneth W. Bell
Barton L. Kline, Esq.
Stewart Title of Idaho, Inc.

d/c/00430

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

August 5, 1988

Donald C. Shepard
Faegre & Benson
2300 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402-3694

Patrick G. Bassett, V.P.
Norwest Bank Minnesota
National Association
Eighth Street & Marquette Avenue
Fourth Floor, Investors Building
Minneapolis, MN 55479

Gary L. Montgomery, Esq.
Marcus, Merrick & Montgomery
737 North 7th
Boise, ID 83702-5595

David P. Hirschi, Esq.
Secretary and General Counsel
Fulcrum, Inc.
257 East 200 South, Suite 800
Salt Lake City, UT 84111

Re: Assignment and Trust Agreement for Water Permit No. 63-10028

Gentlemen:

This office has received an executed copy of the Assignment and Trust Agreement dated August 1, 1988, whereunder Fulcrum, Inc. (Fulcrum) assigned its right, title, and interest in and to the above referenced water permits (permits) to Steward Title of Idaho, Inc., an Idaho corporation (Stewart Title), as trustee for Norwest Bank Minnesota, National Association, First Security Bank of Utah, N.A., Marquette Bank Minneapolis, N.A., and Rainier National bank (collectively (Banks).

This office previously received, acknowledged, and accepted the assignment of said permit from the applicant, Ada County to Fulcrum. In addition, this office received certificates from the Secretary of States office verifying that Fulcrum and Stewart Title are qualified to do business in Idaho. Finally, this office received an affidavit for water rights to be used for power purposes executed by Robert H. De[illegible] registered agent for Stewart Title.

SEP 29 1988

Based upon our understanding of the information contained in the assignment, the banks have agreed to provide financing to fund the cost of construction the Barber Dam Hydroelectric Project. This office also understands that, as part of the security for the repayment of the loan made by the banks, the Banks have required that said permit be assigned to Stewart Title, as trustee, in order to protect the Banks' interest in said permit.

We find that the assignments satisfy the requirements of Idaho Code Sections 42-206 through 42-210. Specifically, Stewart Title is a qualified entity to hold the permits, as trustee, in accordance with the laws of the State of Idaho. Therefore, the Assignment and Trust Agreement is consented to and approved by the Idaho Department of Water Resources, as of the date of this correspondence.

Please note that Stewart Title will be listed as the owner of record of the permits. The Department acknowledges that the Assignment and Trust Agreement provides that the water license shall be issued to Fulcrum despite the fact that Stewart Title is the holder of the permits. While the Department will endeavor to follow the provisions of the Assignment and Trust Agreement, we cannot guarantee that the Department will issue the license as requested. It is the ultimate responsibility of the parties to the Agreement to insure that the terms thereof are properly enforced.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

SEP 29 1988

ASSIGNMENT AND TRUST AGREEMENT

This Assignment and Trust Agreement (hereinafter called the "Assignment"), dated as of August 1, 1988, is hereby entered into by Fulcrum, Inc., with its principal office at 257 East 200 South, Suite 800, Salt Lake City, Utah 84111 (hereinafter called the "Assignor"), Stewart Title of Idaho, Inc., an Idaho corporation, with its office at 1412 West Idaho Street, Boise, Idaho (hereinafter called the "Trustee"), and Norwest Bank Minnesota, National Association, First Security Bank of Utah, N.A., Marquette Bank Minneapolis, N.A. and Rainier National Bank (hereinafter collectively called the "Banks").

RECITALS

A. Bonneville Pacific Corporation ("Bonneville"), the parent company of Assignor, the Banks and Norwest Bank Minnesota, National Association, as agent for the Banks (Norwest Bank Minnesota, National Association, in such capacity being hereinafter called "Agent") have entered into a Credit Agreement, dated as of December 17, 1987, as supplemented and modified by a Project Lending Agreement ("Project Lending Agreement"), dated as of August 1, 1988, among Bonneville, Assignor, the Banks and the Agent (the Credit Agreement, as supplemented and modified by the Project Lending Agreement hereinafter called "Loan Agreement"), pursuant to which the Banks have agreed to make loans in the aggregate amount of $5,420,000 to finance the construction of a certain hydroelectric project known as the Barber Dam Hydroelectric Project in Ada County, Idaho (the "Project").

B. Ada County, State of Idaho ("County") has filed with the Department of Water Resources of the State of Idaho ("Department") an Application for Permit to Appropriate Public Waters No. 63-10028 and the Department approved such application on November 30, 1987 (a copy of which application and approval for water permit for power purposes is attached hereto as Exhibit A (the approval for such application being hereinafter called "Permit")).

C. Pursuant to an Agreement dated June 13, 1988, the County assigned to Fulcrum its entire right, title and interest in and to the Permit, a copy of which Agreement is attached hereto as Exhibit B.

D. The Department has approved the assignment referred to in Recital C above, a copy of which approval is attached hereto as Exhibit C.

E. As a condition to making the loans under the Loan Agreement to finance the construction of the Project, the Banks

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SEP 29 1988

require that this Assignment be executed and delivered to the Trustee.

Accordingly, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby represents and warrants to the Banks that:

(a) the Recitals are true and correct;

(b) Assignor is the lawful owner of the rights and interests granted by the Permit, the Permit is in full force and effect and has not been amended or modified, and the Assignor has not transferred, assigned or conveyed or granted a security interest in its rights and interests under the Permit.

2. Subject to and specifically conditioned upon the written approval hereof by the Department, Assignor hereby assigns to Trustee all of Assignor's right, title and interest in the Permit and all amendments and supplements thereto. Such assignment is made as collateral security for the payment of all of the obligations of the Assignor to the Banks arising under the Project Lending Agreement, including but not limited to the indebtedness evidenced by the project notes issued to the Banks under the Project Lending Agreement.

3. This Assignment is an assignment only of all right, title and interest of the Assignor in the Permit, and the Assignor covenants and agrees with the Trustee to faithfully perform, observe and comply with all obligations of the Assignor under the Permit and with all limitations and conditions imposed under the Permit, as if this Assignment had not been made. The Trustee shall not be deemed in any manner to have assumed such obligations, and in no event shall the Banks be deemed to have assumed any of the obligations of the Assignor under or with respect to the Permit, unless and until the Agent has given Assignor written notice that the Banks have affirmatively assumed such obligations as the result of an event of default existing under the Credit Agreement (a "Default") and the enforcement of the rights and remedies of the Trustee under this Assignment.

4. Assignor agrees that it will not cancel, terminate, modify or amend the Permit or surrender any of its water rights granted under the Permit and will not further assign the Permit to any party, without in each instance the prior written consent of the Banks. Assignor further agrees that it shall deliver to the Trustee or Agent copies of all written agreements, correspondence and memoranda between Assignor and the Department

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SEP 29 1988

relating to the Permit and any water license issued by the Department to replace a Permit as the Trustee or Agent may from time to time reasonably require.

5. Upon the occurrence of any Default the Trustee, at the request of the Agent, may without notice or demand and with or without entry upon the site of the Project, at its option, take over and enjoy the benefits of the permit to the same extent as Assignor might do. The exercise of such right by the Trustee shall not affect any of the rights or remedies of the Agent or the Banks under any other instrument securing payment of the obligations under the Project Lending Agreement and the Project Notes issued thereunder. In addition, upon the occurrence of a Default the Trustee shall have the right to exercise and enforce any and all rights and remedies available after Default to a secured party under the applicable law. If notice to the Assignor of any intended disposition of collateral or any other intended actions is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to Assignor at least 10 days prior to the intended disposition or other action.

6. The Trustee shall hold all right, title and interest in the Permit for the benefit of the Banks subject to the limitations under this Assignment, pending issuance of a water license to replace the Permit by the Department. Any water license issued to replace the Permit shall be issued to Assignor; provided, however, that this Assignment shall constitute an automatic assignment to the Trustee of all of Assignor's right, title and interest in any such water license as collateral security for the payment of Assignor's obligations under the Project Lending Agreement and the Project Notes issued thereunder and the rights and remedies of the Trustee with respect to any such water license shall be the same as those provided in this Assignment in respect of the Permits. Should any water license be issued to the Trustee instead of to Assignor, the Trustee shall take all necessary steps to transfer ownership of such water license to the Assignor as soon as possible, subject to the terms of this Assignment.

7. Assignor agrees to indemnify and to hold Trustee harmless from and against any and all liabilities, obligations, (losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Trustee in any way relating to or arising out of this Assignment or any action taken or omitted to be taken by it under this Assignment, provided that the Assignor shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the gross negligence or willful misconduct of the Trustee.

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8. Nothing herein contained shall be construed as making Trustee a mortgagee in possession, or as constituting a waiver or suspension by the Banks of their right to enforce payment of the debts under the terms of the Loan Agreement. Trustee is not the agent, partner, or joint venturer of either the Assignor or of the Department.

9. Each Bank hereby appoints and authorizes the Trustee to take such action on its behalf and to exercise such powers under this Assignment as are delegated to the Trustee by the terms hereof, together with such powers as are reasonably incidental thereto. As to any matters not expressly provided for by this Assignment, the Trustee shall not be required to exercise any discretion or take any action.

10. Neither the Trustee nor any of its respective directors, officers, employees or agents shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Assignment, except for its own or their own gross negligence or willful misconduct. Without limitation of the generality of the foregoing, the Trustee (i) may consult with legal counsel and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel or experts, (ii) shall incur no liability under or in respect of this Assignment by acting upon any notice, certificate or other instrument or writing believed by it to be genuine and signed or sent by the proper party or parties, (iii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the covenants and agreements of the Assignor under this Assignment or to determine whether a Default has occurred and (iv) shall not be responsible to any Bank for the due execution, legality, validity, enforceability, sufficiency or value of this Assignment or any document or instrument furnished pursuant to this Assignment.

11. Each of the Banks agrees to indemnify the Trustee (to the extent not reimbursed by the Assignor upon demand) ratably according to the face amount of the project note issued to such Bank under the Project Lending Agreement from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, inured by or asserted against the Trustee in any way relating to or arising out of this Assignment or any action taken or omitted to be taken by it under this Assignment, provided that no Bank shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the gross negligence or willful misconduct of the Trustee.

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12. The Trustee may resign at any time by giving at least 90 days prior written notice thereof to the Agent and the Assignor and may be removed at any time with or without cause by the Banks. Upon any such resignation or removal, the Banks shall have the right to appoint a successor Trustee. If no successor trustee shall have been so appointed by the Banks and shall have accepted such appointment within 60 days after the retiring Trustee's giving of notice of resignation or removal, then the retiring Trustee may, on behalf of the Banks, appoint a successor Trustee, which shall be a title insurance company or bank organized under the laws of the United States or of the State of Idaho having its principal office in the State of Idaho and in the case of any bank having a combined capital and surplus of at least $25,000,000. Upon acceptance of any appointment as Trustee hereunder by a successor Trustee, such successor Trustee shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Trustee and the retiring Trustee shall be discharged from its duties and obligations under this Assignment. After any retiring Trustee's resignation or removal hereunder as Trustee, the provisions of paragraphs 7 through 11 of this Assignment shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Trustee under this Assignment.

13. The Trustee acknowledges and agrees that it has made separate arrangements with the Assignor for the payment of its fees for serving as Trustee under this Assignment, and the Assignor agrees that such fees are its obligation to pay.

14. Assignor agrees that it will execute such other instruments and documents as the Agent or the Trustee may from time to time reasonably require to effectuate the assignment granted by this Assignment, including but not limited to filing with the Department such instruments and documents as the Department may require as a condition to approving the assignment of any water license to the Trustee that replaces a Permit.

15. This Assignment shall be binding upon the Assignor and its successors and assigns and shall inure to the benefit of the Trustee and its successors and assigns. This Assignment may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

16. This Assignment can be waived, modified, terminated or discharged only explicitly in a writing signed by the parties hereto. The mere failure to act shall not preclude the exercise or enforcement of any of the rights or remedies of the Trustee hereunder.

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SEP 29 1988

17. All notices to the Assignor provided for under this Assignment shall be in writing and mailed or delivered by overnight courier to the address of Assignor indicated below:

Fulcrum, Inc.
c/o Bonneville Pacific Corporation
257 East 200 South, Suite 800
Salt Lake City, Utah 84111
Attention: Mr. Kenneth W. Bell

with a copy to

David P. Hirschi at the same address.

18. The Trustee shall release all collateral granted hereunder when the Banks' commitment under the Project Lending Agreement to lend for purposes of constructing the Project has terminated and all amounts outstanding under the Project Notes issued under the Project Lending Agreement, including accrued and unpaid interest thereon, and all other amounts outstanding under the Project Lending Agreement have been paid in full.

19. This Assignment shall be deemed made in and shall be governed by the internal laws of the State of Idaho.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first above written.

FULCRUM, INC.

By: _____
Its: Vice President

NORWEST BANK MINNESOTA,
NATIONAL ASSOCIATION

By: _____
Its: Vice President

SEP 29 1988

STATE OF Minnesota)
) ss.
COUNTY OF Hennepin)

On this 2nd day of August, 1988, before me Barbara M. Butke, a notary public, personally appeared David P. Hirschi known or identified to me to be the Vice President of Fulcrum, Inc. ("Corporation") that executed the above instrument or the person who executed the instrument on behalf of the Corporation and acknowledged to me that such Corporation executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Barbara M. Butke
Notary Public
Residing at: Minneapolis, Minnesota
My Commission Expires: Sept 22, 1993

BARBARA M. BUTKE
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Sept. 22, 1993

STATE OF Minnesota)
) ss.
COUNTY OF Hennepin)

On this 2nd day of August, 1988, before me Barbara M. Butke, a notary public, personally appeared Patrick A. Bugsett known or identified to me to be the Vice President of Norwest Bank Minnesota, National Association ("Bank") that executed the above instrument or the person who executed the instrument on behalf of the Bank and acknowledged to me that such Bank executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Barbara M. Butke
Notary Public
Residing at: Minneapolis, Minnesota
My Commission Expires: Sept 22, 1993

BARBARA M. BUTKE
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Sept. 22, 1993

RECORDED

SEP 29 1988

STEWART TITLE OF IDAHO, INC.
as Trustee

By: Joan M. Hart
Its: Vice President

STATE OF Idaho)
) ss.
COUNTY OF Ada)

On this 4th day of August, 1988, before me Beverly Petersen, a notary public, personally appeared Joan M. Hart known or identified to me to be the Vice-President of Stewart Title of Idaho, Inc. ("Corporation") that executed the above instrument or the person who executed the instrument on behalf of the Corporation and acknowledged to me that such Corporation executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Beverly Petersen
Notary Public
Residing at: Boise, Idaho
My Commission Expires: 6-25-91

RECORDED

SEP 29 1988

FIRST SECURITY BANK OF UTAH, N.A.

By: Harvey Tanner
Its: Vice President

STATE OF Utah)
) ss.
COUNTY OF Salt Lake)

On this 3rd day of August, 1988, before me Jeri N. Pavlish, a notary public, personally appeared Harvey Tanner known or identified to me to be the Vice President of First Security Bank of Utah, N.A. ("Bank") that executed the above instrument or the person who executed the instrument on behalf of the Bank and acknowledged to me that such Bank executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Jeri N. Pavlish
Notary Public
Residing at: Residing at Salt Lake City
My Commission Expires: My Commission Expires: 10/08/90

RECORDED

SEP 29 1988

MARQUETTE BANK MINNEAPOLIS, N.A.

By: Mark H. Wright
Its: Business Services Officer

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this 3rd day of August, 1988, before me Elaine M. Sorensen, a notary public, personally appeared Mark H. Wright known or identified to me to be the Business Services Officer of Marquette Bank Minneapolis, N.A. ("Bank") that executed the above instrument or the person who executed the instrument on behalf of the Bank and acknowledged to me that such Bank executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

ELAINE M. SORENSEN
NOTARY PUBLIC--MINNESOTA
WRIGHT COUNTY
My Commission Expires June 9, 1992

Elaine M. Sorensen
Notary Public
Residing at: _____
My Commission Expires: _____

RECORDED

SEP 29 1988

RAINIER NATIONAL BANK

By: Thomas P. Cook
Its: Vice President

STATE OF Washington)
) ss.
COUNTY OF King)

On this 3rd day of August, 1988, before me Cheryl A. Miller, a notary public, personally appeared Thomas P. Cook known or identified to me to be the Vice President of Rainier National Bank ("Bank") that executed the above instrument or the person who executed the instrument on behalf of the Bank and acknowledged to me that such Bank executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Cheryl A. Miller
Notary Public
Residing at: Kent
My Commission Expires: 10-2-90

RECORDED

SEP 29 1988

EXHIBIT A

APPLICATION FOR PERMIT TO APPROPRIATE
PUBLIC WATERS NO. 63-10028

(Attached)

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SEP 29 1988

Form 202
3/78

Ident. No. 63-10028

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Ada County, State of Idaho Phone (208) 383-4424

   Post office address 650 Main Street, Boise, Idaho 83702

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

3. Location of point of diversion is SW ¼ of SE ¼ of Section 29 Township 3N Range 3E B.M. Ada County, additional/~~points of diversion if any~~ description:

   At Barber Dam, circa River Mile 58.9, Boise River

4. Water will be used for the following purposes:

   Allow 2000 JJ 10/6/87
   Amount ~~3000~~ (cfs or ~~acre-feet per annum~~) for elect. gen. purposes from 1/1 to 12/31 (both dates inclusive)

   Amount ~~0.09~~ (cfs or ~~acre-feet per annum~~) for ~~IRRIGATION~~ purposes from ~~3/15~~ to ~~11/15~~ (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:

   Allow 2000 JJ 10/6/87
   a. ~~3000~~ cubic feet per second and/or b. N/A acre-feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. Siphon penstocks to turbine/ generators; return to river via an open channel tailrace.

   b. Height of ~~storage~~ dam 23 ± feet, active reservoir capacity negligible acre-feet; total reservoir capacity neg. acre-feet, materials used in storage dam: Timber crib w/pneumatic concrete fa

   Period of year when water will be diverted to storage N/A (Month/Day) to --- (Month/Day) inclusive.

   c. Proposed well diameter is N/A 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: SW ¼ of SE ¼ of Section 29 Township 3N Range 3E B.M.
      (2) Amount of power to be generated: theoretical 7300 horsepower under 23 ± feet of head.
      (3) List number of each kind of livestock to be watered N/A
      (4) Name of municipality to be served N/A, or number of families to be supplied with domestic water ---.
      (5) If water is to be used for other purposes describe: Power Generation.

SEP 29 1988

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
2N	3E	29															3		3

Total number of acres to be irrigated 3

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 Ada County

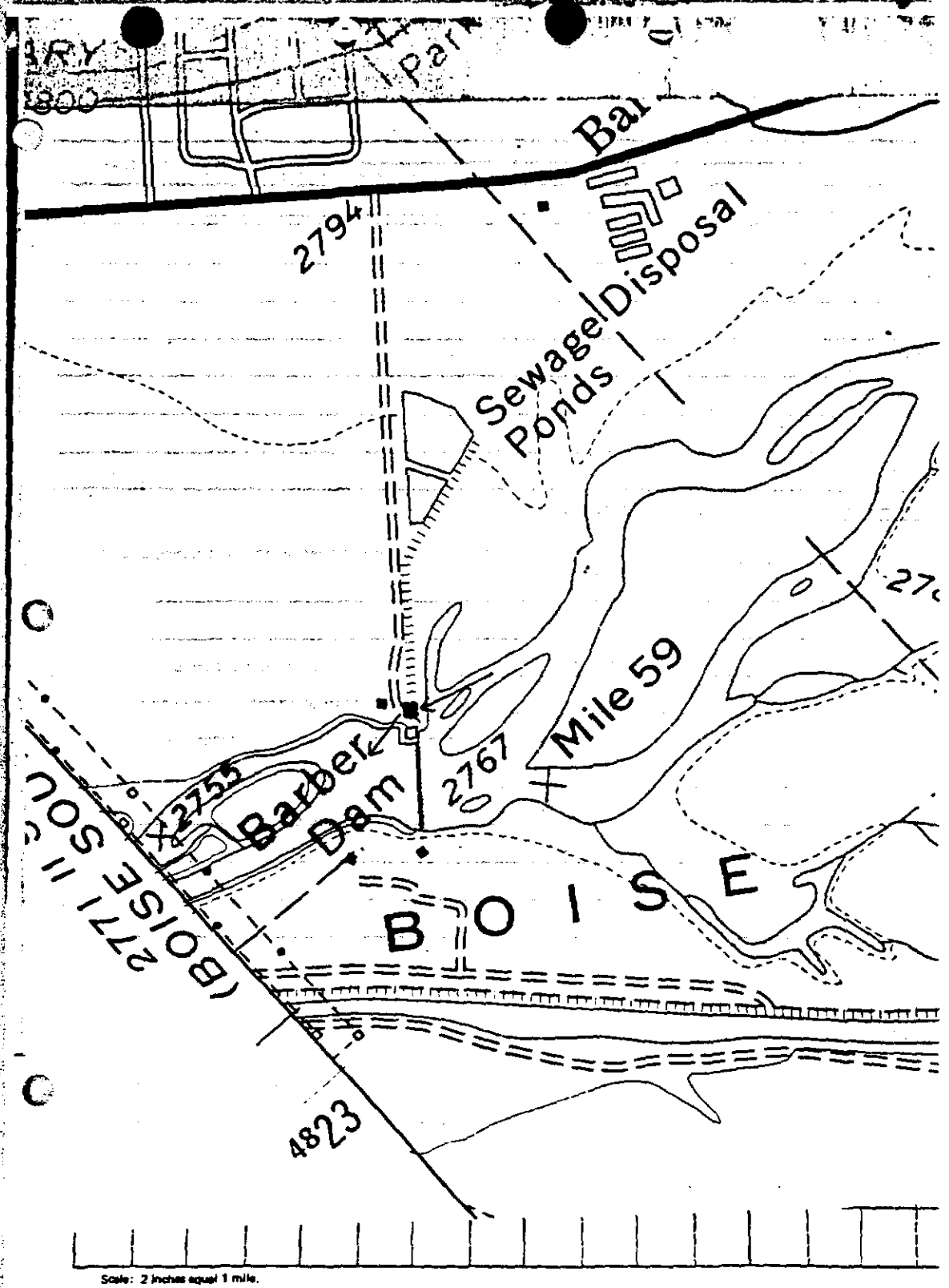
b. Who owns the ~~land to be irrigated or~~ place of use Ada County

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

10. Remarks

FILMED

SEP 29 1988



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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SEP 29 1988

ADA COUNTY

(Applicant) COMMISSIO

Proposed Priority 4/28/83

Received by jc Date 4/28/83 Time _____

Preliminary check by JG Fee $ 5,725.00

Receipted by jc Date 4/28/83 #27964

Publication prepared by SP Date 5/5/83

Published in Idaho Statesman

Publication dates 5/11 & 5/18/83 Corr. ltr'g 5/16/83

Publication approved ltr KP Date 6/20/83

Protests filed by: none

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for (approval) denial by DBS

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. 63-10028, 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 October 1, 19 92.
   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
   d. Other: SEE ATTACHED SHEET FOR CONDITIONS d thru n.

Witness my hand this 30TH day of NOVEMBER, 1987.

R. Keith Higginson
Director

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SEP 29 1988

ATTACHMENT TO CONDITIONS OF APPROVAL
To Permit No. 63-10028

d. This permit does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
e. Prior to placing water to beneficial use under this permit, the permit holder must determine the rate of loss within his facilities using a procedure approved by the Director of the Department of Water Resources, and provide a source of augmentation water to mitigate all losses.
f. Use of water under this permit shall be non-consumptive and only for power generation.
g. Permit holder shall install and maintain a permanent measuring device, or install and rate a flow section, or provide curves and other data acceptable to the Director which can be used to readily determine the rate of diversion for hydropower generation.
h. The storage of water under this permit is contingent upon the certification of the dam and authorization of storage per the dam safety provisions of the Idaho Code.
i. This permit is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this permit. Failure to comply with these provisions is cause for immediate cancellation of this permit.
j. Water used under this permit if discharged into a natural channel shall meet Idaho Water Quality Standards.
k. The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director on the date(s) of expiration of any license issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
l. The water right acquired under this permit for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.mn.
m. The maximum rate of diversion under this permit shall not exceed 2000 cfs.
n. Use of water under this permit is subject to control by the watermaster of State Water District No. 63, Boise River.

Witness my hand this 30TH day of NOVEMBER, 1987.

Director

RECORDED

SEP 29 1988

1300 second feet
Power purposes
Priority 11-16-190

****

S T A T E _ O F _ I D A H O

Water License No. 946.

WHEREAS, On the 16th day of November A.D.1904, BARBER LUMBER COMPANY, of Boise, County of Ada, State of Idaho, duly made application (No.1317) to me for a permit to use 1300 cubic feet per second of the waters of Boise River, County of Ada, State of Idaho, for electric power purposes, and

WHEREAS, On the 28th day of November A.D.1904, Permit No. 946, was issued to said applicant for the diversion of said water, and providing for the completion of the works for diversion therein described on or before the 28th day of November A.D.1906, and for the application to beneficial use of said water on or before the 28th day of November A.D.1909, and

WHEREAS, On the 1st day of November A.D'1906, BARBER LUMBER COMPANY, the holder of said permit duly made proof of the completion of adequate works for the diversion of 1300 cubic feet per second of said waters, as evidenced by my Certificate No. 946, dated November 5,1906, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 1300 cubic feet per second of said water with date of priority of November 16,1904, and

WHEREAS, On the 10th day of September A.D.1909 BARBER LUMBER COMPANY, the holder of said permit duly made proof of the application to beneficial use of 1300 cubic feet per second of said water:

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to BARBER LUMBER COMPANY, of Boise, County of Ada, State of Idaho, the holder and owner of said Permit No. 946, a perpetual right, dating from November 16,1904, to the use of 1300 cubic feet per second of the waters of Boise River, in the County of Ada, and State of Idaho, or so much there of as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point in the south part of southwest quarter of southeast quarter (SW4 SE4) Section 29, township 3 North, Range 3 East of Boise meridian, and conducted to the power house at the Barber Lumber Company Mills for the purpose of generating electric power to be used at the Barber Lumber Company mills, and also to be used by the Idaho-Oregon Light & Power Company for light and power purposes in Boise, Pearl, Emmett, Payette, Weiser, and other places, subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or maynbe adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this seventeenth day of September, A.D. Nineteen hundred and nine.

SEAL)

Jas. Stephenson, Jr.

State Engineer

Recorded September 17,1909

MICROFILMED

SEP 29 1988

EXHIBIT B

ASSIGNMENT OF PERMIT DATED JUNE 13, 1988

(Attached)

MICROFILMED

SEP 29 1988

RECEIVED
JUN 15 1988
Department of Water Resources

NO. 780

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

ASSIGNMENT OF PERMIT

Ada County, a political subdivision of the State of Idaho, hereby assigns to Fulcrum, Inc., an Idaho corporation, of 257 E. 200 South, Suite 800, Salt Lake City, UT 84111, ATTN: David P. Hirschi, Esq., all its right, title, and interest in and to Permit No. 63-10028 to appropriate the public waters of the State of Idaho.

MADE this 13 day of June, 1988.

BOARD OF ADA COUNTY COMMISSIONERS

By: _____
Michael L. Johnson, Chairman

By: absent
Judy M. Peavey, Commissioner

By: Vernon L. Bisterfeldt
Vernon L. Bisterfeldt, Commissioner

ATTEST:

John Bastida
John Bastida, Ada County Clerk

[redacted]
SEP 29 1988

ACKNOWLEDGEMENT

On this 13 day of June, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael L. Johnson, ~~Judy M. Peavey~~) and Vernon L. Bisterfeldt, known or identified to me to be duly elected, qualified, and acting Commissioners of Ada County, Idaho, and John Bastida, known or identified to me as the duly elected, qualified, and

16TH June 88

acting Clerk of Ada County, State of Idaho, whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Shari Strong
Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires: 2-4-94

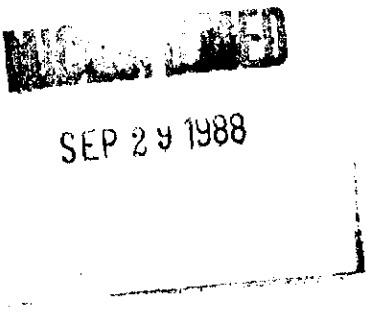
SEP 29 1988

16th June 88

EXHIBIT C

DEPARTMENT APPROVAL OF ASSIGNMENT

(Attached)



State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

June 16, 1988

Fulcrum, Inc.
C/o David P. Hirschi
257 East 200 South Suite 800
Salt Lake City, UT 84111

Re: Assignment of Permit No. 63-10028

Dear Mr. Hirschi:

I have reviewed an executed assignment by which the Board of Ada County Commissioners conveyed permit no. 63-10028 to Fulcrum, Inc. I have also received a certificate of corporate status issued by the Secretary of State, State of Idaho, which attests to the active corporate status of Fulcrum.

I find that the assignment and certificate of corporate status fulfill the requirements of Sections 42-205 through 42-210, Idaho Code, and specifically find that the permit was assigned in good faith, and not for speculation or delay.

The files of the Department will be changed to reflect that Fulcrum, Inc. is the owner of permit no. 63-10028, and Fulcrum will receive all correspondence regarding the permit.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

CC: Teresa Elliott
Ada County Commission
Western Region

SEP 19 1988

State of Idaho

Department of State.

CERTIFICATE OF CORPORATE STATUS
OF

STEWART TITLE OF IDAHO, INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of *Idaho* and was issued a certificate of *incorporation* in Idaho on *August 9, 1976.*

I FURTHER CERTIFY That the corporation's authority to do business has not been forfeited.

Dated *July 28, 1988*

GREAT SEAL OF THE STATE OF IDAHO
ESTO PERPETUA

Pete T. Cenarrusa
SECRETARY OF STATE

by _____

RECORDED

SEP 29 1988

CCSSF 781

State of Idaho

Department of State.

CERTIFICATE OF CORPORATE STATUS
OF

FULCRUM, INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of *Idaho* and was issued a certificate of *incorporation* in Idaho on *September 28, 1984.*

I FURTHER CERTIFY That the corporation's authority to do business has not been forfeited.

Dated *July 28, 1988*

GREAT SEAL OF THE STATE OF IDAHO
ESTO PERPETUA

Pete T. Cenarrusa
SECRETARY OF STATE

by _____

SEP 30 [illegible]

CCSSF 781

Water Right No. 63-10028

State of Idaho
Department of Water Resources

AFFIDAVIT FOR WATER RIGHTS TO BE USED FOR POWER PURPOSES

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

1. Individual Applicant or Individual Members of a Partnership:

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

2. Corporation:

I, Robert H. DeBolt of Boise, County of Ada, State of Idaho, being duly sworn, depose and say: That I am the designated registered agent of Stewart Title of Idaho, Inc.; that as such I am in charge of the registered office of the said corporation as required by Section 30-1-12, Idaho Code, at Boise, Idaho, wherein are kept the corporate records required by Section 30-1-52, Idaho Code; and that Stewart Title of Idaho, Inc. is a corporation qualified to do business in the State of Idaho under the laws of the State of Idaho.

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

The hydropower facility to be developed pursuant to the attached Application for Permit: (check one)

/__/ Will not utilize existing man-made irrigation facilities such as a dam or a canal.

/XX/ Will utilize existing man-made irrigation facilities such as a dam or canal, and permission of the owner is documented in an affidavit attached hereto.

/__/ Will utilize existing man-made irrigation facilities such as a dam or a canal, and the owner of the facilities is the signee of this affidavit.

Robert H. DeBolt

Applicant: Robert H. DeBolt

STATE OF IDAHO)
: ss.
COUNTY OF Ada)

On this 2nd day of August, 1988, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Joan M. Hart

(seal)

Notary Public
Residing at: Boise, Idaho

My commission expires:
10-15-93

552d

SEP 29 1988

AFFIDAVIT OF USER
OF WATER RIGHTS FOR POWER PURPOSES

I, David P. Hirschi, Secretary and General Counsel of Fulcrum, Inc., an Idaho corporation (the "Corporation") hereby depose, affirm and state as follows:

1. The Corporation is the Assignee of a certain Water Permit No. 63-10028.

2. The State of Idaho, Ada County, the Idaho Foundation for Parks and Lands, and Dallas H. Harris and Alta Harris, the owners of the real property and facilities designated in the Permits, have consented to the use thereof by the Corporation.

3. The documents consenting to the use of the real property and facilities are attached hereto and by this reference made a part hereof.

DAVID P. HIRSCHI
Secretary of Fulcrum, Inc.

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STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On this _____ day of August, 1988, personally appeared before me David P. Hirschi, the signer of the above instrument, who duly acknowledged to me that he executed the same.

Deborah B. Matthews
NOTARY PUBLIC

Residing at: Salt Lake City

My Commission Expires:
4/13/91

557d

SEP 29 1988

EXHIBIT A

LEASE AGREEMENT NO. 627
(Ada County)

(Attached)

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AGREEMENT NO. 627

L E A S E

DATE: December 9, 1986.

PARTIES: Interwest Hydro Inc, an Idaho Corporation, dba Interwest Financial (hereinafter "Lessee"); and ADA COUNTY, STATE OF IDAHO (hereinafter "Lessor").

1. DEMISE, DESCRIPTION, AND USE OF PREMISES: Lessor leases to Lessee and Lessee hires from Lessor, those certain premises situated in the County of Ada, State of Idaho, more particularly described in Exhibit "B" which is attached hereto and by reference made a part hereof, together with all of the appurtenances to said premises, which may be required for construction, operation and maintenance of a hydro electric project at the Barber Dam site located on the Boise River approximately seven (7) miles southeast of Boise, Ada County, Idaho (hereinafter the "Project"), including but not limited to, water rights, easements and physical improvements located on the premises. Lessee shall have the right to use said premises for the following purposes:

(a) Constructing, operating, maintaining, repairing, rebuilding, inspecting and patrolling the Project.

(b) Constructing and maintaining other necessary improvements or appurtenances reasonably necessary to carry out the uses permitted under subparagraph (a) above.

2. TERM: The initial term of this Lease shall be for thirty-five (35) years from the date the Project is deemed to be operational. As used herein the expression "term hereof" refers to such initial term and to any renewals or extensions thereof as hereinafter provided.

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EXHIBIT A

3. RENT: Lessor shall pay to Lessee an annual lease payment of $ 25,000.00 . The annual payment shall be due on September 30th of each year, with the first such payment due and payable on the 30th day of September following the date on which the Project becomes operational. Said plant shall be deemed to be operational at such time as Lessee begins generating electricity at the Project, delivers said electricity to Idaho Power Company or its successor in interest, and receives payment therefore. It is expressly understood by the parties hereto that this provision is strictly rental only, and shall in no way be considered or construed as creating the legal relationship of a partnership. The annual lease payment provided for herein shall escalate each year by the same percentage that the purchase power rates paid by Idaho Power to Lessee escalate.

4. WARRANTIES OF TITLE AND QUIET POSSESSION: Lessor covenants and warrants that it is seized of the demised premises in fee simple and has full right and authority to enter into this lease and that Lessee shall have quiet and peaceable possession of the demised premises during the term hereof; provided, however, Lessee acknowledges that there are some questions relative to access to the premises. Lessor makes no warranties regarding access to the demised premises and any and all arrangements and costs necessary to provide Lessee with the necessary access to the premises and its project site thereon shall be the sole responsibility of Lessee.

5. MAINTENANCE: At all times during the term of this

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Lease, Lessee shall keep and maintain the Project and all improvements now and hereafter on the Project, as well as all facilities now and hereafter appurtenant to the Project, in good order and repair and in a safe and clean condition. Lessee shall operate and maintain the facilities in accordance with Prudent Electrical Practices, the National Electric Safety Code in effect from time to time, and other applicable local, state and federal codes, and shall provide and maintain adequate protective equipment sufficient to prevent damage to the facility. Lessee further agrees not to commit waste upon the real property or rights referred to herein and shall not allow any liens to be placed upon the Project, or any portion thereof, other than as required for financing of the Project as set forth hereinafter, which might materially impact upon the interest of Lessor in the demised premises.

6. COMPLIANCE WITH LAWS: During the term of this lease, Lessee shall comply with all applicable laws affecting the demised premises, the breach of which might result in any penalty on Lessor or forfeiture of Lessor's title to the demised premises. Lessee shall be responsible for seeing that all reporting or other requirements under the License are complied with and Lessor will cooperate fully with Lessee in meeting such requirements.

7. ENCUMBRANCE OF LESSEE'S LEASEHOLD INTEREST: Lessee may encumber by mortgage or deed of trust, or other proper instrument, its leasehold interest and estate in the demised premises, together with all buildings and improvements placed by Lessee

NOT FOLLOWED

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thereon, as security for any indebtedness of Lessee. The execution of any such mortgage, or deed of trust, or other instrument, or the foreclosure thereof, or any sale thereunder, either by judicial proceedings or by virtue of any power reserved in such mortgage or deed of trust, or conveyance by Lessee to the holder of such indebtedness, or the exercising of any right, power, or privilege reserved in any mortgage or deed of trust, shall not be held as a violation of any of the the terms or conditions hereof, or as an assumption by the holder of such indebtedness personally of the obligations hereof. No such encumbrance, forclosure, conveyance, or exercise of right shall relieve Lessee from its liability hereunder.

If Lessee shall encumber its leasehold interest and estate in the demised premises and if Lessee or the holder of the indebtedness secured by such encumbrance shall give notice to Lessor of the existence thereof and the address of such holder, then Lessor will mail or deliver to such holder, at such address, a duplicate copy of all notices in writing which Lessor may, from time to time, give to or serve on Lessee under and pursuant to the terms and provisions hereof; such copies shall be mailed or delivered to such holder, at, or as near as possible to, the same time such notices are given to or served on Lessee. Such holder may, at its option, at any time before the rights of Lessee shall be terminated as provied herein, pay any of the rents due hereunder, or pay any taxes and assessments, or do any other act or thing required of Lessee by the terms hereof, or do any act or thing

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circumstances as they shall then exist. The costs of the reference of the arbitrators shall be paid by the parties in equal shares.

24. WAIVER: The waiver by either party, or the failure by either party to take action with respect to any breach of any of the terms, covenants or conditions of this Lease shall not be demed to be a waiver of any subsequent breach of the same.

25. TIME OF THE ESSENCE: Time is of the essence of this Lease, and of each and every term, covenant and condition hereof.

26. PARTIES BOUND: The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, personal representatives, administrators, and assigns of the parties hereto.

27. CAPTIONS: The captions appearing at the beginning of each section of this Lease are for convenience of reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease at Boise, Idaho on the day and year first above written.

ADA COUNTY, STATE OF IDAHO

By _____
Commissioner

By _____
Commissioner

RELEASED

SEP 29 1988

ATTEST:

By Nicholas T. Johnson
Commissioner

LESSOR

John Bostrom
County Clerk
by David Mason
Chief Deputy

Interwest Hydro Inc an Idaho Corporation dba Interwest Financial

By A. Leon Blaze
Its President

LESSEE

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A tract of land located in the SE 1/4 of Section 29, T. 3 N., R. 3 E., B.M., Ada County, Idaho, being more particularly described as follows:

Commencing at the Section Corner common to Sections 29, 30, 31, and 32, T. 3 N., R. 3 E., B.M., Ada County, Idaho,
thence S 86 degrees 34' E, 2651.8 feet to a point identified as point No. 1 of Idaho Power Co. Barber Power Plant Site Survey;
thence N 25 degrees 51' E, 222.40 feet to a point on the Southerly bank of the Boise River;
thence continuing N 25 degrees 51' E, 673.90 feet across the Boise River to a point;
thence S 47 degrees 27' E, 230.00 feet to a point, which is the REAL POINT OF BEGINNING:
thence continuing S 47 degrees 27' E, 79.60 feet to a point;
thence N 30 degrees 09' E, 94.60 feet to a point;
thence S 65 degrees 0' E, 81.60 feet to a point;
thence S 51 degrees 24' E, 164.10 feet to a point;
thence continuing S 51 degrees 24' E, 416.17 feet to a point;
thence S 47 degrees 25' W, 748.23 feet across the Boise River to a point on the Southerly Bank of the Boise River;
thence N 41 degrees 22' W, 399.70 feet along the Southerly bank of the Boise River to a point;
thence N 51 degrees 57' W, 165.4 feet along the Southerly bank of the Boise River to a point;
thence N 33 degrees 23'41" E, 566.17 feet across the Boise River to the REAL POINT OF BEGINNING

RECORDED

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EXHIBIT D

ASSIGNMENT OF LEASE

This Assignment dated this 27th day of June, 1988, is by and between Interwest Hydro, Inc., an Idaho corporation, hereinafter "Interwest" and Fulcrum, Inc., an Idaho corporation, hereinafter "Fulcrum" and provides as follows:

RECITALS:

Interwest is an Idaho corporation with its principal place of business at 3350 Americana Terrace, Boise, Idaho. Fulcrum is an Idaho corporation with its principal place of business at 257 East 200 South, Suite 800, Salt Lake City, Utah 84111.

Interwest desires to assign to Fulcrum all of its right, title and interest in and to and its obligations under and pursuant to that certain Lease Agreement by and between Interwest Hydro, Inc., and Ada County, Idaho. A copy of which is attached hereto as Exhibit A and by this reference made a part hereof as if set forth in full.

Fulcrum desires to accept the assignment of all of Interwest's right, title and interest in and to and obligations under Exhibit A hereto.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and other good and valuation consideration the receipt and legal sufficiency of which is by the parties hereby acknowledged, the parties agree as follows:

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1. Interwest hereby assigns all of its right, title and interest in and to and obligations under Exhibit A hereto to Fulcrum.

2. Fulcrum hereby accepts the assignment by Interwest to Fulcrum of all of Interwest's right, title and interest in and to and obligations under Exhibit A hereto.

3. Fulcrum hereby agrees to indemnify and hold Interwest harmless from and against any rights or claims of Ada County or other entities under and pursuant to or arising out of the terms, conditions and obligations imposed upon Interwest by virtue of Exhibit A.

4. This agreement shall inure to and be binding upon the parties hereto and their heirs, personal representatives, successors and assigns.

5. The parties hereto agree to execute any other documents reasonably required to fully perform the intentions of this agreement.

6. In the event of any litigation arising under, or as a result of, this agreement or arising from any of the acts to be performed hereunder or the alleged breach of this agreement, the prevailing party shall recover its costs and reasonable attorneys' fees.

7. This agreement shall be governed and interpreted by the laws of the State of Idaho.

RECORDED

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IN WITNESS WHEREOF, the parties have hereunto executed this agreement and made it effective as hereinabove provided.

INTERWEST HYDRO, INC.

By: _____
Richard K. Barrell
Vice President

FULCRUM, INC.

By: _____
Robert N. Pratt
Vice President

STATE OF UTAH)
) ss.
County of Salt Lake)

On this 28th day of June, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard K. Barrell, known or identified to me to be the Vice President of Interwest Hydro, Inc., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Teresa A. Schwabedissen
NOTARY PUBLIC for Utah
Residing at Salt Lake City
My commission expires: 4-13-91

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STATE OF UTAH)
) ss.
County of Salt Lake)

On this 28th day of June, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert N. Pratt, known or identified to me to be the Vice President of Fulcrum, Inc., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Teresa A. Schwabedissen
NOTARY PUBLIC for Utah
Residing at Salt Lake City
My commission expires: 4-13-91

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ACKNOWLEDGEMENT OF ASSIGNMENT AND CONSENT TO ASSIGNMENT

Ada County, a political subdivision of the State of Idaho, being a party to that certain Lease, dated December 9, 1986, by and between Interwest Hydro, Inc., an Idaho corporation, d/b/a Interwest Financial, and Ada County, State of Idaho, and City of Boise, State of Idaho, a copy of which is attached hereto as Exhibit A, hereby consents to the assignment from Interwest Hydro, Inc. to Fulcrum, Inc., an Idaho corporation, and to Fulcrum, Inc.'s Construction and Permanent Lenders providing financing for the Barber Dam Hydroelectric Project of any and all of Interwest Hydro, Inc.'s right, title, and interest created by or arising from the terms of said Lease. Nothing herein shall be deemed to release Interwest Hydro, Inc. of any obligations or liabilities under Exhibit A in the event of default by Fulcrum, Inc. under the terms of Exhibit A.

Ada County hereby confirms that the Lease attached hereto as Exhibit A is a true and correct copy of the original Lease, that Ada County executed the original of the same on the date indicated in Exhibit A, and that Exhibit A is in full force and effect.

Any notice required or allowed hereunder or under and pursuant to the terms of Exhibit A hereto shall be in writing and shall be deemed delivered if mailed, postage prepaid, registered or certified mail, return receipt requested, to Fulcrum, Inc., 257 E. 200 South, Suite 800, Salt Lake City, UT 84111, Attention: David P. Hirschi, Esq.

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DATED this 13 day of June, 1988.

BOARD OF ADA COUNTY COMMISSIONERS

By: _____
Michael L. Johnson, Chairman

By: absent
Judy M. Peavey, Commissioner

By: _____
Vernon L. Bisterfeldt, Commissioner

ATTEST:

_____
John Bastida, Ada County Clerk

ACKNOWLEDGEMENT

STATE OF IDAHO)
) ss.
County of Ada)

On this 13 day of June, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael L. Johnson, ~~Judy M. Peavey~~ and Vernon L. Bisterfeldt, known or identified to me to be duly elected, qualified, and acting Commissioners of Ada County, Idaho, and John Bastida, known or identified to me as the duly elected, qualified, and acting Clerk of Ada County, State of Idaho, whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

_____
Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires: 2-4-94

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ACKNOWLEDGEMENT OF ASSIGNMENT AND

EXHIBIT B

ACCESS AGREEMENT AND GRANT OF EASEMENT
(Harris)

(Attached)

RECORDED

SEP 29 1988

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ACCESS AGREEMENT AND GRANT OF EASEMENT

This Access Agreement and Grant of Easement (hereinafter "Agreement") is made this 21st day of September, 1987, between DALLAS H. HARRIS and ALTA HARRIS, Husband and wife (hereinafter "Grantors") and FULCRUM, INC., an Idaho corporation (hereinafter "Grantee").

R E C I T A L S:

The following recitals of fact are a material part of this Agreement:

1. On December 23, 1983, the Federal Energy Regulatory Commission ("FERC") issued its Order granting a major license to Ada County, the City of Boise, and Arthur L. Bloom under Part 1 of the Federal Power Act, for a period of forty (40) years, for the construction, operation, and maintenance of the Barber Dam Hydroelectric Project No. 4881, located on the Boise River approximately seven (7) miles southeast of Boise, Ada County, Idaho (hereinafter the "Project").

2. Arthur L. Bloom and the City of Boise have transferred and assigned all of their interest in said FERC license to Grantee and Ada County.

3. Grantors are the owners of certain real property in Ada County, state of Idaho, including that certain portion thereof to be subject to the easement provided for herein, which is more particularly described in Exhibit "A" which is attached hereto and by reference made a part of this Agreement (hereinafter the "Easement Premises"). The easement granted hereby consists of a

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thirty-three (33) foot wide access road running from Idaho State Highway 21 in a southwesterly direction, across the Easement Premises, approximately two thousand one hundred twenty-seven (2,127) feet to the Barber Dam site. The easement generally follows the currently existing road which is sometimes referred to as "Lysted Road". Also included in the Easement Premises is an easement to the earth fill dam embankment, extending northeast from the Barber Dam Power House, and adjacent to the access road described above, for use as an access to the upper portions of the power house.

4. Grantee has an interest in a tract of land (hereinafter the "Dominant Premises") as evidenced by a Lease with Ada County, which is attached hereto as Exhibit "B" and by reference made a part hereof.

5. The Dominant Premises are presently improved with a structure commonly referred to as the Barber Dam (hereinafter "Barber Dam"), and the remnants of a power house immediately adjacent thereto. It is the Grantee's intent to use the easement provided for in this Agreement for the construction, maintenance, inspection, and operation of the Project.

6. In exchange for the agreements of Grantee contained in this Agreement, Grantors are prepared to grant and Grantee wishes to receive an easement over and across the Easement Premises for the purposes described in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and promises of the parties contained in this Agreement, the following grants, agreements, covenants and

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restrictions are made:

1. GRANT OF EASEMENT. Grantors hereby grant to Grantee as an easement appurtenant to the Dominant Premises, a non-exclusive easement as described in recital number 3 above, for ingress and egress over and across the Easement Premises. After completion of the Project, Grantee is required under its FERC License to obtain an "as built" project survey which will include a survey of the easement premises. If said survey reveals that the current legal description set forth in Exhibit "A" is inaccurate, the parties will execute the necessary amendment to this Agreement to correct said legal description. Said right-of-way easement is granted for the purpose of allowing Grantee or its successors or assigns ingress and egress to construct, operate, inspect and maintain the Project, pursuant to the authority granted under FERC License No. 4881, and any extensions thereof or amendments thereto.

2. PUBLIC USE RESTRICTION. This easement is not intended for public ingress and egress to the Dominant Premises or adjoining property. Grantee agrees that it will not permit such public access except to the extent that the same may be required under the FERC License or applicable statutes or regulations. Grantees shall have the right to take guests to the Project site, so long as such guests remain under the supervision of Grantees; but there shall be no commercial uses of the premises other than those permitted in the FERC License.

3. USE OF EASEMENT PREMISES. Use of the easement over

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and across the Easement Premises is confined to the maintenance of Barber Dam and the construction, maintenance, inspection, and operation of the Project. This construction, maintenance and operation shall be so conducted as to not interfere unreasonably with the use by Grantors of the Easement Premises as hereinafter reserved. The installation or maintenance by Grantee of pipes, conduits, or wires, under, upon or over the Easement Premises is forbidden, except where expressly provided for by this Agreement. Exclusive use of the Easement Premises is not hereby granted. The right to use the Easement Premises likewise for ingress or egress, is expressly reserved by Grantors. In addition, Grantors reserve the right to move livestock, vehicles, equipment, produce, and materials across or upon the Easement Premises to other premises owned or leased by Grantors and to State Highway 21 and any other public road that may become assessable by use of the Easement Premises. This right shall be appurtenant to any land now owned by Grantors and to any land that may hereafter come into Grantors' ownership and that is contiguous to the Easement Premises. Any area physically separated from the Easement Premises but having access thereto by means of public ways or private easements, rights or licenses is deemed to be contiguous to the Easement Premises. Grantors shall not use or otherwise allow livestock, vehicles, equipment, produce, materials or other items to be placed or remain upon the Easement Premises in any manner that would interfere unreasonably with the use by Grantee of the Easement Premises as herein provided, such as use of the easement

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premises as a pasture or a holding pen. However, it is understood and agreed that cattle will roam back and forth across the easement premises between the two fenced areas on either side and that there will be gates on either side so that cows can pass from one side to the other.

4. POWER LINE. Grantors hereby further grant to Grantee the right to have Idaho Power Company upgrade the existing power line running from the Barber Dam Power House northeasterly approximately 2,127 feet parallel to the easement roadway granted herein, to the power line running along Highway 21, or bury a power line along said route. Grantors hereby further grant to Grantee the right to have Mountain States Telephone and Telephone Service bury a telephone cable along said route.

5. USE OF THE DOMINANT PREMISES. This easement grant shall remain in effect only so long as the Dominant Premises are used for the construction, maintenance, inspection, and operation of the Project, including the construction or location of a single family residence thereon for the project operator to reside in. It is understood and agreed that such operator and his family, if any, or any guests of such operator, will not engage in any activities which would unreasonably interfere with Grantor's farming or livestock operations or any other rights of Grantors under this Agreement. If the operator has dogs for pets, the same shall be kept in a kennel with non-see through walls on the sides of the kennel which face the Harris property. The Project Site on the Dominant Premises ("Project Site"), including the area where the

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house might be constructed, will be surrounded by a fence approximately six (6) feet in height which is constructed in such a manner that people and animals will be prevented from passing through it.

6. DISTURBANCE OF CATTLE. Grantee agrees to use reasonable care not to disturb Grantors' cattle in the fields adjacent to the Easement Premises and not to allow animals which are not owned or under the control of Grantors to be on the Easement Premises, except if they are being transported by vehicle to or from the Dominant Premises.

7. IMPROVEMENT AND MAINTENANCE OF EASEMENT.

(a) Gates: Grantee shall within thirty (30) days after start of construction, construct a gate near the northerly entrance to the Easement Premises. This gate shall be a tubular steel gate adequate to retain livestock and shall be in the same location as the gate which presently exists near the southwesterly boundary of State Highway 21. This gate shall be kept locked at all times, except when the Easment Premises are in use as provided for in this Agreement. Both Grantee and Grantors shall be entitled to keys to the gate.

(b) Sign: Within thirty (30) days after the start of construction, Grantee shall install a sign next to the gate near the southwesterly boundary of State Highway 21, which states: "Not for Public Access".

(c) Improvement of Surface: Grantee may improve the Easement Premises with any surface Grantee desires to construct.

(d) Maintenance: Any maintenance which Grantee chooses to make to the Easement Premises, the gate, and the sign shall be at its sole cost and expense.

9. RELOCATION OF EASEMENT. Grantors reserve the right to relocate the Easement Premises, as follows:

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(a) Grantors shall first notify Grantee of the proposed relocation by mailing notice to Grantee showing the proposed relocation and the probable commencement and completion dates, at least thirty (30) days prior to the

commencement of relocation.

(b) Grantors shall improve the new easement premises with the same surface as the one replaced and shall relocate the gate and sign constructed and installed by Grantee at Grantors' sole cost and expense.

(c) At the completion of the relocation work, Grantors shall record an easement grant in recordable form granting the new easement to Grantee and shall cause the same to be delivered to Grantee, whereupon the change in the location of the Easement Premises shall become effective, and appropriate releases of the prior location shall be executed in recordable form and exchanged between the parties hereto, their successors or assigns.

(d) The new easement shall contain the same terms and conditions as set forth herein, except for the legal description of the new easement premises. Until the new easement has been installed to Grantee's satisfaction and the easement is recorded, the surface on the existing easement shall not be disturbed and Grantee shall continue to have the right to exercise any and all rights granted herein with respect to the easement at its original location.

10. CONSIDERATION. Grantee agrees to pay Grantors the sum of FOUR THOUSAND and NO/100 DOLLARS ($4,000.00) (the "Base Amount") upon the execution of this Agreement. For each succeeding year until the fifth anniversary of the execution of this Agreement, Grantee shall pay to Grantors the sum of FOUR THOUSAND and NO/100 DOLLARS ($4,000.00) on the anniversary of the execution of this Agreement. For the year beginning with the fifth anniversary of the execution of this Agreement and each year after the fifth anniversary of the execution of this Agreement, so long as the easement provided for herein is in effect, Grantee shall pay to Grantors an adjusted Base Amount, which shall be computed as follows:

(a) On such date or dates as the purchase price for killowatt hour to which Grantee is entitled under its Firm Energy Sales Agreement with Idaho Power Company or any other purchaser on the Project is increased or

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decreased, the annual lease payment due hereunder shall be increased or decreased by the same percentage. By way of example, if Grantee receives a ten (10%) percent increase in the purchase price which it receives from Idaho Power for energy produced at the Project, then the annual lease payment to which Grantors are entitled shall likewise be increased by ten (10%) percent. Said percentage increase shall be prorated in the year in which it occurs. By way of example, if an increase occurs on July 1, Grantors shall be entitled to one-half of the percentage increase in the year in which the increase occurs. Said increase shall be paid to Grantor in the same month in which Grantee begins receiving said increase. However, notwithstanding the foregoing, in no event shall the annual lease payment be less than the Base Amount of $4,000.00.

11. INDEMNITY. Grantee agrees to indemnify Grantors against all liability of Grantors which may result from, arise out of, or be attributable to the negligence of Grantee in the use of the Easement Premises by Grantee or its agents or contractors, or any construction, maintenance or repair undertaken pursuant to this Agreement by Grantee or its agents or contractors, or which results in any cattle escaping from the easement premises as a result of the gate being left open or unlocked by Grantee or its agents or contractors. Grantors agree to indemnify Grantee against all liability of Grantee which may result from, arise out of, or be attributable to the negligence of Grantors in the use of the easement premises by Grantors or their agents or contractors, or any other activities engaged in or carried on by Grantors or their agents on the properties adjoining or which are near the easement premises. During the term of this Agreement, Grantor and Grantee shall each secure and continuously carry comprehensive general liability insurance for both bodily injury and property damage equivalent to the amount of one million dollars combined single limit. Such insurance shall:

(a) Include an endorsement naming the other party as an additional insured insofar as liability arising out of or releavnt to this Agreement is concerned; and

(b) Include a provision stating that such liability policies shall not be cancelled or their limits of liability reduced without thirty (30) days written notice to the other party. Each party shall furnish the other a certificate of such insurance, together with the endorsements required therein, evidencing the coverages set forth above.

12. RUNNING OF BENEFITS AND BURDENS. All provisions of this Agreement, including the benefits and burdens, run with the

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land and are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.

13. RETENTION OF RIGHTS. Grantors retain all rights to the property not specifically granted herein to Grantee. This Agreement shall terminate if Grantee or its successors or assigns abandon or cease to generate hydroelectric power at the Barber Dam site continuously for more than one (1) full year, unless Grantees are in the process of constructing or remodeling the Project, and in the event of such abandonment or cessation all rights granted by this Agreement shall revert to the Grantors. When the easement is terminated, if a residence has been constructed on the Dominant Premises, the use of the easement granted herein for access to and from such residence shall not be deemed to create any right or claim in the occupance of such residence to continued use of the easement for ingree and egress to said residence.

14. REVERSIONS OF IMPROVEMENTS ON TERMINATION. Upon the termination of the easement provided for in this Agreement, Grantee shall have the right to remove and retain ownership of any and all equipment, fixtures, and materials. The word "materials" as used herein does not refer to the surface improvement of the roadway located upon the Easement Premises. All such improvements not so removed within a reasonable time by Grantee shall revert to and become the property of the Grantors. Grantors shall have no obligation to reimburse Grantee for these improvements which are abandoned.

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15. RELEASE OF EASEMENT. Grantee may terminate the easement provided for in this Agreement by recording a release in recordable form and by personally serving Grantors with a copy of the release as recorded. Whereupon, all rights, duties, and liabilities hereby created shall terminate. For convenience this Release of Easement may run to "the owner or owners and parties interested" in the easement premises. In the event of such termination, any remaining portion of an annual lease payment which has already been tendered to Grantor shall not be refundable.

16. ATTORNEY FEES. Either Grantors or Grantee may enforce this Agreement by appropriate action. Should the party seeking to enforce this Agreement prevail in the action, that party shall recover as part of the costs of such action, a reasonable attorney fee.

17. COMPLIANCE WITH FERC LICENSE. It is the intent of this Agreement to comply fully with the terms and conditions of the federal license for FERC Project No. 4881. If further construction or additions to the project are required by law or regulation, or if any modification to this Agreement is required by law or regulation, Grantee shall notify Grantor in writing of the need for such further construction, additions or modifications and shall obtain Grantor's approval therefor; provided, however, that Grantor's consent and approval will not be unreasonaby withheld. Any modifications or amendments to this Agreement must be in writing and signed by the parties hereto, and must be in conformance with the requirements of said FERC licen

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IN WITNESS WHEREOF, Grantors and Grantee have signed this Agreement on the day and year first above written.

GRANTORS:

Dallas H. Harris

Alta Harris

GRANTEE:

FULCRUM, INC., an Idaho corporation

By _____
Its President

ATTEST:

_____
Secretary

Ada County, Idaho, ss
Request of
Intermountain Hydro, Inc
TIME 1:45 P M
DATE 12-22-87
JOHN BASTIDA
RECORDER
By _____ Deputy
18.00

STATE OF IDAHO)
) ss.
County of Ada)

On this 16 day of September, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared DALLAS H. HARRIS and ALTA HARRIS, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument and who acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

_____
Notary Public for State of Idaho
Residing at:

MICROFILMED

SEP 29 1988

STATE OF IDAHO)
) ss.
County of Ada)

On this 21st day of September, in the year 1986, before me, the undersigned, a Notary Public in and for said State, personally appeared A. Lew Blasel and Bruce W. Blasel, known or identified to me to be the President and Secretary of FULCRUM, INC., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public for State of Idaho
Residing at: Boise

SEP 29 1988

EXHIBIT "A"

DESCRIPTION OF ROADWAY

A roadway 33 feet wide, 16.5 feet each side of centerline, located in the SE¼ of Section 29, T.3N., R. 3E., B.M., Ada County, Idaho, being more particularly described as follows:

Commencing at the Section Corner common to Sections 29, 30, 31, and 32, T.3N., R. 3E., B.M., Ada County, Idaho, thence S 86°34' E, 2,651.8 feet to a point identified as point No. 1 of Idaho Power Co. Barber Power Plant Site Survey; thence N 25°51' E, 222.40 feet to a point on the Southerly bank of the Boise River; thence continuing N 25°51' E, 673.90 feet across the Boise River to a point; thence S 47°27' E, 309.6 feet to a point; thence N 30°09' E, 94.60 feet to a point; thence S 65°10' E, 81.6 feet to a point; thence S 51°24' E, 180.6 feet to a point on the centerline of the above described roadway, which point is the REAL POINT OF BEGINNING:

Thence N 41°39' E, 870.17 feet along said centerline to a point;

Thence N 38°33' E, 1,237.52 feet, more or less, along said centerline to an intersection with the Southwestery boundary of State Highway 21 which is the REAL POINT OF ENDING.

Embracing 1.6 acres, more or less.

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EXHIBIT C

EASEMENT AGREEMENT
(Idaho Foundation of Parks and Lands)

(Attached)

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ST-8801523 (2)

EASEMENT AGREEMENT

8833012

DATE: June 27, 1988

PARTIES: IDAHO FOUNDATION FOR PARKS AND LANDS, an Idaho corporation, (hereinafter "Grantor"), and

FULCRUM, INC., an Idaho corporation, (hereinafter "Grantee").

WHEREAS, on December 23, 1983, the Federal Energy Regulatory Commission (FERC) issued its Order granting a major license to Ada County, the City of Boise, and Arthur L. Bloom under Part I of the Federal Power Act, for a period of 40 years, for the construction, operation, and maintenance of the Barber Dam Project No. 4881-001, located in Ada County, Idaho on the Boise River (hereafter "the Project"); and

WHEREAS, the City of Boise and Arthur L. Bloom have assigned their interest in said License to Fulcrum, Inc., and said Assignment has been approved by the FERC; and

WHEREAS, a portion of the reservoir or backwater area upstream from the Project dam site may be located on property presently owned by Grantor; and

WHEREAS, Grantor considers this Project to be in the public interest and is willing to grant an easement to facilitate construction, operation and maintenance of said Project;

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee an easement and right-of-way in, upon, over and through Grantor's land located in Ada County, Idaho, as more particularly

SEP 29 1988

described in Exhibit "A", which is attached hereto and by reference incorporated herein, for a period of thirty-six (36) years from the date hereof. Said described parcel is identical with the Project boundary as shown in Exhibit "G-2A" submitted with the Licensee's Application on the Project filed with FERC in August of 1982, a copy of which Exhibit is attached hereto and by reference incorporated herein.

Said easement is granted for the sole purpose of constructing, operating and maintaining a hydro electric production facility at the Barber Dam site in Ada County, which shall include use of said premises to the extent necessary as a pool or reservoir for the backwaters upstream from the dam site at the Project. The parties understand and agree that the elevation of water in the reservoir upstream from the Project dam site while the Project is in operation will rise to a maximum level of approximately 2,777 feet, with a permissable variation of 0.25 feet above that level. Said easement may not be used for any purposes which are not necessary or appropriate for the construction, operation and maintenance of a hydro electric facility. None of the facilities will be constructed on the land described in Exhibit "A".

Grantee shall pay to Grantor as consideration for the easement granted hereby, the following:

(1) During the first ten (10) years, the sum of $1,500 per annum so long as no splash boards are added to the facility.

(2) During the first ten (10) years, the sum of $2,500 per annum on and after the date splash boards are added. (In the

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year in which splash boards are added, the consideration will be prorated at the rate of $1,500 per annum during that portion of the year when splash boards are not present, and at the rate of $2,500 per annum during that portion of the year when splash boards are present).

(3) After the first ten (10) years, the sum of $4,000 per annum.

(4) The first annual payment shall be due thirty (30) days from the date of this Agreement, and the annual payment for each 12-month period thereafter shall be due on the same date of each succeeding year for so long as this Agreement remains in force.

Grantee shall have the right to terminate this Agreement and its obligation to pay further consideration as provided above, by giving Grantor sixty (60) days written notice of Grantee's intent to so terminate. In the event of such termination, the parties agree to execute a document in appropriate form for recording and in sufficient detail to provide constructive notice of the termination of this Agreement and the grant of easements provided herein. In the event of such termination, Grantee shall not be entitled to a refund of any annual consideration previously paid to Grantor.

Grantor warrants that it is the owner in fee simple of the land which is described in Exhibit "A", except the portions, if any, which may be owned by the State of Idaho. The Grantor has not determined whether the State of Idaho owns or claims any por-

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tion of the land, and this exception is a precaution, not a disclaimer of title.

Grantee shall have the right to assign its interest in this Agreement and the grant of easement provided herein, in whole or in part.

The terms, conditions and provisions of this Agreement and grant of easement shall extend to and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement and grant of easement on the day and year first above written.

IDAHO FOUNDATION FOR PARKS AND LANDS, an Idaho corporation.

By _____
Title: President

APPROVED:

_____
Secretary

FULCRUM, INC.
an Idaho corporation

By _____
Title: President

APPROVED:

_____
Secretary

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STATE OF IDAHO)
) ss.
County of Ada)

On this 23rd day of June, in the year 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared Hope Kading and Jerry L. Wray, known or identified to me to be the President and secretary of IDAHO FOUNDATION, FOR PARKS AND LANDS, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Kathleen O'Neil
Notary Public for State of Idaho
Residing at:

STATE OF ~~IDAHO~~ UTAH)
) ss.
County of ~~Ada~~ Salt Lake)

On this 27th day of June, in the year 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared John A. McTear and David P. Hirschi, known or identified to me to be the President and secretary of FULCRUM, INC., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Teresa A. Schwabedissen
Notary Public for State of ~~Idaho~~ Utah
Residing at: Salt Lake City

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Ada County, Idaho ss
Request of
STEWART TITLE
Time 8:00 A M.
DATE 7-7-88
JOHN [illegible] DA
By [illegible]
3300

J-U-B ENGINEERS, Inc. 50 South Beechwood Avenue Suite 1 Boise Idaho 837

Exhibit "A"

PROJECT: 8308
DATE: September 15, 1980
REVISED: March 31, 1981
REVISED: July 21, 1981
REVISED: November 17, 1981
REVISED: April 6, 1982 - CLARIFICATION OF REVISION III

REVISION IV
DESCRIPTION FOR
IDAHO PARK FOUNDATION, INC.
BARBER DAM PROPERTY
PORTIONS OF THE S 1/2 SW 1/4, SECTION 28, S 1/2 SE 1/4, SECTION 29, NE 1/4, SECTION 32 AND SECTION 33, ALL IN T.3N., R.3E., B.M., ADA COUNTY, IDAHO

A parcel of land being portions of the S 1/2 of the SW 1/4 of Section 28, S 1/2 of the SE 1/4 of Section 29, and NE 1/4 of Section 32 and Section 33, all in T.3N., R.3E., B.M., Ada County, Idaho, and more particularly described as follows:

Beginning at an iron pin marking the Northwest corner of the said SW 1/4 of Section 28;

thence South 0°30'59" West 1,724.47 feet (formerly described as 1,700.00 feet) along the Westerly boundary of the said SW 1/4 of Section 28 to an aluminum cap, also said point being the REAL POINT OF BEGINNING;

thence South 82°56'36" East 300.16 feet to an aluminum cap;

thence North 51°03'24" East 105.00 feet to an aluminum cap;

thence North 83°23'24" East 379.00 feet to an aluminum cap;

thence South 85°06'36" East 216.00 feet to an aluminum cap;

thence South 62°36'36" East 207.00 feet to an aluminum cap;

thence North 89°38'24" East 146.81 feet to a lead plug and tack on the Easterly boundary of Government Lot 2 of the said SW 1/4 of Section 28;

thence South 0°48'49" West 369.55 feet along a certain existing fence line to an aluminum cap;

thence North 83°01'08" West 1,297.46 feet along a certain existing fence line to an aluminum cap;

thence South 0°24'47" West 294.00 feet along a certain existing fence line to an aluminum cap on the Northeasterly meander line of the Boise River, said point bears South 0°13'30" West 2,270.21 feet from the said Northwest corner of the SW 1/4 of Section 28;

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PROJECT: 8308
DATE: September 15, 1980
REVISED: March 31, 1981
REVISED: July 21, 1981
REVISED: November 17, 1981
REVISED: April 6, 1982 - CLARIFICATION OF REVISION III
PAGE: 2 - Idaho Park Foundation, Inc. - Barber Dam Property

thence Southeastelry along the said Northeasterly meander line of the Boise River to an aluminum cap, said point bears South 34°27'20" East 4,799.48 feet from the said Northwest corner of the SW 1/4 of Section 28;

thence North 2°37'00" West 921.27 feet along a certain existing fence line to an aluminum cap on the Westerly right-of-way line of the Penitentiary Canal;

thence Southeasterly along the said Westerly right-of-way line of the Penitentiary Canal the following courses and distances:

South 46°32'52" East 211.77 feet to an aluminum cap;

thence South 66°58'15" East 144.63 feet to an aluminum cap;

thence South 59°01'16" East 103.85 feet to an aluminum cap;

thence South 59°41'59" East 287.57 feet to an aluminum cap;

thence South 53°10'53" East 116.56 feet to an aluminum cap;

thence South 39°10'11" East 107.37 feet to an aluminum cap;

thence South 46°25'31" East 191.59 feet to an aluminum cap;

thence South 38°25'22" East 85.68 feet to an aluminum cap;

thence South 18°41'30" East 207.08 feet to an aluminum cap;

thence South 19°36'20" East 90.43 feet to an aluminum cap;

thence South 5°45'30" East 221.54 feet to an aluminum cap;

thence South 1°17'35" West 360.61 feet to an aluminum cap;

thence South 5°12'25" West 307.54 feet to an aluminum cap;

thence South 9°57'47" West 332.21 feet to an aluminum cap;

thence South 7°44'41" West 6.37 feet to an aluminum cap on the Southerly boundary of the NE 1/4 of the said Section 33, which bears North 88°52'07" West 1,493.97 feet along the said Southerly boundary of the NE 1/4 of Section 33 from a brass cap marking the Southeast corner of the said NE 1/4 of Section 33;

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PROJECT: 8308
DATE: September 15, 1980
REVISED: March 31, 1981
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PAGE: 3 - Idaho Park Foundation, Inc. - Barber Dam Property

thence North 88°52'07" West 487.26 feet along the said Southerly boundary of the NE 1/4 of Section 33 to an aluminum cap on the Easterly meander line of the Boise River, said point bears South 31°06'38" East 6,170.12 feet from the said Northwest corner of the SW 1/4 of Section 28;

thence continuing North 88°52'07" West along the said Southerly boundary of the NE 1/4 of Section 33 to a point on the Westerly meander line of the said Boise River;

thence Southerly along the said Westerly meander line of the Boise River to a brass cap on the Southerly boundary of the SE 1/4 of the said Section 33, said point bears South 23°21'30" East 8,612.10 feet from the said Northwest corner of the SW 1/4 of Section 28;

thence North 87°29'09" West 434.96 feet along the said Southerly boundary of the SE 1/4 of Section 33 to an aluminum cap, which bears South 87°29'09" East 535.26 feet along the said Southerly boundary of the SE 1/4 of Section 33 from a stone monument marking the Southwest corner of the said SE 1/4 of Section 33;

thence North 57°27'51" West 381.17 feet to an aluminum cap;

thence North 42°07'08" West 302.33 feet to aluminum cap on the Westerly boundary of the said SE 1/4 of Section 33;

thence North 1°30'03" East 891.71 feet along the said Westerly boundary of the SE 1/4 of Section 33 to an aluminum cap marking the Southeast corner of Government Lot 8 of the SW 1/4 of the said Section 33;

thence North 89°29'56" West 953.02 feet along the Southerly boundary of the said Government Lot 8 of the SW 1/4 of Section 33 to an aluminum cap on a line 14.00 feet Northeasterly of the Northeasterly toe of slope of the New York Canal;

thence North 40°21'55" West 65.00 feet along a line 14.00 feet Northeasterly of the said Northeasterly toe of slope of the New York Canal to an aluminum cap;

thence North 48°53'35" West 132.27 feet along a line 14.00 feet Northeasterly of the Northeasterly toe of slope of the New York Canal to an aluminum cap;

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thence North 50°17'40" West 495.58 feet along a line 14.00 feet Northeasterly of the said Northeasterly toe of slope of the New York Canal to an aluminum cap;

thence North 57°36'22" West 102.81 feet along a line 14.00 feet Northeasterly of the said Northeasterly toe of slope of the New York Canal to an aluminum cap;

thence North 37°11'05" West 360.28 feet to an aluminum cap;

thence North 37°01'09" West 493.50 feet to an aluminum cap;

thence North 68°41'09" West 593.50 feet to an aluminum cap;

thence North 88°10'09" West 351.33 feet to an aluminum cap on a line 14.00 feet Northeasterly of the said Northeasterly toe of slope of the New York Canal;

thence along a line 14.00 feet Northeasterly of the said Northeasterly toe of slope of the New York Canal the following courses and distances:

North 59°37'00" West 62.58 feet to an aluminum cap;

thence North 60°03'44" West 244.71 feet to an aluminum cap;

thence North 50°33'39" West 204.48 feet to an aluminum cap;

thence North 64°11'09" West 128.06 feet to an aluminum cap;

thence North 51°42'07" West 152.04 feet to an aluminum cap;

thence North 46°14'23" West 595.37 feet to an aluminum cap;

thence leaving a line 14.00 feet Northeasterly of the said Northeasterly toe of slope of the New York Canal North 0°40'21" West 151.91 feet to an aluminum cap;

thence North 0°18'57" West 130.02 feet to an aluminum cap;

thence North 8°31'51" West 217.57 feet to an aluminum cap;

thence North 20°19'21" West 128.80 feet to an aluminum cap;

thence North 12°42'57" East 118.56 feet to an aluminum cap;

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PROJECT: 8308
DATE: September 15, 1980
REVISED: March 31, 1981
REVISED: July 21, 1981
REVISED: November 17, 1981
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thence North 27°38'36" West 140.87 feet to an aluminum cap;

thence North 18°04'05" West 282.19 feet to an aluminum cap;

thence North 34°11'09" West 136.40 feet to an aluminum cap;

thence North 37°06'42" West 104.14 feet to an aluminum cap;

thence North 44°20'58" West 72.92 feet to an aluminum cap;

thence North 31°12'23" West 123.09 feet to an aluminum cap, said point bears South 83°15'37" East 3,326.78 feet from a brass cap marking the Northwest corner of the said Section 32;

thence North 47°49'15" East 1,262.60 feet to an aluminum cap;

thence South 68°47'35" East 73.54 feet to an aluminum cap;

thence South 88°56'06" East 74.35 feet to an aluminum cap;

thence South 38°52'36" East 128.98 feet to an aluminum cap;

thence North 39°19'05" East 439.59 feet to an aluminum cap;

thence North 82°24'19" East 419.24 feet to an aluminum cap;

thence South 82°56'36" East 183.84 feet to the point of beginning.

Prepared by

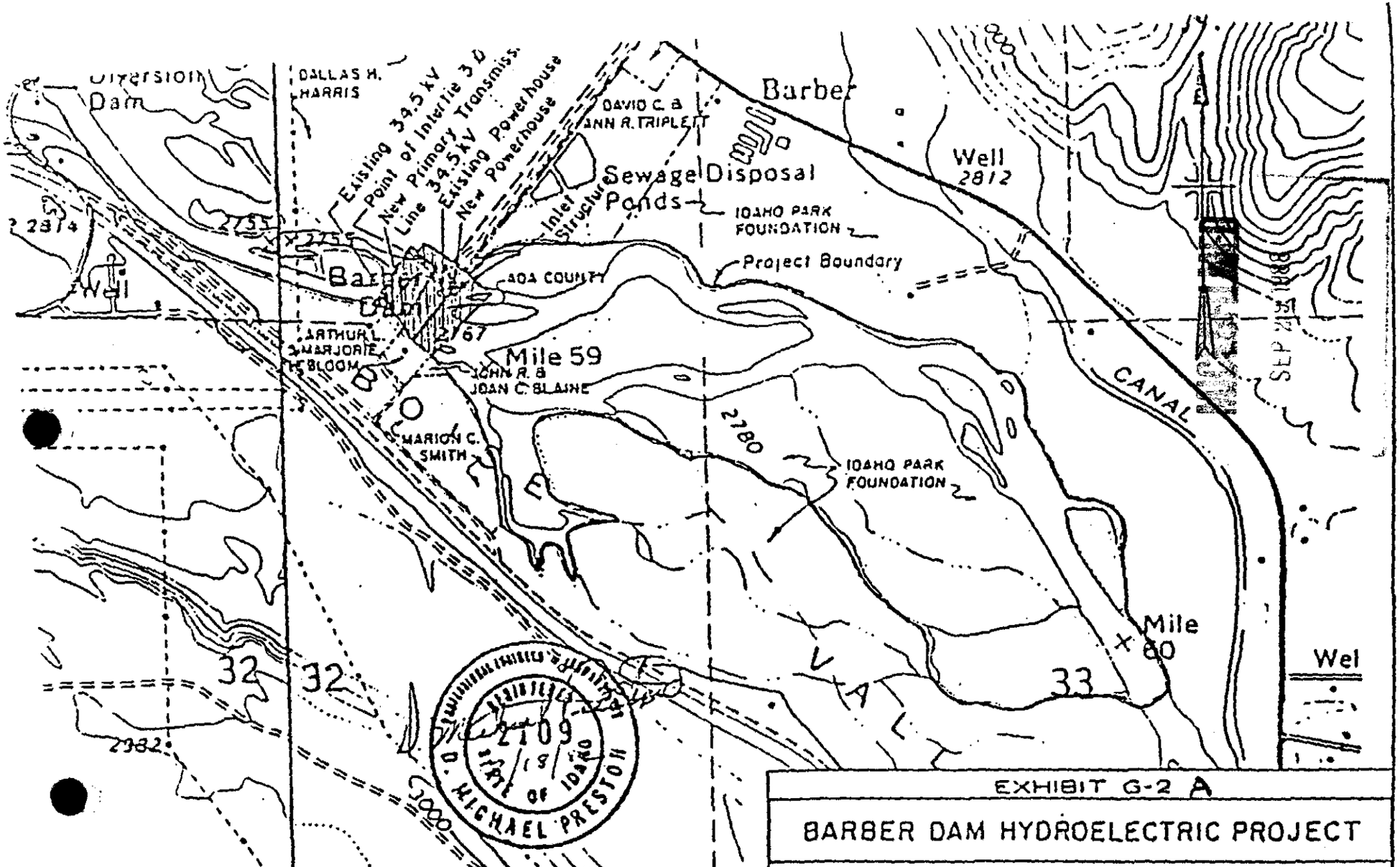
J-U-B ENGINEERS, Inc.

REGISTERED LAND SURVEYOR 852 4-6-82 STATE OF IDAHO GARY L. RODENSPIEL

Gary L. Rodenspiel, L.S.

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JTE/JDC/GLR:ss



THIS DRAWING IS PART OF THE APPLICATION FOR LICENSE SUBMITTED BY THE UNDERSIGNED THIS 18 DAY OF August, 1982.

David M. Cook, P.E.
Ada County Engineer

EXHIBIT G-2 A

BARBER DAM HYDROELECTRIC PROJECT

LOCATION MAP

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Boise, Idaho

DE.	DR. HL	CK	SHEET OF
SCALE 1" = 1000	DATE JULY, 1982		DWG NO 8820-7

EXHIBIT D

TEMPORARY PERMIT NO. 1962
(State of Idaho)

(Attached)

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ST-88015282

(1)

8833011

STATE OF IDAHO
TEMPORARY PERMIT

NO. 1962

Whereas, the Boise River is a navigable river and the State of Idaho holds the bed of the Boise River in trust for the benefit of all of the citizens of the state;

Whereas, Fulcrum, Inc., an Idaho Corporation ("Permittee"), has made application to the state for authorization to construct all facilities associated with Federal Energy Regulatory Commission ("FERC") Project No. 4881 (Barber Dam) placed below the ordinary high water line of Boise River including but not limited to a dam and powerhouse and any related improvements.

Whereas, the Permittee has requested from the Idaho Department of Lands ("Department") an easement to commence the construction of the project;

Whereas, the Idaho State Board of Land Commissioners ("Board") under authority of Idaho Code Section 58-104(9) has directed the Department to propose a reasonable fee for the use of state submerged lands for hydroelectric facilities;

Therefore, the Board grants the Permittee a temporary permit subject to the following terms and conditions:

1. The terms of Stream Channel Alteration Permit No. 63-S-670 and FERC Project No. 4881 are incorporated into this permit by reference as if set-forth fully herein. The permittee must comply with all terms and conditions of Stream Channel Alteration Permit No. 63-S-670 and FERC Project No. 4881 or this permit shall be subject to immediate cancellation.

2. It is understood and agreed that the permittee is required to purchase an easement for this installation after easement policy and fee structure rules are adopted by the Board; this easement shall grant the same authority for construction, operation and maintenance for a dam, powerhouse and related improvements for a hydroelectric facility at the Barber Dam site as provided herein. The term of said easement will be the remaining life of the FERC license on Project No. 4881 (Barber Dam). It is also understood and agreed that the permittee will be required to pay an additional fee for easement consideration, if requested, by the Director, Department of Lands (Director).

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3. The permittee shall maintain, at its sole expense, the dam and powerhouse and associated facilities in a condition satisfactory to the Director.

4. No other use of the subject land is permitted other than those activities identified in this permit.

5. The permit may be assigned upon the written consent and approval of the Director. The permittee must provide written notice of the name and mailing address of the assignee to the Director.

6. This permit may be cancelled after written notice to the permittee of non-compliance with the terms herein and failure of the permittee to correct the noted non-compliance within thirty (30) days.

7. The permittee shall indemnify and hold harmless the State of Idaho and its representatives against and from any and all demands, claims or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with the use authorized under this permit.

8. This permit shall expire on December 31, 1990 or upon issuance of an easement to replace this permit, but will be extended upon request of the permittee, subject to such terms and conditions as may be imposed by the Director.

9. It is understood and agreed that this permit authorizes encroachment of the dam and powerhouse and associated facilities on lands that are located below, over, and between the natural and ordinary high water marks of the Boise River only.
This project is located adjacent to Government Lots 2 and 7, Section 29, Township 3 North, Range 3 East, Boise Meridian, Ada County, as shown on the map attached hereto and made a part hereof and more particularly described:

Parcel 1 (Ada County):

A tract of land located in the SE^4 of Section 29, Township 3 North, Range 3 East, Boise Meridian, being more particularly described as follows:

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Commencing at the Section Corner common to Sections 29, 30, 31, and 32, Township 3 North, Range 3 East, Boise Meridian, thence South 86°34' East, 2,651.80 feet to a point identified as point No. 1 of Idaho Power Company Barber Power Plant Site Survey:

thence North 25°51' East, 222.40 feet to a point on the southerly bank of the Boise River;

thence continuing North 25°51' East, 673.90 feet across the Boise River to a point;

thence South 47°27' East, 230.00 feet to a point, which is the *REAL POINT OF BEGINNING:*

thence continuing South 47°27' East, 79.60 feet to a point;

thence North 30°09' East, 94.60 feet to a point;

thence South 65°00' East, 81.60 feet to a point;

thence South 51°24' East, 164.10 feet to a point;

thence continuing South 51°24' East, 416.17 feet to a point;

thence South 47°25' West, 748.23 feet across the Boise River to a point on the southerly bank of the Boise River;

thence North 41°22' West, 399.70 feet along the southerly bank of the Boise River to a point;

thence North 51°57' West, 165.40 feet along the southerly bank of the Boise River to a point;

thence North 33°23'41" East, 566.17 feet across the Boise River to the real point of beginning.

Parcel 2 (Idaho Foundation For Parks and Lands, Inc.)

A parcel of land being portions of the $S^{2}SW^{4}$ of Section 28, $S^{2}SE^{4}$ of Section 29, and NE^{4} of Section 32 and N^{2} and $N^{2}S^{2}$ of Section 33, all in Township 3 North, Range 3 East, Boise Meridian, and more particularly described as follows:

Beginning at an iron pin marking the Northwest Corner of the said SW^{4} of Section 28;

thence South 0°30'59" West, 1,724.47 feet (formerly described as 1,700.00 feet) along the westerly boundary of the said SW^{4} of Section 28 to an aluminum cap, also said point being the REAL POINT OF BEGINNING;

thence South 82°56'36" East, 300.16 feet to an aluminum cap;

thence North 51°03'24" East, 105.00 feet to an aluminum cap;

thence North 83°23'24" East, 379.00 feet to an aluminum cap;

thence South 85°06'36" East, 216.00 feet to an aluminum cap;

thence South 62°36'36" East, 207.00 feet to an aluminum cap;

thence North 89°38'24" East, 146.81 feet to a [illegible] and tack on the easterly boundary of Government Lot 2 of the said SW^{4} of Section 28;

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thence South 0°48'49" West, 369.55 feet along a certain existing fence line to an aluminum cap;

thence North 83°01'08" West, 1,297.46 feet along a certain existing fence line to an aluminum cap;

thence South 0°24'47" West, 294.00 feet along a certain existing fence line to an aluminum cap on the northeasterly meander line of the Boise River, said point bears South 0°13'30" West, 2,270.21 feet from the said northwest corner of the SW¼ of Section 28;

thence southeasterly along the said northeasterly meander line of the Boise River to an aluminum cap, said point bears South 34°27'20" East, 4,799.48 feet from the northwest corner of the SW¼ of Section 28;

thence North 2°37'00" West, 921.27 feet along a certain existing fence line to an aluminum cap on the westerly right-of-way line of the Penitentiary Canal;

thence southeasterly along the said westerly right-of-way line of the Penitentiary Canal the following courses and distances:

South 46°32'52" East, 211.77 feet to an aluminum cap;
thence South 66°58'15" East, 144.63 feet to an aluminum cap;
thence South 59°01'16" East, 103.85 feet to an aluminum cap;
thence South 59°41'59" East, 287.57 feet to an aluminum cap;
thence South 53°10'53" East, 116.56 feet to an aluminum cap;
thence South 39°10'11" East, 107.37 feet to an aluminum cap;
thence South 46°25'31" East, 191.59 feet to an aluminum cap;
thence South 38°25'22" East, 85.68 feet to an aluminum cap;
thence South 18°41'30" East, 207.08 feet to an aluminum cap;
thence South 19°36'20" East, 90.43 feet to an aluminum cap;
thence South 5°45'30" East, 221.54 feet to an aluminum cap;
thence South 1°17'35" West, 360.61 feet to an aluminum cap;
thence South 5°12'25" West, 307.54 feet to an aluminum cap;
thence South 9°57'47" West, 332.21 feet to an aluminum cap;
thence South 7°44'41" West, 6.37 feet to an aluminum cap on the southerly boundary of the NE¼ of said Section 33, which bears North 88°52'07" West, 1,493.97 feet along the said southerly boundary of the NE¼ of Section 33 from a brass cap marking the southeast corner of the said NE¼ of Section 33;

thence North 88°52'07" West, 487.26 feet along the said southerly boundary of the NE¼ of Section 33 to an aluminum cap on the easterly meander line of the Boise River, said point bears South 31°06'38" East, 6,170.12 feet from the said Northwest Corner of the SW¼ of Section 28;

thence continuing North 88°52'07" West, along the said southerly boundary of the NE¼ of Section 33 to a point on the westerly meander line of the said Boise River;

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thence southerly along the said westerly meander line of the Boise River to a brass cap on the southerly boundary of the SE^4 of the said Section 33, said point bears South 23°21'30" East, 8,612.10 feet from the said Northwest Corner of the SW^4 of Section 28;

thence North 87°29'09" West, 434.96 feet along the said southerly boundary of the SE^4 of Section 33 to an aluminum cap, which bears South 87°29'09" East 535.26 feet along the said southerly boundary of the SE^4 of Section 33 from a stone monument marking the Southwest Corner of the said SE^4 of Section 33;

thence North 57°27'51" West, 381.17 feet to an aluminum cap;

thence North 42°07'08" West, 302.33 feet to an aluminum cap on the westerly boundary of the said SE^4 of Section 33;

thence North 1°30'03" East, 891.71 feet along the said westerly boundary of the SE^4 of Section 33 to an aluminum cap marking the Southeast Corner of Government Lot 8 of the SW^4 of the said Section 33;

thence North 89°29'56" West, 953.02 feet along the southerly boundary of the said Government Lot 8 of the SW^4 of Section 33 to an aluminum cap on a line 14.00 feet northeasterly of the northeasterly toe of slope of the New York Canal;

thence North 40°21'55" West 65.00 feet along a line 14.00 feet northeasterly of the said northeasterly toe of slope of the New York Canal to an aluminum cap;

thence North 48°53'35" West, 132.27 feet along a line 14.00 feet northeasterly of the northeasterly toe of slope of the New York Canal to an aluminum cap;

thence North 50°17'40" West, 495.58 feet along a line 14.00 feet northeasterly of the said northeasterly toe of slope of the New York Canal to an aluminum cap;

thence North 57°36'22" West, 102.81 feet along a line 14.00 feet northeasterly of the said northeasterly toe of slope of the New York Canal to an aluminum cap;

thence North 37°11'05" West, 360.28 feet to an aluminum cap;

thence North 37°01'09" West, 493.50 feet to an aluminum cap;

thence North 68°41'09" West, 593.50 feet to an aluminum cap;

thence North 88°10'09" West, 351.33 feet to an aluminum cap on a line 14.00 feet northeasterly of the said northeasterly toe of slope of the New York Canal;

thence along a line 14.00 feet northeasterly of the said northeasterly toe of slope of the New York Canal the following courses and distances:

North 59°37'00" West, 62.58 feet to an aluminum cap;

thence North 60°03'44" West, 244.71 feet to an aluminum cap;

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SEP 29 1988

thence North 50°33'39" West, 204.48 feet to an aluminum cap;
thence North 64°11'09" West, 128.06 feet to an aluminum cap;
thence North 51°42'07" West, 152.04 feet to an aluminum cap;
thence North 46°14'23" West, 595.37 feet to an aluminum cap;
thence leaving a line 14.00 feet northeasterly of the said northeasterly toe of slope of the New York Canal North 0°40'21" West, 151.91 feet to an aluminum cap;
thence North 0°18'57" West, 130.02 feet to an aluminum cap;
thence North 8°31'51" West, 217.57 feet to an aluminum cap;
thence North 20°19'21" West, 128.80 feet to an aluminum cap;
thence North 12°42'57" East, 118.56 feet to an aluminum cap;
thence North 27°38'36" West, 140.87 feet to an aluminum cap;
thence North 18°04'05" West, 282.19 feet to an aluminum cap;
thence North 34°11'09" West, 136.40 feet to an aluminum cap;
thence North 37°06'42" West, 104.14 feet to an aluminum cap;
thence North 44°20'58" West, 72.92 feet to an aluminum cap;
thence North 31°12'23" West, 123.09 feet to an aluminum cap, said point bears South 83°15'37" East, 3,326.78 feet from a brass cap marking the Northwest Corner of the said Section 32;
thence North 47°49'15" East, 1,262.60 feet to an aluminum cap;
thence South 68°47'35" East, 73.54 feet to an aluminum cap;
thence South 88°56'06" East, 74.35 feet to an aluminum cap;
thence South 38°52'36" East, 128.98 feet to an aluminum cap;
thence North 39°19'05" East, 439.59 feet to an aluminum cap;
thence North 82°24'19" East, 419.24 feet to an aluminum cap;
thence South 82°56'36" East, 183.84 feet to the point of beginning.

EXCEPT any portion contained in a Deed to Ada County, recorded August 11, 1986 as Instrument No. 8646168, records of Ada County, Idaho.

10. The permit becomes effective upon a one-time payment of TWO HUNDRED FIFTY DOLLARS ($250.00) and upon signature by the Board and the Permittee. The $250.00 payment will be applied to the fee for the easement when it is issued.

ISSUED THIS 29th day of June, 1988.

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SEP 29 1988

STATE BOARD OF LAND COMMISSIONERS

Governor of the State of Idaho and
President of the State Board of
Land Commissioners

Countersigned:

Secretary of State

Director, Department of Lands
OFM

Representative of Fulcrum, Inc.

PRESIDENT
Title

* * * * * * * * * * * * * * *

MICROFILMED
SEP 29 1988

STATE OF IDAHO)
COUNTY OF ADA)

On this 29th day of June, 1988, before me, a Notary Public in and for said State, personally appeared CECIL D. ANDRUS, known to me to be the Governor of the State of Idaho and President of the State Board of Land Commissioners; PETE T. CENARRUSA, known to me to be the Secretary of State of the State of Idaho; and STANLEY F. HAMILTON, known to me to be the Director of the Department of Lands of the State of Idaho, that executed the said instrument and acknowledged to me that such State of Idaho and State Board of Land Commissioners executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last written above.

John B. Brogan

JOHN B. BROGAN, Notary Public
residing at Idaho City, Idaho

My Commission expires 8-25-1992.

Ada County, Idaho ss
Request of
STEWART TITLE
TIME 8:00 A.M.
DATE 7-7-88
RECORDED
By Lisa Deutrogui
Deputy

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SEP 29 1988

EXHIBIT E

FIRST AMENDMENT TO ACCESS AGREEMENT
AND GRANT OF EASEMENT

(Attached)

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SEP 2 9 1988

8838074

FIRST AMENDMENT TO ACCESS AGREEMENT

AND GRANT OF EASEMENT

THIS FIRST AMENDMENT TO ACCESS AGREEMENT AND GRANT OF EASEMENT (hereinafter "First Amendment") is made this 3rd. day of ~~July,~~ August 1988, between DALLAS H. HARRIS AND ALTA HARRIS, husband and wife (hereinafter "Grantors") and FULCRUM, INC., an Idaho corporation (hereinafter "Grantee").

RECITALS:

The following recitals of fact are a material part of this First Amendment:

A. On September 21, 1987, Grantors and Grantee entered into an Access Agreement and Grant of Easement (the "Easement"), which Easement was recorded December 22, 1987, as Instrument No. 8769596 in the Official Records of the Ada County, Idaho, Recorder.

B. Paragraph 1 of the Easement entitled "Grant of Easement" describes the Easement Premises as that real property described in Exhibit "A" attached to the Easement. Said paragraph 1 also indicates that if a survey is prepared in connection with the Project to which the Easement relates and such survey reveals that the legal description set forth in Exhibit "A" to the Easement is inaccurate, the parties will execute the necessary amendment to the Easement to correct the legal description.

C. A survey has been prepared with respect to the Easement Premises and an amendment to the legal description is necessary. The parties hereto desire hereby to effectuate such an amendment.

RECORDED

SEP 29 1988

NOW, THEREFORE, in consideration of the foregoing premises and pursuant to previous agreements between the parties, the parties hereto agree as follows:

1. Amendment to Legal Description of Easement Premises. The parties hereto amend the Easement by substituting for Exhibit "A" attached to the Easement the Exhibit "A" hereto and by this reference made a part hereof. For all purposes, the Exhibit "A" attached hereto shall constitute the legal description for the Easement as if originally attached to and made a part of the Easement.

2. Reaffirmation of Easement. Except as modified hereby, the Easement remains in full force and effect and is binding upon the parties thereto and hereto.

IN WITNESS WHEREOF, the parties hereto have executed or caused these presents to be executed by their duly authorized officers the day and year first above written.

FULCRUM, INC.

By _____
Its Vice-President

_____
DALLAS H. HARRIS

_____
ALTA HARRIS

SEP 29 1988

STATE OF IDAHO)
) ss.
County of Ada)

On this 3rd day of ~~July~~ August, 1988, before me, the undersigned, a Notary public in and for said State, personally appeared DALLAS H. HARRIS and ALTA HARRIS, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument and who acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public for State of Idaho

Residing at: Boise, Idaho

STATE OF UTAH)
) ss.
County of Salt Lake)

On this 27th day of July, 1988, before me, the undersigned, a Notary public in and for said State, personally appeared Robert N. Pratt, known or identified to me to be the Vice President of FULCRUM, INC., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public for State of Utah

Residing at: Salt Lake City

26dph

RECORDED

SEP 29 1988

EXHIBIT "A"

REAL PROPERTY DESCRIPTION

PARCEL B

An easement for the purpose of ingress and egress over a strip of land 33.00 feet in width located in the Southeast Quarter of Section 29, Township 3 North, Range 3 East, Boise Meridian, in Ada County, Idaho, more particularly described as follows:

Commencing at the section corner common to Sections 29, 30, 31 and 32, Township 3 North, Range 3 East, B.M., Ada County, Idaho:

THENCE South 89°00'59" East a distance of 2639.26 feet along the southerly boundary of said Section 29 to the southwest corner of said SE 1/4 of Section 29;

THENCE North 76°07'11" East a distance of 261.78 feet to a point on the southerly bank of the Boise River;

THENCE North 33°23'41" East a distance of 566.17 feet across the Boise River;

THENCE South 47°27'00" East a distance of 79.60 feet;

THENCE North 30°07'16" East a distance of 94.87 feet;

THENCE South 65°09'03" East a distance of 81.29 feet;

THENCE South 51°23'56" East a distance of 164.04 feet to the southwest corner of said access easement and the True Point of Beginning;

THENCE North 42°41'46" East a distance of 500.03 feet;

THENCE North 38°46'00" East a distance of 1620.20 feet to the southeasterly boundary of State Highway No. 21;

THENCE South 51°15'39" East a distance of 33.00 feet along the southeasterly boundary of State Highway No. 21;

THENCE South 38°46'00" West a distance of 1621.35 feet;

THENCE South 42°41'46" West a distance of 498.80 feet to the northeasterly boundary of the above described tract;

THENCE North 51°23'56" West a distance of 33.08 feet to the True Point of Beginning.

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SEP 29 1988

CONSENT OF DALLAS H. HARRIS AND ALTA HARRIS

This Consent of Dallas H. Harris and Alta Harris is entered into as of the third day of August, 1988, by Dallas H. Harris and Alta Harris, husband and wife, individuals residing in Ada County, State of Idaho (hereinafter "Harris").

Harris hereby consents to and represents the following:

1. Harris has reviewed the Collateral Assignment of Agreements dated as of August 1, 1988, between the Banks, Fulcrum, Inc., and Bonneville Pacific Corporation, except for Schedules I-A, I-B, II-A, II-B, IV, V, VI-A, VI-B, VII and VIII. Harris consents to assignment of the Access Agreement and Grant of Easement, dated September 21, 1987, as amended by the First Amendment to Access Agreement and Grant of Easement, dated August 2, 1988, to the Banks.

2. The Access Agreement and Grant of Easement, as of the date of this Consent, (a) is in full force and effect, (b) has not been modified or amended, except for the First Amendment to Access Agreement, and has not been assigned by Harris, and (c) Harris has no knowledge of the occurrence of any default, transfer or assignment, except for the Collateral Assignment of Agreements. As of the date of this Consent, Harris has no counterclaims, offsets or defenses against Fulcrum, Inc., with respect to the Access Agreement and Grant of Easement and First Amendment to Access Agreement.

3. Harris agrees not to amend, modify or terminate the Assigned Agreement without prior written notice to and the consent of the Banks at the address shown in Paragraph 4 hereof and Harris agrees, if a default in the performance of Fulcrum, Inc. occurs under the Assigned Agreement, to allow the Banks, if they elect to do so, an opportunity to cure such default, within forty-five (45) days of the notice of default, on behalf of Fulcrum, Inc. and if they shall elect to do so, then to complete Fulcrum, Inc.'s performance obligations under the Assigned Agreement. In the event the Assigned Agreements are terminated for any reason, including a rejection or other termination as a result of a bankruptcy, and the Banks so request within thirty (30) days of such termination, Harris shall enter into new Assigned Agreements with the Banks upon the same terms and conditions as set forth in the terminated Assigned Agreements for the balance of the terms thereof.

4. Any notice given hereunder to the Banks shall be in writing and shall be deemed delivered if mailed, postage prepaid, registered or certified mail, return receipt requested, to

SEP 29 1988

Norwest Bank Minnesota, National Association
Eighth Street and Marquette Avenue
Minneapolis, Minnesota 55479
Attention: Patrick G. Bassett
Vice President
Norwest Energy Finance

or to such other person or address as the Banks, or any of them, may direct by notice to Harris at:

Dallas H. Harris and Alta Harris
1955 Teal Lane
Boise, Idaho 83706

Executed on the date set forth below to be effective as of the date first set forth above.

DATE: August 3, 1988.

Ada County, Idaho,
Request of
STEWART TITLE
TIME 2:56 PM
DATE 8-3-88
JOHN BASTIDA
RECORDER
By Deputy
18.00

Dallas H. Harris

Alta Harris

RECORDED

SEP 29 1988

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

June 16, 1988

Fulcrum, Inc.
C/o David P. Hirschi
257 East 200 South Suite 800
Salt Lake City, UT 84111

Re: Assignment of Permit No. 63-10028

Dear Mr. Hirschi:

I have reviewed an executed assignment by which the Board of Ada County Commissioners conveyed permit no. 63-10028 to Fulcrum, Inc. I have also received a certificate of corporate status issued by the Secretary of State, State of Idaho, which attests to the active corporate status of Fulcrum.

I find that the assignment and certificate of corporate status fulfill the requirements of Sections 42-205 through 42-210, Idaho Code, and specifically find that the permit was assigned in good faith, and not for speculation or delay.

The files of the Department will be changed to reflect that Fulcrum, Inc. is the owner of permit no. 63-10028, and Fulcrum will receive all correspondence regarding the permit.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

CC: Teresa Elliott
Ada County Commission
Western Region

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SEP 29 1988

RECEIVED
JUN 15 1988
Department of Water Resources

NO. 780

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

ASSIGNMENT OF PERMIT

Ada County, a political subdivision of the State of Idaho, hereby assigns to Fulcrum, Inc., an Idaho corporation, of 257 E. 200 South, Suite 800, Salt Lake City, UT 84111, ATTN: David P. Hirschi, Esq., all its right, title, and interest in and to Permit No. 63-10028 to appropriate the public waters of the State of Idaho.

MADE this 13 day of June, 1988.

BOARD OF ADA COUNTY COMMISSIONERS

By: _____
Michael L. Johnson, Chairman

By: absent
Judy M. Peavey, Commissioner

By: _____
Vernon L. Bisterfeldt, Commissioner

ATTEST:

_____
John Bastida, Ada County Clerk

ACKNOWLEDGEMENT

On this 13 day of June, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael L. Johnson, ~~Judy M. Peavey~~, and Vernon L. Bisterfeldt, known or identified to me to be duly elected, qualified, and acting Commissioners of Ada County, Idaho, and John Bastida, known or identified to me as the duly elected, qualified, and

RECORDED
SEP 29 1988

acting Clerk of Ada County, State of Idaho, whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Shari Stong

Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires: 2-4-94

SEP 29 1993

State of Idaho

Department of State.

CERTIFICATE OF CORPORATE STATUS
OF

FULCRUM, INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of *Idaho* and was issued a certificate of *incorporation* in Idaho on *September 28, 1984.*

I FURTHER CERTIFY That the corporation's authority to do business has not been forfeited.

Dated *June 14, 1988*

GREAT SEAL OF THE STATE OF IDAHO
ESTO PERPETUA

Pete T. Cenarrusa
SECRETARY OF STATE

by R. Kinsman

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SEP 29 1988

CCSSF 781

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440
DECEMBER 04, 1987

STATE OF IDAHO
650 MAIN ST.
BOISE, ID 83702

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 63-10028

DEAR PERMIT HOLDER:

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

PLEASE BE ADVISED THAT PRIOR APPLICATIONS FOR PERMIT HAVE BEEN FILED TO APPROPRIATE WATER FROM YOUR SOURCE WHICH MAY IMPACT THE AVAILABILITY OF WATER TO BE USED UNDER THIS PERMIT. THEREFORE, YOU SHOULD BE SURE TO ANALYZE THE IMPACT OF THESE RIGHTS BEFORE MAKING A MAJOR INVESTMENT IN YOUR WATER USE PROJECT.

IF THE DIVERSION DAM IS 10 FEET OR MORE IN HEIGHT, OR HAS AN IMPOUNDING CAPACITY OF 50 ACRE-FEET OR MORE, CERTAIN DAM SAFETY REQUIREMENTS MUST BE MET. PLEASE CONTACT THE REGIONAL OFFICE NEAREST YOU FOR ADDITIONAL INFORMATION.

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

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

SINCERELY,

MICROFILMED

FEB 29 1988

GARY SPACKMAN
SUPERVISOR, WATER ALLOCATION SECTION

GS: SC
ENCLOSURES

41 FERC ¶ 62,138

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Fulcrum Inc. Project No. 4881-012

ORDER APPROVING WILDLIFE MITIGATIVE PLAN

(Issued November 9, 1987)

On September 17, 1987, Fulcrum, Inc., licensee for the Barber Dam Project, filed a wildlife mitigative plan required by article 24 of the license.

The plan includes measures to minimize the potential for raptor electrocution resulting from construction of the transmission line and includes a statement that construction activities would be scheduled to avoid impacts to waterfowl nesting downstream of Barber Dam.

By letters dated March 17, 1987, and May 11, 1987, the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service concurred with the plan as long as contruction activites outside of the powerhouse did not occur during the waterfowl nesting period (March 15 to May 31).

According to the licensee, external site work is expected to be completed by January 31, 1988 (letter dated October 5, 1987), and thus would not affect nesting waterfowl. In the event the present construction plans are changed, all external site work must take place during the period of June 1 through March 15 to avoid impacts to nesting waterfowl.

The plan, as amended herein, is consistent with the requirements of the article and is approved.

The Director orders:

(A) The wildlife mitigative plan filed on September 17, 1987, is approved.

(B) All site work outside of the powerhouse must take place during the period of June 1 through March 15.

(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 this order.

Dean L. Shumway
Director, Division of
Environmental Analysis

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NOV 19 1987
Department of Water Resources

DC-A-31

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

MICROFILMED
FEB 29 1988

POSTAGE AND FEES PAID
FEDERAL ENERGY
REGULATORY COMMISSION
FERC-351

P -0004981012 101465
DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES
450 WEST STATE STREET

BOISE, ID 83720

MEMORANDUM

TO: File 63-10028

FROM: Jim Johnson

DATE: October 6, 1987

RE: Review of Information Provided Pursuant to Requirements of Rules & Regulations

The applicant has determined that peak use is estimated at 2000 cfs, with the average use around 1900 cfs.

The application for permit requested 3000 cfs. Since there is no apparent justification for 3000 cfs, the application should be reduced to the amount that is a realistic estimate of the appropriation.

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FEB 29 1988

Form No. 202a
3/79

State of Idaho
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: Jan Grove APPLICATION NUMBER: 63-10028

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.

Field check by: _____
Date: _____
Comments: _____

- ☐ Yes [x] No Field check required.
- ☐ Yes [x] No Critical groundwater area.
- [x] Yes ☐ 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:

	Copies sent by:	Date:
☐ Idaho State Health Department.		
[x] Idaho Fish and Game Department.	SP	5/16/83
☐ Idaho Department of Lands.		
☐ U.S. Bureau of Land Management.		
☐ U.S. Forest Service.		
☐ Other _____		

PROCESSING:

- ☐ Yes [x] No Platted by: _____ Map No. _____
- ☐ Yes ☐ No Other rights on same place of use. 63-9040 - 2000 CFS - 10/30/80 - POWER - COOK ELEC. Co. - 63-2010 - 1300 CFS - 11/16/04 - POWER - BARBER LUMBER CO.
- [x] Yes ☐ No* In form for advertising.
  Final date for protests: 5/31/83 6/27/83
- ☐ Yes ☐ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- [x] Affidavit of publication received. Date: 5/20/83 6/20/83
- [x] Application published correctly. If not, record action taken: _____
- [x] Fee amount, receipt date & number, recorded on application. $725.00 / 279964
- [x] Publication dates and paper, recorded on application. Idaho Statesman 5/28 5/29/83 Com 6/9 & 6/16/83
- [x] Protests, dates, withdrawal, etc., recorded on application. NONE
- [x] Recommendation & initial, recorded on application.
- [x] Yes ☐ No Measuring device required.
- ☐ Yes [x] No Access port required.
- [x] Yes ☐ No Will water be delivered by watermaster? If yes, what district? 63
- 4/28/83 Date of priority recommended.

Special conditions of approval or cover letter. _____

Subordinate (26)

appr 63-9653 (Cattaraugus Bloom, or Fulcomunfre) that has been relinquished 11-17-87

RECEIVED
FEB 29 1988

By: DBS Date: 6/27/83

STATE OFFICE REVIEW: 45 25 26A 05(63, Boise River) 27 18A 18B 08A 09D 17G 17K

RECEIVED
JUL 5 1983
Department of Water Resources

L14, L09, L17

☐ See attached sheet for more information.

By: tw Date: 9/24/87

Needs FERC Letter dc jw

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

_ _ _ _ . _ _ _ _ . _ _ _ _ . _ _ _ _ . _ _ _ _ . _ _ _ . _ _ _ . _ _ . _ _ . _ _

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

CECIL D. ANDRUS
Governor

A. KENNETH DUNN
Director

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

July 1, 1987

RE: Application for Permit No. 63-10028

Bruce Blaser
Interwest Hydro, Inc.
3350 Americana Terrace, Suite 300
Boise, ID 83706

Dear Mr. Blaser:

Per your request, we have reviewed the above referenced application and find that we will require some additional information regarding this project, prior to any further action being taken.

You were given a copy of our Water Appropriation Rules and Regulations during your visit to our office on June 30, 1987. Be advised that you must supply all the pertinent information required in Rule 4,5,3. (see Rules 4,5,3 through 4,5,3,5,1.)

Once all information has been gathered and submitted, we will be able to proceed with processing the application.

Sincerely,

KAY WALKER
Technical Records Specialist

KW:sc

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POWER CALCULATIONS FOR APPLICATION NO. 63-10028

P = Kilowatts 5402. .74 X hp 7300

Q = cfs 3000.

H = feet 23

e = efficiency

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

$e = \frac{P(11.8)}{QH} = \frac{5402(11.8)}{3000 \times 23} = \frac{63743.6}{69000} = 0.92$ – high but ok

Based on the above calculations the proposed project must have an 92 % efficiency.

****

OVERLAP REVIEW per VAX 6/25/87:

P/D 63-9640 power- Cook Electric Co. Inc. ← is being prepared for rejection
63-2010 power- Barbour Lumber Co.

P/U 63-2388 Irrig.
~~63-1988 Domestic~~
63-9343 Commercial
63-9640 power
63-0184 Irrig.
63-0365 Irrig.

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BYPASSED AREA

KW 6/25/87

per Bruce Blaser 6/25/87
~~Idaho Power~~ Interwest Hydro, Inc. Cook Electric is ~~out of~~ no longer involved with this project — owners of project are now Ada Co. & Interwest Hydro — Interwest Hydro leases from County.

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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

November 12, 1986

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

Re: Application for Permit No. 63-9640

Gentlemen:

This office has recently received from Mr. Dave Collins, an angineer for Ada County, copies of documentation from the Federal Engery Regulatory Commission (FERC) relative to the proposed Barber Dam hydroelectric development, including the Order Denying Rehearings dated October 18, 1985. This documentation shows that the FERC license remains in the name of Ada County and Arthur L. Bloom.

The purpose of this letter is to inquire about the status of your involvement with this project. Please provide this information no later than November 21, 1986, to enable the Department to assess the opportunity for further action on water rights at the Barber Dam site.

Sincerely,

David R. Tuthill Jr., P.E.
Manager, Western Water Region Office

DRT:nl

c.c. Dave Collins

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OCT 28 1985

33 FERC ¶61,046

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Raymond J. O'Connor, Chairman;
A. G. Sousa and Charles G. Stalon.

Ada County, the City of Boise, and Arthur L. Bloom	)	Project Nos. 4881-005, -006
Cook Electric Company	)	Project Nos. 3598-002, -003

ORDER DENYING REHEARINGS

(Issued October 18, 1985)

On December 23, 1983, the Director, Office of Electric Power Regulation, issued an order granting a major license to Ada County, the City of Boise, and Arthur L. Bloom (Licensees) for the Barber Dam Project No. 4881 and denying Cook Electric Company's (Cook) competing application for preliminary permit for Project No. 3598. 1/ The Barber Dam project will be located on the Boise River in Ada County, Idaho.

On May 18, 1984, in response to timely petitions for appeal filed by Cook and the Licensees, we issued an order affirming the Director's order with one modification relating to the deadline for the start of construction. 2/ The Licensees and Cook have requested rehearing of that order. For the reasons discussed below, the requests for rehearing are denied.

I. Cook's Rehearing Request

Cook argues that: its preliminary permit application should be reinstated; the license for Project No. 4881 should be revoked; and the license application for the project should be rejected. Cook contends that the Commission erred when it accepted the license application for Project No. 4881 after the deadline had expired for filing applications in competition with its proposed Project No. 3598.

Cook's request for rehearing merely incorporates by reference the arguments presented in its appeal of the Director's action; no new arguments are advanced. Since we gave full consideration to

1/ 25 FERC ¶ 62,399 (1983).

2/ 27 FERC ¶ 61,285 (1984).

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these arguments in our previous order, we will deny Cook's request for rehearing. 3/

II. Licensees' Rehearing Request

The application for the project and many of the Exhibit F drawings approved as part of the license indicate that the project reservoir has a surface elevation of 2775.5 msl. However, we generally require that lands above the normal surface elvation be included in licenses to allow for the operation and maintenance of the project and control of the shoreline, including provision for flood stages. The Licensees' revised Exhibit G-2 drawings, dated December 22, 1982, indicate a project boundary that appears to be generally above the 100 year flood line, which is approximately the 2780 msl contour line. Part of the project's reservoir is owned by the Idaho Parks Foundation (IPF) and held in trust for the benefit of the residents of Ada County. In addition, portions of the reservoir's shoreline falling within the project boundary may be owned by private individuals, although Ada County has retained flood and flowage easements on all of this shoreline.

The Licensees contend that the project boundary indicated in the revised Exhibit G-2 drawings reflects a project shoreline that greatly exceeds any realistic requirement of shoreline control (including provision for flood stages), and therefore argue that the project boundary contour line should be changed to 2777 msl. Licensees further request a waiver of the fee ownership requirements of Article 5 of the license to allow Licensees to acquire the right to use in perpetuity, for legitimate project purposes, the lands within the project boundary owned by IPF.

The Licensees have misconstrued the terms of their license. Revised Exhibit G-2, which indicates a project boundary generally above the contour line of 2780 msl, was approved and made part of the license only to the extent that it shows the general location,

3/ As we discussed in our order on appeal, under the Commission's decision in Georgia-Pacific Corporation, 17 FERC ¶61,174 (1981), competing license applications could be filed any time before the Commission issued a preliminary permit for the same site. Although this policy was changed by a final rule issued March 20, 1985, the new rule did not become effective until June 10, 1985. See "Application for License, Permit, or Exemption from Licensing for Water Power Projects", Order No. 413, issued March 20, 1985, 50 Fed. Reg. 11,658 (March 25, 1985).

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Western Regional Office

description, and nature of the project boundary. 4/ Article 26 requires revisions to, among others, Exhibit G-2 to establish a final project boundary. Specifically, within 90 days after the completion of construction, the Licensees must file revised drawings for Commission approval showing the project as built. Although the currently-indicated project boundary appears to be an appropriate project boundary, Licensees may seek approval of a different boundary at the time they submit revised Exhibit G drawings for approval pursuant to Article 26.

The Licensees also misunderstand the requirements of Article 5 of their license. Under Article 5, the Licensees must acquire all lands necessary for the construction, operation, or maintenance of the project within five years. However, they may do so by acquiring title in fee or the right to use such lands in perpetuity. The purpose of standard license Article 5 is to ensure that licensees obtain sufficient control over all property interests necessary for project purposes. 5/ The proposed conveyance by the IPF to the Licensees, their successors or assigns, of the right to use in perpetuity the lands of the IPF within the project's boundaries for all legitimate project purposes complies with the requirements of Article 5. No waiver of Article 5 is required.

The Commission orders:

(A) The request for rehearing filed by Cook Electric Company on June 18, 1984, is denied.

(B) The request for rehearing filed jointly by Ada County, the City of Boise, and Arthur L. Bloom on June 18, 1984, is denied.

By the Commission.

(S E A L)

Kenneth F. Plumb

Kenneth F. Plumb,
Secretary.

4/ See 27 FERC at 61,527.

5/ See Niagara Mohawk Power Corp., 16 FERC ¶ 61,180 (1981).

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Ada County, the City of Boise, and Arthur L. Bloom) Project No. 4881-007

ORDER AMENDING LICENSE

(Issued August 22, 1985)

On December 23, 1983, a license for construction and operation of the Barber Dam Project No. 4881 was issued to Ada County, the City of Boise, and Arthur L. Bloom (Licensees).1/ Article 28 of the license, as amended by order issued May 18, 1984, requires that construction of project works be commenced within two years from the date of issuance of the license and that construction shall be completed within two years from the start of construction.

On July 19, 1985, the Licensees filed a request for extension of time to comply with Article 28.2/ The Licensees state that because of continuing opposition from the potential power purchaser, they would not be able to obtain a financially satisfactory power purchase agreement in the near future. The Licensees state further that an ongoing rate case before the Idaho Public Utilities Commission (IPUC) may not be determined before the end of 1985 and that the IPUC has, in the interim, lowered its PURPA rate to 44.2 mills/kWh. They therefore ask that the construction start and completion dates for Project No. 4881 be extended the maximum possible.

Under Section 13 of the Federal Power Act, the period for commencement of construction may be extended once but not for more than two additional years and the period for completion of construction, carried out in good faith and with reasonable diligence, may be extended when not incompatible with the public interest. The requested extension of time for start of construction will therefore be granted. Since the period for completion is based on the construction start date, that period will be correspondingly extended.

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1/ 25 FERC ¶62,399

2/ Authority to act on this matter is delegated to the Director, Office of Hydropower Licensing, under §375.314 of the Commission's regulations, 49 Fed. Reg. 29,369 (1984)(Errata issued July 27, 1984)(to be codified at 18 C.F.R. §375.314). This order may be appealed to the Commission by any party within 30 days of the issuance date of this order pursuant to Rule 1902, 18 C.F.R. §385.1902 (1984). 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.

It is ordered that:

(A) Article 28 of the license for Project No. 4881, issued December 23, 1983, is amended to read as follows:

Article 28. Licensee shall commence construction of the project within four years of the date of issuance of the license and shall complete construction within two years from the start of construction.

(B) This order is final unless a petition appealing it to the Commission is filed within 30 days from the date of its issuance, as provided in Section 385.1902 of the Commission's regulations, 18 CFR 385.1902 (1984).

Don Gaber

for

Kenneth M. Pusateri
Acting Director, Office of
Hydropower Licensing

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FERC ¶ 61,285
LICENSE
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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

Ada County, The City of Boise, and Arthur L. Bloom	)	Project No. 4881-002, -004
Cook Electric Company	)	Project No. 3598-000, -001

ORDER ON APPEALS

(Issued May 18, 1984)

On December 23, 1983, the Director, Office of Electric Power Regulation, issued an order 1/ issuing a license to Ada County, the City of Boise, and Arthur L. Bloom ("Licensees") for the Barber Dam Project No. 4881-002 and denying Cook Electric Company's ("Cook") competing application for preliminary permit (Project No. 3598-000). The project is located on the Boise River in Ada County, Idaho.

Cook and the Licensees have appealed the Director's order. Cook appeals the Director's acceptance of the Licensees' license application, the Commission's failure to grant Cook's motion to intervene in the Project No. 4881-002 proceeding, the issuance of a license to the Licensees, and the denial of Cook's permit application. The Licensees have responded to Cook's appeal.

The Licensees accept the license issued by the Director subject to the issues raised in their appeal. Briefly stated, the Licensees challenge the following license articles:

(1) Article 5, requiring the acquisition of title in fee or the right to use in perpetuity all lands within the project boundaries;

(2) Article 28, requiring the commencement of construction within one year of the date of issuance of the license order;

(3) Article 32, requiring payment of annual charges to the United States; and

(4) Article 33, requiring the establishment of an amortization reserve account after the first 20 years of operation.

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1/ Ada County, the City of Boise, and Arthur L. Bloom, 25 FERC ¶62,399 (1983).

In addition, Mr. Oliver Gregerson has filed with the Commission a document styled "Petition Appealing Staff Action Pursuant to Rule 1902, 18 C.F.R. 385." Mr. Gregerson asserts that the Licensees' application for license contains erroneous information that is material to the stability of Barber Dam.

We have considered Cook's and the Licensees' arguments on appeal and affirm the Director's order, with one modification. The start of construction deadline provided in Article 28 is amended to give the Licensees 24 months to start construction. In addition, we are rejecting Mr. Gregerson's petition because the document fails to comply with the Commission's rules. We discuss each of the pleadings in turn.

I. Cook's Appeal

Cook asserts that the Commission erred when it permitted the Licensees to file their license application in September 1982. It claims that the Georgia Pacific decision, 2/ under which the Director allowed the Licensees to file their application, conflicts with Section 4.33(a) of the Commission's regulations. 3/ Cook also maintains that the Commission failed to act within a reasonable time on Cook's application for preliminary permit and on an appeal filed by Cook's competitors. Cook concludes that the Commission's action was an abuse of the Commission's discretion, and violated Cook's rights under the Administrative Procedure Act and the due process clause of the United States Constitution. 4/

Cook's arguments are essentially the same as those Cook advanced in its request for rehearing of the Commission's order dismissing Cook's competitors' appeal as moot 5/ and in Cook's motion filed October 4, 1982. In our May 20, 1983 order denying Cook's rehearing, we rejected these earlier arguments, and affirmed that the license application was properly accepted and that we had acted within a reasonable time in resolving Cook's competitors' appeal. 6/ The Director, in turn, relied upon

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2/ Georgia Pac. Corp., 17 FERC ¶61,174 (1981).

3/ 18 C.F.R. §4.33(a) (1983).

4/ 5 U.S.C. §§555(b), 558(c) (1982); U.S. Const. Amend. V.

5/ Arthur Bloom and Ada County, 22 FERC ¶61,273 (1983).

6/ Arthur Bloom and Ada County, 23 FERC ¶61,264 (1983). One argument not included in Cook's October 4, 1982 motion, but which was included in Cook's request for rehearing and this appeal, is that the Georgia Pacific decision violates Section 4.33(a) of the Commission's regulations. We do not agree, for the reasons set forth in the Georgia Pacific decision.

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that order in ruling on Cook's motion. We adopt our earlier discussion and therefore uphold the Director's treatment of Cook's contentions.

For the reasons discussed here and in our May 20, 1983 order, we do not agree with Cook's arguments. We therefore affirm the Director's order and deny Cook's appeal. 7/ Cook does not challenge the Director's decision to favor the license application over the preliminary permit application.

II. Licensees' Appeal

A. The Project Boundary and Ownership Requirements

Concurrent with their application for license, the Licensees filed a petition for waiver of the requirement that they own all project lands and facilities. The Commission imposes this requirement through a standard license article (Article 5). 8/ The Director denied the petition for waiver, stating: 9/

> The Commission has determined that where a dam and reservoir are an integral part of a hydroelectric project, those facilities must be licensed. The Licensee must have sufficient control over project works to enable the Commission, through the Licensee, to carry out its responsibilities with respect to the project.

Accordingly, the Director included Article 5 in the license.

7/ Cook also appeals our failure to grant its timely motion to intervene in the Project No. 4881-002 proceeding; we hereby grant Cook's intervention nunc pro tunc. Cook has suffered no prejudice from our failure to act upon the intervention earlier, since the Director considered the arguments contained in the motion in his order and since this appeal is being entertained nothwithstanding Cook's earlier non-party status.

8/ 54 F.P.C. 1824 (1975); 18 C.F.R. §2.9 (1983). License Article 5 requires the Licensees, within five years of the date of issuance of the license, to 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, and to retain possession of all project property covered by the license.

9/ 25 FERC ¶62,399 (1984) (citing N.Y. State Elec. & Gas Corp., 16 FERC ¶61,176 (1981)).

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In their appeal, the Licensees reassert their request for a waiver of Article 5, insofar as it would require them to acquire a portion of the project reservoir owned by the Idaho Parks Foundation ("IPF"). They maintain that their current ownership interests, coupled with IPF's interests, meets the Commission's needs under the Federal Power Act ("Act").

In addition, the Licensees now argue that the project boundary is excessive, and that the IPF property interests in question should not be included in the project license at all. They assert that the project reservoir extends only to the downstream edges of some islands (elevation unspecified) facing the upstream face of the dam. Since resolution of this contention in the Licensees' favor would render moot their request for waiver, we address it first.

The Licensees' argument that the project reservoir included in the license is too large is without merit. The argument hinges on the Licensees' conclusion that the body of water "created by an existing dam [at a run-of-river project] is not used in the generation process." This conclusion is erroneous. The body of water, or reservoir, created by a dam provides the head that operates the project. This is the body of water that the Director included in the project boundary. The clear nexus between the Licensees' power plant and the body of water that would not exist but for the Barber Dam, and which is necessary for power generation, justifies the Director's finding that the reservoir is an integral part of the proposed power plant and must be licensed. 10/

Furthermore, the Licensees' argument is at odds with their own application and request for waiver. The application states that the existing development includes a 180-acre pool as a project feature with a normal surface elevation of 2775.5 msl. This body of water, with additional provision to allow operation and maintenance of the project and control of the shoreline (including provision for flood stages), see 18 C.F.R. §4.61(f)(4)(i), was generally approved by the license (final approval must await the filing of as-built Exhibit G drawings, required by Article 26). The application states that the portion of the pool owned by Ada County would be encompassed within the project boundary, while the remainder of the pool, owned by IPF, would be excluded. The application was accompanied by a request that the Commission waive the requirement that the Licensees own the full "reservoir". In light of these statements, it is untenable for the Licensees to now argue that the portions of the project reservoir included in the license that are owned by IPF are not part of this hydroelectric project. 11/

10/ See N.Y. State Elec. & Gas Corp., 16 FERC ¶61,176 (1981).

11/ The Licensees attempt to distinguish their earlier admission that the project includes a 180-acre "pool" by now arguing that a "pool" and "reservoir" are different. This argument is unpersuasive. These terms are commonly used interchangeably in this field.

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If the Commission concludes that the Director included the correct body of water as the project reservoir, the Licensees request that they be relieved of their obligation to acquire the additional property interests now owned by IPF. The Licensees argue that the lands lying within the approved project boundary that they do not own are held in trust by IPF for use as a wildlife reserve and for other beneficial public uses. They further assert that to acquire fee simple property interests would disrupt the present land use scheme, disturb community harmony, and cause delay. In addition, the Licensees maintain that acquisition of fee simple is not necessary to protect the United States Government's interest in the event of federal takeover. Finally, the Licensees assert that the Director's application of the New York State Electric & Gas case to this situation was error. 12/ In an attempt to distinguish the cases, the Licensees assert that here, one co-applicant owns the dam, project operation is strictly run-of-the river, and fish, wildlife and other environmental concerns are protected by an existing trust.

This Commission has consistently required licensees to acquire sufficient control over project works to enable the Commission, through the licensee, to carry out its responsibilities with respect to the project. We have held to the belief that: 13/

> [S]tandard Article 5...has proven to be the most efficient means of assuring the control of all real property interests necessary for project purposes, obviating a variety of potential disputes and complications with the holder of fee title during the terms of the license and in the event of recapture or relicensing under Section 14 and 15 of the Act.

The licensee's property interests must be broad enough to encompass all legitimate project purposes under Section 10(a) of the Act.

The Licensees' proposal would not give us sufficient control to meet our responsibilities under the Act. The Idaho Parks Foundation's and the Commission's view of how the project should be operated may at times differ. If this occurs, the Commission may well be unable to require the Licensees to fulfill a necessary project purpose. In addition, the Commission will be unable to ensure that the Licensees have sufficient property interests for a new license or in the event of federal

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12/ N.Y. State Elec. & Gas Corp., 16 FERC ¶61,176 (1981).

13/ Niagara Mohawk Power Corp., 16 FERC ¶61,180 (1981).

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takeover. For these reasons, the Licensees' proposal is not acceptable. 14/

The Licensees' attempt to distinguish the New York State Electric & Gas decision is unpersuasive. None of the referenced differences between the cases diminish their common tie: the applicants' proposals did not give the Commission sufficient authority to carry out its responsibilities under the Act. The Licensees' argument that the Commission's property ownership requirements grossly exceed congressional intent is also unpersuasive; Congress provided that the Federal Government or a new licensee could take over all project works at the end of the license term, and could do so under the compensation formula specified in the statute. 15/ This could not be accomplished if someone other than the licensee held any necessary project property interests.

B. Commencement of Project Construction

The license currently gives the Licensees twelve months to commence project construction; the Licensees assert that they need an additional twelve months. Upon review of the various conditions placed upon the authority to construct this facility, we find that the Licensees' request is reasonable. In addition, the Director normally provides a two-year construction commencement requirement for projects of this type. 16/ Therefore, Article 28 will be modified to require commencement of construction within 24 months. This period will be calculated from the date provided for in Ordering Paragraph (A) of the order from which this appeal is taken.

C. Annual Charges Under Section 10(e)

The Licensees challenge the imposition of Article 32, which requires the Licensees to pay the United States an annual charge for the purpose of reimbursing the United States for the cost of administration of Part I of the Act. The Licensees assert that these annual charges inhibit the development of small hydroelectric projects, and that the Licensees are there-

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14/ We are sensitive to the problems raised by Licensees, yet must ensure that the license's purposes can be carried out. In addition, we are mindful of the needs of future licensees for any subsequent licenses that may be issued for the project. If the Licensees can show that acquisition of some property interest less than fee simple will be sufficient for project purposes, we will entertain a motion for amendment of the license at that time.

15/ 16 U.S.C. §§807-08 (1982).

16/ Long Lake Energy Corp., 26 FERC ¶61,317 (1984).

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fore entitled to an exemption from this portion of the Act under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). The Commission issues exemptions from all or part of Part I of the Act under Section 408(b) of the Energy Security Act of 1980 ("ESA"), which amended Section 405 of PURPA. 17/ The Licensees also assert that they are entitled to an exemption from annual charges because two of the three licensees are municipalities within the contemplation of the Federal Power Act. 18/

The requirement to pay annual charges was properly imposed. In East Columbia Basin Irrigation District, we enunciated a prospective policy of not granting exemptions from Section 10(e) annual charges unless an exemption from all licensing provisions were granted. 19/ We reaffirm this policy because we continue to believe that where an applicant has sought to retain the benefits and protections of a license, it is appropriate to also incur the concomitant responsibilities. This Commission's responsibilities do not end with issuance of a license; continuous regulatory supervision is required. 20/ If we did not require these Licensees to pay their fair share of these expenses, an unfair burden would fall upon other licensees, who would bear the administrative expense of a project they did not develop.

Furthermore, requiring a licensee to pay its share of the costs associated with administration of Part I of the Act does not contravene Congress' desire that the development of small hydroelectric power projects be expedited. The Licensees have

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17/ 16 U.S.C. §2705(d) (1982); 18 C.F.R. §§4.101-.108 (1983).

18/ Actually, the Licensees have requested a "waiver" rather than an "exemption" under Section 408(b) of the ESA and Section 10(e) of the Act. Since both of these statutes provide for exemptions from, rather than waivers of, these charges, we are treating the Licensees' request as a request for exemption. We have no statutory authority to waive annual charges, except for projects of 2000 horsepower or less. See 16 U.S.C. §803(i) (1982). The Barber Dam Project would have a capacity of 5520 horsepower.

19/ 17 FERC ¶61,218 (1981).

20/ For example, the several studies which the Licensees must complete - the performance of which the Licensees use to justify their request for an extension of time to commence project construction - must all be reviewed and approved by the Commission or the Director.

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provided no evidence that Congress, in enacting ESA Section 408(b), intended to establish a class of licensed projects that would not have to pay annual charges. Furthermore, we have not found that the annual charges for the costs of administration of the Act have placed a major financial burden on licensees. For example, in 1983, the annual administrative charge for a 4.14 MW project generating 16.5 million kWh would have been $2148. 21/ We cannot guarantee what these costs, or what the costs imposed by any license article, will be in the future. However, we do not believe that the imposition of these charges is retarding the development of small hydroelectric projects. Accordingly, we will not exercise our authority under the ESA to exempt Project No. 4881-000 from the requirement of Section 10(e) relating to the costs of administration of the Act. 22/

The Licensees' second ground for an exemption from annual charges lies in the language of Section 10(e) itself. Section 10(e) provides for exemption from the payment of annual charges by licensees for two classes of licensees: (1) states and municipalities (a) to the extent the project power is sold to the public without profit or is used by the state or municipality for public purposes or (b) if the project is designed primarily for navigational purposes, and (2) licensees for projects of not more than two thousand horsepower. Certain exceptions limit these exemptions. The Licensees assert that they qualify for the first exemption.

The Licensees are incorrect. As joint municipal/non-municipal licensees, Ada County, the City of Boise, and Arthur L. Bloom do not qualify for the special entitlements accorded municipalities under the Act. 23/ Section 10(e) limits this exemption to states and municipalities, both of which are defined in the Act. Hybrid applicants do not fall within either definition. 24/

21/ According to the license application, this project will cost in excess of $5,000,000.

22/ Further, the request for exemption from Section 10(e) annual charges should be denied for failure to comply with our regulations. See 18 C.F.R. §§4.103(b), 4.105(a), 4.108.

23/ See City of Fayetteville Pub. Works Comm'n, 16 FERC ¶61,209 (1981).

24/ Id.; 16 U.S.C. §796(6), (7) (1982).

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D. Amortization Reserves Under Section 10(d)

The Licensees challenge the imposition of Article 33 (requiring the establishment and maintenance of a Section 10(d) amortization reserve account) on three seperate grounds: (1) Section 10(d) is an "unfathomable regulatory risk" that discourages the contruction and financing of small hydro projects; (2) Section 10(d) conditions are contrary to Section 210 of PURPA; and (3) Section 10(d) conditions discriminate against small hydro projects.

We do not agree with the Licensees' characterization of the financial risks posed by the amortization reserve article, or that the article significantly discourages investment in small hydro projects. In our experience, the article has not been a major concern in the development of small hydroelectric projects, and the Licensees have failed to produce any evidence to the contrary. 25/ More importantly, the article's value to the regulatory and relicensing processes justify the costs (if any) it imposes on these licensees in particular and licensees in general.

We also do not agree that Article 33 conflicts with the avoided cost provisions of PURPA Section 210. The avoided cost provisions in PURPA provide a mechanism for establishing rates that encourage small power production. We must presume that when Congress approved PURPA, it was aware that, twenty years into a hydroelectric project's life, a licensee's return on its investment could require the licensee to set aside funds in an amortization reserve account, thereby reducing the net investment that the licensee would recover at takeover or relicensing. 26/ Nevertheless, with one minor exception, 27/ Congress did not give the Commission the authority to exempt any licensee from Section 10(d) of the Act - an action which it logically would have taken if it had adopted the Licensees' view that the avoided cost provisions of Section 210 of PURPA and the amortization reserve provisions of Section 10(d) of the Act were in conflict.

25/ The Licensees' action in this case supports our conclusion. The Licensees were presumably aware of the amortization reserve provisions of the Act when they applied for a license. Nevertheless, they did not request an exemption from this provision when they filed their application, nor give any suggestion that the provision prevented or discouraged their project.

26/ See 16 U.S.C. §§807-08 (1982).

27/ The sole exception was for projects of 15 MW or less that use conduit facilities. PURPA §213, 16 U.S.C. §823a (1982).

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Two years later, when Congress established the 5 MW exemption program, it gave no indication that it believed there was a conflict between PURPA Section 210 and Section 10(d) of the Act that required exemption of qualifying small power producers of 5 MW or less who obtained licenses from Section 10(d) of the Act. 28/ More importantly, Congress did not allow the Commission to exempt applicants from the provisions of Section 10(d) (or any other licensing requirement) for any small power producer larger than 5 MW yet smaller than the 80 MW limit in PURPA Section 210 - an action which, as in 1978, it presumably would have taken if it had adopted the Licensees' view that the avoided cost provisions of PURPA and Section 10(d) of the Federal Power Act were in conflict.

We believe that the correct interpretation is that Congress fully intended Section 10(d) to apply to small power producers unless the Commission determined that an exemption was both permissible and appropriate. We do not believe that exemption from this provision is warranted.

We reject the Licensees' argument that the amortization reserve provisions unfairly discriminate against hydroelectric projects when compared to other alternative energy resources encouraged under PURPA. Congress has clearly created distinctly different schemes of federal regulation for hydroelectric projects on the one hand and other qualifying hydroelectric facilities under PURPA on the other. The differing treatment to which the Licensees object was fully intended by Congress. While Congress has given the Commission the discretion to eliminate some of these distinctions, we believe that the preservation of Section 10(d)'s requirements is in the public interest in this case.

A common thread running through the Licensees' argument against the imposition of Section 10(e) annual charges and Section 10(d) amortization reserves is that they somehow jeopardize or at least prejudice the economic feasibility of the project. The applicants presumably believed that the proposal presented in their application was economically feasible, and the Director agreed. Until now, there has been no suggestion that an annual charge for administrative costs or requiring the funding of an amortization reserve could prevent development of this project. The Licensees cannot claim to have been unaware of these requirements. 29/ These circumstances undercut the Licensees' suggestion that Articles 32 and 33 materially harm their project.

28/ Energy Security Act of 1980, §408(b), 16 U.S.C. §2705(d) (1982); H.R. Rep. No. 1104, 96th Cong., 2d Sess. 276 (1980).

29/ If the Licensees nevertheless do not wish to proceed, they can surrender the license. See, e.g., Madera Irrigation District, 21 FERC ¶61,156 (1982).

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III. Mr. Gregerson's Appeal

Mr. Oliver Gregerson filed an appeal of the Director's order on January 25, 1984. Mr. Gregerson does not have party status in this proceeding, and thus has no standing to appeal this action. 30/ In addition, the document was filed two days after the deadline for filing an appeal in this proceeding. 31/ Finally, Mr. Gregerson did not file the required number of copies of his appeal, 32/ and did not comply with the requirement that he serve a copy of his appeal on the parties to the proceeding 33/ - an omission which appears to have substantially prejudiced them. 34/ Accordingly, we shall reject this filing for failure to comply with our regulations.

Because Mr. Gregerson's appeal rests upon his assertion that the Licensees' application for license contains erroneous information material to the stability of Barber Dam, we have undertaken a full review of his allegations. We conclude that the Director's reliance upon the data provided under oath by the Licensees was reasonable. Mr. Gregerson's appeal provided no information that would affect the staff's independent stability analysis. The Director's action (see Article 30) addresses the substantial concerns for the stability of the Barber Dam and public safety and provides adequate safeguards. Mr. Gregerson's allegations provide no basis to disturb the Director's order issuing license.

The Commission orders:

(A) The appeal of Cook Electric Company in this proceeding is denied.

(B) The appeal of Ada County, the City of Boise, and Arthur L. Bloom in this proceeding is denied, except as provided in ordering paragraph (C).

(C) License Article 28 is hereby amended to read:

Article 28. Licensee shall commence construction of the proposed project within two years of the date of issuance of the license and shall complete construction within two years from the start of construction.

30/ 18 C.F.R. §385.1902 (1982).

31/ Id.

32/ 18 C.F.R. §385.2004 (1982).

33/ 18 C.F.R. §385.2010 (1982).

34/ No one has responded to Mr. Gregerson's appeal.

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Project Nos. 4881-002, -004, 3598-000, -002

(D) The appeal of Mr. Oliver Gregerson in this proceeding is rejected.

By the Commission.

(S E A L)

Kenneth F. Plumb

Kenneth F. Plumb,
Secretary.

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DEC 0 1983
ADA County
Board of Commissioners

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Ada County, the City of Boise, and Arthur L. Bloom) Project No. 4881-00

Cook Electric Company) Project No. 3598-00

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ADA COUNTY
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ORDER ISSUING LICENSE (MAJOR) AND
DENYING APPLICATION FOR PRELIMINARY PERMIT

(Issued December 23, 1983)

Ada County, the City of Boise, Idaho and Arthur L. Bloom (Applicant) filed on September 7, 1982, an application for license under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Barber Dam Project No. 4881.1/ The project would be located on the Boise River, in Ada County, Idaho, and would affect the interests of interstate or foreign commerce.

Notice of the application has been published and comments have been received from interested Federal, State, and local agencies. No protests or petitions to intervene have been received from the agencies, and none of the agencies objected to the issuance of the license. Cook Electric Company (Cook) filed on April 4, 1983, a motion to intervene. Cook states that the application for license for Project No. 4881 should be dismissed and that a preliminary permit be issued to Cook. The concerns of the intervenor and commenting agencies are discussed below.

Project Description and Operation

The Barber Dam Project No. 4881 would consist of: (1) the existing 1,500-foot-long, 25-foot-high embankment and timber-crib Barber Dam owned by Ada County; (2) a 180-acre reservoir; (3) an intake structure; (4) a powerhouse containing three generating units with a total installed capacity of 4,140 kW; and (5) a transmission line. 2/

1/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 18 C.F.R. §375.308 (1983). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. 385.1902, (1983). 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.

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

The proposed project would be designed for automatic operation on a run-of-the-river mode.

Safety and Adequacy

The existing Barber Dam consists of an embankment section, a timber-crib section, and a non-operational integral powerhouse section. [redacted] Ordinarily, a factor of safety of two is generally considered the minimum acceptable for design. However, the dam has safely withstood actual loads in excess of the loads used for the analysis; therefore, giving due consideration to the lack of water storage behind the dam, it is considered safe for normal operation. Failure of the dam during extreme flood flows would be gradual and would not impose a hazard to downstream life. Failure of the dam could result in a significant movement of the sediment collected behind the dam. Article 30 requires the Licensee to file for approval, a report to show that dam failure would not present a hazard to human life [redacted] No project construction may commence until this report is approved.

The earth embankment section of Barber Dam would be overtopped by extreme floods and would probably fail. Failure of the earth embankment by overtopping flood water would not create a hazard to downstream life or property.

The existing non-operational powerhouse is also a water retaining structure, but the details of the powerhouse provided on the Exhibit F drawings are inadequate for safety analyses. [redacted]

The design of the proposed powerhouse presented in the application for license is preliminary in nature. Therefore, [redacted]

It is concluded that, under the conditions of this license, the project will be safe and adequate.

Economic Feasibility

The project will generate an average 16.5 million kWh annually which will be sold to Idaho Power Company.3/ An economic comparison of the Barber Dam Project to a coal-fired alternative shows that over its 50-year economic life, the proposed hydro project would have a levelized annual benefit of $234,000. Therefore, the project is economically feasible.

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3/ This is equivalent to the energy that would be generated by the consumption of 23,300 barrels of oil or 7,600 tons of coal at a thermal generation plant.

Wildlife Resources

The Boise River in the vicinity of the project provides habitat for wintering and nesting waterfowl. The Federally listed endangered bald eagle winters in the area and uses large trees in the riparian zone for roosting.

The U.S. Department of the Interior (Interior) and the Idaho Department of Fish and Game (IDFG) recommended that the Applicant create new riparian habitat and compensate for the loss of large roosting trees to replace the habitat that would be destroyed by the project. Interior also recommended that the Applicant limit heavy construction and/or blasting to the period from late summer to early fall to minimize potential impacts to nesting waterfowl and wintering bald eagles. IDFG also recommended that the Applicant should design and construct transmission line facilities to protect raptors.4/ The Applicant has agreed to implement the recommendations.

Article 24 requires the Licensee to prepare a [redacted] plan that would address the agencies' concerns. Staff also concludes that implementation of the measures required by Article 24 would adequately protect the endangered bald eagle.

Water Quality

The U.S. Environmental Protection Agency (EPA) and the Idaho Department of Health and Welfare (IDHW) expressed concern about the possible adverse effects on water quality that would result from the removal of a sand bar. The EPA also expressed concern about the dredging of sediments from the river. The Applicant received on September 21, 1983, water quality certification for the project from IDHW. Article 36 requires the Licensee to [redacted] that would include measures to protect water quality.

NPPC Fish and Wildlife Program

Pursuant to Section 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Pub. L. No. 96-501, the Northwest Power Planning Council (NPPC) developed in 1982 a fish and wildlife program to protect, mitigate, and enhance fish and wildlife resources in the Pacific Northwest. The

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4/ The IDFG for its comments on the application, submitted several conditions appropriate for an exempted project. The IDFG's concerns are provided for in the standard articles of the license.

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project does not appear to conflict with NPPC's fish and wildlife program. Nevertheless, Article 34 reserves in the Commission the authority to order, where practicable, alterations in project structures and operations in order to take into account NPPC's fish and wildlife program.

Recreational Resources

An uncompleted section of the regional Boise River Greenbelt Bikepath is tentatively planned to be constructed within and adjacent to the project boundary. The Department of Parks and Recreation (IDPR) recommended that the Applicant acquire two parcels of land in order to complete this section of the bikepath.

Ada County, is committed to the completion of the bikepath and has secured matching funding from Interior for this purpose. This section is unresolved. The Applicant is expected to cooperate in allowing use of project lands for completion of the bikepath where possible, thereby contributing to the comprehensive development of the Boise River.

Cultural Resources

Barber Dam is listed on the National Register of Historic Places. The Idaho State Historic Preservation Officer (SHPO) stated that construction of a new powerhouse would have a visual effect on Barber Dam, but the effect would not be adverse if the powerhouse is designed in consultation with the SHPO and according to the Secretary of the Interior's Standards for Historic Preservation Projects. The Applicant stated that it would comply with these standards to ensure that the powerhouse would be constructed in a manner visually compatible with existing structures, and would continue to consult with the SHPO. It is concluded that the project would not have an adverse effect on historical resources as long as the Applicant complies with Interior's standards. The Advisory Council on Historic Preservation has been consulted. Article 25 requires the Licensee to implement these mitigative measures.

Other Environmental Impacts

The project would result in short-term, minor increases in noise levels, exhaust emissions, and dust from construction activities, and erosion and sedimentation from disturbance of land surfaces. Dredging of the tailrace would temporarily increase turbidity of the river. Less than 1 acre of riparian habitat would be affected. Special license articles are included herein to protect wildlife habitat and cultural resources.

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On the basis of the record, and Staff's independent analysis, it is concluded that issuance of a license for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

Other Aspects of Comprehensive Development

The project does not conflict with any existing or proposed developments, makes good use of the flow and fall of the Boise River, and will be best adapted to a plan for the comprehensive development of the Boise River for beneficial uses upon compliance with the terms and conditions of the license.

License Term

The proposed scale of development is less than that which would warrant a full 50-year term since the project's dam and reservoir currently exist. Therefore, pursuant to the Commission's policy for licensing projects involving moderate development, 5/ this

N.B.

Competing Application

Cook Electric Company (Cook) filed on October 23, 1980, an application for preliminary permit for the Barber Dam Project No. 3598. Cook subsequently filed motions to reject the Applicant's license application (and grant Cook's permit application) and intervene in the licensing proceeding. Cook argues that: (a) the Commission should not have accepted for filing the Applicant's license application for Project No. 4881-002 as the time for filing competing applications to Project No. 3598 had expired; and (b) granting Applicant a license and denying Cook a preliminary permit would violate Cook's rights to the due process of law guaranteed by the Constitution of the United States, and would violate Cook's right to a decision on its preliminary permit application within a reasonable time.

Cook's arguments are essentially the same as those set forth in its request for rehearing of the Order Dismissing Appeal As Moot issued March 4, 1983, by the Commission.6/ In the Order Denying Rehearing, issued May 20, 1983, the Commission rejected Cook's arguments and affirmed that the license application was properly accepted and that the Commission had acted within a reasonable time in resolving Cook's competitors' appeal. Thus, Cook's arguments are rejected here.7/

Cook's preliminary permit application for Project No. 3598 proposes to study the feasibility of a similar hydroelectric

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5/ Lyndonville Electric Department, 7 FERC ¶61,324 (June 29, 1979).

6/ See Arthur Bloom and Ada County, et al., 22 FERC ¶61,233 (March 4, 1983).

7/ See 23 FERC ¶61,264

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project at Barber Dam with a capacity between 3,200 kW and 4,500 kW and an average annual generation of 15.4 million kWh. The proposal by the license applicant for Project No. 4881 would develop 4,140 kW with an annual energy generation of 16.5 million kWh.

Section 4.33(f) of the Commission's regulations states that, if an applicant for license has demonstrated its ability to carry out its plans, the Commission will favor the applicant for license over a preliminary permit applicant proposing to develop the same water resource.

This presumption is rebuttable, where the permit applicant can substantiate that its proposal is superior to that of the license applicant.8/ Here, the permit applicant has not demonstrated that its proposal is superior.9/ Since the license applicant meets the statutory and regulatory license requirements, including demonstrating its ability to carry out its plans, the application for license will be granted and the competing application for preliminary permit will be denied.

Petition for Waiver

Concurrent with the application for license filed September 7, 1982, the Applicant also filed a petition for waiver of ownership requirements. The Applicant states that part of the reservoir created by Barber Dam is owned by the Idaho Park Foundation, Inc. (IPFI) in trust for Ada County under covenants designed to preserve, protect, and maintain a wildlife sanctuary in the reservoir area. The Applicant argues that it would not be in the public interest to require it to obtain the said property interests since the land is already devoted for public recreational use. The IPFI did not object to the project provided that it was operated run-of-the-river.

The Commission has determined that where a dam and reservoir are an integral part of a hydroelectric project, those facilities must be licensed. The Licensee must have sufficient control over project works to enable the Commission, through the Licensee, to carry out its responsibilities with respect to the project. 10/ Therefore, the Applicant's petition for waiver will be denied.11/

See (8)(c) p7*

8/ See Frontier Technology, Inc. 22 FERC ¶61,267 (March 4, 1983).

9/ See, e.g., W.P.B. Power, Inc., 17 FERC ¶61,008 (Oct. 5, 1981); and Continental Hydro Corp., 20 FERC ¶61,34[illegible] (Sept. 23, 1982).

10/ See New York State Electric and Gas Corporation, 16 FERC ¶61,176 (September 10, 1981).

11/ Normal project operation is not expected to interfere with the wildlife sanctuary.

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It is ordered that:

(A) [redacted] to Ada County, City of Boise, and Arthur L. Bloom (Licensee), of Idaho under Part I of the Federal Power Act (Act), for a period of 40 years, [redacted] for the construction, operation, and maintenance of the Barber Dam Project No. 4881, located in Ada County on the Boise River and affecting the interests of interstate or foreign commerce. [redacted]

(B) The Barber Dam Project No. 4881 consists of:

(1) All lands, [redacted] constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by certain exhibits that form part of the application for license and that are designated and described as:

EXHIBIT	FERC DRAWING NO. 4881-	SHOWING
G-1	21	Vicinity Map
G-2-1	22	Topographic Map
G-2-2	23	Topographic Map
G-3	24	Land Survey

(2) Project works consisting of: (a) the 1,500-foot-long, 22.4-foot-high Barber Dam comprising a timber-crib section, an embankment section, and a non-functional integrated powerhouse section; (b) a 180-acre reservoir with negligible storage capacity; (c) an intake structure with three gates; (d) [redacted] (e) a 56-foot-long, 48-inch-diameter steel penstock; (f) a powerhouse containing three generating units, one rated at 1,990 kW, one rated at 1,930 kW, and one rated at 220 kW; (g) a 100-foot-long concrete tailrace; (h) a 5,000 KVA 4.16/34.5-kV transformer; (i) a 175-foot-long, 34.5-kV transmission line; and appurtenant facilities.

The location, nature, and character of these project works are generally shown and described by the exhibits cited above and more specifically shown and described by certain other

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exhibits that also form a part of the application for license and that are designated and described as:

EXHIBIT	FERC DRAWING NO.	TITLE
F-1	4881- 1	Proposed Refurbishment Existing Powerhouse
F-2	4881- 2	Powerhouse Plan
F-3	4881- 3	Powerhouse Profile
F-4	4881- 4	Powerhouse Profile
F-7-D	4881- 10	Upstream Elevation of Powerhouse
F-7-E	4881- 11	Downstream Elevation
F-7-F	4881- 12	Section of Boise River Dam and South Elevation of Powerhouse
F-7-H	4881- 14	Section of Crib Overflow Dam
F-7-I	4881- 15	Barber Dam Rehabilitation Project
F-8	4881- 16	Topographic Map
F-9-A	4881- 17	Cross Section Embankment
F-9-B	4881- 18	Cross Section
F-9-C	4881- 19	Cross Section

Exhibit A - Page A-10, paragraphs 2 and 3, filed September 7, 1982.

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

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(C) Exhibits A (Page A-10, paragraphs 2 and 3), F, and G, designated in ordering paragraph (B) above, are approved and made a part of the license only to the extent that they show the general location, description, and nature of the project.

(D) This license is also subject to the terms and conditions set forth in Form L-11 (revised October, 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting the Interests of Interstate or Foreign Commerce," designated as Articles 1 through 23, attached to and made a part of this license. The license is also subject to the following additional articles:

Article 24. Licensee shall consult with the U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game, in developing a wildlife mitigation plan. The plan shall be filed with the Commission, for approval, and shall consider: (1) the timing of construction activities to avoid impacts to wintering bald eagles and nesting waterfowl; and (2) measures necessary to mitigate the loss of riparian habitat as a result of project construction. Agency comments on the plan shall be included in the filing. The Licensee shall not commence construction of any project structures until the plan is approved.

Article 25. Licensee shall, prior to the commencement of any construction or rehabilitation at the project, consult with the Idaho State Historic Preservation Officer (SHPO) to develop a mitigation plan in a manner satisfactory to the SHPO ensuring that: (1) the construction of the project complies with the Secretary of the Interior's Standards for Historic Preservation Projects and Rehabilitation; and, (2) based on final review of redevelopment plans, any historic and engineering components that will be substantially altered shall be documented according to the standards of the Historic American Engineering Record (HAER) and accepted in writing by HAER and the SHPO prior to construction activity. The mitigation plan shall be filed for Commission approval, and the Licensee shall not commence construction of any project works until the plan is approved. The Licensee shall make available funds in a reasonable amount to complete any additional survey and/or recording work required and any [illegible]. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites and the Licensee shall consult with the SHPO to develop a mitigation plan for the protection of significant archeological or historical resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historical work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

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Article 26. The Licensee shall [redacted] file in accordance with the Commission's Rules and Regulations [redacted] drawings for Commission approval showing the project as-built.

Article 27. The Licensee shall file with the Commission's Regional Engineer and the Director, Office of Electric Power Regulation one copy each of the contract drawings and specifications for pertinent features of the project such as water retention structures, powerhouse and water conveyance structures, at [redacted]. The Director, Office of Electric Power Regulation may require changes in the plans and specifications to assure a safe and adequate project.

Article 28. Licensee shall [redacted] of the proposed project [redacted] of the date of issuance of the license and [redacted] from the start of construction.

Article 29. [redacted] prior to the start of construction and shall ensure that construction of cofferdams and deep excavations are consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the Licensee shall file with the Commission's Regional Engineer and Director, Office of Electric Power Regulation one copy of the approved cofferdam construction drawings and specifications and a copy of the letter(s) of approval.

Article 30. Licensee shall, [redacted] from the date of issuance of this license, [redacted] by the Director, Office of Electric Power Regulation, a report to demonstrate that failure of the dam would not present a hazard to human life [redacted], and shall not commence construction of any project structures until the report is approved. The report filed should fully document all reconnaissance and studies performed to determine that failure of the dam will not present a hazard to human life or cause significant property damage under all flow conditions [redacted]. If the results of reconnaissance of the area downstream of the dam are inconclusive in determining the hazard potential of the dam, a dam break analysis should be performed and results of the analysis should consider failure under normal operating conditions and flood flows up to the rate where no significant increase in hazard to downstream life and property occurs. An inundation map and water surface profiles should be developed and furnished for the flow condition which results in the greatest potential for loss of life and significant property damage. The method and assumptions utilized in the dam break analysis should be fully documented. The inundation map and water surface profiles should delineate the affected areas and water surface elevations prior to and after the assumed failure. The map and profiles should also show the travel time of the flood wave at critical points downstream of the dam.

Tuttle Report
Dam 1/7
1/2 SPF
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Article 31. The Licensee shall [redacted] file for approval of the Director, Office of Electric Power Regulation [redacted] showing the final design and a final supporting design report for the proposed powerhouse, [redacted] and shall not commence construction of any project structures until the filing is approved.

X-Ref p. 2 *

Appeal

Article 32. The Licensee shall pay the United States an annual charge, effective the first day of the month in which this license is issued for the purpose of reimbursing the United States for the cost of administration of Part I of the Act. The charge shall be 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 5,520 horsepower.

Appeal

Article 33. Pursuant to Section 10(d) of the Act, after the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20 years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall be set aside in the project amortization reserve account. The amounts established in the project amortization reserve account shall be maintained until further order of the Commission.

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

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Article 34. The Commission reserves the authority to order, upon its own motion or upon the recommendation of Federal or State fish and wildlife agencies or affected Indian Tribes, alterations of project structures and operations to take into account to the fullest extent practicable at each relevant stage of the decision-making process the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 35. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

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

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

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

AR-35 (c)(2) amendment to Dallas Power & Light Co.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project

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development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Electric Power Regulation, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

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

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

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

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

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

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation,

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public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

Article 36. The Licensee, in consultation with the U.S. Environmental Protection Agency and the Idaho Department of Health and Welfare, shall prepare and file with the Commission's Regional Engineer in San Francisco, California, and the Director, Office of Electric Power Regulation, at least 60 days prior to any ground disturbing activity or spoil disposal at the Barber Dam Project, a detailed plan to control erosion and dust, and to minimize the quantity of inorganic sediment or other potential water pollutants resulting from construction and operation of project facilities, including dredging and spoil disposal. This plan shall include an implementation schedule, monitoring and maintenance programs for project construction and operation, and a summary and evidence of agency consultation. The Director, Office of Electric Power Regulation, may require changes in the plan to minimize erosion, dust, sedimentation, and water pollution problems.

(E) The application for preliminary permit filed by Cook Electric Company on October 23, 1980, for Project No. 3598 is denied.

Appeal (F) The Petition for Waiver of Ownership Requirements filed by Ada County, City of Boise, and Arthur Bloom is denied.

(G) Failure of the Licensee to file a petition appealing this order to the Commission shall constitute acceptance of this license. In acknowledgment of acceptance of this license, the license shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Lawrence R. Anderson
Director, Office of Electric
Power Regulation

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Project No. 4881-002

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, Ada County, City of Boise, and Arthur Bloom, this _____ day of _____, 19____, has caused its corporate name to be signed hereto by _____, its _____ President, and its corporate seal to be affixed hereto and attested by _____ its _____ Secretary, pursuant to a resolution of its Board of Directors duly adopted on the _____ day of _____ 19____, a certified copy of the record of which is attached hereto.

By_____
President

Attest:

_____
Secretary

(Executed in quadruplicate)

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Form L-2
(Revised October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

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

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

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

Article 3. The project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes 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, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alteration thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

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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 [redacted] 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 [redacted] 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. [redacted] 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, [redacted] 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, [redacted] 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 [redacted] 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. [redacted]

NB

Article 23. The Licensee shall interpose no objection to, and [redacted], 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, [redacted] 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 inconsistant 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 [redacted] and other uses of [redacted], 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 [redacted].

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 [redacted] 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 [redacted] 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 [redacted] 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 [redacted] 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 [redacted] 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.

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INTER-DEPARTMENT MEMO — 1

FROM David Shaw

DATE 2/6/84

TO 63-10028 – State O~~ffice~~ Water Elections

SUBJECT Earlier in time filing.

The attached letter references 63-9640 which is an application for 2000 cfs at Barber Dam. This application is earlier in time than Ada County's application and, if approved, would preclude the Ada County project.

I don't think, from this letter, we could approve the Ada County permit until a decision is reached on 63-9640.

SIGNATURE

DBS

Dennis S. Voorhees

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

February 1, 1984

Mr. David B. Shaw
Western Regional Supervisor
State of Idaho
Department of Water Resources
Statehouse
Boise, ID 83720

Re: Permit Application No. 63-9640

Dear David:

The Federal Energy Regulatory Commission issued an order granting a hydroelectric license to Ada County and others on December 23, 1983. At the same time it issued an order denying Cook Electric, Inc. an application for a preliminary permit on Barber Dam site. Both parties have taken appeals from the decision of the director of Office of Electric Power Regulation and expect a disposition on those not earlier than February 23, 1984.

Cook Electric will be litigating what has become known as the Georgia Pacific issue. Essentially the issue is whether a license applicant must respond in timely manner to a public notice issued on a preliminary permit application. The FERC says no, but its rules and policies would seem to indicate the contrary.

Should the full Commission dismiss the appeal of Cook Electric on the issue, I will file for rehearing, a procedural prerequisite to taking the issue to the United States Court of Appeals in either San Francisco or Washington, D.C.

I will keep you advised of the agency and court proceedings in this matter.

Sincerely yours,

Dennis S Voorhees

DENNIS S. VOORHEES

DSV/kjm

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Department of Water Resources
Western Regional Office

63-10028

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: C. M. Butler III, Chairman;
Georgiana Sheldon, J. David Hughes,
A. G. Sousa and Oliver G. Richard III.

Authur Bloom and Ada County	)	Project No. 4881-003
Cook Electric Company	)	Project No. 3598-000

ORDER GRANTING REHEARING FOR PURPOSE OF FURTHER CONSIDERATION

(Issued May 2, 1983)

The Appellant 1/, pursuant to 18 C.F.R. §385.713, 47 Fed. Reg. 19033 (1982) has filed an application for rehearing in the above-captioned proceeding. 2/ In order to review more fully the arguments raised, the Commission grants rehearing of the order solely for the purpose of further consideration. This action does not constitute a grant or denial of the application on its merits in whole or in part.

The Commission orders:

Rehearing of the Commission order in the above-captioned proceeding is granted solely for the purpose of further consideration. No responses to the application for rehearing will be entertained by the Commission. See §385.713(d) of the Commission's Rules of Practice and Procedure.

By the Commission

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(S E A L)

Kenneth F. Plumb,
Secretary.

1/ Cook Electric Company

2/ Order Dismissing Appeal as Moot, 22 FERC ¶61,273 (March 4, 1983).

63-10028

22 FERC ¶61,273

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: C. M. Butler III, Chairman; Georgiana Sheldon, A. G. Sousa and Oliver G. Richard III.

Arthur Bloom and Ada County) Project No. 4881-001

Cook Electric Company) Project No. 3598-000

ORDER DISMISSING APPEAL AS MOOT

(Issued March 4, 1983)

Cook Electric Company filed an application for a preliminary permit for the proposed Barber Dam Project, located on the Boise River in Ada County, Idaho (Project No. 3598-000). Arthur L. Bloom and Ada County, Idaho filed a competing application for exemption from licensing (Project No. 4881-000), which the Deputy Director, Office of Electric Power Regulation, rejected because it was filed late. Arthur L. Bloom and Ada County filed a timely appeal.

On September 7, 1982, Arthur L. Bloom, Ada County and the City of Boise filed an application for license for the Barber Dam site. By letter of February 7, 1983, the Director, Office of Electric Power Regulation, accepted the application in accordance with our policy, in competitive proceedings initiated by the filing of a preliminary permit application, of accepting license applications filed anytime before the issuance of a permit. Georgia Pacific Corporation, 17 FERC ¶61,174 (Nov. 12, 1981).

An exemption application is considered withdrawn upon acceptance of a license application filed by the same party. 1/ Similarly, an appeal of a rejected exemption application is rendered moot when the appellant's license application is accepted for filing.

1/ See 18 CFR §4.104(c)(2)(iii)(1982).

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The Commission orders:

Arthur L. Bloom and Ada County's appeal of the rejection of its exemption application is dismissed as moot.

By the Commission.

(S E A L)

Kenneth F. Plumb

Kenneth F. Plumb,
Secretary.

63-10028

P-4881-002

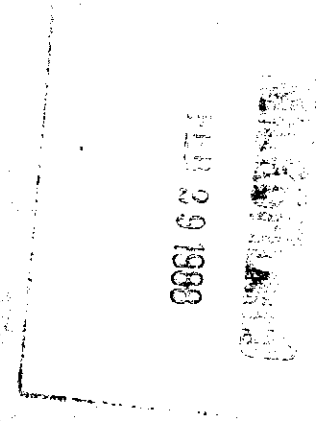
UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Filed with the Commission

(February 25, 1983)

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: License (5 MW or Less)

b. Project No: 4881-002

c. Date Filed: September 7, 1982

d. Applicant: Ada County, City of Boise, & Arthur L. Bloom

e. Name of Project: Barber Dam

f. Location: On Boise River, near Boise, in Ada County, Idaho

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§791(a) - 825(r)

h. Contact Person: William Kenney, Perito, Duerk, Carlson and Pinco, Suite 400, 1140 Connecticut Ave., N.W. Washington, D.C. 20036

i. Comment Date: APR 3 1983

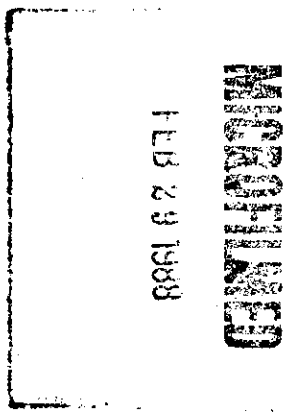
j. Competing Application: Project No. 3598 Date Filed: 10/23/80
Notice Issued: 2/1/81

k. Description of Project: The Barber Dam Project would consist of: (1) the existing 1,500-foot-long, 25-foot-high embankment and timber - crib Barber Dam; impounding, (2) a 180-acre reservoir; (3) a new intake structure; (4) a concrete powerhouse containing three generating units with a total installed capacity of 4,140 kW; (5) a 100-foot-long, concrete tailrace; and (6) a 175-foot-long transmission line. The run-of-the-river project would have an estimated average annual generation of 16.5 million kWh.

l. Purpose of Project: The energy generated by the project would be sold to Idaho Power Company.

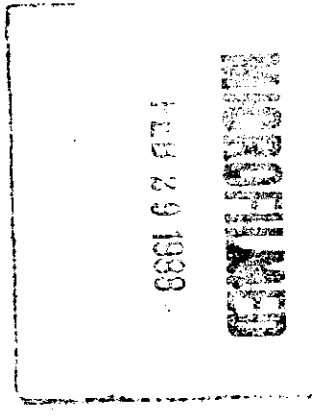
m. This notice also consists of the following standard paragraphs: A2, B, C, D1

A2. Applications for License -- Anyone desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either the competing application itself (see 18 CFR 4.33(a) and (d), and Part 16, where applicable) or a notice of intent (see 18 CFR 4.33(b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in §4.33(c) or §§4.101 to 4.104 (1982).



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 (1982). 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.

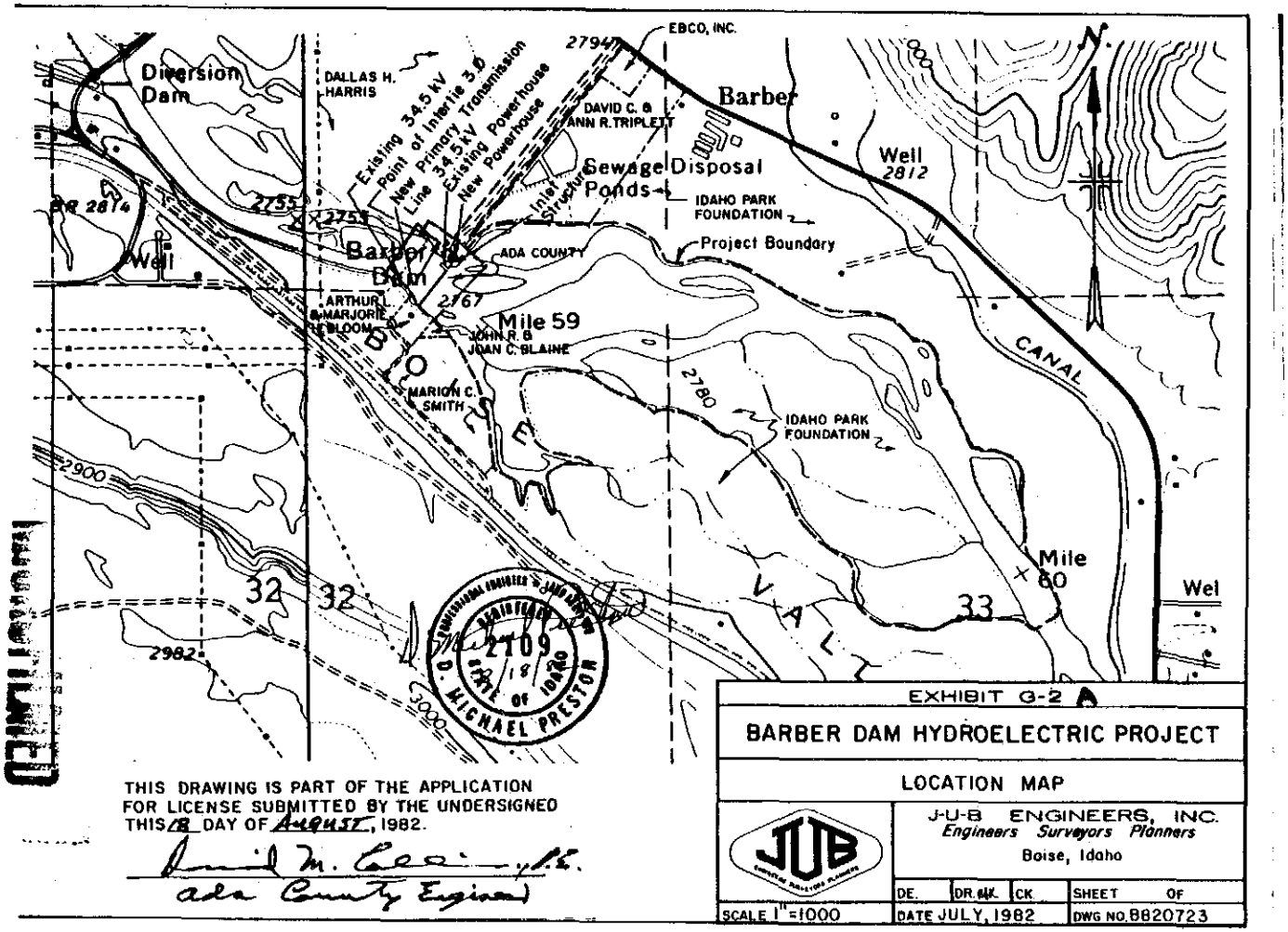
C. Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which 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: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 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.



D1. Agency Comments - Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kenneth F. Plumb
Secretary



THIS DRAWING IS PART OF THE APPLICATION FOR LICENSE SUBMITTED BY THE UNDERSIGNED THIS 18 DAY OF August, 1982.

David M. Case, P.E.
ada County Engineer

EXHIBIT G-2

BARBER DAM HYDROELECTRIC PROJECT

LOCATION MAP

JUB

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Boise, Idaho

DE.	DR. MK.	CK	SHEET	OF
SCALE 1"=1000	DATE JULY, 1982		DWG NO. 8820723	

FEB 29 1988

New power plant at Barber Dam planned by '86

THE IDAHO STATESMAN
BOISE, IDAHO
NOV 16 1983

By TOM KNAPPENBERGER
The Idaho Statesman

The historic landmark should be producing power for 1,100 homes in late 1986, after 50 years of slumber

If all goes according to plan, Ada County's long-neglected Barber Dam will regain its former glory in the next three years as an electrical power plant.

Abandoned as an electrical generator in the early 1930s, the 77-year-old dam could be producing 4,140 kilowatts of power by late 1986, Ada County Engineer Dave Collins said. The 16.5 million kilowatt-hours produced annually would light 1,100 homes.

Boise city and Ada County officials expect to receive their federal generating license in two to three weeks, Collins said. After a 30-day waiting period, they have 18 months under federal regulations to begin construction of the project.

Construction on the new powerhouse, with two or three turbines, should begin by next fall, Collins said, with the first electricity in 50 years to come from the dam by late 1986.

The city and county are jointly developing the power project because Ada County owns the dam and 10.5 surrounding acres, but cannot legally generate power as cities can.

To finance construction, the two governments may seek voter approval — probably next spring — for about $5.6 million of either revenue or general obligation bonds.

Either type of bond would be repaid from money made by selling the electricity to Idaho Power Co. Revenue bonds require majority voter approval, while general obligation bonds need a two-thirds vote, Spokane bond counsel Mike Moore said. Revenue bonds were used at no taxpayer expense to expand the Boise airport.

Original estimates had the city and county sharing $300,000 in annual net receipts from electrical sales, Collins said. Newer estimates have cut that to $150,000, but Collins said there are too many variables to accurately predict how much money the project will raise. Ada County and Boise will have to negotiate their shares of the income, Collins added.

A 2,000-square-foot power house is planned for just north of the old, empty concrete powerhouse on the north shore of the dam. There are no plans for remodeling the old powerhouse, Collins said, although county commissioners have discussed using it for a restaurant or an interpretive nature center for the nearby Barber Flats wildlife area.

The dam itself, about a half mile upstream from Barber Park, was built in 1904-1906 to generate electricity and to form a log-holding pond for the old Barber Lumber Co. mill. More than 100 families lived in the lumber company town until the mill shut down in 1932 because of dwindling lumber supplies.

The dam was neglected until 1977, when Ada County acquired it for payment of back taxes. The timber dam was said to be unsafe and there were calls to tear it down. Ada County rebuilt the dam with concrete facing in 1978, and Collins began pushing for a power plant.

License approval is almost assured, Collins said.

Under terms of the license, the county cannot change the height of the dam or the flow of the river. Collins said the project will have little environmental effect on the river and should not disturb fishing.

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

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

July 28, 1983

Ada County State of Idaho
650 Main Street
Boise, Id 83702

Gentlemen

We have completed a preliminary review of the above referenced application. This review has included advertising by the regional office and a verification that all required preliminary information has been provided.

For power projects that are under the jurisdiction of the Federal Energy Regulatory Commission (FERC), we withold final action on the application pending FERC approval of (1) a preliminary permit, or (2) an exemption. If you have not yet contacted FERC, the address below is a good starting point:

Regional Engineer
San Francisco Regional Office
Federal Energy Regulatory Commission
333 Market Street, Sixth Floor
San Francisco, CA 94105-2195
Telephone No. (415) 974-7177

The continued validity of this application is contingent on your proceeding with due diligence toward obtaining an approval or an exemption from FERC. Please keep this office informed of progress in this regard.

Sincerely

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L. GLEN SAXTON
Chief, Operations Bureau

LGS:jvv

6/2/83

NOTICE OF CORRECTION

Notice is hereby given that notice of Application for a Water Right Permit No. 63-10028 in the name of Ada County was published in error on 5/12 & 5/19/83.

The Applicant's name was advertised as being Ada County, WHEREAS, the actual name is Ada County, State of Idaho and the use of water and rate of diversion were advertised as being irrigation and .09 cfs. WHEREAS, the actual use of water and rate of diversion is for irrigation .09 cfs and power 3,000 cfs.

If issued, the permit will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, Statehouse, 450 W. State St., Boise, ID 83720 on or before June 27, 1983.

Ken Dunn, Director

Published in the Idaho Statesman on 6/9 & 6/16/83

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FEB 29 1988

DBS

IDAHO DEPARTMENT OF FISH AND GAME
REGION 3
109 West Forty-fourth Street
Boise • Idaho • 83704

May 19, 1983

Mr. David B. Shaw
Western Regional Supervisor
Department of Water Resources
450 W. State Street
Boise, Idaho 83720

Dear David: RE: Permit No. 63-10028

Idaho Department of Fish and Game personnel have reviewed the above referenced application. We have no objection to the issuance of this permit.

Thank you for the opportunity to review and comment on this application.

Sincerely,

Stacy Gebhards
Regional Supervisor
Region 3

FEB 29 1988

RECEIVED
MAY 20 1983
Department of Water Resources
Western Regional Office

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

May 6, 1983

Stacy Gebhards
Regional Supervisor
Idaho Department of Fish & Game
Region 3/Statehouse

Re: Application for Permit No. 63-10028

Dear Stacy:

Enclosed is a copy of the above referenced application for permit which may be of interest to your agency. Please review the application and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter, however, if your agency desires to file a formal protest against the approval of this application, your written protest must be received in this office by May 31, 1983.

If you have any questions regarding the application, please contact this office.

Sincerely,

DAVID B. SHAW
Western Regional Supervisor

DBS:jp

Enclosure

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FEB 29 1988

63-10028

ADA COUNTY

650 MAIN ST., BOISE, ID 83702

Source: BOISE RIVER trib. to SNAKE RIVER

Date Filed: 04/28/1983

Diversion Pt: SWSE Sec 29 T 03N R 03E

Use: IRRIGATION (0.09 CFS)

In: SWSE Sec 29 T 03N R 03E FOR 3 ACRES

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FEB 29 1988

3/79

IDENT. NO. 63-10028

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT DATA ENTRY LOG

Initials	Date	Item
jp	5/5/83	Original form entered
		Edit Report Correct
		Date Protested
		Date of Hearing
		Date Approved/Denied (Proof due date, stage and/or status, conditions of approval, water district)
		Record Verified
		Amendment Approved
		Extension Approved
		Partial Proof
		Proof Complete
		Field Exam Received
		Field Exam Accepted and changes entered
		License Signed
		Transfer Approved
		Keypunched by State Office

September 22, 1987

RECEIVED
SEP 22 1987
Department of Water Resources

Kay Walker
Technical Records Specialist
State of Idaho
Department of Water Resources

Re: Barber Dam #63-1028 #63 9653

Dear Kay:

Thank you for your assistance in helping me process the Barber Dam Application. I am providing you with the additional information you requested.

4,5,3,1,1. The Boise River has more than 5 users. The Barber Dam permit is for non-consumptive use and is the only user at this site. ✓

4,5,3,1,3. The Barber Dam application is for a non-consumptive use to produce power at an existing dam site. Water will continue to flow over the existing spillway, and all water run through the turbines will be returned to the existing river channel. No areas of the river will be dewatered. Thus any existing rights will be unaffected. ✓

4,5,3,2,1. There will be no consumptive use of water. Peak use is estimated at 2000CFS (3967 acre Ft per day) Average use would be 1900CFS (2777 acre Ft. per day) Volume on a yearly average would be 1,013,605 acre Ft. Water will be used during each month of the year; The amount used will be determined by water flows in the river.

4,5,3,2,2. A flow duration curve is provided (see appendix 1.). No ground water will be used. Sole source is the Boise River.

4,5,3,3,1. The department of Water Resource has a copy of the F.E.R.C. license issued for this project. Ada County owns the ground and dam for project works. A copy of the letter from the Prosecuting Attorneys Office is provided. A copy of the access agreement is also provided. The title page and signature page of the Power Purchase Agreement with Idaho Power is also provided. Compliance with sections 42-205 & 42-206 Idaho Code 1. Section 205 The Boise River.

42-205

a) Ada County (applicant) owns the ground.
b) Does not apply - no prior application.

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42-206 Does not apply, Ada County is permitted to do business in the State of Idaho.

4,5,3,3,2. See Appendix 3

4,5,3,4,1. See Appendix 4

4,5,3,4,2. The existing powerhouse will be remodeled to accept new turbines and generators (see Appendix 5). Estimated cost of construction is 5 million dollars.

2,5,3,5,1 The County is the property owner, Interwest Hydro, Inc. is the leasee (see Appendix 6). Letters are enclosed from Fish & Game Division of Environment.

Sincerely,

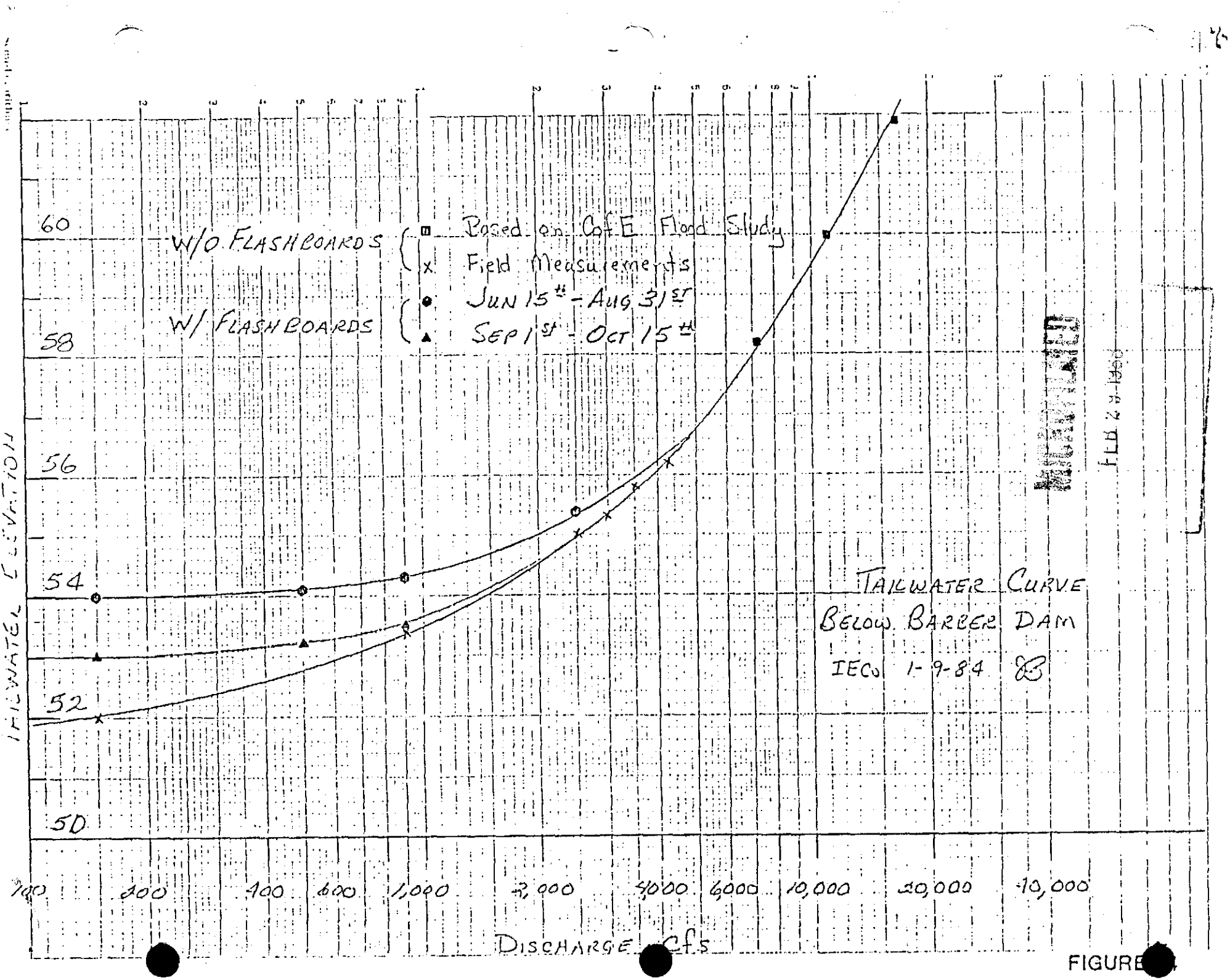
Bruce Blaser

Bruce Blaser
Fulcrum, Inc.

BB/dt

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FEB 23 1988


W/O FLASHBOARDS
W/ FLASHBOARDS
Based on CofE Flood Study
Field Measurements
JUN 15th - AUG 31st
SEP 1st - OCT 15th
TAILWATER CURVE
BELOW BARBER DAM
IECo 1-9-84
TAILWATER ELEVATION
60
58
56
54
52
50
100
200
400
600
1,000
2,000
4000
6000
10,000
20,000
40,000
DISCHARGE cfs

FIGURE

OFFICE OF
THE PROSECUTING ATTORNEY
COUNTY OF ADA
JIM C. HARRIS
PROSECUTING ATTORNEY
ADA COUNTY COURTHOUSE, BOISE, IDAHO 83702
(208) 384-8750

July 15, 1982

MEMORANDUM

Opinion 82-70

TO: Board of Ada County Commissioners

FROM: J. Kelley Wiltbank, Deputy Prosecuting Attorney

RE: Authority of Idaho Counties to Join With Municipalities For the Production of Electrical Energy

Dear Commissioners:

This office has been asked to research the authority of Idaho counties to join with a municipality for the purpose of generation of electrical energy by the municipality. This question is presented to us couched in the specific facts of the disposition of Barber Dam.

Ada County acquired title to Barber Dam in a Deed from the Boise River Conservancy, on June 1, 1978, for the purpose of maintaining the dam for the public as a part of the Boise River Green Belt system. Extensive repairs in the amount of $298,000.00 were completed in order to insure the dam's safety. Ada County has continued the upkeep of the dam and has maintained liability insurance on the structure which amounts are essentially unrecoverable. In the fall of 1980, Ada County determined that it wished to sell or otherwise dispose of the dam site in order that it not be a drain on the county tax dollar. The board has studied the possible options of selling the dam, and now, in the alternative, has determined to explore the possibility of joining with the city of Boise in order that the city might develop a hydroelectric facility and sell energy to offset the costs of electrical energy to the tax payers of Ada County. In order to proceed with this second option, the Board of County Commissioners has filed a co-application with the city of Boise and with Mr. Arthur L. Bloom to the Federal Energy Regulatory Commission for a license to develop a minor hydroelectric project. The intent of the parties is to develop two separate and distinct projects. The county and the city propose to develop a hydroelectric plant as stated above. The County would still retain title to the dam and instead of a one time purchase payment made to the county, both the city and county would have an additional revenue source to offset property taxes. Mr. Bloom, who is the abutting owner on the south side of the

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dam joins with the city and county in order to provide the highest and best integrated and compatible use of the river flow year round.

Idaho counties are subdivisions of state government whose creation and powers are derived from the Idaho Constitution and the state statutes and are limited to those powers expressly conferred on them or necessarily implied or incidental to those express powers. While I can find no statutory or constitutional grant of authority for Idaho counties to be involved in the generation and sale of energy, public agencies in the State of Idaho, which are defined as "any city or political subdivision of the state, including, but not limited to counties;. . ." may enter into agreement for the joint exercise of powers to exercise any power, privilege and authority which each has independently. No power, privilege or authority, however, may be extended beyond the power, privilege or authority which agency has if it were acting alone. In view of the facts as presented to me, Ada County would continue to own the dam but would not be in the position of developing the generating facilities nor would they sell the electrical energy both of which would be left to the city of Boise. It is therefore the opinion of this office that through the joint exercise of powers, Ada County is authorized under the constitution and the statutes to join with the city of Boise for this purpose.

Should you have any further questions, please do not hesitate to contact me.

Sincerely,

J. Kelley Wiltbank
Deputy Prosecuting Attorney

JKW:ks

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FEB 29 1988

ACCESS AGREEMENT AND GRANT OF EASEMENT

This Access Agreement and Grant of Easement (hereinafter "Agreement") is made this 21st day of September, 1987, between DALLAS H. HARRIS and ALTA HARRIS, Husband and wife (hereinafter "Grantors") and FULCRUM, INC., an Idaho corporation (hereinafter "Grantee").

R E C I T A L S:

The following recitals of fact are a material part of this Agreement:

1. On December 23, 1983, the Federal Energy Regulatory Commission ("FERC") issued its Order granting a major license to Ada County, the City of Boise, and Arthur L. Bloom under Part 1 of the Federal Power Act, for a period of forty (40) years, for the construction, operation, and maintenance of the Barber Dam Hydroelectric Project No. 4881, located on the Boise River approximately seven (7) miles southeast of Boise, Ada County, Idaho (hereinafter the "Project").

2. Arthur L. Bloom and the City of Boise have transferred and assigned all of their interest in said FERC license to Grantee and Ada County.

3. Grantors are the owners of certain real property in Ada County, state of Idaho, including that certain portion thereof to be subject to the easement provided for herein, which is more particularly described in Exhibit "A" which is attached hereto and by reference made a part of this Agreement (hereinafter the "Easement Premises"). The easement granted hereby consists of a

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thirty-three (33) foot wide access road running from Idaho State Highway 21 in a southwesterly direction, across the Easement Premises, approximately two thousand one hundred twenty-seven (2,127) feet to the Barber Dam site. The easement generally follows the currently existing road which is sometimes referred to as "Lysted Road". Also included in the Easement Premises is an easement to the earth fill dam embankment, extending northeast from the Barber Dam Power House, and adjacent to the access road described above, for use as an access to the upper portions of the power house.

4. Grantee has an interest in a tract of land (hereinafter the "Dominant Premises") as evidenced by a Lease with Ada County, which is attached hereto as Exhibit "B" and by reference made a part hereof.

5. The Dominant Premises are presently improved with a structure commonly referred to as the Barber Dam (hereinafter "Barber Dam"), and the remnants of a power house immediately adjacent thereto. It is the Grantee's intent to use the easement provided for in this Agreement for the construction, maintenance, inspection, and operation of the Project.

6. In exchange for the agreements of Grantee contained in this Agreement, Grantors are prepared to grant and Grantee wishes to receive an easement over and across the Easement Premises for the purposes described in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and promises of the parties contained in this Agreement, the following grants, agreements, covenants and

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restrictions are made:

1. GRANT OF EASEMENT. Grantors hereby grant to Grantee as an easement appurtenant to the Dominant Premises, a non-exclusive easement as described in recital number 3 above, for ingress and egress over and across the Easement Premises. After completion of the Project, Grantee is required under its FERC License to obtain an "as built" project survey which will include a survey of the easement premises. If said survey reveals that the current legal description set forth in Exhibit "A" is inaccurate, the parties will execute the necessary amendment to this Agreement to correct said legal description. Said right-of-way easement is granted for the purpose of allowing Grantee or its successors or assigns ingress and egress to construct, operate, inspect and maintain the Project, pursuant to the authority granted under FERC License No. 4881, and any extensions thereof or amendments thereto.

2. PUBLIC USE RESTRICTION. This easement is not intended for public ingress and egress to the Dominant Premises or adjoining property. Grantee agrees that it will not permit such public access except to the extent that the same may be required under the FERC License or applicable statutes or regulations. Grantees shall have the right to take guests to the Project site, so long as such guests remain under the supervision of Grantees; but there shall be no commercial uses of the premises other than those permitted in the FERC License.

3. USE OF EASEMENT PREMISES. Use of the easement over

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FEB 29 1988

and across the Easement Premises is confined to the maintenance of Barber Dam and the construction, maintenance, inspection, and operation of the Project. This construction, maintenance and operation shall be so conducted as to not interfere unreasonably with the use by Grantors of the Easement Premises as hereinafter reserved. The installation or maintenance by Grantee of pipes, conduits, or wires, under, upon or over the Easement Premises is forbidden, except where expressly provided for by this Agreement. Exclusive use of the Easement Premises is not hereby granted. The right to use the Easement Premises likewise for ingress or egress, is expressly reserved by Grantors. In addition, Grantors reserve the right to move livestock, vehicles, equipment, produce, and materials across or upon the Easement Premises to other premises owned or leased by Grantors and to State Highway 21 and any other public road that may become assessable by use of the Easement Premises. This right shall be appurtenant to any land now owned by Grantors and to any land that may hereafter come into Grantors' ownership and that is contiguous to the Easement Premises. Any area physically separated from the Easement Premises but having access thereto by means of public ways or private easements, rights or licenses is deemed to be contiguous to the Easement Premises. Grantors shall not use or otherwise allow livestock, vehicles, equipment, produce, materials or other items to be placed or remain upon the Easement Premises in any manner that would interfere unreasonably with the use by Grantee of the Easement Premises as herein provided, such as use of the easement

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FEB 29 1988

premises as a pasture or a holding pen. However, it is understood and agreed that cattle will roam back and forth across the easement premises between the two fenced areas on either side and that there will be gates on either side so that cows can pass from one side to the other.

4. POWER LINE. Grantors hereby further grant to Grantee the right to have Idaho Power Company upgrade the existing power line running from the Barber Dam Power House northeasterly approximately 2,127 feet parallel to the easement roadway granted herein, to the power line running along Highway 21, or bury a power line along said route. Grantors hereby further grant to Grantee the right to have Mountain States Telephone and Telephone Service bury a telephone cable along said route.

5. USE OF THE DOMINANT PREMISES. This easement grant shall remain in effect only so long as the Dominant Premises are used for the construction, maintenance, inspection, and operation of the Project, including the construction or location of a single family residence thereon for the project operator to reside in. It is understood and agreed that such operator and his family, if any, or any guests of such operator, will not engage in any activities which would unreasonably interfere with Grantor's farming or livestock operations or any other rights of Grantors under this Agreement. If the operator has dogs for pets, the same shall be kept in a kennel with non-see through walls on the sides of the kennel which face the Harris property. The Project Site on the Dominant Premises ("Project Site"), including the area where a

RECORDED
FEB 29 1988

house might be constructed, will be surrounded by a fence approximately six (6) feet in height which is constructed in such a manner that people and animals will be prevented from passing through it.

6. DISTURBANCE OF CATTLE. Grantee agrees to use reasonable care not to disturb Grantors' cattle in the fields adjacent to the Easement Premises and not to allow animals which are not owned or under the control of Grantors to be on the Easement Premises, except if they are being transported by vehicle to or from the Dominant Premises.

7. IMPROVEMENT AND MAINTENANCE OF EASEMENT.

(a) Gates: Grantee shall within thirty (30) days after start of construction, construct a gate near the northerly entrance to the Easement Premises. This gate shall be a tubular steel gate adequate to retain livestock and shall be in the same location as the gate which presently exists near the southwesterly boundary of State Highway 21. This gate shall be kept locked at all times, except when the Easment Premises are in use as provided for in this Agreement. Both Grantee and Grantors shall be entitled to keys to the gate.

(b) Sign: Within thirty (30) days after the start of construction, Grantee shall install a sign next to the gate near the southwesterly boundary of State Highway 21, which states: "Not for Public Access".

(c) Improvement of Surface: Grantee may improve the Easement Premises with any surface Grantee desires to construct.

(d) Maintenance: Any maintenance which Grantee chooses to make to the Easement Premises, the gate, and the sign shall be at its sole cost and expense.

9. RELOCATION OF EASEMENT. Grantors reserve the right to relocate the Easement Premises, as follows:

(a) Grantors shall first notify Grantee of the proposed relocation by mailing notice to Grantee showing the proposed relocation and the probable commencement and completion dates, at least thirty (30) days prior to the

FEB 29 1988

commencement of relocation.

(b) Grantors shall improve the new easement premises with the same surface as the one replaced and shall relocate the gate and sign constructed and installed by Grantee at Grantors' sole cost and expense.

(c) At the completion of the relocation work, Grantors shall record an easement grant in recordable form granting the new easement to Grantee and shall cause the same to be delivered to Grantee, whereupon the change in the location of the Easement Premises shall become effective, and appropriate releases of the prior location shall be executed in recordable form and exchanged between the parties hereto, their successors or assigns.

(d) The new easement shall contain the same terms and conditions as set forth herein, except for the legal description of the new easement premises. Until the new easement has been installed to Grantee's satisfaction and the easement is recorded, the surface on the existing easement shall not be disturbed and Grantee shall continue to have the right to exercise any and all rights granted herein with respect to the easement at its original location.

10. CONSIDERATION. Grantee agrees to pay Grantors the sum of FOUR THOUSAND and NO/100 DOLLARS ($4,000.00) (the "Base Amount") upon the execution of this Agreement. For each succeeding year until the fifth anniversary of the execution of this Agreement, Grantee shall pay to Grantors the sum of FOUR THOUSAND and NO/100 DOLLARS ($4,000.00) on the anniversary of the execution of this Agreement. For the year beginning with the fifth anniversary of the execution of this Agreement and each year after the fifth anniversary of the execution of this Agreement, so long as the easement provided for herein is in effect, Grantee shall pay to Grantors an adjusted Base Amount, which shall be computed as follows:

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FEB 29 1988

(a) On such date or dates as the purchase price for killowatt hour to which Grantee is entitled under its Firm Energy Sales Agreement with Idaho Power Company or any other purchaser on the Project is increased or

decreased, the annual lease payment due hereunder shall be increased or decreased by the same percentage. By way of example, if Grantee receives a ten (10%) percent increase in the purchase price which it receives from Idaho Power for energy produced at the Project, then the annual lease payment to which Grantors are entitled shall likewise be increased by ten (10%) percent. Said percentage increase shall be prorated in the year in which it occurs. By way of example, if an increase occurs on July 1, Grantors shall be entitled to one-half of the percentage increase in the year in which the increase occurs. Said increase shall be paid to Grantor in the same month in which Grantee begins receiving said increase. However, notwithstanding the foregoing, in no event shall the annual lease payment be less than the Base Amount of $4,000.00.

11. INDEMNITY. Grantee agrees to indemnify Grantors against all liability of Grantors which may result from, arise out of, or be attributable to the negligence of Grantee in the use of the Easement Premises by Grantee or its agents or contractors, or any construction, maintenance or repair undertaken pursuant to this Agreement by Grantee or its agents or contractors, or which results in any cattle escaping from the easement premises as a result of the gate being left open or unlocked by Grantee or its agents or contractors. Grantors agree to indemnify Grantee against all liability of Grantee which may result from, arise out of, or be attributable to the negligence of Grantors in the use of the easement premises by Grantors or their agents or contractors, or any other activities engaged in or carried on by Grantors or their agents on the properties adjoining or which are near the easement premises. During the term of this Agreement, Grantor and Grantee shall each secure and continuously carry comprehensive general liability insurance for both bodily injury and property damage equivalent to the amount of one million dollars combined single limit. Such insurance shall:

(a) Include an endorsement naming the other party as an additional insured insofar as liability arising out of or releavnt to this Agreement is concerned; and

(b) Include a provision stating that such liability policies shall not be cancelled or their limits of liability reduced without thirty (30) days written notice to the other party. Each party shall furnish the other a certificate of such insurance, together with the endorsements required therein, evidencing the coverages set forth above.

12. RUNNING OF BENEFITS AND BURDENS. All provisions of this Agreement, including the benefits and burdens, run with the

RECORDED

FEB 29 1988

land and are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.

13. RETENTION OF RIGHTS. Grantors retain all rights to the property not specifically granted herein to Grantee. This Agreement shall terminate if Grantee or its successors or assigns abandon or cease to generate hydroelectric power at the Barber Dam site continuously for more than one (1) full year, unless Grantees are in the process of constructing or remodeling the Project, and in the event of such abandonment or cessation all rights granted by this Agreement shall revert to the Grantors. When the easement is terminated, if a residence has been constructed on the Dominant Premises, the use of the easement granted herein for access to and from such residence shall not be deemed to create any right or claim in the occupance of such residence to continued use of the easement for ingree and egress to said residence.

14. REVERSIONS OF IMPROVEMENTS ON TERMINATION. Upon the termination of the easement provided for in this Agreement, Grantee shall have the right to remove and retain ownership of any and all equipment, fixtures, and materials. The word "materials" as used herein does not refer to the surface improvement of the roadway located upon the Easement Premises. All such improvements not so removed within a reasonable time by Grantee shall revert to and become the property of the Grantors. Grantors shall have no obligation to reimburse Grantee for these improvements which are abandoned.

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15. RELEASE OF EASEMENT. Grantee may terminate the easement provided for in this Agreement by recording a release in recordable form and by personally serving Grantors with a copy of the release as recorded. Whereupon, all rights, duties, and liabilities hereby created shall terminate. For convenience this Release of Easement may run to "the owner or owners and parties interested" in the easement premises. In the event of such termination, any remaining portion of an annual lease payment which has already been tendered to Grantor shall not be refundable.

16. ATTORNEY FEES. Either Grantors or Grantee may enforce this Agreement by appropriate action. Should the party seeking to enforce this Agreement prevail in the action, that party shall recover as part of the costs of such action, a reasonable attorney fee.

17. COMPLIANCE WITH FERC LICENSE. It is the intent of this Agreement to comply fully with the terms and conditions of the federal license for FERC Project No. 4881. If further construction or additions to the project are required by law or regulation, or if any modification to this Agreement is required by law or regulation, Grantee shall notify Grantor in writing of the need for such further construction, additions or modifications and shall obtain Grantor's approval therefor; provided, however, that Grantor's consent and approval will not be unreasonaby withheld. Any modifications or amendments to this Agreement must be in writing and signed by the parties hereto, and must be in conformance with the requirements of said FERC license.

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IN WITNESS WHEREOF, Grantors and Grantee have signed this Agreement on the day and year first above written.

GRANTORS:

Dallas H. Harris

Alta Harris

GRANTEE:

FULCRUM, INC., an Idaho corporation

By _____
Its President

ATTEST:

_____
Secretary

STATE OF IDAHO)
) ss.
County of Ada)

On this 16 day of September, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared DALLAS H. HARRIS and ALTA HARRIS, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument and who acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Rita Lee
Notary Public for State of Idaho
Residing at:

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FEB 29 1988

STATE OF IDAHO)
) ss.
County of Ada)

On this 21st day of September, in the year 1986, before me, the undersigned, a Notary Public in and for said State, personally appeared A. Leon Blase and Bruce W. Blase, known or identified to me to be the President and Secretary of FULCRUM, INC., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public for State of Idaho
Residing at: Boise

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Facility No: 21615078
Project: Barber Dam

FIRM ENERGY SALES AGREEMENT

THIS AGREEMENT, entered into on this 13th day of July, 1987, is between INTERWEST HYDRO, INC, a corporation (Seller), and IDAHO POWER COMPANY, a Maine corporation (Idaho) hereinafter sometimes referred to collectively as "parties" or individually as "party."

W I T N E S S E T H:

WHEREAS, Seller plans to construct, own and operate an electric generation facility; and

WHEREAS, Seller wishes to sell, and Idaho has been ordered by the Commission to agree to purchase, electric energy from that facility,

THEREFORE, In consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

ARTICLE I: DEFINITIONS

As used in this Agreement and the appendices attached hereto, the following terms shall have the following meanings:

1.1 "Annual Net Firm Energy" - The amount of Net Firm Energy Seller estimates it will deliver to Idaho at the Point of Delivery during each Contract Year.

1.2 "Commission" - The Idaho Public Utilities Commission.

1.3 "Contract Year" - The period commencing each calendar year on the same calendar date as the Operation Date and ending 364 days thereafter.

1.4 "Designated Dispatch Facility" - Idaho's Boise Bench System Dispatch Center.

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ARTICLE XXVIII: ADDITIONAL TERMS AND CONDITIONS

This Agreement includes the following appendices, which are attached hereto and included by reference:

Appendix A	-	Standards for Interconnection and Metering
Appendix B	-	Special Facilities, Point(s) of Delivery and Metering, and Operation Date
Appendix C	-	Schedule of Required Licenses and Permits
Appendix D	-	Lump Sum Payment
Appendix E	-	Operating Instructions

ARTICLE XXIX - ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement of the parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements between the parties concerning the subject matter hereof.

IN WITNESS WHEREOF, The parties hereto have caused this Agreement to be executed in their respective names on the dates set forth below:

IDAHO POWER COMPANY

By _____
Vice President - Planning, Resources and Rates

Dated 7-13-87
"Idaho"

INTERWEST HYDRO, INC

By _____
Leon Blaser
President

Dated: 8 July 87
"Seller"

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IDAHO DEPARTMENT OF FISH AND GAME
600 South Walnut • Box 25
Boise • Idaho • 83707

November 21, 1986

Mr. Bruce Blazer
Interwest Financial
3350 Americana Terrace
Boise, ID 83706

Re: Barber Dam Hydroelectric Project, FERC No. 4881

Dear Bruce:

Thank you for providing the information on the power line route and raptor proof pole construction for the above project.

The short length of the intertie and use of the "Eagle safe" design should minimize any potential impacts. With these features, we find the transmission line design acceptable as proposed.

As for the dredging to be conducted in lieu of removing the small island which we discussed, could you provide us with a schematic of the dredging boundaries with an indication of existing and post-dredging bottom elevations (or depths). Would you also include the measures planned to minimize downstream movements of sediments?

Sincerely,

Al Van Vooren
Staff Biologist

cc: Reg. 3
USFWS
FERC (Portland)

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Ada County, the City of Boise, and Arthur L. Bloom
Ada County and Fulcrum, Inc.

Project No. 4881-008

ORDER APPROVING TRANSFER OF LICENSE

(Issued March 24, 1987)

Ada County, the City of Boise, and Arthur L. Bloom seek Commission approval to transfer their license for the Barber Dam Project to Ada County and Fulcrum, Inc. The project is located on the Boise River in Ada County, Idaho. The purpose of the transfer is to facilitate the financing, development, and construction of the licensed project.

Ada County, the City of Boise, and Arthur L. Bloom have fully complied with the terms of the license and agree to pay annual charges that have accrued to the date of the transfer. Ada County and Fulcrum, Inc. are qualified to hold the license and operate the property under license and agree to accept all of the terms and conditions of the license and to be bound by the license as if they were the original licensees.

No comments, protests, or motions to intervene were filed in response to the public notice of the application to transfer the license. Transfer of the license for this project is consistent with the Commission's regulations and is in the public interest.

The Director orders:

(A) Transfer of the license for this project is approved.

(B) Approval of the transfer is contingent upon transfer of title of the properties under license and delivery of all license instruments to Ada County and Fulcrum, Inc., which shall be subject to all terms and conditions of the license as though they were the original licensees. Ada County and Fulcrum, Inc. shall submit certified copies of all instruments of conveyance within 60 days from the date of this order.

(C) This order is issued under authority delegated to the Director and is final unless appealed to the Commission under Rule 1902 within 30 days from the date of this order. Ada County and Fulcrum, Inc. shall acknowledge acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet within 60 days from the date of this order.

William C. Wakefield II
Acting Director, Division
of Project Management

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Ada County, the City of Boise, and Arthur L. Bloom
Ada County and Fulcrum, Inc.

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FEB 29 1988

William C. Wakefield II
Acting Director, Division
of Project Management

Project No. 4881-008

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, Ada County this _____ day of _____, 19____, has caused its name to be signed hereto by _____, _____, and _____, its Commissioners, and its corporate seal to be affixed hereto and attested by _____ its _____ Secretary, pursuant to a resolution of its Board of Commissioners duly adopted on the _____ day of _____ 19__, a certified copy of the record of which is attached hereto.

ADA COUNTY

_____
Commissioner

_____
Commissioner

_____
Commissioner

Attest:

_____
Secretary

(Executed in quadruplicate)

United States Department of the Interior

FISH AND WILDLIFE SERVICE

BOISE FIELD OFFICE
4696 Overland Road, Room 576
Boise, Idaho 83705

December 12, 1986

Mr. Bruce Blaser
Interwest Financial
3350 Americana Terrace
Boise, Idaho 83706

Re: Barber Dam Hydro Project
FERC #4881

Dear Mr. Blaser:

Thank you for your letters of October 27 and November 19 which transmitted drawings of the proposed powerline route and raptor-proof pole construction for the referenced project. We approve of these planned project features as proposed.

Sincerely yours,

John P. Wolflin
Field Supervisor

cc: IDFG, HQ, Boise
IDFG, Region 3, Boise
FWS, AES, Portland
FERC, Portland
FERC, Hydropower Licensing, Washington, D.C.

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FEB 29 1988

Received 2826. 1987

United States Department of the Interior

FISH AND WILDLIFE SERVICE

BOISE FIELD OFFICE
4696 Overland Road, Room 576
Boise, Idaho 83705

February 24, 1987

Mr. Bruce Blaser
Interwest Financial
3350 Americana Terrace
Boise, Idaho 83706

Re: Barber Dam Hydro Project
FERC #4881

Dear Mr. Blaser.

Thank you for your December 12, 1986 letter transmitting a copy of the mitigation plan for the referenced project.

For the most part, we found the mitigation plan acceptable. However, it only suggests the general timing of construction that could mitigate adverse effects on nesting waterfowl and other wildlife. The plan leaves some doubt that construction will occur during late summer, fall, and early winter. Further, your application for a Section 404 permit indicates a proposed starting date of "Early 1987."

Since we consider this project to be in Resource Category II habitat, we recommend you reconcile this discrepancy and define construction dates that will minimize disturbance of waterfowl nesting. Thank you for the opportunity to comment on this document.

Sincerely yours,

Robert L. Parenti
for John P. Wolflin
Field Supervisor

cc: IDFG, State Office, Boise
IDFG, Reg. 3, Boise
EPA, Boise
FERC, Hydropower Lic., Washington, D.C.
FERC, Portland

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Received May 12 87

United States Department of the Interior

FISH AND WILDLIFE SERVICE

BOISE FIELD OFFICE
4696 Overland Road, Room 576
Boise, Idaho 83705

May 11, 1987

Mr. Bruce Blaser
Secretary-Treasurer
Interwest Financial
3350 Americana Terrace
Boise, Idaho 83706

Re: Barber Dam Hydro Project
FERC #4881

Dear Mr. Blaser:

Thank you for your March 25 letter describing the construction schedule for the referenced project. It provides the assurance that construction will not disturb waterfowl nesting. We appreciate you clarifying this detail in the mitigation plan, making the plan completely acceptable.

Sincerely yours,

John P. Wolflin
Field Supervisor

cc: IDFG, State Office, Boise
IDFG, Reg. 3, Boise
EPA, Boise
FERC, Portland
FERC, Hydropower Lic., Washington, D.C.

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Region 3
109 W. 44th St.
Boise, Idaho 83714
Telephone (208) 334-3725

March 17, 1987

Bruce Blaser
Interwest Hydro Inc.
3350 Americana Terrace # 300
Boise, ID 83706

Re: Barber Dam Hydro/FERC 4881-001

Dear Mr. Blaser:

Idaho Department of Fish and Game personnel have reviewed the proposed final mitigation plan for the proposed Barber Dam Project, FERC No. 4881-001.

Based on the material submitted, we feel that construction of the project will have minimum environmental impacts. Timing of various construction phases will do much to alleviate potential problems with turbidity and waterfowl disturbance, as you have addressed in the mitigation proposal.

Thank you for the opportunity to comment.

Sincerely,

Stacy Gebhards
Regional Supervisor
Region 3/Boise

SG:WR:l

cc: Program Coordination

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EQUAL OPPORTUNITY EMPLOYER

600 South Walnut • Box 25
Boise, Idaho 83707

September 8, 1987

Mr. Bruce Blaser
Interwest Financial, Inc.
3350 Americana Terrace
Boise, ID 83706

Re: Barber Dam Hydro, FERC #4881.

Dear Mr. Blaser:

We concur that a plan for clearing the reservoir area is irrelevant to the Barber Dam project as the proposed project will not result in any additional land being inundated. We feel the mitigation plan for preservation of existing vegetation adequately meets concerns on vegetation impacts.

Sincerely,

Al Van Vooren
Resident Fisheries Manager

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EQUAL OPPORTUNITY EMPLOYER

Dr. David L. Crowder
Director and
State Historic Preservation Officer
210 Main St.
Boise, Idaho 83702
208-334-3890

IDAHO STATE HISTORICAL SOCIETY

CECIL D. ANDRUS, Governor

Archaeology/Oral History
210 Main St.
Boise, Idaho 83702
208-334-3847, 3863

Museum
610 N. Julia Davis Dr.
Boise, Idaho 83702
208-334-2120

Library and Archives
610 N. Julia Davis Dr.
Boise, Idaho 83702
208-334-3356

Old Idaho Penitentiary
2445 Old Penitentiary Rd.
Boise, Idaho 83712
208-334-2844

August 21, 1987

Mr. Bruce Blazer
Interwest Hydro
3350 Americana Terrace, Suite 300
Boise, Idaho 83706

Dear Mr. Blazer:

Thank you for the opportunity to discuss the proposed project involving Barber Dam and Powerplant with you and representatives from Bonneville Pacific and J.U.B. Engineering on July 29, 1987. As you know, the property was listed in the National Register of Historic Places in 1978 as a significant example of early hydropower technology in Idaho.

Jennifer Attebery, State Architectural Historian, and I believe a major issue in this particular project will be the downstream construction of external gates for periodic access to the turbines. As described, these gates may have an adverse visual effect on the structure unless carefully designed. Other items in the proposed project which should be carefully addressed include the removal of the log screen and the original wood gates. Of lesser importance will be the interior wall modifications to accommodate the new turbine units.

Please note that our comments are specifically addressing concerns which we feel may affect this project as a qualifying Tax Reform Act rehabilitation (the 20% ITC program). Other responsibilities under Section 106 of the National Historic Preservation Act (FERC licensing, for example) will require more information from you as your project is refined.

In general, we think this is an imaginitive project, and are sure that ways can be found to meet both Tax Act and 106 requirements while still meeting your needs. Thank you for the early consultation; we look forward to continued discussions with you as the project develops.

Sincerely,

Donald W. Watts
Preservation Planner
State Historic Preservation Office

Celebrate IDAHO 1890 CENTENNIAL 1990

cc: B. Davis, ISHS

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DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
BUILDING 602, CITY-COUNTY AIRPORT
WALLA WALLA, WASHINGTON 99362-9265

REPLY TO
ATTENTION OF:

April 14, 1987

Operations, Construction,
and Readiness Division

Mr. Bruce Blaser
Fulcrum, Incorporated
3350 American Terrace, No. 300
Boise, Idaho 83706

Dear Mr. Blaser:

This is in response to your April 1, 1987 letter confirming Fulcrum, Incorporated's decision to use the waterbag cofferdam above and below the dam in the Boise River, Sec. 29, T.3N., R.3E., B.M., Ada County, Idaho. The use of waterbags for cofferdams will not require an individual permit under Section 404 of the Clean Water Act.

The placement of the concrete in tightly sealed forms is authorized under Section 404 of the Clean Water Act by a nationwide permit in accordance with 33 CFR 330.5, a copy of which is enclosed (refer to paragraph (a)(25)).

The removal of excavated and blasted rock does not require a permit. This is based on the condition that the material is loaded out without being pushed up in a stockpile which would remain on site overnight. Large pieces of rock may be used as riprap to stablize the river bank. The placement of the riprap is authorized by a nationwide permit for bank stabilization in accordance with 33 CFR 330.5 (refer to paragraph (a)(13)). The silt material must be disposed of in an upland site. If you will contact Mr. John Olson, telephone (208) 334-0671, he will verify for you that the disposal site is not considered a wetland.

If you should change your project from the description provided in your application, referenced above, a Department of the Army permit may be required, and you should contact this office before you start your work. In addition, your attention is directed to the enclosed list of conditions and management practices (refer to paragraphs (b) and (c)). If these requirements cannot be met, a Department of the Army permit may be required.

This determination is applicable only to Department of the Army permits administered by the Corps of Engineers. It does not relieve you of the responsibility to obtain other Federal, state, and local permits which may be required. Your project may be within the jurisdiction of the National Flood Insurance Program It is recommended that you contact your city or county

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zoning office regarding any approvals required under the National Flood Insurance Program. If you should have any questions or need further information, please write or call Mr. Jim Fellows at (509) 522-6724.

Sincerely,

Jim Fellows for

G. Dean Hilliard
Chief, Regulatory Branch

Enclosure

Copies furnished:

U.S. Fish and Wildlife Service
Division of Ecological Services
4696 Overland Road, Room 576
Boise, Idaho 83705

Environmental Protection Agency
ATTN: Ms. Michelle Stevens
422 West Washington
Boise, Idaho 83702-5998

Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, Idaho 83705

InterWest Hydro, Incorporated
3350 American Terrace, No. 300
Boise, Idaho 83706

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FEB 29 1988

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region

Cecil D. Andrus
Governor

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

August 18, 1987

Fulcrum, Inc.
3350 Americana Terrace, #300
Boise, ID 83706

RE: 63-S-670

Gentlemen:

This office has reviewed your above referenced application for a permit to alter a stream channel and has prepared a decision as provided for in Section 42-3805 of the Idaho Code.

You may consider this letter as a permit to alter the stream channel shown on your application provided the conditions listed below are adhered to.

SPECIAL CONDITIONS:

MINIMUM STANDARDS (These standards are established in the State of Idaho, Department of Water Resources Rules and Regulations regarding Stream Channel Alterations dated March 1, 1985, and are enclosed with this permit.)

9,1 - Construction Procedures

9,2 - Dumped Rock Riprap

A separate easement will be required from the Department of Lands prior to the start of construction.

This permit specifically prohibits the removal of streambed material from below the water surface in the flowing part of the channel and/or pushing or pulling streambed material across the wetted stream channel.

Equipment usage within the wetted portion of the stream channel shall be limited to 1 crossing location. All material must be carried above the water surface or be enclosed in a container when moved through these crossings.

Stream bank vegetation shall be protected to the extent practical during construction. Disturbed areas shall be revegetated, if appropriate, after completion of construction.

All areas subject to erosion as a result of the construction shall be protected with rock riprap or other suitable methods of erosion protection.

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All construction shall be completed in accordance with descriptions and methods on the application and attachments submitted with the application unless otherwise specified. Any changes must be approved by this department prior to construction.

All temporary structures, excavated material, vegetation or construction debris resulting from the construction shall be disposed of out of the stream channel where it cannot reenter the channel at high flows.

All temporary cofferdams and work pads shall be constructed of clean material of sufficient size or protected with rock riprap such that erosion does not occur while the temporary material is in the channel.

This permit shall expire December 31, 1988.

GENERAL CONDITIONS:

This permit does not constitute any of the following:

a. An easement or right-of-way to trespass across or work upon property belonging to others.
b. Other approval that may be required by State or Federal Government, unless specifically stated in the special conditions above.
c. Responsibility of the Department of Water Resources for damage to adjacent properties due to work done.
d. Compliance with the Federal Flood Insurance Program, FEMA regulations or approval of the local Planning and Zoning authority.

The permit holder or operator must have a copy of this permit at the alteration site and available for inspection at all times.

The Department of Water Resources may cancel this permit at any time that it determines such action is necessary to minimize adverse impact on the stream channel.

CONDITIONS AND CONSTRUCTION PROCEDURES APPROVED UNDER THIS PERMIT MAY NOT COINCIDE WITH THE PROPOSAL AS SUBMITTED. FAILURE TO ADHERE TO CONDITIONS AS SET FORTH HEREIN CAN RESULT IN LEGAL ACTION AS PROVIDED FOR IN SECTION 42-3809, IDAHO CODE.

If you object to the decision issuing this permit with the above conditions, you have fifteen days in which to notify this office in writing that you request a formal hearing on the matter. If an objection has not been received within fifteen days, this decision will be final.

If you have any questions, please contact this office.

Sincerely,

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

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enc.
cc: IDOL, IDFG, IDHW - DOE, C of E, Ada County, InterWest Hydro, Inc.

PROPOSED MITIGATION

BARBER DAM PROJECT

EXPECTED ENVIRONMENTAL IMPACTS

General. The Barber Dam Hydroelectric Project would be a run-of-river operation with flows controlled upstream at Lucky Peak Dam. Additionally, the Barber Dam pool immediately behind the dam has filled in with sediment over many years and the dam has virtually no storage reservoir capacity. Because the project would not require any change in the normal flow regime of the Boise River or any change in present pool elevations, it is not anticipated that the environmentally sensitive area upstream of the project would be adversely impacted on a long-term basis. Some temporary impacts, however, can be expected from the construction and start-up operations of the hydroelectric project. Discussed below are those potential impacts in terms of construction and continued operation.

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Potential Impacts of Construction

Habitat. In the licence application it was proposed to remove a small sandbar approximately 20 feet wide by 150 feet long which presently exists in the north channel of the Boise River immediately east (upstream) of the proposed intake structure location. This will no longer be done. This was proposed to environmental agencies (IDFG and USFWS) during visits to the site on July 14, 1982. The sandbar is considered riparian habitat and suitable nesting area for waterfowl in the vicinity.

This was originally proposed to facilitate construction of a new powerhouse. The existing powerhouse will now be utilized with no proposed changes to the exterior of the structure. Existing weeds and grasses on the embankment and flat area lying north of the existing powerhouse will be disturbed. Disturbance will be minimal, and will be confined to a small area. Exhibit 1 shows disturbed area. The embankment will be seeded as recommended by the Department of Fish & Game, and the flat area will be replaced with grass. It will be necessary to remove two cottonwood and locust trees located on the northwest corner of the powerhouse.

Stream Turbidity. Temporary stream turbidity is expected to occur with the restoration of the intake structures and tailrace. Such increases of turbidity in the Boise River could adversely affect fish and disrupt recreational activities on the stream. Siltation from construction turbidity could also adversely affect fish spawning activities.

Turbidity problems could be minimized by utilizing existing state standards and establishing procedures in the project's bid documents. Construction timing and phasing to minimize stream turbidity would also be addressed. It is anticipated that stream turbidity could be minimized by installation of a cofferdam in the north channel for removal of the sedimentation in front of the intake structures. The cofferdam will be installed during low flow conditions on the river, and be constructed of sandbags. This will allow the area in front of the intake structure and the tailrace area to be dewatered. By dewatering intake and tailrace

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area, turbidity is not expected to be a problem. Some blasting of bed rock will be required in the tailrace section to allow flows from the powerhouse to pass freely.

Fish and Wildlife Avoidance. Construction activities will have an impact on fish and wildlife that use the immediate project area. The presence of construction workers and equipment, construction noise and dredging activities will probably cause some temporary disruption to fish and wildlife. Nesting waterfowl in the immediate area could also be disturbed by these activities.

Construction activity will be temporary and the impacts limited to the immediate vicinity of Barber Dam. It is estimated to take four weeks to complete excavation on intake and tailrace stream alterations. Effects on nesting waterfowl and wildlife rearing can be mitigated by the timing of construction. If the project is constructed during the late summer, fall and early winter, there will be little impact on nesting and rearing activities. The U.S. Fish and Wildlife Service has made the applicant aware that wintering concentrations of bald eagles occur in upstream areas of the Barber Dam pool. Again, construction activities would be carried out in a manner that the eagles or other environmentally sensitive species would not be unduly disturbed.

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Noise. Construction activity will produce significant noise from equipment. Though the project site is in a sparsely populated area, there are several residential dwellings located along the southwest side of the Boise River. Although flows over the dam would serve to drown out any negative noise impacts during construction,equipment and machinery would be muffled or otherwise equipped with appropriate noise suppression devices. Additionally, it is proposed to restrict construction activities to normal working hours. Further, since noise is directional, it is anticipated that existing levee would serve to drown out noise of construction as would noise associated with flows over the spillway.

Stream Flow Disruption. No negative impacts on stream flow are anticipated. Flows diverted through the generating turbines will be returned at the northerly bend of the river. The only change to the existing river flow patterns will be to increase the volume of flow in the north river channel approaching the powerhouse. Such an alteration in major flow patterns is not anticipated to substantially disrupt either the upstream pool or the downstream river channel.

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Potential Impacts of Operation

Raptor Electrocution. Because of the presence of bald eagles and other birds of prey in the general project vicinity, the possibility of raptor electrocution is a serious concern. Electrocution can occur when a bird landing on a power pole has a

wing span sufficient to touch two phase wires at the same tie, thus creating a fault condition. This potential problem can be prevented by proper design of new transmission line poles and placement of pole cross members according to the typical Idaho Power Company standards. Idaho Power Company will be constructing the power lines. There also exists a variety of climbing animals in the project vicinity that could come in contact with electrical components of the facility. This danger to area wildlife can be minimized by fencing the area, enclosing the generating units and rodent-proofing electrical switchgear.

Powerhouse Noise. Operation of the generating facilities will produce continuous noise at low levels. Such noise levels will not be of sufficient intensity however, to be continually disruptive to wildlife or human activities. it is expected that wildlife in the area will become acclimated after a short period of time. It is also expected that present noise levels associated with flows over the dam will help offset, if not completely drown out noise from the project's operation when excess flow is being spilled. Since noise is directional and the noise producing facilities would be located on the downstream side of the existing levee and dam, it is anticipated that the levee and dam would aid as a noise cutoff to [illegible] habitat. Downstream habitat is primarily pasture land.

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Water Quality Degradation. There are four potential long-term water quality problems related to the production of

hydroelectric power:

1. Nitrogen supersaturation.
2. Low dissolved oxygen content.
3. Metallic pollution.
4. Fuel and chemical pollution.

All of these problems can be mitigated by proper equipment selection, plant design and operation procedures.

Properly designed intake structures and generating equipment will to change nitrogen concentration in the water since it is not possible to change nitrogen levels in a closed system under such a low head. However, if conditions at the intakes allow nitrogen to enter the water, hydraulic pressures within the penstock and turbines would dissolve this additional nitrogen into the water. Nitrogen would not come out of solution until it reaches a lower pressure, which occurs at the turbine. This supersaturation condition could not only be fatal to fish, but could also cause damage to turbine equipment through cavitation. Proper design of the intake structure, therefore, would prevent a cavitation problem by minimizing air entrainment.

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Pressure can increase the amount of oxygen which can be dissolved in water. Since the proposed facility would utilize a free flowing stream without the need of a reservoir dam, flows to be passed through the turbine/generators are fully oxygenated and

comments/concerns by affected state and federal fish and wildlife agencies as well as water quality bureaus and the State Historic preservation Office. Also included are those specific responses to the concerns which include any proposed mitigation measures.

Starting October, 1986, the above agencies along with the Department of Water Resources, and the Corps of Engineers were contacted in order to complete the final mitigation process to allow construction to begin on the Barber project. Stream alteration permits will be filed using information compiled from these agency suggestions. The licensee feels the project will have temporary impact on the environment during the construction stage, and that these impacts, as well as any other impacts have been mitigated during the license process, and no further mitigation is necessary.

The licensee solicits your comments and appreciates opportunity to work with your agency.

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the power generation process would neither increase nor deplete existing oxygen levels.

Metallic pollution could occur if proper materials are not used in a hydroelectric facility. It will be specified that turbine runners and other turbine components are not to be constructed of bronze or other heavy metals so that such metallic pollution can be prevented.

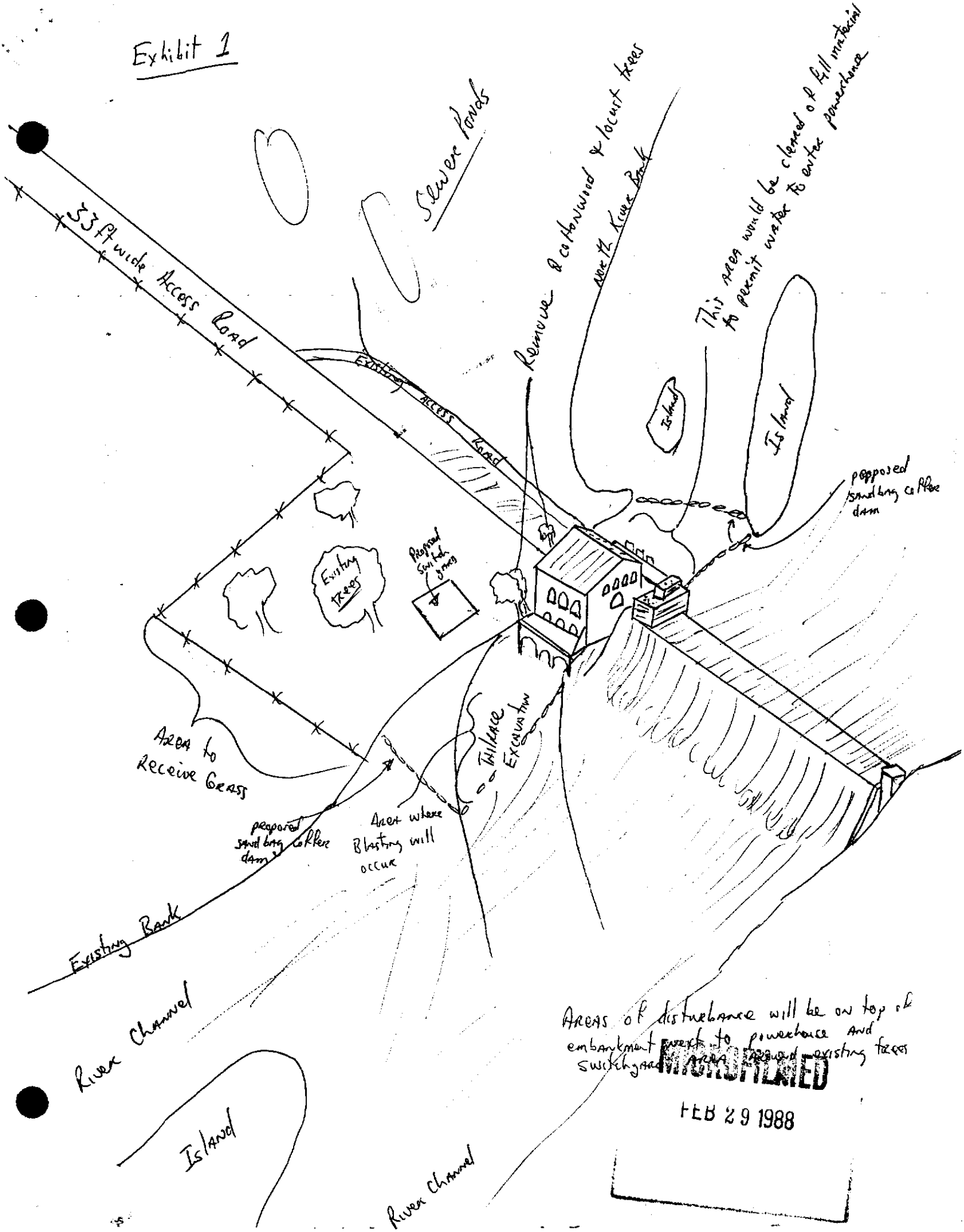
The proposed turbines would be equipped with sealed or water-lubricated bearings, thus minimizing the potential problem of introducing foreign matter (e.g. grease or oil) into the river. Turbine manufacturers have indicated that they will include a statement to the effect that their turbines do not contain any heavy metals or introduce hazardous substances into the water.

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JUL 2 1982

AGENCY CONSULTATION

On July 14, 1982, representatives of the Idaho Department of Fish and Game, U.S. Fish and Wildlife Service, the Applicant's consultants and the Applicant's representative visited the Barber Dam site and inspected the surrounding area. Additionally, the Idaho State Historic Preservation Office was contacted for their comments/concerns relative to the installation of generating facilities at Barber Dam. The following Table represents those

Exhibit 1



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EXHIBIT 2

POTENTIAL IMPACT ON	CONCERN	RESPONSE
Habitat	Levee and flat area north of powerhouse	Reseed levee, plant grass in flat area.
	Tree removal	Prune if possible, replant compatible tree species if the removal is necessary
	Soil erosion.	Revegetate disturbed areas.
River	Stream turbidity.	Time construction during low flow period. Appropriate construction techniques including sanding cofferdam.
	Metallic pollution.	Specify use of non-heavy metals.
	Chemical Pollution	Specify use of water lubricated bearings.
Fish & Wildlife	Electrocution	Installation of security fencing. Provide rodent-proofing.
	Nitrogen supersaturation.	Properly design intakes to prevent air entrainment in penstocks.
	Avoidance due to noise; Disruption to nesting	Temporary; use muffler equipment. Properly time construction around nesting periods.
Raptors	Electrocution.	Will raptor-proof new transmission line poles per Idaho Power Co. standards.
Existing Structures	Historic integrity of structures.	No new construction at exist. structure. Exterior powerhouse would be refurbished per DOI standards; continued coordination with Idaho SHPO.
	Aesthetic quality.	New structures will be compatible with existing facilities per DOI standards.
	Archaeological remnants; disturbance from construction.	Continued coordination with state archaeologist prior to ground disturbing activities.

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Bonneville Pacific Corporation

July 17, 1987

Mr. David R. Tuthill, Jr., P.E.
Western Region Manager
Idaho Department of Water Resources
450 W. State St.
Boise, ID 83720

Ref. Barber Dam Hydroelectric Project

Dear David:

I understand that your department requires proof that our company has the capability of financing the above-referenced project.

Bonneville Pacific Corporation has to date financed 18 alternative energy projects ranging in size from 100 kilowatts to 75 megawatts. Of these 10 have been hydroelectric projects.

Bonneville had $83 million in total assets and a net worth of $24 million as of April 30, 1987. We are in the process of making a second public stock offering which should increase our net worth to over $50 million and total assets to over $100 million.

Bonneville has in place a revolving construction line of credit in the amount of $10 million with Norwest Bank of Minneapolis. We have relationships with several term lenders including Westinghouse Credit Corporation, Pru-Capital, Inc., and New England Mutual Life Insurance Company.

If you have questions or need references or substantiation with respect to this information, please contact our Treasurer, Kenneth Bell.

Sincerely yours,

Dean R. Anderson
Vice President

cc. Bruce Blaser, Interwest Hydro, Inc.
DRA/barblet.doc

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257 East 200 South, Suite 800 / Salt Lake City, Utah 84111 / 801-363-2520 / Facsimile 801-363-9557 / Telex 453068

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

SEP 15 1987

REPLY TO ATTN OF: WD-136

Orland Clements
Fulcrum, Inc.
c/o Bonneville Pacific Corporation
P.O. Box 2467
Twin Falls, ID 83301

RE: Barber Dam Hydroelectric Project, FERC No. 4881

Dear Mr. Clements:

The following comments relate to article 36 of your Federal Energy Regulatory Commission (FERC) license concerning development of an erosion control and dust prevention plan.

As we understand the plan, the following components are included in construction plans and implementation:

1. River gravels and silts will be excavated behind water bay cofferdams. When river gravels are removed below cofferdams, work will be done when water is not in the channel.

2. Deposition of 500-600 yd^3 of river gravels will not occur in wetlands. Mr. Bruce Blaser said all materials could be deposited on the existing access road, which would minimize environmental impacts. If material is to be deposited outside the existing road, a wetland delineation should be done by the U.S. Army Corps of Engineers or the Environmental Protection Agency.

If material is to be placed in wetlands, we recommend that you begin coordination with the Walla Walla District, U.S. Army Corps of Engineers as early as possible so there are no unnecessary project delays.

Accordingly, the plans and specifications of the erosion control and dust prevention plan meet our approval as per the September 2, 1987, meeting with Montey Marchus, Idaho Department of Health and Welfare, Division of Environment, yourself, and Michelle Stevens of our Idaho Operations Office.

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Should you have questions, please contact Michelle Stevens at (208) 334-9488 at our Idaho Operations Office.

Sincerely,

Gerald Opatz, Chief
Environmental Review Section

cc: FERC
IDHW-DOE, Boise
IOO
COE-Walla Walla

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STATE OF IDAHO

DEPARTMENT OF HEALTH AND WELFARE
DIVISION OF ENVIRONMENT - 801 Reserve Street, Boise, Idaho 83712

September 3, 1987

Orland Clements
Fulcrum, Inc.
c/o Bonneville Pacific Corporation
P.O. Box 2467
Twin Falls, Idaho 83301

RE: Barber Dam Project
FERC No. 4881

Dear Mr. Clements:

1. The proposed project affects the Boise River, a special resource water. Construction must proceed without violation of Idaho Water Quality Standards, Section 1-2200, with particular concern for impacts on stream dissolved oxygen, temperature, and gas supersaturation.

2. Construction impacts are most easily mitigated by working above the high water line where possible with appropriate buffer standards. In particular, Michelle Stevens will indicate where dredged material will be deposited to keep it out of wetlands.

3. Activities should proceed in a timely manner to minimize the impact on the river, and all restoration should be coordinated with Michelle.

4. Petroleum products and/or hazardous materials must be stored away from the stream.

Sincerely,

Monty G. Marchus

Monty G. Marchus, P.E.
Water Quality Engineer

MGM:cs

cc: Michelle Stevens, EPA-100
Jon Wroten, DOE-BFO

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1987

BARBER DAM

HYDROELECTRIC PROJECT

ADA COUNTY, IDAHO

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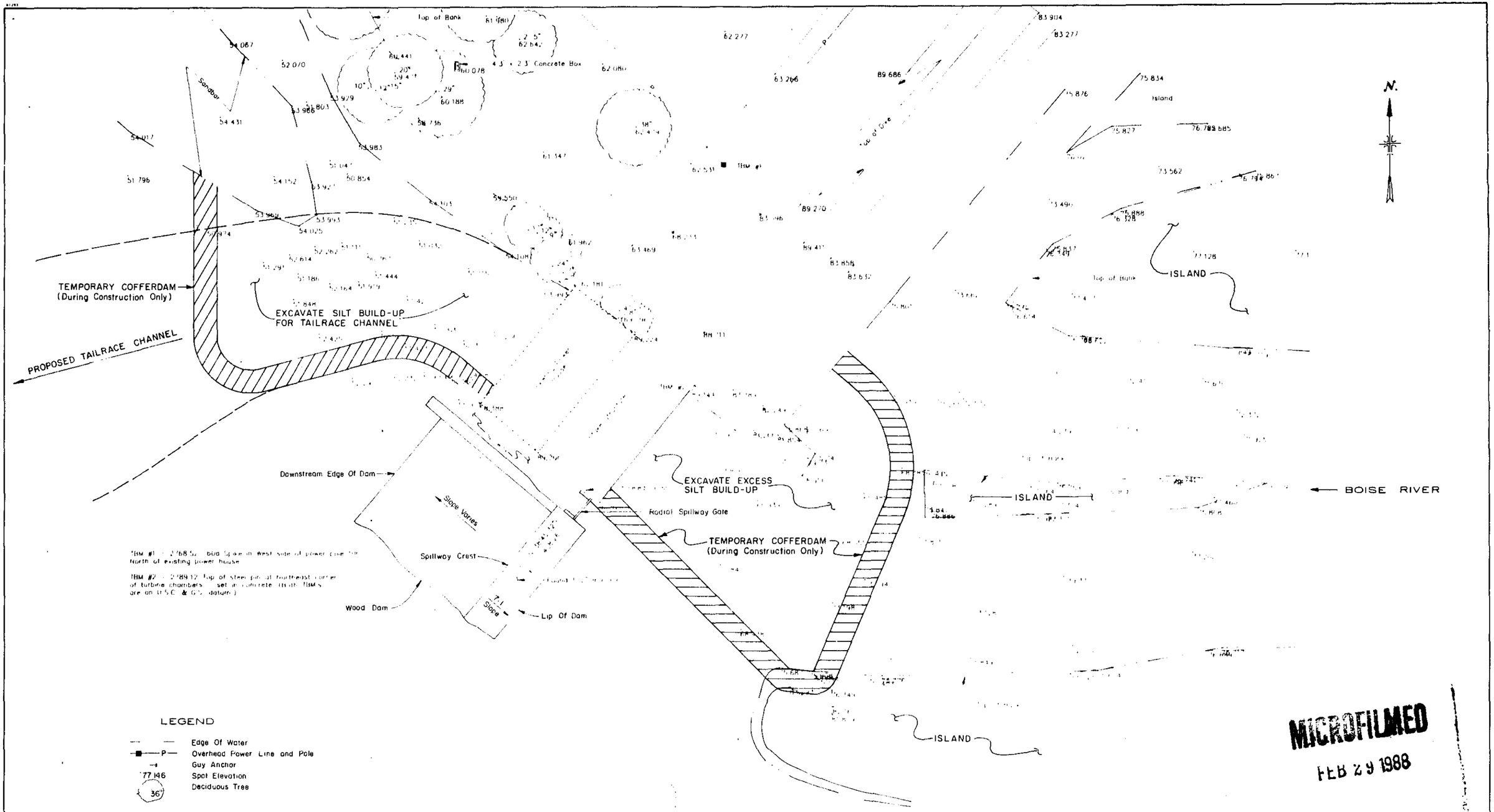
ENGINEER:

J-U-B ENGINEERS, INC.
Engineers Surveyors Plann
NORTH PLAZA OFFICES
800 FALLS AVENUE
TWIN FALLS, IDAHO

OWNER:

BONNEVILLE PACIFIC CORP.
200 EAST SOUTH TEMPLE, SUITE 300
SALT LAKE CITY, UTAH

Preliminary
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Preliminary
Not Subject to Review

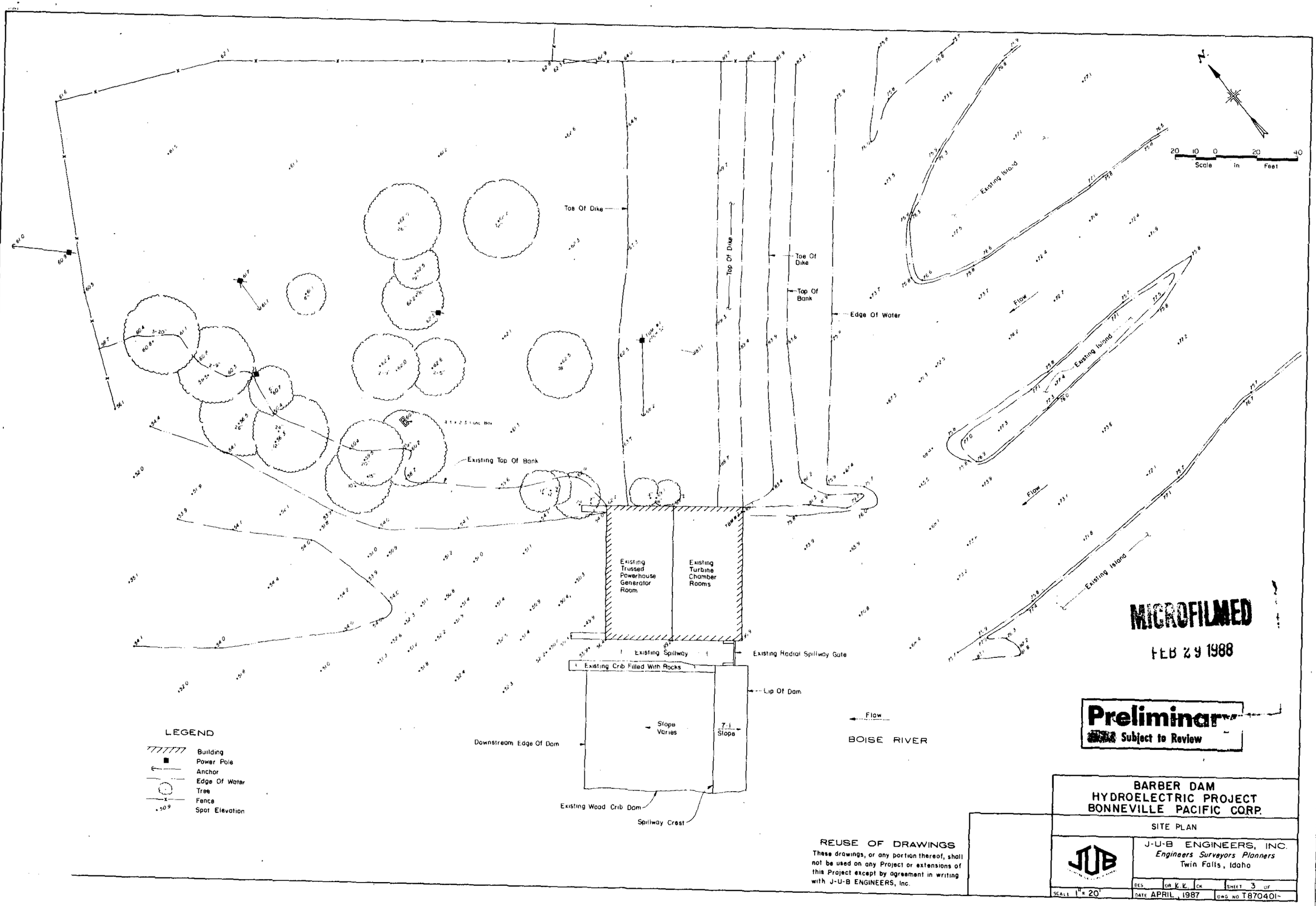
BARBER DAM
HYDROELECTRIC PROJECT
BONNEVILLE PACIFIC CORP.

TEMPORARY COFFERDAM PLAN

J-U-B ENGINEERS, INC
Engineers Surveyors Planners
Twin Falls, Idaho

DES. | DR K.K | CK | SHEET 2

SCALE 1" = 20' | DATE APRIL, 1987 | DWG. NO T87040I-



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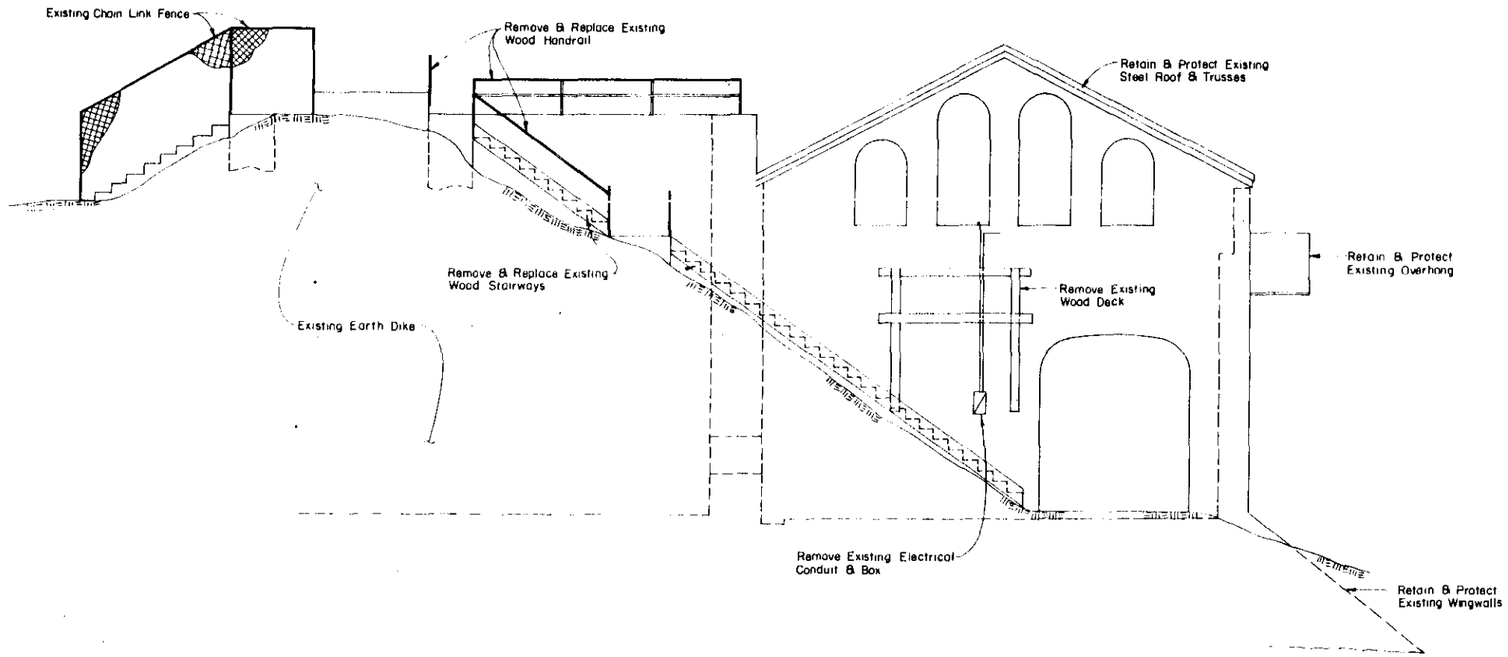
BARBER DAM
HYDROELECTRIC PROJECT
BONNEVILLE PACIFIC CORP.

SITE PLAN

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Twin Falls, Idaho

SCALE 1" = 20'	DES	DR K.K.	CK	SHEET 3 OF
	DATE APRIL, 1987			DWG NO T870401

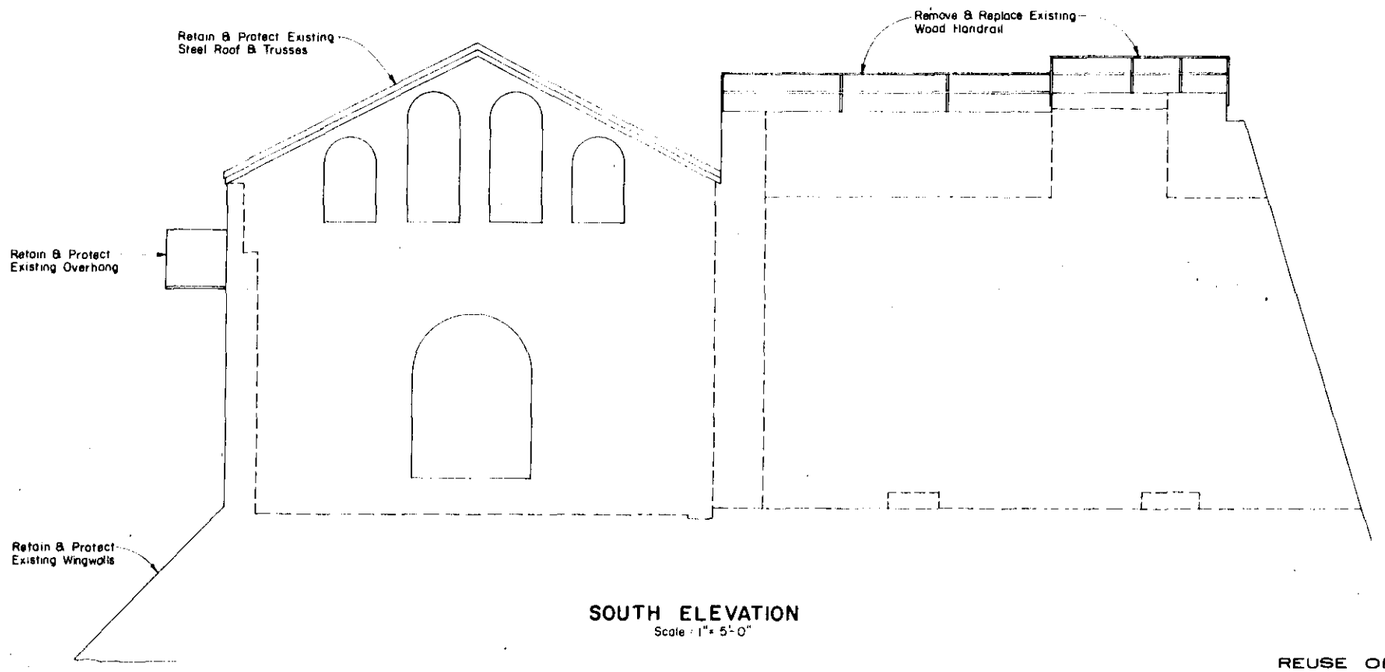
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NORTH ELEVATION
Scale: 1" = 5'-0"

NOTE:

1. All Exterior Walls And Window Openings To Be Retained And Protected.
2. New Glass Windows To Be Installed In All Existing Window Openings.
3. Remove All Graffitti From Interior And Exterior Walls.



SOUTH ELEVATION
Scale: 1" = 5'-0"

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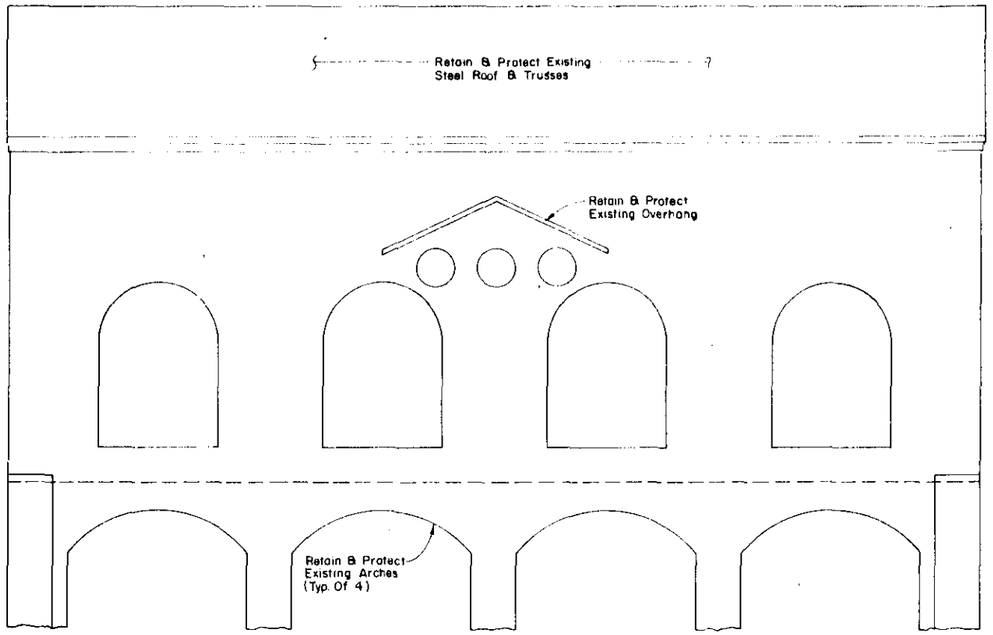
BARBER DAM
HYDROELECTRIC PROJECT
BONNEVILLE PACIFIC CORP.

EXISTING
NORTH AND SOUTH ELEVATIONS

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Engineers Surveyors Planners
Twin Falls, Idaho

DES | DR K.E. | CK | SHEET 4 OF

SCALE AS SHOWN | DATE APRIL, 1987 | DWG NO T870401-



WEST ELEVATION

Scale: 1"= 5'-0"

NOTE:

1. All Exterior Walls And Window Openings To Be Retained And Protected.
2. New Glass Windows To Be Installed In All Existing Window Openings.
3. Remove All Graffitti From Interior And Exterior Walls.

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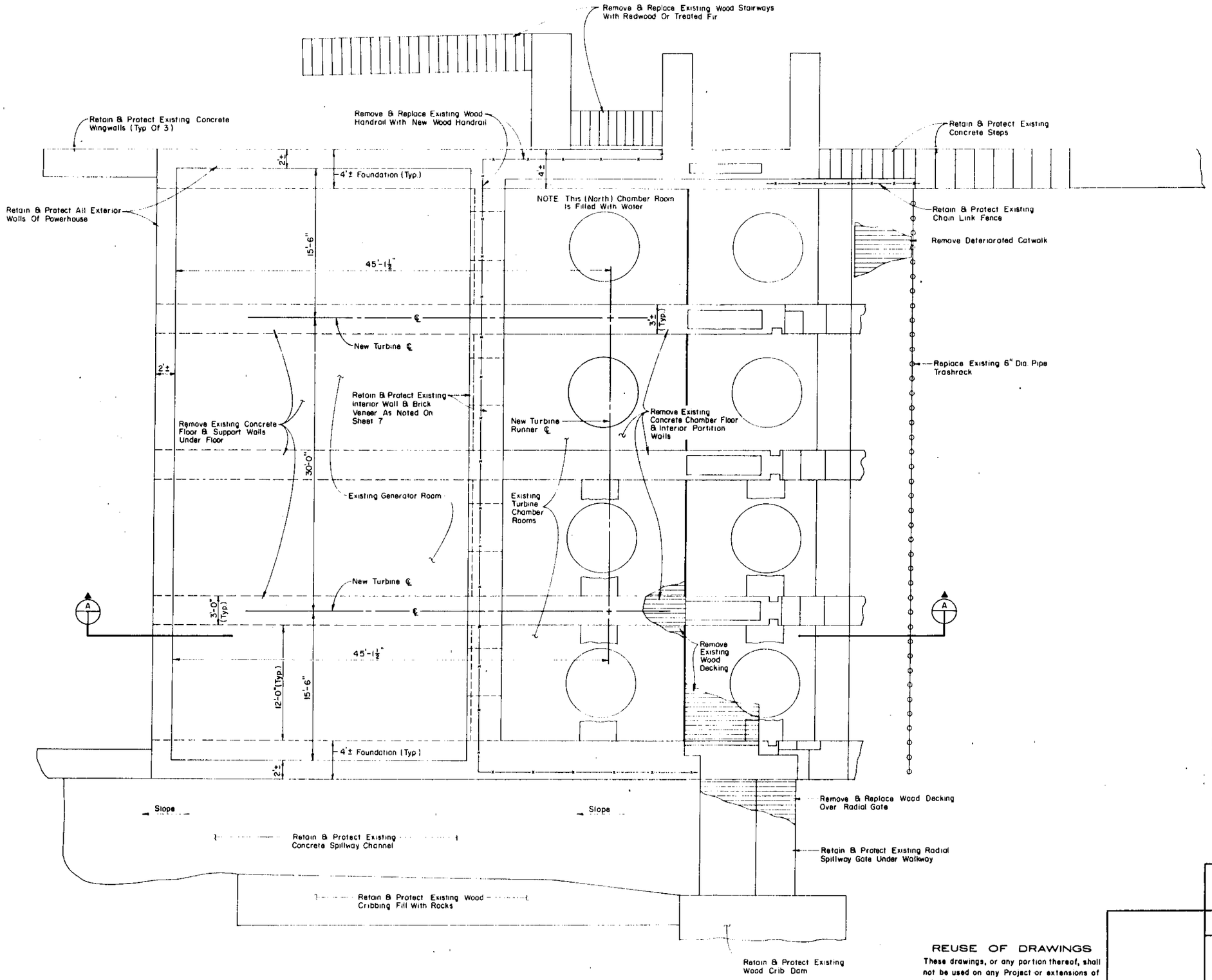
BARBER DAM
HYDROELECTRIC PROJECT
BONNEVILLE PACIFIC CORP.

EXISTING WEST ELEVATION
AND MISCELLANEOUS DETAILS

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Twin Falls, Idaho

DES | DR R.K. | CK | SHEET 5 OF

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N.

Project North

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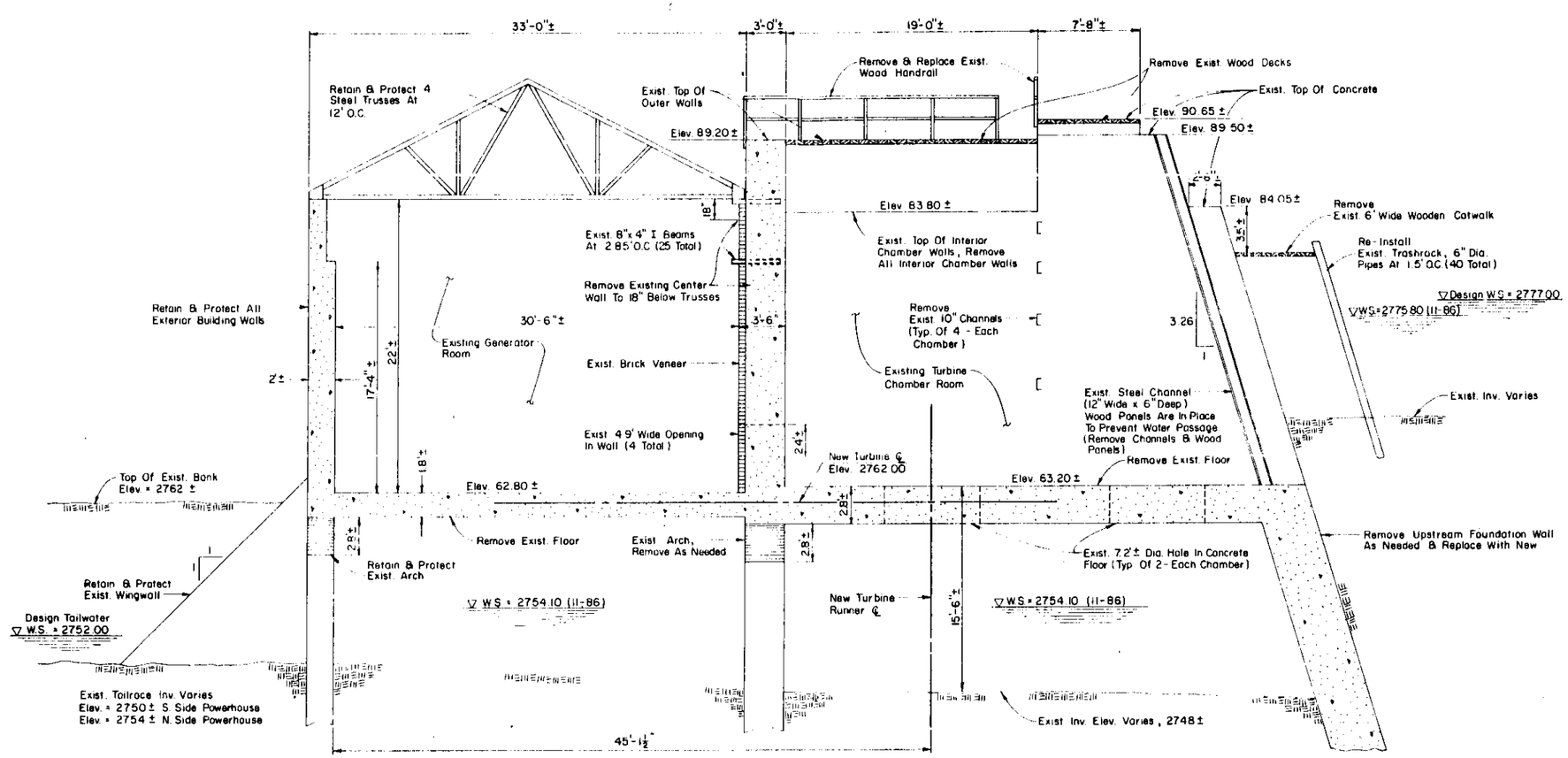
BARBER DAM HYDROELECTRIC PROJECT BONNEVILLE PACIFIC CORP.

EXISTING POWERHOUSE FLOOR PLAN

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Twin Falls, Idaho

DES. | DR K.C. | CK | SHEET 6 OF

SCALE 1"=5'-0" | DATE APRIL, 1987 | DWG NO T87040I-



SECTION (A)
Scale: 1"=5'-0"

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BARBER DAM
HYDROELECTRIC PROJECT
BONNEVILLE PACIFIC CORP.

EXISTING POWERHOUSE SECTION

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Twin Falls, Idaho

DES. | DR K.K. | CK | SHEET 7 OF

SCALE AS SHOWN | DATE APRIL, 1987 | DWG. NO. T870401-

Retain & Protect Exist. Steel Roof & Trusses

Replace Exist. Wood Handrail With Identical

Retain & Protect Outside Exterior Walls

Retain & Protect Exist. Concrete Steps & Chain Link Fence On North Side Of Powerhouse

⅝" Bolts Into Masonry Wall At 12" O.C. (6" Min. Embedment)

Joist Hangers To Be Approved By Engineer

⅝" CDX Plywood

2 x 12 No.1 Douglas Fir Joists At 12" O.C.

26 Ga. Sheet Metal Roof, Seal With Roofing Tar As Needed

12" Fiberglass Insulation

2 x 12 Redwood Sill

Redwood Facia

2 x 10 Redwood Sill Plate Over Sill Material

2 x 12 Blocking

Retain & Protect Exist. Wall As Shown

2 x 12 Blocking At Midspan

Wood Handrail To Match Exist.

3'-6"±

⅝" Type X Gypsum Board, Taped Finish, Over 4 Mil Vapor Barrier

½" x 12" A.B. At 4'-0" O.C.

Remove Exist. Wall Up To This Point

Contractor Shall Review Method Of Temporary Shoring Of Wall With Engineer Prior To Construction

Elev. = 2780.00

6"

3'-0" Sidewalk

10"

℄ Turbine Runner

1½" Dia. Steel Tube Handrail (Typ.)

FF Elev. = 2775.00

▽Design HW Elev.=2777.00

Elev. = 2773.63

Retain & Protect Existing Exterior Walls Of Powerhouse

Manway Access

Access

See Trash Rock Details, Sheet

12" Min.

Elev. 2770.26

2'±

18'-10¾"

12"

5'-10¾"

4'-3⅜"

22'-11⅝"

6" Dia. Pipes At 18" O.C.

Bulkhead Gate Slide, See Details Sheet

6"

6"

6"

3'-0" Sidewalk

℄ Bearing

END OF VOITH SUPPLY

Flow

Bulkhead Gate Slide

Const. New Center Pier, See Detail Sheet

℄ Turbine Elev. = 2762.00

1½" Dia Steel Tube Handrail

℄ Elev. = 2762.00

FF Elev. =

FF Elev. = 2760.05

Rectangular To Circular Liner

W18 x 76 Embedded In Concrete (2 Req'd.)

Retain & Protect Existing Arches & Center Wall

Lean Dental Concrete Fill

12"

IST Lift Elev = 2755.36

See Trash Rock Details, Sheet

12" Min. Dia. Riprap 15' Upstream Of Wall

Prefabricated Steel Stairs w/Grating & Handrail (Typ. Of 3)

12"

75°

2'-0"

Elev. = 2753.74

12"

END OF VOITH SUPPLY

6

6a

2'-6"

24"

Access

18"

▽Min. TW WS Elev=2752.00

FF Elev. = 2751.10

IST Lift Elev = 2749.86

7

8

9

10

11

12

Draft Tube

IST Lift Elev. 2751.83

FEB 29 1988

3'-0"

Roughan Surface Of IST Concrete Placement (Typ.)

IST Lift Elev. 2750.64

3'-0" Under Anchor Bolts Only

9"

Cutoff Wall To Bedrock

2'-9"±

15'-6"

15'-3"

28'-3⅜"

38'-0"

12"

Rounded Upstream Edge Of Center Pier, See Detail Sheet

4:1 Slope

Elev. = 2739.97

4'-6"

2'-0"±

3'-0"

3'-1⅜"

45'-1½"

38'-11⅞"

12" Min. Dia Riprap Throughout 4:1 Transition

Preliminary
Subject to Review

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BARBER DAM HYDROELECTRIC PROJECT BONNEVILLE PACIFIC CORP.

FINISHED POWERHOUSE SECTION

J-U-B ENGINEERS, INC.
Engineers Surveyors Planners
Twin Falls, Idaho

DES	DR K.K.	CK	SHEET 11 OF
SCALE 1" = 3'-0"	DATE APRIL, 1987	DWG. NO T870401-	